PHILIPPINE REPORTS

VOL. 780

FEBRUARY 1, 2016 TO FEBRUARY 10, 2016

VOLUME 780

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

FEBRUARY 1, 2016 TO FEBRUARY 10, 2016

SUPREME COURT
MANILA
2017

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2017

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

FE CRESCENCIA QUIMSON-BABOR
COURT ATTORNEY VI

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY VI

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

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY II

SUPREME COURT OF THE PHILIPPINES

HON. MARIA LOURDES P.A. SERENO, Chief Justice
HON. ANTONIO T. CARPIO, Senior Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. ARTURO D. BRION, Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice
HON. LUCAS P. BERSAMIN, Associate Justice
HON. MARIANO C. DEL CASTILLO, Associate Justice
HON. MARTIN S. VILLARAMA, JR., Associate Justice
HON. JOSE P. PEREZ, Associate Justice
HON. JOSE C. MENDOZA, Associate Justice
HON. BIENVENIDO L. REYES, Associate Justice
HON. ESTELA M. PERLAS-BERNABE, Associate Justice
HON. MARVIC MARIO VICTOR F. LEONEN, Associate Justice
HON. FRANCIS H. JARDELEZA, Associate Justice

ATTY. ENRIQUETA E.VIDAL, Clerk of Court En Banc
ATTY. FELIPA B. ANAMA, Deputy Clerk of Court En Banc

FIRST DIVISION

Chairperson

Hon. Maria Lourdes P.A. Sereno

Members

Hon. Teresita J. Leonardo-De Castro
Hon. Lucas P. Bersamin
Hon. Martin S. Villarama, Jr.
Hon. Bienvenido L. Reyes

Division Clerk of Court

Atty. Edgar O. Aricheta

SECOND DIVISION

Chairperson

Hon. Antonio T. Carpio

Members

Hon. Arturo D. Brion
Hon. Mariano C. Del Castillo
Hon. Jose P. Perez
Hon. Estela M. Perlas-Bernabe

Division Clerk of Court

Atty. Ma. Lourdes C. Perfecto

THIRD DIVISION

Chairperson

Hon. Presbitero J. Velasco, Jr.

Members

Hon. Diosdado M. Peralta
Hon. Jose C. Mendoza
Hon. Marvic Mario Victor F. Leonen
Hon. Francis H. Jardeleza

Division Clerk of Court

Atty. Wilfredo Y. Lapitan

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 175210. February 1, 2016]

MARIO JOSE E. SERENO, EXECUTIVE DIRECTOR OF THE ASSOCIATION OF PETROCHEMICAL MANUFACTURERS OF THE PHILIPPINES, INC. (APMP), *petitioner, vs.* **COMMITTEE ON TRADE AND RELATED MATTERS (CTRM) OF THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA), COMPOSED OF THE DIRECTOR-GENERAL OF THE NEDA SECRETARIAT, THE EXECUTIVE SECRETARY, THE SECRETARIES OF TRADE AND INDUSTRY, FINANCE, FOREIGN AFFAIRS, AGRICULTURE, ENVIRONMENT AND NATURAL RESOURCES, BUDGET AND MANAGEMENT, TRANSPORTATION AND COMMUNICATION, LABOR AND EMPLOYMENT, AGRARIAN REFORM, THE GOVERNOR OF THE BANGKO SENTRAL NG PILIPINAS AND THE CHAIRMAN OF THE TARIFF COMMISSION, AND BRENDA R. MENDOZA IN HER CAPACITY AS DIRECTOR OF THE TRADE, INDUSTRY & UTILITIES STAFF,** *respondents*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO INFORMATION ON MATTERS OF PUBLIC CONCERN; RATIONALE; IT IS SUBJECT TO

LIMITATIONS PRESCRIBED BY LAW.— The constitutional guarantee of the right to information on matters of public concern enunciated in Section 7 of Article III of the 1987 Constitution complements the State's policy of full public disclosure in all transactions involving public interest expressed in Section 28 of Article II of the 1987 Constitution. These provisions are aimed at ensuring transparency in policy-making as well as in the operations of the Government, and at safeguarding the exercise by the people of the freedom of expression. In a democratic society like ours, the free exchange of information is necessary, and can be possible only if the people are provided the proper information on matters that affect them. But the people's right to information is not absolute. According to *Legaspi v. Civil Service Commission*, the constitutional guarantee to information "does not open every door to any and all information." It is limited to matters of public concern, and is subject to such limitations as may be provided by law. Likewise, the State's policy of full public disclosure is restricted to transactions involving public interest, and is further subject to reasonable conditions prescribed by law.

2. ID.; ID.; ID.; ID.; TWO REQUISITES THAT MUST CONCUR BEFORE THE RIGHT TO INFORMATION MAY BE COMPELLED BY *MANDAMUS*.— Two requisites must concur before the right to information may be compelled by writ of *mandamus*. Firstly, the information sought must be in relation to matters of public concern or public interest. And, secondly, it must not be exempt by law from the operation of the constitutional guarantee. As to the first requisite, there is no rigid test in determining whether or not a particular information is of public concern or public interest. Both terms cover a wide-range of issues that the public may want to be familiar with either because the issues have a direct effect on them or because the issues "naturally arouse the interest of an ordinary citizen." As such, whether or not the information sought is of public interest or public concern is left to the proper determination of the courts on a case to case basis. x x x The second requisite is that the information requested must not be excluded by law from the constitutional guarantee. In that regard, the Court has already declared that the constitutional guarantee of the people's right to information

does not cover national security matters and intelligence information, trade secrets and banking transactions and criminal matters. Equally excluded from coverage of the constitutional guarantee are diplomatic correspondence, closed-door Cabinet meeting and executive sessions of either house of Congress, as well as the internal deliberations of the Supreme Court. In *Chavez v. Public Estates Authority*, the Court has ruled that the right to information does not extend to matters acknowledged as "privileged information under the separation of powers," which include "Presidential conversations, correspondences, or discussions during closed-door Cabinet meetings." Likewise exempted from the right to information are "information on military and diplomatic secrets, information affecting national security, and information on investigations of crimes by law enforcement agencies before the prosecution of the accused."

3. ID.; ID.; ID.; ID.; MEETINGS OF THE COMMITTEE ON TARIFF AND RELATED MATTERS (CTRM) OF THE NATIONAL ECONOMIC DEVELOPMENT AUTHORITY (NEDA) AND THE MINUTES THEREOF ARE EXEMPTED FROM THE COVERAGE OF THE CONSTITUTIONAL RIGHT OF ACCESS TO INFORMATION; THE NEED TO ENSURE THE PROTECTION OF THE PRIVILEGE OF NON-DISCLOSURE IS NECESSARY TO ALLOW THE FREE EXCHANGE OF IDEAS AMONG GOVERNMENT OFFICIALS AS WELL AS TO GUARANTEE THE WELL-CONSIDERED RECOMMENDATION FREE FROM THE INTERFERENCE OF THE INQUISITIVE PUBLIC.— The authority of the CTRM as the advisory body of the President and the NEDA is set forth in E.O. No. 230, series of 1987 (*Reorganization Act of the National Economic and Development Authority*) x x x[.] It is always necessary, given the highly important and complex powers to fix tariff rates vested in the President, that the recommendations submitted for the President's consideration be well-thought out and well-deliberated. The Court has expressly recognized in *Chavez v. Public Estates Authority* that "a frank exchange of exploratory ideas and assessments, free from the glare of publicity and pressure by interested parties, is essential to protect the independence of decision-making of those tasked to exercise Presidential, Legislative and Judicial power." x x x Without doubt, therefore, ensuring and promoting the free exchange

of ideas among the members of the committee tasked to give tariff recommendations to the President were truly imperative. Every claim of exemption, being a limitation on a right constitutionally granted to the people, is liberally construed in favor of disclosure and strictly against the claim of confidentiality. However, the claim of privilege as a cause for exemption from the obligation to disclose information must be clearly asserted by specifying the grounds for the exemption. In case of denial of access to the information, it is the government agency concerned that has the burden of showing that the information sought to be obtained is not a matter of public concern, or that the same is exempted from the coverage of the constitutional guarantee. We reiterate, therefore, that the burden has been well discharged herein. x x x In *Senate of the Philippines v. Ermita*, [it was ruled that] [w]hat should determine whether or not information was within the ambit of the exception from the people's right to access to information was not the composition of the body, but the nature of the information sought to be accessed. A different holding would only result to the unwanted situation wherein any concerned citizen, like the petitioner, invoking the right to information on a matter of public concern and the State's policy of full public disclosure, could demand information from any government agency under all conditions whenever he felt aggrieved by the decision or recommendation of the latter. In case of conflict, there is a need to strike a balance between the right of the people and the interest of the Government to be protected. Here, the need to ensure the protection of the privilege of non-disclosure is necessary to allow the free exchange of ideas among Government officials as well as to guarantee the well-considered recommendation free from interference of the inquisitive public.

APPEARANCES OF COUNSEL

Ma. Tanya Karina A. Lat for petitioner.
Golda S. Benjamin collaborating counsel for petitioner.
The Solicitor General for public respondents.

D E C I S I O N

BERSAMIN, *J.*:

The constitutional guarantee to information does not open every door to any and all information, but is rather confined to matters of public concern. It is subject to such limitations as may be provided by law. The State's policy of full public disclosure is restricted to transactions involving public interest, and is tempered by reasonable conditions prescribed by law.

The Case

The petitioner appeals the decision rendered on October 16, 2006 by the Regional Trial Court (RTC), Branch 268, in Pasig City[1] dismissing the petition for *mandamus* he had filed in his capacity as a citizen and as a stakeholder in the Philippine petrochemical industry to compel respondent Committee on Tariff and Related Matters (CTRM) to provide him a copy of the minutes of its May 23, 2005 meeting; as well as to provide copies of all official records, documents, papers and government research data used as basis for the issuance of Executive Order No. 486.[2]

Antecedents

On May 23, 2005, the CTRM, an office under the National Economic Development Authority (NEDA), held a meeting in which it resolved to recommend to President Gloria Macapagal-Arroyo the lifting of the suspension of the tariff reduction schedule on petrochemicals and certain plastic products, thereby reducing the Common Effective Preferential Tariff (CEPT) rates on products covered by Executive Order (E.O.) No. 161 from 7% or 10% to 5% starting July 2005.[3]

On June 9, 2005, Wilfredo A. Paras (Paras), then the Chairman of the Association of Petrochemical Manufacturers of the

---

[1] *Rollo,* pp. 37-39; penned by Judge Amelia C. Manalastas.

[2] *Id*. at 34.

[3] *Id*. at 18.

Philippines (APMP), the main industry association in the petrochemical sector, wrote to the CTRM Secretariat, through its Director Brenda Mendoza (Director Mendoza), to request a copy of the minutes of the meeting held on May 23, 2005.

Director Mendoza denied the request through her letter of June 20, 2005,[4] to wit:

> With reference to your request for a copy of the minutes and resolution of the Committee on Tariff and Related Matters (CTRM) meeting held on 23 May 2005, our Legal Staff advised that we cannot provide the minutes of the meeting detailing the position and views of different CTRM member agencies. We may, however, provide you with the action taken of the CTRM as follows:
>
> > "The CTRM agreed to reduce the CEPT rates on petrochemical resins and plastic products covered under EO 161 from 7%/ 10% to 5% starting July 2005, and to revert the CEPT rates on these products to EO 161 levels once the proposed naphtha cracker plant is in commercial operation."
>
> The CTRM has yet to confirm the minutes including the action taken during the said meeting since it has not met after 23 May 2005.

The CTRM, again through Director Mendoza, sent a second letter dated August 31, 2005 as a response to the series of letter-requests from the APMP, stating:

> The CTRM during its meeting on 14 July 2005 noted that Section 3, Rule IV of the Implementing Rules and Regulations of Republic Act 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees provides that every department, office or agency shall provide official information, records or documents to any requesting public (sic). However, the section also provides exceptions to the rules, such as if '…(c) such information, record or document south (sic) falls within the concepts of established privileged or recognized exceptions as may be provided by law or settled policy or jurisprudence…' The acknowledged limitations to information access under Section 3 (c) include diplomatic correspondence, closed-door Cabinet meetings and executive sessions

[4] *Id*. at 95.

of either House of Congress, as well as internal deliberations of the Supreme Court (Chavez vs. Presidential Commission on Good Government, 299 SCRA 744)

The CTRM is of the view that the limitation pertaining to closed-door cabinet meetings under Section 3 (c) of the IRR applies to the minutes of the meeting requested by APMP. In view thereof, the CTRM is constrained [not] to provide the said minutes to the APMP.[5]

The APMP sent another letter-request dated October 27, 2005 to the CTRM through Director Mendoza reminding about the legal implications of the refusal to furnish copies of the minutes as in violation of the petitioner's Constitutional right of access to information on matters of public concern. However, the CTRM continued to refuse access to the documents sought by the APMP.[6]

The attitude of the CTRM prompted the petitioner and the APMP to bring the petition for *mandamus* in the RTC to compel the CTRM to provide the copy of the minutes and to grant access to the minutes. The case was docketed as SCA No. 2903.

The APMP, through Paras and Concepcion I. Tanglao, respectively its Chairman and President at the time, sent letters dated December 12, 2005[7] and January 10, 2006[8] to the Office of the President (OP), stating the reasons why the recommendation of the CTRM should be rejected, but the OP did not respond to the letters.

Thereafter, the petitioner filed an *Urgent Motion for the Issuance of a Writ of Preliminary Mandatory Injunction* dated January 3, 2006, to which the respondent filed its *Opposition* dated January 26, 2006 and *Motion to Dismiss* dated February 16, 2006.[9]

---

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

[6] *Id*. at 21.

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

[8] *Id*. at 52-54.

[9] *Id*. at 79.

Meanwhile, President Arroyo signed Executive Order No. 486,[10] dated January 12, 2006, to lift the suspension of the tariff reduction on petrochemical resins and other plastic products under the ASEAN Free Trade Area – Common Effective Preferential Tariff (AFTA-CEPT) Scheme. The relevant portions of E.O. No. 486 read:

WHEREAS, Executive Order 234 dated 27 April 2000, which implemented the 2000-2003 Philippine schedule of tariff reduction of products transferred from the Temporary Exclusion List and the Sensitive List to the Inclusion List of the accelerated CEPT Scheme for the AFTA, provided that the CEPT rates on petrochemicals and certain plastic products will be reduced to 5% on 01 January 2003;

WHEREAS, Executive Order 161 issued on 9 January 2003 provides for the suspension of the application of the tariff reduction schedule on petrochemicals and certain products in 2003 and 2004 only;

WHEREAS, the government recognizes the need to provide an enabling environment for the naphtha cracker plant to attain international competitiveness;

WHEREAS, the NEDA Board approved the lifting of the suspension of the aforesaid tariff reduction schedule on petrochemicals and certain plastic products and the reversion of the CEPT rates on these products to EO 161 (s.2003) levels once the naphtha cracker plant is in commercial operation;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, pursuant to the powers vested in me under Section 402 of the Tariff and Customs Code of 1978 (Presidential Decree No. 1464), as amended, do hereby order:

SECTION 1. The articles specifically listed in *Annex "A"* (Articles Granted Concession under the CEPT Scheme for the AFTA) hereof, as classified under Section 104 of the Tariff and Customs Code of 1978, as amended shall be subject to the ASEAN CEPT rates in accordance with the schedule indicated in Column 4 of *Annex "A"*. The ASEAN CEPT rates so indicated shall be accorded to imports coming from ASEAN Member States applying CEPT concession to

[10] *Id*. at 55-59.

the same product pursuant to Article 4 of the CEPT Agreement and its Interpretative Notes.

In its order of May 9, 2006, the RTC denied the *Urgent Motion for the Issuance of a Writ of Preliminary Mandatory Injunction* but directed the parties to file their respective memorandums after noting that the controversy involved a pure question of law.[11]

Subsequently, the RTC rendered its assailed decision on October 16, 2006[12] dismissing the petition for *mandamus* for lack of merit. It relied on the relevant portions of Section 3 of Rule IV of the Implementing Rules and Regulations of R.A. No. 6713 (*Code of Conduct and Ethical Standards for Public Officials and Employees*), to wit:

> Sec 3. Every department, office or agency shall provide official information, records and documents to any requesting public except if:
>
> xxx xxx xxx
>
> (c) the information, record or document sought falls within the concepts of established privilege or recognized exceptions as may be provided by law or settled policy or jurisprudence;
>
> (d) such information, record or document comprises drafts or decisions, orders, rulings, policies, memoranda, etc.

and relevant portions of Section 7 (c) of the same law, *viz*.:

> Section 7. Prohibited Acts and Transactions. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared unlawful:
>
> xxx xxx xxx
>
> (c) Disclosure and/or misuse of confidential information – Public officials and employees shall not use or divulge confidential or

---

[11] *Id*. at 79.

[12] *Id*. at 37-39.

classified information officially known to them by reason of their office and not made available to the public either:

xxx xxx xxx

(2) To the prejudice of public interest.[13]

The RTC declared that the "CTRM is an advisory body composed of various department heads or secretaries and is classified as cabinet meetings and inter-agency communications;"[14] and that the record of the communications of such body "falls under the category of privileged information because of the sensitive subject matter which could seriously affect public interest."[15]

Hence, this appeal directly to the Court on questions of law.[16]

Issues

The petitioner submits the following issues for resolution, namely:

I. Are meetings of the CTRM and the minutes thereof exempt from the Constitutional right of access to information?

II. Assuming *arguendo* that the minutes of CTRM meetings are privileged or confidential, is such privilege or confidentiality absolute?

III. Can privilege or confidentiality be invoked to evade public accountability, or worse, to cover up incompetence and malice?[17]

In short, the issue is whether or not the CTRM may be compelled by *mandamus* to furnish the petitioner with a copy of the minutes of the May 23, 2005 meeting based on the

---

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

[14] *Id*. at 38.

[15] *Id*.

[16] *Id*. at 9-34.

[17] *Id*. at 24.

constitutional right to information on matters of public concern and the State's policy of full public disclosure. The request for information was motivated by his desire to understand the basis for the CTRM's recommendation that allegedly caused tremendous losses to the petrochemical industry through the issuance of E.O. No. 486.

In seeking the nullification of the assailed decision of the RTC, and the consequent release of the minutes and the disclosure of all official records, documents, papers and government research data used as the basis for the issuance of E.O. No. 486, the petitioner invokes the following provisions of the 1987 Constitution and R.A. No. 6713, thusly:

Section 28 of Article II of the 1987 Constitution:

Section 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

Section 7 of Article III of the 1987 Constitution:

Section 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Section 1 of Article XI of the 1987 Constitution:

Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

Section 5 of R.A. No. 6713:

Section 5. Duties of Public Officials and Employees. – In the performance of their duties, all public officials and employees are under obligation to:

xxx xxx xxx

(e) Make documents accessible to the public. – All public documents must be made accessible to, and readily available for inspection by, the public within reasonable working hours.

Ruling of the Court

The dismissal of the petition for *mandamus* by the RTC is affirmed.

The constitutional guarantee of the right to information on matters of public concern enunciated in Section 7 of Article III of the 1987 Constitution complements the State's policy of full public disclosure in all transactions involving public interest expressed in Section 28 of Article II of the 1987 Constitution. These provisions are aimed at ensuring transparency in policy-making as well as in the operations of the Government, and at safeguarding the exercise by the people of the freedom of expression. In a democratic society like ours, the free exchange of information is necessary, and can be possible only if the people are provided the proper information on matters that affect them. But the people's right to information is not absolute. According to *Legaspi v. Civil Service Commission*,[18] the constitutional guarantee to information "does not open every door to any and all information."[19] It is limited to matters of public concern, and is subject to such limitations as may be provided by law.[20] Likewise, the State's policy of full public disclosure is restricted to transactions involving public interest, and is further subject to reasonable conditions prescribed by law.[21]

Two requisites must concur before the right to information may be compelled by writ of *mandamus*. Firstly, the information sought must be in relation to matters of public concern or public

---

[18] No. 72119, May 29, 1987, 150 SCRA 530.

[19] *Id*. at 540.

[20] Section 7 of Article III, 1987 Constitution.

[21] Section 28 of Article II, 1987 Constitution.

interest. And, secondly, it must not be exempt by law from the operation of the constitutional guarantee.

As to the first requisite, there is no rigid test in determining whether or not a particular information is of public concern or public interest.[22] Both terms cover a wide-range of issues that the public may want to be familiar with either because the issues have a direct effect on them or because the issues "naturally arouse the interest of an ordinary citizen."[23] As such, whether or not the information sought is of public interest or public concern is left to the proper determination of the courts on a case to case basis.

In his capacity as a citizen and as the Executive Director of the APMP, the petitioner has sought to obtain official information dealing with the policy recommendation of the CTRM with respect to the reduction of tariffs on petrochemical resins and plastic products. He has asserted that the recommendation, which would be effected through E.O. No. 486, not only brought significant losses to the petrochemical industry that undermined the industry's long-term viability and survival, but also conflicted with official government pronouncements, policy directives, and enactments designed to support and develop an integrated petrochemical industry. He has claimed that the implementation of E.O. No. 486 effectively deprived the industry of tariff support and market share, thereby jeopardizing large investments without due process of law.[24]

The Philippine petrochemical industry centers on the manufacture of plastic and other related materials, and provides essential input requirements for the agricultural and industrial sectors of the country. Thus, the position of the petrochemical industry as an essential contributor to the overall growth of our country's economy easily makes the information sought a matter of public concern or interest.

---

[22] *Legaspi v. Civil Service Commission*, *supra* note 18.

[23] *Id*. at 541.

[24] *Rollo,* p. 128.

The second requisite is that the information requested must not be excluded by law from the constitutional guarantee. In that regard, the Court has already declared that the constitutional guarantee of the people's right to information does not cover national security matters and intelligence information, trade secrets and banking transactions and criminal matters.[25] Equally excluded from coverage of the constitutional guarantee are diplomatic correspondence, closed-door Cabinet meeting and executive sessions of either house of Congress, as well as the internal deliberations of the Supreme Court.[26] In *Chavez v. Public Estates Authority*,[27] the Court has ruled that the right to information does not extend to matters acknowledged as "privileged information under the separation of powers," which include "Presidential conversations, correspondences, or discussions during closed-door Cabinet meetings."[28] Likewise exempted from the right to information are "information on military and diplomatic secrets, information affecting national security, and information on investigations of crimes by law enforcement agencies before the prosecution of the accused."[29]

The respondents claim exemption on the ground that the May 23, 2005 meeting was classified as a closed-door Cabinet meeting by virtue of the committee's composition and the nature of its mandate dealing with matters of foreign affairs, trade and policy-making. They assert that the information withheld was within the scope of the exemption from disclosure because the CTRM meetings were directly related to the exercise of the sovereign prerogative of the President as the Head of State in the conduct of foreign affairs and the regulation of trade, as provided in Section 3 (a) of Rule IV of the Rules Implementing R.A. No. 6713.[30]

---

[25] *Chavez v. Presidential Commission on Good Government*, G.R. No. 130716, December 9, 1998, 299 SCRA 744, 763.

[26] *Id.* at 765.

[27] G.R. No. 133250, July 9, 2002, 384 SCRA 152.

[28] *Id*. at 188.

[29] *Id*.

[30] Section 3. Every department, office or agency shall provide official information, records or documents to any requesting public, except if:

The authority of the CTRM as the advisory body of the President and the NEDA is set forth in E.O. No. 230, series of 1987 (*Reorganization Act of the National Economic and Development Authority*), to wit:

> SECTION 6. National Economic and Development Authority Inter-agency Committees. – To assist the NEDA Board in the performance of its functions, there are hereby created the following committees which shall hereafter be under the direct control of the NEDA Board and shall submit all their recommendations to the President for approval on matters involving their respective concerns. The Chairman of these committees shall be designated by the President. The NEDA Board shall likewise determine where the technical staff of the said committees shall be based.
>
> xxx xxx xxx
>
> (e) Committee on Tariff and Related Matters (TRM) – The TRM to be composed of the Director-General of the National Economic and Development Authority Secretariat, the Executive Secretary, the Secretaries of Trade and Industry, Foreign Affairs, Agriculture, Environment and Natural Resources and of Budget and Management, the Governor of the Central Bank and the Chairman of the Tariff Commission shall have the following functions:
>
> (i) Advise the President and the NEDA Board on tariff and related matters, and on the effects on the country of various international developments;
>
> (ii) Coordinate agency positions and recommend national positions for international economic negotiations;
>
> (iii) Recommend to the President a continuous rationalization program for the country's tariff structure. (underlining supplied)

The respondents are correct. It is always necessary, given the highly important and complex powers to fix tariff rates vested in the President,[31] that the recommendations submitted for the President's consideration be well-thought out and well-deliberated.

(a) such information, record or document must be kept secret in the interest of national defense or security or the conduct of foreign affairs

[31] Section 28 (2) of Article VI of the 1987 Constitution.

The Court has expressly recognized in *Chavez v. Public Estates Authority*[32] that "a frank exchange of exploratory ideas and assessments, free from the glare of publicity and pressure by interested parties, is essential to protect the independence of decision-making of those tasked to exercise Presidential, Legislative and Judicial power." In *Almonte v. Vasquez*,[33] the Court has stressed the need for confidentiality and privacy, stating thusly: "A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately."[34] Without doubt, therefore, ensuring and promoting the free exchange of ideas among the members of the committee tasked to give tariff recommendations to the President were truly imperative.

Every claim of exemption, being a limitation on a right constitutionally granted to the people, is liberally construed in favor of disclosure and strictly against the claim of confidentiality. However, the claim of privilege as a cause for exemption from the obligation to disclose information must be clearly asserted by specifying the grounds for the exemption.[35] In case of denial of access to the information, it is the government agency concerned that has the burden of showing that the information sought to be obtained is not a matter of public concern, or that the same is exempted from the coverage of the constitutional guarantee.[36] We reiterate, therefore, that the burden has been well discharged herein.

The respondents further assert that the information sought fell within the concept of established privilege provided by jurisprudence under Section 3 (c) of Rule IV of the Rules

---

[32] *Supra* note 28, at 189.

[33] G.R. No. 95367, May 23, 1995, 244 SCRA 286.

[34] *Id*. at 295.

[35] *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 51.

[36] *Supra* note 18, at 541.

Implementing R.A. No. 6713, the May 23, 2005 meeting being regarded as a closed-door Cabinet meeting.[37] The petitioner, disagreeing, posits that R.A. No. 6713, by itself, neither provides exceptions to the constitutional right to information nor specifies limitations on the State policy of full public disclosure; that the Implementing Rules and Regulations went beyond the scope of R.A. No. 6713 in providing exceptions not covered by the law; that the alleged closed-door Cabinet meeting exception, so as to fall within the ambit of Section 3(c) of the Rules Implementing R.A. No. 6713, was not established under settled policy or jurisprudence; that the reliance on the rulings in *Chavez v. PCGG* and *Chavez v. PEA-Amari* that declared the closed-door Cabinet meeting as an exception to the right to information was misplaced considering that the exception was not squarely in issue in those cases; that the pronouncement could only be regarded as *obiter dicta*; that the closed-door Cabinet meeting exception, assuming though not admitting the same to have been established by law or settled jurisprudence, could not be automatically applied to all the CTRM meetings because the CTRM was different from the Cabinet inasmuch as two of its members, namely, the Governor of the Bangko Sentral ng Pilipinas and the Chairman of the Tariff Commission, were not members of the President's Cabinet; and that the deliberations of the CTRM as a body merely akin to the Cabinet could not be given the privilege and confidentiality not expressly provided for by law or jurisprudence, most especially considering that only by legislative enactment could the constitutional guarantee to the right to information be restricted.

We cannot side with the petitioner.

In *Senate of the Philippines v. Ermita*,[38] we have said that executive privilege is properly invoked in relation to specific categories of information, not to categories of persons. As such, the fact that some members of the committee were not part of the President's Cabinet was of no moment. What should determine

---

[37] *Rollo,* p. 180.

[38] *Supra* note 31, at 60.

whether or not information was within the ambit of the exception from the people's right to access to information was not the composition of the body, but the nature of the information sought to be accessed. A different holding would only result to the unwanted situation wherein any concerned citizen, like the petitioner, invoking the right to information on a matter of public concern and the State's policy of full public disclosure, could demand information from any government agency under all conditions whenever he felt aggrieved by the decision or recommendation of the latter.

In case of conflict, there is a need to strike a balance between the right of the people and the interest of the Government to be protected. Here, the need to ensure the protection of the privilege of non-disclosure is necessary to allow the free exchange of ideas among Government officials as well as to guarantee the well-considered recommendation free from interference of the inquisitive public.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; and **AFFIRMS** the decision of the Regional Trial Court in Special Civil Action No. 2903, without pronouncement on costs of suit.

SO ORDERED.

Leonardo-de Castro (*Acting Chairperson*), *Peralta,*[*] *Perlas-Bernabe,* and *Jardeleza, JJ.,* concur.

---

[*] Vice Chief Justice Ma. Lourdes P.A. Sereno, per raffle dated November 7, 2012.

FIRST DIVISION

[G.R. No. 179287. February 1, 2016]

PCI JIMMY M. FORTALEZA and SPO2 FREDDIE A. NATIVIDAD, *petitioners, vs.* **HON. RAUL M. GONZALEZ in his capacity as the Secretary of Justice and ELIZABETH N. OROLA VDA. DE SALABAS,** *respondents.*

[G.R. No. 182090. February 1, 2016]

ELIZABETH N. OROLA VDA. DE SALABAS, *petitioner, vs.* **HON. EDUARDO R. ERMITA, HON. MANUEL B. GAITE, P/INSP. CLARENCE DONGAIL, P/INSP. JONATHAN LORILLA,**[1] **PO3 ALLEN WINSTON HULLEZA and PO2 BERNARDO CIMATU,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; DOCTRINE OF LAW OF THE CASE NOT APPLICABLE SINCE THE TWO CASES IN CASE AT BAR DO NOT INVOLVE THE SAME PARTIES.— [T]he doctrine of the *law of the case* requires that the appeal be that of the same parties, and that the pronouncement by the appellate court be with full opportunity to be heard to said parties: The doctrine of law of the case simply means, therefore, that when an appellate court has once declared the law in a case, its declaration continues to be the law of that case even on a subsequent appeal, notwithstanding that the rule thus laid down may have been reversed in other cases. For practical considerations, indeed, once the appellate court has issued a pronouncement on a point that was presented to it with full opportunity to be heard having been accorded to the parties, the pronouncement should be regarded as the law of the case and should not be reopened on remand of the case to determine other issues of the case, like

[1] Also spelled as Laurella in some parts of the records.

damages. But the law of the case, as the name implies, concerns only legal questions or issues thereby adjudicated in the former appeal. G.R. No. 179287 and G.R. No. 182090 do not, however, involve the same parties. Of the fifteen persons required by the October 2, 2006 Resolution of the Secretary of Justice to be included in the Information for Kidnapping and Murder, only ***Jimmy Fortaleza*** and ***Freddie Natividad*** filed a Petition for *Certiorari* with the Court of Appeals, were heard thereon, and whose arguments were considered in the Resolution dated April 30, 2008 in G.R. No. 179287. **Clarence Dongail, Jonathan Lorilla, Allen Winston Hulleza** and **Bernardo Cimatu**, on the other hand, appealed to the Office of the President, and are the parties in G.R. No. 182090, to the exclusion of ***Jimmy Fortaleza*** and ***Freddie Natividad*** and the other respondents. The doctrine of the law of the case does not, therefore, apply here in G.R No. 182090.

2. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE OFFICE OF THE PRESIDENT CANNOT ORDER THE REINVESTIGATION OF THE CHARGES WITH RESPECT TO THE PARTIES WHO DID NOT APPEAL TO IT THE RESOLUTION OF THE SECRETARY OF JUSTICE.— [T]he Office of the President cannot order the reinvestigation of the charges with respect to ***Jimmy Fortaleza, Freddie Natividad,*** and the nine other accused who did not participate in the appeal before the Office of the President, namely: Jimmy Fortaleza, Freddie Natividad, Manolo G. Escalante, Ronnie Herrera, July ("Kirhat" Dela Rosa) Flores, Carlo "Caloy" De Los Santos, Lorraine "Lulu" Abay, Manerto Cañete, Elma Cañete, Elson Cañete, and Jude Montilla. Due process prevents the grant of additional awards to parties who did not appeal or who resorted to other remedies and such additional award constitutes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Office of the President.

3. ID.; ID.; ID.; THE SECRETARY OF JUSTICE HAS THE POWER TO REVIEW THE ACTIONS OF THE PROSECUTORS DURING THE REINVESTIGATION BUT RESPONDENTS SHOULD BE GIVEN DUE NOTICE OF THE REVIEW PROCEEDINGS AND BE AFFORDED ADEQUATE OPPORTUNITY TO BE HEARD; IN VIEW OF NON-COMPLIANCE WITH THE REQUIREMENTS,

THE COURT REMANDS THE CASE TO THE SECRETARY OF JUSTICE.— [W]e cannot adhere to the position of the Office of the President that the entire case should be remanded to the Provincial Prosecutor of Negros Oriental on the ground that the Secretary of Justice may not exercise its power to review where there was allegedly no new resolution rendered by the local prosecutor. As can be gleaned from the records, the Secretary of Justice conducted an automatic review of the Provincial Prosecutor's affirmance of former resolutions issued by previous investigating prosecutors without conducting an actual reinvestigation of the case. It is established in jurisprudence that the Secretary of Justice has the statutory power of control and supervision over prosecutors. x x x Moreover, Section 4, Rule 112 of the Rules of Court recognizes the Secretary of Justice's power to review the actions of the investigating prosecutor, even *motu proprio*[.] x x x [T]he Secretary of Justice was empowered to review the actions of the Provincial Fiscal during the preliminary investigation or the reinvestigation. We note by analogy, however, that in *Department of Justice v. Alaon,* the Court declared that respondents should be given due notice of the review proceedings before the Secretary of Justice and be afforded adequate opportunity to be heard therein. In the case at bar, we find that there is nothing on record to show that respondents were given notice and an opportunity to be heard before the Secretary of Justice. For this reason, we remand the case to the Secretary of Justice with respect to respondents Dongail, Lorilla, Hulleza, and Cimatu for further proceedings, with the caveat that any resolution of the Secretary of Justice on the matter shall be subject to the approval of the trial court.

APPEARANCES OF COUNSEL

Erfe Del Castillo for petitioner SPO2 Freddie A. Natividad.

Lope E. Feble for petitioner Elizabeth Orola Vda. De Salabas.

Rebecca S. Dacanay for respondent PO3 Allen Winston Hulleza.

The Solicitor General for public respondents.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

The consolidated petitions in the case at bar stem from the October 2, 2006 Resolution[2] of Secretary of Justice Raul Gonzalez, ordering the Provincial Prosecutor of Negros Oriental to file an amended Information for Kidnapping and Murder against the following persons:

1. **P/Insp. Clarence Dongail**;
2. Manolo G. Escalante;
3. Ronnie Herrera;
4. ***SPO2 Freddie Natividad;***
5. ***SPO4 Jimmy Fortaleza:***
6. July ("Kirhat" Dela Rosa) Flores;
7. Carlo "Caloy" De Los Santos;
8. **POI Bernardo Cimatu**;
9. **PO2 Allen Winston Hulleza**;
10. **Insp. Jonathan Laurella**;
11. Lorraine "Lulu" Abay;
12. Manerto Cañete;
13. Elma Cañete
14. Elson Cañete; and
15. Jude Montilla[3]

From this Resolution, ***Jimmy Fortaleza*** and ***Freddie Natividad*** filed a Petition for *Certiorari* with the Court of Appeals, while **Clarence Dongail, Jonathan Lorilla, Allen Winston Hulleza, and Bernardo Cimatu** appealed to the

---

[2] *Rollo* (G.R. No. 182090), p. 26.

[3] The parties in G.R. No. 179287 are in italics, while the parties in G.R. No. 182090 are underlined.

Office of the President. When the Court of Appeals dismissed[4] the Petition for *Certiorari,* Fortaleza and Natividad filed a Petition for Review with this Court, which was docketed as G.R. No. 179287. The Office of the President, on the other hand, set aside the October 2, 2006 Resolution of the Department of Justice. To assail this Decision[5] dated September 19, 2007 and the subsequent Resolution[6] dated January 9, 2008 denying her Motion for Reconsideration, complainant Elizabeth Orola-Salabas filed a Petition for *Certiorari* with this Court which was docketed as G.R. No. 182090.

The procedural antecedents of the case are as follows:

Maximo Lomoljo, Jr., Ricardo Suganob, and Eleuterio Salabas were allegedly kidnapped in Bacolod City on August 31, 2003. A few days later, their dead bodies were found in different places in Negros Oriental. Several criminal complaints were filed in relation to this incident. The first was filed against **Police Inspector (P/Insp.) Clarence Dongail** alias Dodong and fifteen other John Does before the Bacolod City Prosecution Office. Investigating Prosecutor Rosanna V. Saril-Toledano issued a Resolution dated October 24, 2003 dismissing the complaint for lack of probable cause.

On October 16, 2003, Elizabeth Orola-Salabas, wife of Eleuterio, filed an Amended Criminal Complaint against **P/Insp. Dongail**, Manolo Escalante and fifteen other John Does for Kidnapping with Murder before the Municipal Trial Court (MTC) of Guihulngan, Negros Oriental. The complaint was docketed as Criminal Case No. 10-03-437. However, on January 13, 2004, the MTC issued a Resolution[7] dismissing the Amended Criminal Complaint for lack of factual and legal merit.

---

[4] *Rollo* (G.R. No. 179287), pp. 27-39; penned by Associate Justice Stephen C. Cruz with Associate Justices Isaias P. Dicdican and Antonio L. Villamor concurring.

[5] *Rollo* (G.R. No. 182090), pp. 20-24; issued by Executive Secretary Eduardo R. Ermita.

[6] *Id*. at 25; issued by Deputy Executive Secretary for Legal Affairs Manuel B. Gaite.

[7] Records, Folder 3, Annex "F".

On March 1, 2004, Orola-Salabas filed another Amended Affidavit Complaint for Kidnapping with Murder before the Negros Oriental Provincial Prosecution Office against **P/Insp. Dongail**, Ramonito Estanislao, Manolo Escalante, Ronnie Herrera, ***Senior Police Officer (SPO) 2 Freddie Natividad, PCI Jimmy Fortaleza,*** **Police Officer (PO) 1 Bernardo Cimatu, PO2 Allen Winston Hulleza, Insp. Jonathan Lorilla**, SPO1 Agustilo Hulleza, Jr., Lorraine Abay, July Flores, Carlo de los Santos, Mamerto Cañete, Elma Cañete, Bruno Cañete, Elson Cañete and Warlito Cañete. The Complaint was docketed as I.S. Case No. 2004-78. On August 9, 2004, Asst. Provincial Prosecutor Joseph A. Elmaco issued a Resolution finding probable cause against **P/Insp. Dongail** and Ramonito Estanislao and "15 other 'John Does' for the death of victim Eleuterio Salabas." The case against respondents Manolo Escalante, Ronnie Herrera, SP02 Freddie Natividad, ***SPO4 Jimmy Fortaleza,*** **PO1 Bernard Cimatu, PO2 Allen Winston Hulleza, Inspector Jonathan Lorilla**, SPO1 Agustilo (SOLA) Hulleza, Jr., Lorraine 'Lulu' Abay, July 'Kirhat' Flores, Carlos de los Santos, Mamerto Cañete, Elma Cañete, Bruno Cañete, Elson Cañete, and Warlito Cañete were dismissed for insufficiency of evidence.

P/Insp. Dongail filed a Motion for Reconsideration. On October 1, 2004, Asst. Provincial Prosecutor Elmaco issued an Order discharging **P/Insp. Dongail** from the criminal complaint. An Information for Kidnapping with Murder was thereafter filed against Ramonito Estanislao and fifteen John Does before the Regional Trial Court of Guihulngan, Negros Oriental. The case was assigned to Branch 64 and docketed as Crim. Case No. 04-094-G.

On December 2, 2004, Orola-Salabas filed an Urgent Motion for Reinvestigation, praying for the inclusion in the Information of **P/Insp. Dongail**, Manolo Escalante, Ronnie Herrera, ***SPO2 Freddie Natividad, PCI Jimmy Fortaleza,*** **PO1 Bernardo Cimatu, PO2 Allen Winston Hulleza, Insp. Jonathan Lorilla**, SPO1 Agustilo Hulleza, Jr., Lorraine Abay, July Flores, Carlo de los Santos, Mamerto Cañete, Elma Cañete, Bruno Cañete, Elson Cañete, and Warlito Cañete. The RTC issued an Order directing Asst. Provincial Prosecutor Macarieto I. Trayvilla to conduct the reinvestigation.

On December 13, 2004, the Department of Justice sent a letter directing the Negros Oriental Provincial Prosecution Office to forward the records of I.S. Case No. 2004-78 to the DOJ for automatic review.

On December 28, 2004, the Negros Oriental Provincial Prosecution Office, without conducting a reinvestigation, issued a Resolution affirming *in toto* the August 9, 2004 and October 1, 2004 Resolutions of Asst. Provincial Prosecutor Joseph A. Elmaco.

On January 24, 2005, Orola-Salabas filed an Urgent Motion to Compel Prosecutor Macareto I. Trayvilla to Conduct Reinvestigation. On January 27, 2005, the RTC issued an Order granting said Motion. Upon the failure of Prosecutor Trayvilla to conduct the reinvestigation, Orola-Salabas filed an Urgent Motion Directing Prosecutor Trayvilla to Explain Why He Should Not Be Cited For Contempt.

On October 2, 2006, Justice Secretary Raul Gonzalez issued the aforementioned Resolution modifying the August 9, 2004 resolution of the Negros Oriental Provincial Prosecution Office (which found probable cause against **P/Insp. Dongail** and **Estanislao** only and dismissed the case against the other respondents). The dispositive portion of the Resolution of the Secretary of Justice states:

> WHEREFORE, premises considered, the assailed resolution is hereby MODIFIED. The Provincial Prosecutor of Negros Oriental is hereby ordered to file an amended Information for Kidnapping with Murder against the following respondents: P/INSP. CLARENCE DONGAIL, MANOLO G. ESCALANTE, RONNIE HERRERA, SPO2 FREDDIE NATIVIDAD, SPO4 JIMMY FORTALEZA, JULY ("Kirhat" dela Rosa) FLORES, CARLO "Caloy" DE LOS SANTOS, PO1 BERNARDO CIMATU, PO2 ALLEN WINSTON HULLEZA, INSP. JONATHAN [LORILLA], LORRAINE "LULU" ABAY, MANERTO, ELMA, ELSON ALL SURNAME(D) CAÑETE, and JUDE MONTILLA and report the action taken within ten (10) days from receipt hereof. [8]

---

[8] *Rollo* (G.R. No. 182090), p. 37.

PCI Jimmy Fortaleza and ***SPO2 Freddie Natividad*** filed a Petition for *Certiorari* under Rule 65 with the Court of Appeals challenging the October 2, 2006 Resolution of the Secretary of Justice on the following grounds: (1) the Secretary of Justice erred in entertaining the case despite the fact that complainant Orola-Salabas did not file a Petition for Review; (2) the August 9, 2004 resolution of the Negros Oriental Provincial Prosecution Office had already become final; and (3) ***PCI Jimmy Fortaleza*** and ***SPO2 Freddie Natividad*** were not informed of the alleged Petition for Review. The Petition was docketed as CA-G.R. CEB-SP No. 02203.

In the meantime, **P/Insp. Clarence Dongail, P/Insp. Jonathan Laurella, PO3 Allen Winston Hulleza** and **PO2 Bernardo Cimatu** appealed the same October 2, 2006 Resolution of the Secretary of Justice before the Office of the President. The appeal was docketed as O.P. Case No. 06-J-380.

On August 16, 2007, the Court of Appeals rendered its Decision dismissing the Petition for *Certiorari* for lack of merit. The appellate court held that the Secretary of Justice has the power of supervision and control over prosecutors and therefore can *motu proprio* take cognizance of a case pending before or resolved by the Provincial Prosecution Office. The Court of Appeals also noted that the power of supervision and control over prosecutors applies not only in the conduct of the preliminary investigation, but also in the conduct of the reinvestigation. Pursuant to the Order of the RTC ordering reinvestigation, it is clear that the reinvestigation stage has not been terminated, and the power of control of the Secretary of Justice, allowing it to act on the reinvestigation *motu proprio,* continues to apply. Finally, since the case involves the exercise of the Secretary of Justice's power of control and does not involve a Petition for Review, the requirement of furnishing copies of said Petition for Review to the respondents do not apply in the case at bar.

PCI Jimmy Fortaleza and ***SPO2 Freddie Natividad*** filed with this Court a Petition for Review under Rule 45 challenging the August 16, 2007 Decision of the Court of Appeals. The Petition was docketed as G.R. No. 179287.

On September 19,2007, the Office of the President, through Executive Secretary Eduardo Ermita, rendered its Decision in O.P. Case No. 06-J-380 setting aside the October 2, 2006 Resolution of the Secretary of Justice. The pertinent portions of the Decision read:

> Even if the DOJ has the power of control and supervision over its provincial prosecutor and any decision rendered by the latter may be reviewed by the former, there is yet no new decision in this case to be reviewed. The second investigation has yet to be commenced by the provincial prosecutor when the DOJ ordered the transmittal of the case for its automatic review. At the outset, DOJ's Resolution of 02 October 2006 was in defiance of the order of the court which had already acquired jurisdiction over the case. Besides, the DOJ should have exercised its automatic power of review after the October 1, 2004 Resolution of the Provincial Prosecutor of Negros Oriental and not after the proper Information was filed with court and the latter has properly acquired its jurisdiction over the case.
>
> xxx xxx xxx
>
> WHEREFORE, premises considered, the 02 October 2006 Resolution of the Department of Justice is hereby set aside. The Provincial Prosecutor of Negros Oriental is hereby directed to comply with the January 27, 2005 Order of the Regional Trial Court of Guihulngan, Negros Oriental and to immediately proceed with the reinvestigation of the case.[9]

On January 9, 2008, the Office of the President, through Deputy Executive Secretary Manuel B. Gaite, denied Orola-Salabas's Motion for Reconsideration.[10]

On March 31, 2008, Orola-Salabas filed with this Court a Petition for *Certiorari* assailing the Decision dated September 19, 2007 and Resolution dated January 9, 2007 of the Office of the President. The Petition was docketed as G.R. No. 182090.

On April 30, 2008, this Court issued a Resolution[11] in G.R. No. 179287 denying the Petition for Review for failure

---

[9] *Id*. at 23-24.

[10] *Id*. at 25.

[11] *Rollo* (G.R. No. 179287), pp. 214-215.

of petitioners to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision as to warrant the exercise of this Court's appellate jurisdiction.

On June 2, 2008, this Court resolved to consolidate G.R. No. 179287 with G.R. No. 182090.[12]

PCI Jimmy Fortaleza and ***SPO2 Freddie Natividad*** did not file a Motion for Reconsideration of this Court's April 30, 2008 Resolution denying the Petition in G.R. No. 179287. Consequently, said Resolution of this Court has become final and executory. We shall therefore proceed to rule on the Petition in G.R. No. 182090.

In her Petition for *Certiorari,* Orola-Salabas assail the September 19, 2007 Decision and January 9, 2008 Resolution of the Office of the President on the following grounds:

I

PUBLIC RESPONDENTS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN PROCEEDING WITH THE APPEAL AFTER THE REGIONAL TRIAL COURT HA[D] ACQUIRED JURISDICTION OVER THE CASE, AN ACT WHICH [WA]S CLEARLY AND UNMISTAKABLY OUTSIDE THEIR POWERS AS IT CONSTITUTE AN ENCROACHMENT UPON JUDICIAL POWER.

II

PUBLIC RESPONDENTS ACTED WITH GRAVE ABUSE OF DISCRETION IN DISREGARDING THE DECISION OF THE COURT OF APPEALS UPHOLDING THE POWER AND AUTHORITY OF THE SECRETARY OF JUSTICE IN ISSUING HIS RESOLUTION INDICTING PRIVATE RESPONDENTS OF THE CRIME CHARGED.[13]

Orola-Salabas assert the settled doctrine in the leading case of *Crespo v. Mogul*[14] that:

---

[12] *Rollo* (G.R. No. 182090), p. 85.

[13] *Id*. at 10.

[14] 235 Phil. 465, 476 (1987).

> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.

Thus, according to Orola-Salabas, when the Informations were filed by the Provincial Prosecutor of Negros Oriental in the RTC of Guihulngan City, Negros Oriental, Branch 64, in compliance with the October 2, 2006 Resolution of the Secretary of Justice, the RTC acquired jurisdiction over the case to the exclusion of all other courts or agencies.

We disagree with petitioner on this point. In *People v. Espinosa,*[15] we stressed that the court does not lose control of the proceedings by reason of a reinvestigation or review conducted by either the DOJ or the Office of the President. On the contrary, the court, in the exercise of its discretion, may grant or deny a motion to dismiss based on such reinvestigation or review:

> Under Section 11(c) of Rule 116 of the Rules of Court, the arraignment shall be suspended for a period not exceeding 60 days when a reinvestigation or review is being conducted at either the Department of Justice or the Office of the President. However, we should stress that the court does not lose control of the proceedings by reason of such review. Once it had assumed jurisdiction, it is not handcuffed by any resolution of the reviewing prosecuting authority. Neither is it deprived of its jurisdiction by such resolution. The principles established in *Crespo v. Mogul* still stands, as follows:

---

[15] 456 Phil. 507, 516-517 (2003).

> Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.[16]

In her second Assignment of Error, Orola-Salabas claims that the Office of the President, through Executive Secretary Ermita and Deputy Executive Secretary Gaite, acted in grave abuse of discretion in issuing the assailed September 19, 2007 Decision and January 9, 2008 Resolution as it disregarded the August 16, 2007 Decision of the Court of Appeals which, incidentally, has been affirmed by this Court in its final and executory April 30, 2008 Resolution in G.R. No. 179287.

The second assignment of error in effect argues that the determination by the Court of Appeals on the question of the validity of the Secretary of Justice Resolution should be considered the *law of the case* and should remain established in all other steps of the prosecution process. The doctrine of the *law of the case* is well settled in jurisprudence:

> Law of the case has been defined as the opinion delivered on a former appeal, and means, more specifically, that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.

The concept of law of the case is well explained in *Mangold v. Bacon,* an American case, thusly:

> The general rule, nakedly and boldly put, is that legal conclusions announced on a first appeal, whether on the general law or the law as applied to the concrete facts, not only prescribe the duty and limit the power of the trial court to strict obedience and conformity thereto, but they become and **remain the law of the case in all other steps below or above on subsequent**

---

[16] *Id*.

> **appeal**. The rule is grounded on convenience, experience, and reason. Without the rule there would be no end to criticism, reagitation, reexamination, and reformulation. In short, there would be endless litigation. It would be intolerable if parties litigants were allowed to speculate on changes in the personnel of a court, or on the chance of our rewriting propositions once gravely ruled on solemn argument and handed down as the law of a given case. An itch to reopen questions foreclosed on a first appeal would result in the foolishness of the inquisitive youth who pulled up his com to see how it grew. Courts are allowed, if they so choose, to act like ordinary sensible persons. The administration of justice is a practical affair. The rule is a practical and a good one of frequent and beneficial use.[17]

The doctrine of the *law of the case* applies even if the prior resort to the appellate court is in a *certiorari* proceeding,[18] as in the case at bar. If this doctrine were to be applied, the previous opinion by the Court of Appeals — that the October 2, 2006 Resolution of the Secretary of Justice was valid should govern on subsequent appeal.

However, the doctrine of the *law of the case* requires that the appeal be that of the same parties, and that the pronouncement by the appellate court be with full opportunity to be heard accorded to said parties:

> The doctrine of law of the case simply means, therefore, that when an appellate court has once declared the law in a case, its declaration continues to be the law of that case even on a subsequent appeal, notwithstanding that the rule thus laid down may have been reversed in other cases. For practical considerations, indeed, once the appellate court has issued a pronouncement on a point that was presented to it with full opportunity to be heard having been accorded to the parties, the pronouncement should be regarded as the law of the case and should not be reopened on remand of the case to determine other issues of the case, like damages. But the law of the case, as

---

[17] *Development Bank of the Philippines v. Guariña Agricultural and Realty Development Corporation,* G.R. No. 160758, January 15, 2014, 713 SCRA 292, 308-309.

[18] *Banco De Oro-EPCI, Inc. v. Tansipek,* 611 Phil. 90, 99 (2009).

the name implies, concerns only legal questions or issues thereby adjudicated in the former appeal.[19]

G.R. No. 179287 and G.R. No. 182090 do not, however, involve the same parties. Of the fifteen persons required by the October 2, 2006 Resolution of the Secretary of Justice to be included in the Information for Kidnapping and Murder, only ***Jimmy Fortaleza*** and ***Freddie Natividad*** filed a Petition for *Certiorari* with the Court of Appeals, were heard thereon, and whose arguments were considered in the Resolution dated April 30, 2008 in G.R. No. 179287. **Clarence Dongail**, **Jonathan Lorilla, Allen Winston Hulleza** and **Bernardo Cimatu**, on the other hand, appealed to the Office of the President, and are the parties in G.R. No. 182090, to the exclusion of ***Jimmy Fortaleza*** and ***Freddie Natividad*** and the other respondents. The doctrine of the law of the case does not, therefore, apply here in G.R No. 182090.

Corollary thereto, however, the Office of the President cannot order the reinvestigation of the charges with respect to ***Jimmy Fortaleza, Freddie Natividad,*** and the nine other accused who did not participate in the appeal before the Office of the President, namely: Jimmy Fortaleza, Freddie Natividad, Manolo G. Escalante, Ronnie Herrera, July ("Kirhat" Dela Rosa) Flores, Carlo "Caloy" De Los Santos, Lorraine "Lulu" Abay, Manerto Cañete, Elma Cañete, Elson Cañete, and Jude Montilla. Due process prevents the grant of additional awards to parties who did not appeal[20] or who resorted to other remedies and such additional award constitutes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Office of the President.

On a more substantive point, we cannot adhere to the position of the Office of the President that the entire case should be remanded to the Provincial Prosecutor of Negros Oriental on

---

[19] *Development Bank of the Philippines v. Guariña Agricultural and Realty Development Corporation, supra* note 17 at 309.

[20] See *Daabay v. Coca-Cola Bottlers Phils., Inc.,* G.R. No. 199890, August 19, 2013.

the ground that the Secretary of Justice may not exercise its power to review where there was allegedly no new resolution rendered by the local prosecutor. As can be gleaned from the records, the Secretary of Justice conducted an automatic review of the Provincial Prosecutor's affirmance of former resolutions issued by previous investigating prosecutors without conducting an actual reinvestigation of the case.

It is established in jurisprudence that the Secretary of Justice has the statutory power of control and supervision over prosecutors. In the recent case of *Department of Justice v. Alaon.*[21] we reiterated that:

> There is no quarrel about the Secretary of Justice's power of review over the actions of his subordinates, specifically public prosecutors. This power of review is encompassed in the Secretary of Justice's authority of supervision and control over the bureaus, offices, and agencies under him, subject only to specified guidelines.
>
> Chapter 7, section 38, paragraph 1 of Executive Order No. 292 or The Administrative Code of 1987, defines the administrative relationship that is **supervision and control:**
>
> > **SECTION 38**. *Definition of Administrative Relationships.*— Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:
> >
> > (l) *Supervision and Control.* — Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; **direct the performance of duty**; restrain the commission of acts; **review, approve, reverse or modify acts and decisions of subordinate officials or units**; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs. Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "control" shall encompass supervision and control as defined in this paragraph.

---

[21] G.R. No. 189596, April 23, 2014, 723 SCRA 580, 589-591.

In *Noblejas v. Judge Salas,* we defined control as the power (of the department head) to alter, modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. The power of control implies the right of the President (and, naturally, of his *alter ego)* **to interfere** in the exercise of such discretion as may be vested by law in the officers of the national government, as well as to act in lieu of such officers. (Citations omitted.)

Moreover, Section 4, Rule 112 of the Rules of Court recognizes the Secretary of Justice's power to review the actions of the investigating prosecutor, even *motu proprio,* to wit:

SECTION 4. *Resolution of Investigating Prosecutor and its Review.* — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the *Sandiganbayan* in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent,

or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If upon petition by a proper party under such rules as the Department of Justice may prescribe **or *motu proprio,* the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor**, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (Emphasis supplied.)

Verily, the Secretary of Justice was empowered to review the actions of the Provincial Fiscal during the preliminary investigation or the reinvestigation. We note by analogy, however, that in *Department of Justice v. Alaon,* the Court declared that respondents should be given due notice of the review proceedings before the Secretary of Justice and be afforded adequate opportunity to be heard therein.

In the case at bar, we find that there is nothing on record to show that respondents were given notice and an opportunity to be heard before the Secretary of Justice. For this reason, we remand the case to the Secretary of Justice with respect to respondents Dongail, Lorilla, Hulleza, and Cimatu for further proceedings, with the caveat that any resolution of the Secretary of Justice on the matter shall be subject to the approval of the court.

WHEREFORE, the Decision of the Office of the President dated September 19, 2007 and its Resolution dated January 9, 2008 are hereby **SET ASIDE.** The case is **REMANDED** to the Secretary of Justice for further proceedings with respect to respondents Clarence Dongail, Jonathan Lorilla, Allen Winston Hulleza and Bernardo Cimatu.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Perlas-Bernabe, and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 191185. February 1, 2016]

GUILBEMER FRANCO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT, EXPLAINED.—** The burden of such proof rests with the prosecution, which must rely on the strength of its case rather than on the weakness of the case for the defense. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence. In every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt: *first*, the fact of the commission of the crime charged, or the presence of all the elements of the offense; and *second*, the fact that the accused was the perpetrator of the crime.

2. **CRIMINAL LAW; THEFT; ESSENTIAL ELEMENTS AND *CORPUS DELICTI* OF THEFT.—** Under Article 308 of the Revised Penal Code, the essential elements of the crime of theft are: (1) the taking of personal property; (2) the property belongs to another; (3) the taking away was done with intent to gain; (4) the taking away was done without the consent of the owner; and (5) the taking away is accomplished without violence or intimidation against person or force upon things. The *corpus delicti* in theft has two elements, to wit: (1) that the property was lost by the owner; and (2) that it was lost by felonious taking.

3. **REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; REQUISITES THAT MUST CONCUR TO SUSTAIN A CONVICTION BASED ON CIRCUMSTANCIAL EVIDENCE.—** To sustain a conviction based on circumstantial evidence, Section 4, Rule 133 of the Rules of Court provides that the following requisites must concur: (1) there must be more than one circumstance to convict; (2) the facts on which

the inference of guilt is based must be proved; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. With respect to the third requisite, 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 others, as the guilty person.

4. **ID.; ID.; ID.; IN THE APPRECIATION OF CIRCUMSTANTIAL EVIDENCE, THE CIRCUMSTANCES MUST BE PROVED AND NOT PRESUMED; CIRCUMSTANTIAL EVIDENCE IN CASE AT BAR NOT SUFFICIENT FOR CONVICTION.—** The facts and circumstances proven by the prosecution, taken together, are not sufficient to justify the unequivocal conclusion that Franco feloniously took Nakamoto's cell phone. No other convincing evidence was presented by the prosecution that would link him to the theft. The fact Franco took a cell phone from the altar does not necessarily point to the conclusion that it was Nakamoto's cell phone that he took. **In the appreciation of circumstantial evidence, the rule is that the circumstances must be proved, and not themselves presumed.** The circumstantial evidence must exclude the possibility that some other person has committed the offense charged. Franco, therefore, cannot be convicted of the crime charged in this case. There is not enough evidence to do so. As a rule, in order to support a conviction on the basis of circumstantial evidence, all the circumstances must be consistent with the hypothesis that the accused is guilty. In this case, not all the facts on which the inference of guilt is based were proved. The matter of what and whose cell phone Franco took from the altar still remains uncertain.

5. **ID.; ID.; DEFENSE OF DENIAL; DENIAL MAY BE WEAK BUT IT ASSUMES SIGNIFICANCE WHEN THE PROSECUTION'S EVIDENCE IS INSUFFICIENT TO OVERTURN THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.—** The evidence of the prosecution must stand on its own weight and not rely on the weakness of the defense. In this case, Franco did not deny that he was at the Body Shape Gym on November 3, 2004, at around 1:00 p.m. and left the place at around 2:45 p.m. He did not even deny that he took a cell phone from the altar together with his

cap. What he denied is that he took Nakamoto's cell phone and instead, claimed that what he took is his own cell phone. Denial may be weak but courts should not at once look at them with disfavor. There are situations where an accused may really have no other defenses but denial, which, if established to be the truth, may tilt the scales of justice in his favor, especially when the prosecution evidence itself is weak. While it is true that denial partakes of the nature of negative and self-serving evidence and is seldom given weight in law, the Court admits an exception established by jurisprudence that the defense of denial assumes significance when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt. The exception applies in the case at hand. The prosecution failed to produce sufficient evidence to overturn the constitutional guarantee that Franco is presumed to be innocent.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

REYES, *J.*:

The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. The prosecution cannot be allowed to draw strength from the weakness of the defense's evidence for it has the *onus probandi* in establishing the guilt of the accused— *ei incumbit probatio qui dicit, non que negat*— he who asserts, not he who denies, must prove.[1]

Nature of the Case

Before the Court is a Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court where petitioner Guilbemer Franco

---

[1] *People v. Masalihit,* 360 Phil. 332, 343 (1998).

[2] *Rollo,* pp. 10-30.

(Franco) assails the Decision[3] dated September 16, 2009 of the Court of Appeals (CA), in CA-G.R. CR No. 31706, affirming the Decision[4] dated February 27, 2008 of the Regional Trial Court (RTC) of Manila, Branch 15, in Criminal Case No. 05-238613. The RTC convicted Franco of the crime of Theft under an Information, which reads as follows:

> That on or about **November 3, 2004,** in the City or Manila. Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent to gain and without the knowledge and consent of the owner thereof, take, steal and carry away one (1) Nokia 3660 Model cellular phone worth Php 18,500.00 belonging to **BENJAMIN JOSEPH NAKAMOTO Y ERGUIZA** to the damage and prejudice of the said owner in the aforesaid amount of Php 18,500.00, Philippine Currency.
>
> Contrary to law.[5]

On September 5, 2005, Franco, assisted by counsel, pleaded not guilty to the crime charged.[6]

The Facts

The evidence for the prosecution established the following facts:

On November 3, 2004 at around ll :00 a.m., Benjamin Joseph Nakamoto (Nakamoto) went to work out at the Body Shape Gym located at Malong Street, Tondo, Manila. After he finished working out, he placed his Nokia 3660 cell phone worth ₱18,500.00 on the altar where gym users usually put their valuables and proceeded to the comfort room to change his clothes. After ten minutes, he returned to get his cell phone, but it was already missing. Arnie Rosario (Rosario), who was also working out, informed him that he saw Franco get a cap and a cell phone

---

[3] Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), with Associate Justices Amelita G. Tolentino and Stephen C. Cruz concurring; CA *rollo,* pp. 88-92.

[4] Rendered by Presiding Judge Mercedes Posada-Lacap; records, pp. 62-66.

[5] *Id*. at 1.

[6] *Rollo,* p. 34.

from the altar. Nakamoto requested everyone not to leave the gym, but upon verification from the logbook, he found out that Franco had left within the time that he was in the shower.[7]

The gym's caretaker, Virgilio Ramos (Ramos), testified that he saw Franco in the gym but he was not working out and was just going around the area. In fact, it was just Franco's second time at the gym. Ramos even met him near the door and as Franco did not log out, he was the one who indicated it in their logbook. When Nakamoto announced that his cell phone was missing and asked that nobody leaves the place, he put an asterisk opposite the name of Franco in the logbook to indicate that he was the only one who left the gym after the cell phone was declared lost.[8]

Nakamoto, together with Jeoffrey Masangkay, a police officer who was also working out at the gym, tried to locate Franco within the gym's vicinity but they failed to find him. They proceeded to the police station and while there, a report was received from another police officer that somebody saw Franco along Coral Street, which is near the gym and that he was holding a cell phone. They went to Coral Street but he was already gone. A vendor told them that he saw a person who was holding a cell phone, which was then ringing and that the person was trying to shut it off. When they went to Franco's house, they were initially not allowed to come in but were eventually let in by Franco's mother. They talked to Franco who denied having taken the cell phone.[9]

Nakamoto then filed a complaint with the *barangay* but no settlement was arrived thereat; hence, a criminal complaint for theft was filed against Franco before the City Prosecutor's Office of Manila, docketed as I.S. No. 04K-25849.[10]

---

[7] *Id*. at 33-34.

[8] Records, pp. 64-65.

[9] *Id*. at 63-64.

[10] *Rollo,* p. 34; TSN, February 8, 2006, pp. 14-15.

In his defense, Franco denied the charge, alleging that if Nakamoto had indeed lost his cell phone at around 1:00 p.m., he and his witnesses could have confronted him as at that time, he was still at the gym, having left only at around 2:45 p.m.[11] He also admitted to have taken a cap and cell phone from the altar but claimed these to be his.[12]

Ruling of the RTC

In its Decision dated February 27, 2008, the RTC convicted Franco of theft, the dispositive portion of which reads:

> IN VIEW OF THE FOREGOING; this Court finds [Franco], GUILTY beyond reasonable doubt of the crime of theft penalized in paragraph 1 of Article 309 in relation to Article 308 of the Revised Penal Code and hereby imposes upon him the penalty of imprisonment of two (2) years, four (4) months and one (1) day as minimum to seven (7) years and four (4) months as maximum and to pay the complainant Php18,500.00.
>
> SO ORDERED.[13]

The RTC did not find Franco's defense credible and ruled that his denial cannot be given evidentiary value over the positive testimony of Rosario.[14]

Franco then appealed to the CA.[15]

Ruling of the CA

In affirming the RTC decision, the CA found the elements of theft to have been duly established. It relied heavily on the "positive testimony" of Rosario who declared to have seen Franco take a cap and a cell phone from the altar. The CA likewise gave credence to the testimony of Ramos who confirmed that it was only Franco who left the gym immediately before Nakamoto announced that his cell phone was missing. Ramos also presented

---

[11] Records, p. 9.

[12] TSN, January 29, 2007, p. 5.

[13] Records, p. 66.

[14] *Id*. at 65-66.

[15] *Id*. at 70-71.

the logbook and affirmed having put an asterisk opposite the name "ELMER," which was entered by the accused upon logging in. The CA stated that taken together, the foregoing circumstances are sufficient to support a moral conviction that Franco is guilty, and at the same time, inconsistent with the hypothesis that he is innocent.[16] The CA further ruled that the RTC cannot be faulted for giving more weight to the testimony of Nakamoto[17] and Rosario,[18] considering that Franco failed to show that they were impelled by an ill or improper motive to falsely testify against him.[19]

In his petition for review, Franco presented the following issues for resolution, to wit:

I.

WHETHER THE HONORABLE [CA] ERRED IN GIVING WEIGHT AND CREDENCE TO THE PROSECUTION WITNESSES' INCONSISTENT AND IRRECONCILABLE TESTIMONIES.

II.

WHETHER THE HONORABLE [CA] ERRED IN AFFIRMING [FRANCO'S] CONVICTION DESPITE THE FACT THAT THE SAME WAS BASED ON FABRICATIONS AND PRESUMPTIONS.

III.

WHETHER THE HONORABLE [CA] ERRED IN ACCEPTING THE VALUE OF THE ALLEGEDLY STOLEN CELLULAR PHONE WITHOUT SUBSTANTIATING EVIDENCE.[20]

Ruling of the Court

Preliminarily, the Court restates the rule that only errors of law and not of facts are reviewable by this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules

---

[16] *Rollo,* pp. 35-36.

[17] TSN, February 8, 2006, pp. 1-19.

[18] TSN, April 19, 2006, pp. 1-15.

[19] *People v. PFC Malejana,* 515 Phil. 584, 597 (2006).

[20] *Rollo,* p. 17.

of Court. This rule applies with greater force when the factual findings of the CA are in full agreement with that of the RTC.[21]

The rule, however, is not ironclad. A departure therefrom may be warranted when it is established that the RTC ignored, overlooked, misconstrued or misinterpreted cogent facts and circumstances, which, if considered, will change the outcome of the case. Considering that what is at stake here is liberty, the Court has carefully reviewed the records of the case[22] and finds that Franco should be acquitted.

Failure of the prosecution to prove Franco's guilt beyond reasonable doubt

The burden of such proof rests with the prosecution, which must rely on the strength of its case rather than on the weakness of the case for the defense. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.[23]

In every criminal conviction, the prosecution is required to prove two things beyond reasonable doubt: *first,* the fact of the commission of the crime charged, or the presence of all the elements of the offense; and *second,* the fact that the accused was the perpetrator of the crime.[24]

Under Article 308 of the Revised Penal Code, the essential elements of the crime of theft are: (1) the taking of personal property; (2) the property belongs to another; (3) the taking away was done with intent to gain; (4) the taking away was done without the consent of the owner; and (5) the taking away

---

[21] *Boneng v. People,* 363 Phil. 594, 600 (1999).

[22] *People v. Agulay,* 588 Phil. 247, 263 (2008).

[23] *People v. Villanueva,* 427 Phil. 102, 128 (2002).

[24] *People v. Santos,* 388 Phil. 993, 1004 (2000).

is accomplished without violence or intimidation against person or force upon things.[25]

The *corpus delicti* in theft has two elements, to wit: (1) that the property was lost by the owner; and (2) that it was lost by felonious taking.[26] In this case, the crucial issue is whether the prosecution has presented proof beyond reasonable doubt to establish the *corpus delicti* of the crime. In affirming Franco's conviction, the CA ruled that the elements were established. Moreover, the RTC and the CA apparently relied heavily on circumstantial evidence.

To sustain a conviction based on circumstantial evidence, Section 4, Rule 133 of the Rules of Court provides that the following requisites must concur: (1) there must be more than one circumstance to convict; (2) the facts on which the inference of guilt is based must be proved; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. With respect to the third requisite, 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 others, as the guilty person.[27]

The prosecution presented three (3) witnesses — Nakamoto, the complainant; Ramos, the gym's caretaker; and Rosario, another gym user.

Their testimonies established the following circumstances: (1) Nakamoto placed his cell phone on the altar,[28] left and went to change his clothes, and after ten minutes, returned to get his cell phone but the same was already missing;[29] (2) Rosario

---

[25] *People v. Bustinera,* G.R. No. 148233, June 8, 2004, 431 SCRA 284, 291.

[26] *Tan v. People,* 372 Phil. 93, 105 (1999).

[27] *People v. Ayola,* 416 Phil. 861, 872 (2001).

[28] CA *rollo,* p. 88.

[29] TSN, February 8, 2006, pp. 4-5.

saw Franco get a cap and a cell phone but the same place;[30] and (3) Ramos saw Franco leave the gym at 1:15 p.m. and the latter failed to log out in the logbook.[31] The RTC and the CA wove these circumstances in order to arrive at the "positive identification" of Franco as the perpetrator.[32]

A perusal of their testimonies, however, shows that certain facts have been overlooked by both courts.

For one, it was only Rosario who saw Franco get a cap and a cell phone from the altar. His lone testimony, however, cannot be considered a positive identification of Franco as the perpetrator.[33]

In *People v. Pondivida,*[34] the Court held:

> Positive identification pertains essentially to proof of identity and not *per se* to that of being an eyewitness to the very act of commission of the crime. There are two types of positive identification. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others. x x x.[35] (Emphasis omitted and underscoring ours)

---

[30] *Id.* at 5; TSN April 19, 2006, p. 5.

[31] TSN, August 28, 2006, pp. 6-7.

[32] CA *rollo,* pp. 90-91.

[33] *Rollo,* p. 66.

[34] G.R. No. 188969, February 27, 2013, 692 SCRA 217.

[35] *Id.* at 222, citing *People v. Caliso,* 675 Phil. 742, 755 (2011).

Rosario's testimony definitely cannot fall under the first category of positive identification. While it may support the conclusion that Franco took a cell phone from the altar, it does not establish with certainty that what Franco feloniously took, assuming that he did, was Nakamoto's cell phone. Rosario merely testified that Franco took "a cell phone." He stated:

Q: How did you know that the said cell phone was taken by the accused?
A: [W]e were then in a conversation when I asked him to spot or assist me with the weights that I intended to carry. We were then situated in an area very near the altar where his cap and cell phone were placed. **After assisting me, he went to the area and took the cell phone and the cap at the same time.**

Q: [W]ho were you talking [sic] at that time?
A: Guilbemer Franco.

Q: lt was also [G]uilbcmer Franco who helped or spot you in the work out?
A: Yes, sir.

Q: And after assisting you, what did Franco do?
A: He took the cell phone of Mr. Nakamoto and his cap at the same time and covered the cell phone by his cap and left the place.

Q: Where was that cell phone of the private complainant placed at that time?
A: At the top of the altar where is [sic] cap is also located.

Q: How far was that altar from where you were working?
A: Only inches.

Q: It was directly in front of you?
A: Yes, sir.

Q: What did you do when the accused took the cap as well as the cell phone of the private complainant?
A: None, sir. I thought the cap and cell phone was his.

Q: How did you know that the cell phone belongs to the private complainant?
A: After Mr. Nakamoto came out from the shower, he went directly to the altar to get his cell phone which

> **was not there anymore and asked us where his cell phone and I told him that I saw Mr. Franco get a cell phone from that area**.[36] (Emphasis ours)

On cross-examination, Rosario also stated that he did not actually see Franco take Nakamoto's cell phone[37] but on re-direct, he clarified that he did not see the cell phone of Nakamoto because he thought that the cell phone was owned by Franco.[38]

What was firmly established by Rosario's testimony is that Franco took a cell phone from the altar. But Franco even admitted such fact.[39] What stands out from Rosario's testimony is that he was unable to particularly describe at first instance what or whose cell phone Franco took from the altar. He only assumed that it was Nakamoto's at the time the latter announced that his cell phone was missing. This was, in fact, observed by the RTC in the course of Rosario's testimony, thus:

> COURT: What you actually saw was, [G]uilbemer Franco was taking his cap together with the cell phone placed beside the cap but you do not know that [the] cell phone was Bj's or Nakamoto's?
>
> A: [Y]es, Your Honor.
>
> **COURT: You just presumed that the cell phone taken by Guilbemor Franco was his?**
>
> **A: Yes, Ma'am.**[40] (Emphasis ours)

Moreover, it must be noted that save for Nakamoto's statement that he placed his cell phone at the altar, no one saw him actually place his cell phone there. This was confirmed by Rosario–

---

[36] TSN, April 19, 2006, pp. 4-5.

[37] *Id*. at 11.

[38] *Id*. at 12.

[39] TSN, January 29, 2007, pp. 5-9.

[40] TSN, April 19, 2006, p. 12.

COURT:

Q: And on that day, you were able to see that Nakamoto on four incidents, when he logged-in, during work-out and when he went inside the C.[R].?
A: Yes, sir.

Q: Therefore, you did not see Nakamoto place his cell phone at the Altar?
A: Yes, sir.[41] (Emphasis ours)

Ramos, the gym caretaker, also testified that he did not see Franco take Nakamoto's cell phone and only assumed that the cell phone on the altar was Nakamoto's, thus —

Q: And do you know who owns that cell phone put [sic] over the altar?
A: Benjamin Nakamoto.

Q: How do you know that it belongs to Benjamin Nakamoto?
A: He is the only one who brings a cell phone to the gym.

xxx xxx xxx

Q: [D]id you actually see him take the cell phone of Nakamoto?
A: I did not see him take the [cell] phone but as soon as the cell phone was lost, he was the only one who left the gym.[42]

Neither can the prosecution's testimonial evidence fall under the second category of positive identification, that is, Franco having been identified as the person or one of the persons last seen immediately before and right after the commission of the theft. Records show that there were other people in the gym before and after Nakamoto lost his cell phone. In fact, Nakamoto himself suspected Rosario of having taken his cell phone, thus:

ATTY SANCHEZ:

Q: You said that you stayed inside the rest room for more or less 10 minutes?
A: [Y]es, sir.

---

[41] *Id*. at 10.

[42] TSN, August 28, 2006, pp. 6-7.

Q: After 10 minutes, you don't know whether aside from Franco somebody went out from the gym because you were inside the c.r.?
A: Yes, sir.

xxx xxx xxx

Q: As a matter of fact, one of your witness[es] who went near the place where your cell phone was placed was this Arnie Rosario?
A: Yes, sir.

Q: And it was only the accused and [Rosario] who were near the place where you said you placed the cell phone?
A: Yes, sir.

Q: You did not suspect [Rosario] to have taken the cell phone?

A: I also suspected, sir.[43] (Emphasis ours)

Moreover, the prosecution witnesses confirmed that the altar is the usual spot where the gym users place their valuables. According to Rosario:

ATTY. SANCHEZ:

Q: And in that place, you said there was a Sto. Niño?
A: At the Altar.

Q: Those who work-out in that gym usually place their things [on top of] the altar.
A: Yes, sir.

Q: Therefore, there were people who place their cell phones on top [of] the Altar?
A: Yes, sir.

Q: Aside from Nakamoto, other people place their things on top [of] the Altar?

A : Yes, sir.[44] (Emphasis ours)

---

[43] TSN, February 8, 2006, p. 11.

[44] TSN, April 19, 2006, p. 10.

The prosecution's evidence does not rule out the following possibilities: *one,* that what Franco took was his own cell phone; *two,* even on the assumption that Franco stole a cell phone from the altar, that what he feloniously took was Nakamoto's cell phone, considering the fact that at the time Nakamoto was inside the changing room, other people may have placed their cell phone on the same spot; and *three,* that some other person may have taken Nakamoto's cell phone.

It must be emphasized that "[c]ourts must judge the guilt or innocence of the accused based on facts and not on mere conjectures, presumptions, or suspicions."[45] It is iniquitous to base Franco's guilt on the presumptions of the prosecution's witnesses for the Court has, time and again, declared that if the inculpatory facts and circumstances are capable of two or more interpretations, one of which being consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction.[46]

Franco also asserts that the logbook from which his time in and time out at the gym was based was not identified during the trial and was only produced after Ramos testified.[47] Ramos testified that when Nakamoto announced that his cell phone was missing and asked that nobody leaves the place, he put an asterisk opposite the name of Franco in the logbook to indicate that he was the only one who left the gym after the cell phone was declared lost.[48]

Under the Rules on Evidence, documents are either public or private. Private documents are those that do not fall under

---

[45] *People v. Anabe,* 644 Phil. 261, 281 (2010).

[46] *People v. Timtiman,* G.R. No. 101663, November 4, 1992, 215 SCRA 364, 373, citing *People v. Remorosa,* G.R. No. 81768, August 7, 1991, 200 SCRA 350, 360.

[47] *Rollo,* p. 48.

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

any of the enumerations in Section 19, Rule 132 of the Rules of Court.[49] Section 20 of the same Rule, in turn, provides that before any private document is received in evidence, its due execution and authenticity must be proved either by anyone who saw the document executed or written, or by evidence of the genuineness of the signature or handwriting of the maker.[50]

In this case, the foregoing rule was not followed. The testimony of Ramos shows that the logbook, indeed, was not identified and authenticated during the course of Ramos' testimony. At the time when Ramos was testifying, he merely referred to the log in and log out time and the name of the person at page 104 of the logbook that appears on line 22 of the entries for November 3, 2004. This was photocopied and marked as Exhibit "C-1".[51] Meanwhile, when Nakamoto was presented as rebuttal witness, a page from the logbook was again marked as Exhibit "D".[52] The logbook or the particular page referred to by Ramos was neither identified nor confirmed by him as the same logbook which he used to log the ins and outs of the gym users, or that the writing and notations on said logbook was his.

The prosecution contends, meanwhile, that the RTC's evaluation of the witnesses' credibility may no longer be questioned at this stage.[53] The Court is not unmindful of the

---

[49] Sec. 19. *Classes of Documents.*— For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledge before a notary public except last wills and testaments; and

(c) Public records kept in the Philippines, or private documents required by law to be entered therein.

All other writings are private.

[50] *Sanvicente v. People,* 441 Phil. 139, 151 (2002).

[51] TSN, August 28, 2006, pp. 7, 14.

[52] TSN, March 19, 2007, p. 4.

[53] *Rollo,* p. 66.

rule that the assignment of value and weight to the testimony of a witness is best left to the discretion of the RTC. But an exception to that rule shall be applied in this case where certain facts of substance and value, if considered, may affect the result.[54] In *Lejano v. People,*[55] the Court stated:

> A judge must keep an open mind. He must guard against slipping into hasty conclusion, often arising from a desire to quickly finish the job or deciding a case. A positive declaration from a witness that he saw the accused commit the crime should not automatically cancel out the accused's claim that he did not do it. A lying witness can make as positive an identification as a truthful witness can. The lying witness can also say as forthrightly and unequivocally, "He did it!" without blinking an eye.[56]

The facts and circumstances proven by the prosecution, taken together, are not sufficient to justify the unequivocal conclusion that Franco feloniously took Nakamoto's cell phone. No other convincing evidence was presented by the prosecution that would link him to the theft.[57] The fact Franco took a cell phone from the altar does not necessarily point to the conclusion that it was Nakamoto's cell phone that he took. **In the appreciation of circumstantial evidence, the rule is that the circumstances must be proved, and not themselves presumed.** The circumstantial evidence must exclude the possibility that some other person has committed the offense charged.[58]

Franco, therefore, cannot be convicted of the crime charged in this case. There is not enough evidence to do so. As a rule, in order to support a conviction on the basis of circumstantial evidence, all the circumstances must be consistent with the

---

[54] *People v. Deunida,* G.R. Nos. 105199-200, March 28, 1994, 231 SCRA 520, 532.

[55] 652 Phil. 512 (2010).

[56] *Id.* at 581.

[57] *Rollo,* p. 24.

[58] *People v. Anabe, supra* note 45.

hypothesis that the accused is guilty. In this case, not all the facts on which the inference of guilt is based were proved. The matter of what and whose cell phone Franco took from the altar still remains uncertain.

Franco's defense of denial

The evidence of the prosecution must stand on its own weight and not rely on the weakness of the defense.[59] In this case, Franco did not deny that he was at the Body Shape Gym on November 3, 2004, at around 1:00 p.m. and left the place at around 2:45 p.m.[60] He did not even deny that he took a cell phone from the altar together with his cap. What he denied is that he took Nakamoto's cell phone and instead, claimed that what he took is his own cell phone.[61] Denial may be weak but courts should not at once look at them with disfavor. There are situations where an accused may really have no other defenses but denial, which, if established to be the truth, may tilt the scales of justice in his favor, especially when the prosecution evidence itself is weak.[62]

While it is true that denial partakes of the nature of negative and self-serving evidence and is seldom given weight in law,[63] the Court admits an exception established by jurisprudence that the defense of denial assumes significance when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt.[64] The exception applies in the case at hand. The prosecution failed to produce sufficient evidence to overturn the constitutional guarantee that Franco is presumed to be innocent.

---

[59] *People v. Tan,* 432 Phil. 171, 199 (2002).

[60] *Rollo,* pp. 45-46.

[61] TSN, January 29, 2007, pp. 5-6.

[62] *People v. Ladrillo,* 377 Phil. 904, 917 (1999).

[63] *People v. Cañete,* 364 Phil. 423, 435 (1999).

[64] *People v. Mejia,* 612 Phil. 668, 687 (2009).

Value of the cell phone

It is also argued by Franco that the value of the cell phone must be duly proved with reasonable degree of certainty. On the other hand, the people contended that there has been a judicial admission of the same.[65] This issue, however, is now moot and academic considering Franco's acquittal.

Conclusion

The circumstantial evidence proven by the prosecution in this case failed to pass the test of moral certainty necessary to warrant Franco's conviction. Accusation is not synonymous with guilt.[66] Not only that, where the inculpatory facts and circumstances are capable of two or more explanations or interpretations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not meet or hurdle the test of moral certainty required for conviction.[67]

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals dated September 16, 2009 in CA-G.R. CR No. 31706 is hereby **REVERSED** and **SET ASIDE**. Petitioner Guilbemer Franco is **ACQUITTED** of the crime of Theft charged in Criminal Csse No. 05-238613 because his guilt was not proven beyond reasonable doubt.

No costs.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez,* and *Jardeleza, JJ.,* concur.

---

[65] TSN, February 8, 2006, p. 6.

[66] See *People v. Manambit,* 338 Phil. 57 (1997).

[67] *Atienza v. People*, G.R. No. 188694, February 12, 2014, 716 SCRA 84, 104-105.

THIRD DIVISION

[G.R. No. 194134. February 1, 2016]

JOSE ROMULO L. FRANCISCO, *petitioner, vs.* **LOYOLA PLANS CONSOLIDATED INC., JESUSA CONCEPCION and GERARDO B. MONZON,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE PETITION FOR *CERTIORARI* ELEVATED TO THE COURT OF APPEALS IN CASE AT BAR IS AN ORIGINAL AND INDEPENDENT ACTION, AND JURISDICTION OVER THE PERSON OF THE PETITIONER WAS ACQUIRED UPON THE FILING OF THE *CERTIORARI* PETITION.—** It is stressed that the petition for *certiorari* elevated to the CA is, by nature, an original and independent action. Therefore, the same is not considered as part of the trial that had resulted in the rendition of the judgment or order complained of. Being an original action, there is a need for the CA to acquire jurisdiction over the person of the parties to the case before it can be resolved on its merits. Naturally, the CA acquired jurisdiction over the person of the petitioner upon the filing of the *certiorari* petition.

2. **ID.; ID.; ORIGINAL CASES FILED BEFORE THE COURT OF APPEALS; JURISDICTION OVER THE PERSON OF RESPONDENT, HOW ACQUIRED.—** Section 4, Rule 46 of the Rules of Court, which covers cases originally filed before the CA, provides how the CA acquired jurisdiction over the person of the respondent xxx. [I]n petitions for *certiorari* filed before the CA, the latter acquires jurisdiction over the person of the respondent upon: "1. the service of the order or resolution indicating the CA's initial action on the petition to the respondent; or 2. the voluntary submission of the respondent to the CA's jurisdiction." xxx Considering that the CA had issued a Resolution dated September 17, 2008 directing petitioner to file the necessary attachments, the resolution indicating the initial action taken by the CA, it cannot be denied that respondents were already aware of the *certiorari* proceedings

before the CA and that jurisdiction had been acquired over their person. Thus, the CA had already acquired jurisdiction over both parties. x x x The CA acquired jurisdiction over the person of Monzon upon the service of the resolution indicating its initial action to his counsel of record.

3. **ID.; ID.; FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS; WHEN A CLIENT IS REPRESENTED BY COUNSEL, NOTICE TO COUNSEL IS NOTICE TO CLIENT, AND IN THE ABSENCE OF WITHDRAWAL OR SUBSTITUTION OF COUNSEL, THE COURT WILL RIGHTLY ASSUME THAT THE COUNSEL OF RECORD CONTINUES TO REPRESENT HIS CLIENT.—** Records disclose that the CA served its Resolution dated September 17, 2008 indicating its initial action on the petition before it, directing petitioner to file certified copies of the parties' position papers, among others. The said order was sent to Monzon through Atty. Josabeth Alonso, his counsel of record. Case law instructs that when a client is represented by counsel, notice to counsel is notice to client. In the absence of a notice of withdrawal or substitution of counsel, the court will rightly assume that the counsel of record continues to represent his client. In the case at bar, the counsel of respondents denied its representation of Monzon in a Motion and Manifestation dated October 28, 2008, or after the receipt of the Resolution dated October 14, 2008 of the CA directing them to file their comment. It was only on May 8, 2009 that the counsel of respondents formally filed an *Ex Parte* Motion to Withdraw as Counsel of Monzon. Hence, prior to such notice of withdrawal as counsel, the CA aptly held in its Resolution dated April 17, 2009 that without notice of withdrawal of counsel filed by Monzon or his counsel, the CA rightly assumed that counsel of record continues to represent Monzon.

APPEARANCES OF COUNSEL

Alonso and Associates for respondents Loyola Plans and J. Concepcion.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* dated November 6, 2010 of petitioner Jose Romulo L. Francisco assailing the Resolution[1] dated February 19, 2010 and Resolution[2] dated October 12, 2010 of the Court of Appeals *(CA)* which ruled that it did not acquire jurisdiction over the person of private respondent Gerardo B. Monzon thereby dismissing the case with respect to Monzon.

The facts are as follows:

On November 8, 1993, respondent Loyola Plans Consolidated, Inc. *(Loyola)* hired petitioner Jose Romulo Francisco as National Training Officer on probationary basis with a salary of ₱6,600.00. On May 9, 1994, petitioner became a regular employee.[3] Loyola added the Pasay-Parañaque Area Office as an extension sales office to petitioner's Makati Marketing Group on January 2, 1996.[4] In January 1997, petitioner was paid ₱15,400.00 as Manager of the Makati Marketing Group.[5]

On July 1, 1997, petitioner filed a complaint for illegal dismissal against respondent Loyola and individual respondents Loyola's President and Chief Executive Officer Jesusa P. Concepcion and Loyola's Vice-President for Marketing and Sales Gerardo B. Monzon.[6]

---

[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Magdangal M. De Leon and Mario V. Lopez; concurring, *rollo,* pp. 24-25.

[2] Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier, concurring, *id.* at 27-29.

[3] *Id.* at 90.

[4] *Id.* at 376.

[5] *Id.* at 91.

[6] *Id.* at 353-354.

In his position paper, petitioner alleged that Monzon, respondent's Vice-President for Marketing and Sales, deliberately falsified a resignation letter[7] dated March 24, 1997 purportedly signed by petitioner.[8] Petitioner received the same on April 1, 1997.[9] Two memoranda, both dated March 25, 1997, instructing petitioner to relinquish the Loyola Makati Marketing Group and Pasay-Parañaque Area Office, and clearance forms to be filled-out by petitioner accompanied the alleged resignation letter.[10]

In a letter[11] dated April 14, 1997 addressed to Monzon, petitioner, through his counsel, protested the alleged illegal termination. In the said letter, petitioner accused Monzon of his criminal intentions prior to the sham acceptance of his falsified letter.[12] Petitioner also demanded Monzon to reinstate him with backwages within five days from the receipt of the said letter; otherwise, its liabilities will be increased from the suit that he would file against Loyola and Monzon.[13] Petitioner informed Monzon that he should personally take the vehicle in petitioner's possession.[14]

When respondents ignored his demands, petitioner filed a case of falsification of private document against Monzon before the Office of the City Prosecutor of Makati City.[15]

On the other hand, Loyola claimed that petitioner voluntarily resigned from his post. In its position paper, Loyola alleged that petitioner showed dismal performance during his stint as

---

[7] *Id.* at 355.

[8] *Id.* at 376.

[9] *Id.*

[10] *Id.*

[11] *Id.* at 356.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.* at 378.

Marketing Manager from May 1996 to December 1996, with his actual sales below his projected forecast.[16] In January 1997, Monzon called petitioner's attention regarding his poor sales performance from June to December 1996.[17] Petitioner was given a chance to prove himself in attaining all the sales, collection and organization forecasts from January to March 1997, however, it was also agreed upon that petitioner would tender his irrevocable resignation should he fail to do so.[18]

Hence, when the company records showed that petitioner miserably failed to reach his goals, petitioner tendered his irrevocable resignation on March 24, 1997, which Monzon accepted on the same day.[19] Loyola alleged that there was no illegal dismissal since petitioner voluntarily resigned.

The Labor Arbiter *(LA)* issued an Order[20] dated April 24, 1997 that the resolution of the illegal dismissal case should wait for the outcome of the criminal case filed against Monzon in Branch 66, Metropolitan Trial Court *(MeTC)* of Makati.[21]

On June 24, 1998, petitioner filed a Motion for Reconsideration against the Order issued by the LA praying that the illegal dismissal case should proceed independently from the criminal case against Monzon.[22]

In a Resolution[23] dated June 22, 1999, the National Labor Relations Commission (*NLRC*), which treated the Motion for Reconsideration as an appeal, ruled that the case should be deferred pending the criminal case.[24] The NLRC ratiocinated

---

[16] *Id.* at 385.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] Penned by Labor Arbiter Ernesto S. Dinopol, *id* at 74-79.

[21] *Id.* at 79.

[22] CA *rolla,* pp. 435-436.

[23] *Rollo,* pp. 80-86.

[24] *Id.* at 82.

that the determination whether petitioner was illegally dismissed is dependent upon the resolution of the criminal case involving the alleged forgery of the resignation letter.[25]

In a Decision[26] dated February 10, 2004, the MeTC found Monzon guilty beyond reasonable doubt of the crime of Falsification of Private Document under Article 172, paragraph 2 of the Revised Penal Code.[27] The MeTC also held that damage had been caused to petitioner since he was terminated from his job causing financial constraints as a consequence of the forgery of the resignation letter.[28]

On August 10, 2004, the Regional Trial Court *(RTC),* Branch 132 of Makati City affirmed the conviction of Monzon.[29] Likewise, the *CA,* in its Decision[30] dated March 18, 2005, affirmed the conviction of Monzon finding it more probable that he made the spurious resignation letter and made it appear that petitioner intended to resign from work than petitioner resigning from his job despite the difficulty in finding a stable job.[31] In a Resolution[32] dated November 14, 2005, this Court dismissed the petition for *certiorari* filed by Monzon for being the wrong remedy; for failing to state the material dates, and for a defective or insufficient certification against forum shopping.[33]

---

[25] *Id.*

[26] Penned by Presiding Judge Perpetua Atal-Paño, *id.* at 68-73.

[27] *Id.* at 73.

[28] *Id.*

[29] Penned by Presiding Judge Rommel O. Baybay; *id.* at 65-67.

[30] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Amelita G. Tolentino and Lucenito N. Tagle, concurring; *id.* at 58-64.

[31] *Id.* at 62.

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

[33] *Id.* at 54.

In its Decision[34] dated September 5, 2007, the LA ruled for the petitioner. It held that the final conviction of Monzon in the falsification charges simultaneously made the illegal termination of petitioner with finality inwoking the doctrines of *res judicata,* finality of judgment and estoppel by judgment.[35] The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding [petitioner] to have been illegally dismissed and in bad faith by respondents and ordering respondents Loyola Plans Inc., its President and Chief Executive Officer Jesusa P. Concepcion, and Gerardo B. Monzon, jointly an[d] severally"
>
> 1. To reinstate [petitioner] to his former position without loss of seniority rights and benefits; and the reinstatement immediately executory upon receipt of this Decision by the respondents and even pending appeal;
>
> 2. To submit a report compliance whether [petitioner] was physically reinstated or simply enrolled in the company's payroll within ten (l0) calendar days from receipt of this Decision;
>
> 3. To pay [petitioner]s full backwages starting from date of his illegal dismissal on 15 April 1997, plus 13th month pay from 1 January 1997, until his actual reinstatement:

A. Backwages		
4/15/97- 9/5/07 = 125 months		
₱15,400.00 x 125 mos.	=	₱1,925,000.00
13th Month Pay		
₱1,925,000.00 ÷ 12	=	160,416.66
SILP		
₱592.30 x 5 x 125 ÷ 12	=	30,848.95
B. 13th Month Pay		
1/1/97- 4/14/97 = 3.43 mos.		
₱15,400.00 x 3.43 ÷ 12	=	4,401.83
		₱2,120,667.44

[34] Penned by Labor Arbiter Patricio P. Libo-on, *id.* at 119-129.

[35] *Id.* at 122.

4. To pay [petitioner] moral and exemplary damages in the respective amount of ₱l,000,000.00 each;

5. To pay [petitioner] 10% of the total awards as attoney's fees or in the amount of ₱212,066.74

SO ORDERED.[36]

Maintaining that the personal acts of Monzon should not be taken against respondents Loyola and Concepcion, respondents elevated the case before the NLRC. In its Resolution[37] dated April 30, 2008, the NLRC affirmed with modifications the ruling of the LA. The decretal part of the decision reads:

WHEREFORE, foregoing premises considered, the Decision dated September 05, 2007, is hereby MODlFIED. The award of backwages should be computed from the finality of the judgment of conviction of individual respondent Gerardo Monzon up to his actual reinstatement. The award of moral and exemplary damages is DELETED and the award of attorney's fees based on the total monetary award in this Decision, is hereby maintained.

SO ORDERED.[38]

Aggrieved, petitioner filed a petition for *certiorari* before the CA seeking the nullification of the Resolution of the NLRC. Petitioner asseverates that the NLRC has no jurisdiction to reverse its own final Resolution dated June 22, 1999 which affirmed the decision of the LA to hold the proceedings and await the outcome of the criminal case against Monzon, and to modify the final decision of this Court in the same case.[39] Petitioner insists that the award of damages of the LA has become final due to respondents' forum shopping.[40]

---

[36] *Id* at 127-129.

[37] Penned by Commissioner Gregorio O. Bilog III with Presiding Commissioner Lourdes C. Javier, concurring and Commissioner Tito F. Genilo, taking no part; *id*. at 89-107.

[38] *Id.* at 107.

[39] *Id*. at 167.

[40] *Id.*

In a Resolution[41] dated October 14, 2008, the CA ordered respondents to file their comment on the petition for *certiorari* within ten (10) days from notice.[42]

On October 28, 2008, respondents' counsel filed a Manifestation and Motion[43] denying any legal relations with Monzon. It averred that Monzon has ceased to be in the employ of Loyola and had not made any communication with Loyola or its counsel.[44]

However, the CA, in a Resolution[45] dated April 17, 2009, denied the said motion. It held that without any withdrawal of counsel filed by either Monzon or Atty. Josabeth Alonso before the CA, the latter's legal representation of Monzon subsists.[46] It also ruled that the manifestation and motion on October 28, 2008 of Alonso and Associates denying its legal relations with Monzon is not enough, to sever its representation with him.[47] The CA ordered the respondents to file their comment within ten (10) days from the receipt of notice.[48]

Thereafter, respondents' counsel filed an *Ex Parte* Motion dated May 8, 2009 moving to withdraw as counsel of individual respondent Monzon.[49] It avowed that it could no longer make a proper and full representation of Monzon, since the latter ceased to communicate with Loyola and its counsel when the former resigned from his post.[50]

---

[41] Penned by Associate Justice Romeo F. Barza, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Arcangelita M. Romilla-Lontok, concurring; CA *rollo,* p. 274.

[42] *Rollo*, p. 38.

[43] CA *rollo,* pp. 275-277.

[44] *Id.* at 276.

[45] *Rollo,* pp. 38-45.

[46] *Id.* at 44.

[47] *Id.*

[48] *Id.* at 45.

[49] *Id.* at 46-53.

[50] *Id.* at 47.

The CA granted the motion in its Minute Resolution[51] dated July 21, 2009 and ordered that Monzon should be furnished with the copy of the said resolution for compliance.[52]

In a Resolution[53] dated February 19, 2010, the CA dismissed the case with respect to Monzon. It held that the CA did not acquire jurisdiction over the person of Monzon since the copy of the Resolution dated July 21, 2009 mailed to Monzon's address of record was returned unclaimed.[54]

The CA denied the Motion for Reconsideration filed by petitioner in its Resolution[55] dated October 12, 2010. The CA ruled that "while Section 26[56] of Rule 138 prescribes the usual means by which an attorney may withdraw as counsel for a client, there are instances where the court may be justified in relieving a lawyer from continuing his appearance in action or proceeding, without hearing the client, like when a situation

---

[51] *Id.* at 34.

[52] *Id.*

[53] *Supra* note 1.

[54] *Id.* at 25.

[55] *Supra* note 2.

[56] Section 26. *Change of attorneys.*— An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceedings without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the advance party.

A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract. However, the attorney may, in the discretion of the court, intervene in the case to protect his rights. For the payment of his compensation the attorney shall have a lien upon all judgments for the payment of money, and executions issued in pursuance of such judgment, rendered in the case wherein his services had been retained by the client.

develops where the client stops having any contact with the lawyer, who is thereby left without the usual means which are indispensable in the successful or proper defense of the client's cause."[57]

Hence, petitioner filed the instant petition for review on *certiorari* before this Court raising the following issues:

1. The questioned dismissal is against the Court of Appeals' final resolution dated April 17, 2009.

2. Alonso and Associates fraudulently provided a sham address causing the failure of service to Monzon.

3. The questioned dismissal is against the Supreme Court's final resolution of the criminal case against Monzon.

4. Respondents judicially admitted illegal dismissal when they accepted the resignation letter in good faith which later on was proven to be falsified.

5. The Labor Arbiter's awards have become final and executory.

6. Respondents deliberately intended to render the final Supreme Court resolution ineffectual.

7. Respondents are solidarily liable to pay interest.

Petitioner essentially assails the Resolution dated February 19, 2010 of the CA which dismissed the case with respect to individual respondent Monzon, and the Resolution dated October 12, 2010 which denied his motion for reconsideration against the dismissal of the case. He maintains that such dismissal is against the final judgment of the criminal case against Monzon. Petitioner insists that the final resolution of the falsification charges against Monzon has already settled that he is illegally terminated from his job, thus, the awards of the LA should be enforced.

---

[57] *Rollo,* p. 28.

It is noted that the CA in a Resolution[58] dated March 14, 2011 resolved to hold in abeyance the pending petition for *certiorari* in light of the petition for review on *certiorari* filed by petitioner before this Court.

This Court finds the instant petition partly meritorious.

Petitioner alleges that the CA had already acquired jurisdiction over the person of respondent Monzon because of the successful service of the Resolution dated September 17, 2009 indicating the initial action of the CA on the petition to his counsel of record, Rayala, Alonso and Partners (later renamed as Alonso and Associates). Petitioner also avers that the CA already determined that a copy of his petition was duly served to his counsel after the service of its initial resolution dated September 17, 2009.

It is stressed that the petition for *certiorari* elevated to the CA is, by nature, an original and independent action. Therefore, the same is not considered as part of the trial that had resulted in the rendition of the judgment or order complained of.[59] Being an original action, there is a need for the CA to acquire jurisdiction over the person of the parties to the case before it can be resolved on its merits. Naturally, the CA acquired jurisdiction over the person of the petitioner upon the filing of the *certiorari* petition.

On the other hand, Section 4, Rule 46 of the Rules of Court, which covers cases originally filed before the CA, provides how the CA acquired jurisdiction over the person of the respondent, *viz.*:

SEC. 4. *Jurisdiction over person of respondent, how acquired.* — The court shall acquire jurisdiction over the person of the respondent by the service on him of its order or resolution indicating

---

[58] Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier, concurring; CA *rollo,* pp. 885-886.

[59] *Province of Leyte herein represented by Mr. Rodolfo Badiable in his capacity as the ICO- Provincial Treasurer, Province of Leyte v. Energy Development Corp.,* G.R. No. 203124, June 22, 2015.

its initial action on the petition or by his voluntary submission to such jurisdiction.

In other words, in petitions for *certiorari* filed before the CA, the latter acquires jurisdiction over the person of the respondent upon:

1. the service of the order or resolution indicating the CA's initial action on the petition to the respondent; or

2. the voluntary submission of the respondent to the CA's jurisdiction.

Records disclose that the CA served its Resolution dated September 17, 2008 indicating its initial action on the petition before it, directing petitioner to file certified copies of the parties' position papers, among others. The said order was sent to Monzon through Atty. Josabeth Alonso, his counsel of record.[60]

Case law instructs that when a client is represented by counsel, notice to counsel is notice to client.[61] In the absence of a notice of withdrawal or substitution of counsel, the court will rightly assume that the counsel of record continues to represent his client.[62]

In the case at bar, the counsel of respondents denied its representation of Monzon in a Motion and Manifestation dated October 28, 2008, or after the receipt of the Resolution dated October 14, 2008 of the CA directing them to file their comment. It was only on May 8, 2009 that the counsel of respondents formally filed an *Ex Parte* Motion to Withdraw as Counsel of Monzon. Hence, prior to such notice of withdrawal as counsel, the CA aptly held in its Resolution dated April 17, 2009 that without notice of withdrawal of counsel filed by Monzon or his counsel, the CA rightly assumed that counsel of record continues to represent Monzon.

---

[60] *Rollo,* p. 35.

[61] *Manaya v. Alabang Country Club, Inc.,* 552 Phil. 226, 233 (2007).

[62] *Id.*

Considering that the CA had issued a Resolution dated September 17, 2008 directing petitioner to file the necessary attachments, the resolution indicating the initial action taken by the CA, it cannot be denied that respondents were already aware of the *certiorari* proceedings before the CA and that jurisdiction had been acquired over their person. Thus, the CA had already acquired jurisdiction over both parties.

Therefore, the CA erred in dismissing the case with respect to Monzon on the ground that it did not acquire jurisdiction over his person when its minute resolution granting the withdrawal of counsel was returned unclaimed. The CA acquired jurisdiction over the person of Monzon upon the service of the resolution indicating its initial action to his counsel of record.

We will not rule upon the other issues raised by petitioner as this Court is not the proper venue to address the same in view of the pending petition for *certiorari* filed by the petitioner before the CA.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Resolution dated February 19, 2010 of the Court of Appeals in CA-G.R. SP No. 105131 dismissing the case against respondent Gerardo B. Monzon is hereby **REVERSED** and **SET ASIDE.**

The Court of Appeals is **DIRECTED** to resolve the case **WITH DISPATCH**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Perez, Reyes,* and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 202978. February 1, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICTOR P. PADIT,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; THE FAILURE TO DESIGNATE THE OFFENSE BY STATUTE OR TO MENTION THE SPECIFIC PROVISION PENALIZING THE ACT, OR AN ERRONEOUS SPECIFICATION OF THE LAW VIOLATED, DOES NOT VITIATE THE INFORMATION IF THE FACTS ALLEGED THEREIN CLEARLY RECITE THE FACTS CONSTITUTING THE CRIME CHARGED.— [T]he Court notes that the Information, dated August 2, 2006, specifically charged petitioner with rape under Article 335 of the Revised Penal Code (*RPC*). However, upon the enactment of Republic Act No. 8353 (*RA 8353*), otherwise known as the *Anti-Rape Law of 1997*, which became effective on October 22, 1997, rape was reclassified as a crime against persons, thus, repealing Article 335 of the RPC. The new provisions on rape are now found in Articles 266-A to 266-D of the said Code. In the instant case, the crime was committed on May 5, 2006. Hence, the applicable law is the RPC as amended by RA 8353 and that the prosecution as well as the RTC and the CA committed an error in specifying the provision of law which was violated. Nonetheless, it is settled that the failure to designate the offense by statute or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged therein clearly recite the facts constituting the crime charged. The character of the crime is not determined by the caption or preamble of the information nor by the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information. In the instant case, the body of the Information contains an averment of the acts alleged to have been committed by petitioner and describes acts punishable

under Article 266-A, in relation to Article 266-B, of the RPC, as amended.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH AND SINCERITY.— Settled is the rule that testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has, in fact, been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. Considering that AAA was only four (4) years old when she was raped and was only five (5) years old when she took the witness stand, she could not have invented a horrible story. For her to fabricate the facts of rape and to charge the accused falsely of a crime is certainly beyond her mental capacity.

3. CRIMINAL LAW; REVISED PENAL CODE; RAPE; A MERE TOUCHING OF THE EXTERNAL GENITALIA BY THE PENIS CAPABLE OF CONSUMMATING THE SEXUAL ACT ALREADY CONSTITUTES CONSUMMATED RAPE.— AAA, who was then four years old at the time of the molestation, was not expected to be knowledgeable about sexual intercourse and every stage thereof. The fact that she claimed that accused-appellant rubbed his penis against her vagina did not mean that there was no penetration. Carnal knowledge is defined as the act of a man having sexual bodily connections with a woman. This explains why the slightest penetration of the female genitalia consummates the rape. As such, a mere touching of the external genitalia by the penis capable of consummating the sexual act already constitutes consummated rape. In the present case, AAA testified that she felt pain when accused-appellant "rubbed his penis [against her] vagina." This Court has held that rape is committed on the victim's testimony that she felt pain. In fact, AAA still felt severe pain in her vagina when she was being given a bath by her mother after her molestation. This kind of pain

could not have been the result of mere superficial rubbing of accused-appellant's sex organ with that of the victim. Such pain could be nothing but the result of penile penetration sufficient to constitute rape.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FACT THAT THE OFFENDED PARTY IS A MINOR DOES NOT MEAN THAT SHE IS INCAPABLE OF PERCEIVING AND OF MAKING HER PERCEPTION KNOWN.—** The Court is neither persuaded by accused-appellant's insistence that while there is no question that children, like AAA, at such an age are incapable of lying, their credibility is not only limited to their capacity to tell the truth but also their capacity to grasp things that have happened, to intelligently recall them and to completely and accurately relate them. The fact that the offended party is a minor does not mean that she is incapable of perceiving and of making her perception known. Children of sound mind are likely to be more observant of incidents which take place within their view than older persons, and their testimonies are likely more correct in detail than that of older persons. In fact, AAA had consistently, positively, and categorically identified accused-appellant as her abuser. Her testimony was direct, candid, and replete with details of the rape.

5. **ID.; ID.; ADMISSIBILITY; TESTIMONIAL EVIDENCE; HEARSAY EVIDENCE, DEFINED; THE REASON FOR THE EXCLUSION OF HEARSAY EVIDENCE IS THAT THE PARTY AGAINST WHOM THE HEARSAY TESTIMONY IS PRESENTED IS DEPRIVED OF THE RIGHT OR OPPORTUNITY TO CROSS-EXAMINE THE PERSON TO WHOM THE STATEMENTS ARE ATTRIBUTED.—** The term "hearsay" as used in the law on evidence, signifies evidence which is not founded upon the personal knowledge of the witness from whom it is elicited and which consequently does not depend wholly for its credibility and weight upon the confidence which the court may have in him; its value, if any, is measured by the credit to be given to some third person not sworn as a witness to that fact, and consequently, not subject to cross- examination. If one therefore testifies to facts which he learned from a third person not sworn as a witness to those facts, his testimony is inadmissible as hearsay evidence. The reason for the exclusion of hearsay

evidence is that the party against whom the hearsay testimony is presented is deprived of the right or opportunity to cross-examine the person to whom the statements are attributed. Moreover, the court is without opportunity to test the credibility of hearsay statements by observing the demeanor of the person who made them. In the instant case, the declarant, AAA herself, was sworn as a witness to the fact testified to by her mother. Accused-appellant's counsel even cross-examined AAA. Moreover, the trial court had the opportunity to observe AAA's manner of testifying. Hence, the testimony of AAA's mother on the incident related to her by her daughter cannot be disregarded as hearsay evidence.

6. **ID.; ID.; CREDIBILITY OF WITNESSES; FOR A DISCREPANCY OR INCONSISTENCY IN THE TESTIMONY OF A WITNESS TO SERVE AS A BASIS FOR ACQUITTAL, IT MUST REFER TO THE SIGNIFICANT FACTS INDISPENSABLE TO THE GUILT OR INNOCENCE OF THE ACCUSED FOR THE CRIME CHARGED.—** The Court finds neither logic nor relevance in accused-appellant's argument that if he indeed committed the offense charged, why is it that of all times that AAA went to his yard and play it was only during the time alleged by the prosecution that accused-appellant decided to rape her. This matter is inconsequential as it has no bearing with respect to the elements of rape. As aptly held by the CA, the decisive factor in the prosecution for rape is whether the commission of the crime has been sufficiently proven. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must refer to the significant facts indispensable to the guilt or innocence of the accused for the crime charged. As the inconsistencies alleged by accused-appellant had nothing to do with the elements of the crime of rape, they cannot be used as grounds for his acquittal.

7. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; WHAT THE LAW PUNISHES IS CARNAL KNOWLEDGE OF A WOMAN BELOW TWELVE YEARS OF AGE; PENALTY IN CASE AT BAR.—** When the offended party is under twelve (12) years of age, the crime committed is termed statutory rape as it departs from the usual modes of committing rape. What the law punishes is carnal knowledge of a woman below twelve years of age. In the instant case, there is no dispute that AAA was four years of age when

the crime was committed. Resultantly, accused-appellant was charged and proven guilty of statutory rape. As to the penalty, Article 266-B of the RPC, as amended, provides that the death penalty shall be imposed if the victim is a child below seven years old. However, following Republic Act No. 9346, the RTC, as affirmed by the CA, correctly imposed upon accused-appellant the penalty of *reclusion perpetua* in lieu of death, but it should be specified that it is without eligibility for parole, as the RTC did not state it in the dispositive portion of its Decision.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Emily B. Olarte for accused-appellant.

D E C I S I O N

PERALTA, *J.*:

Before the Court is an ordinary appeal filed by accused-appellant Victor P. Padit *(Padit)* assailing the Decision[1] of the Court of Appeals *(CA),* dated July 19, 2011, in CA-GR. CEB-CR-H.C. No. 00888, which affirmed with modification the Decision[2] of the Regional Trial Court *(RTC)* of Guiuan, Eastern Samar, Branch 3, in Criminal Case No. 2266, finding Padit guilty of the crime of rape.

The antecedents are as follows:

In the morning of May 5, 2006, the victim, AAA,[3] a four-year-old girl, was playing inside their house while her mother

---

[1] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Ingles, concurring; *rollo,* pp. 3-17.

[2] Penned by Judge Rolando M. Lacdo-o; CA *rollo,* pp. 49-71.

[3] The initials AAA represent the private offended party, whose name is withheld to protect her privacy. Under Republic Act No. 9262 *(Anti-Violence Against Women and Their Children Act of 2004),* the name,

was looking after her younger brother. After a while, AAA went out of the house to buy bread. On her way to the store, she was called by accused-appellant, who is their neighbor and the uncle of her mother, and whom AAA calls as Lolo Victor. Accused-appellant brought AAA inside his house and allowed her to play. He then brought her upstairs, caused her to lie down and removed her short pants. Accused-appellant also removed his short pants and proceeded to rub his penis against AAA's vagina. AAA felt pain but was rendered helpless and prevented from making any sound as accused-appellant covered her mouth with his hand. Thereafter, accused-appellant threatened to hurt AAA with his knife if she tells anybody about the incident.

Meanwhile, AAA's mother was about to serve lunch when she noticed that AAA was not yet around. She then went out of their house and around their neighborhood calling for AAA. While she was in accused-appellant's yard, the latter came out of his house and told her that AAA is inside watching him weave baskets. Accused-appellant then went back inside the house and, after a few minutes, brought AAA outside.

Back at their house, her mother asked AAA why she did not respond to her calls. AAA then told her mother about what accused-appellant did to her. Upon hearing AAA's account of her sexual molestation committed by accused-appellant, AAA's mother immediately went to accused-appellant's house to confront him. Accused-appellant, however, denied having molested AAA. Unable to elicit an admission from accused-appellant, AAA's mother went back to their house and proceeded to give AAA a bath. While she was washing AAA's vagina, the latter cried and asked her not to touch it because it was very painful.

The following morning, AAA's parents filed a complaint with their Barangay Chairman. They also caused AAA to undergo physical/medical examination on May 8, 2006 wherein

---

address, and other identifying information of the victim are made confidential to protect and respect the right to privacy of the victim.

it was found that the child's vulva showed a slight hymenal abrasion.

Subsequently, AAA's mother filed a criminal Complaint[4] with the Prosecutor's Office of Guiuan, Eastern Samar. In an Information[5] dated August 2, 2006, the Office of the Public Prosecutor of Eastern Samar charged accused-appellant with the crime of rape, the pertinent portions of which read as follows:

xxx xxx xxx

The undersigned, Public Prosecutor of the Province of Eastern Samar, accuses Victor Padit y Padual of the crime of Rape, defined and penalized under Art. 335, Revised Penal Code, committed as follows:

That on or about the 5th day of May 2006, at about 12:00 noon, Brgy. Naparaan, Salcedo, Eastern Samar, Philippines, within the jurisdiction of this Honorable Court, the aforenamed accused with lewd design and by means of force and intimidation, did then and there wilfully, unlawful1y and feloniously place and rub his penis into the vagina of [AAA], 4-year-old girl minor, without her consent and against her will.

Contrary to law.

xxx xxx xxx

In his defense, accused-appellant denied the allegations of the prosecution contending that he could not have raped AAA because his wife was with him at the time that the alleged molestation was committed. Accused-appellant's wife corroborated his testimony on the witness stand.

During pre-trial, the prosecution and the defense entered into a stipulation of facts wherein it was admitted that the victim was four (4) years old at the time of the alleged rape; accused-appellant is the same person who has been charged and arraigned; and, accused-appellant and the victim and her parents are neighbors.[6]

---

[4] Exhibit "A", Folder of Documentary Exhibits, p. 3.

[5] Records, p. 1.

[6] See RTC Joint Preliminary Conference and Pre-Trial Order, *id.* at 19-21.

Thereafter, trial ensued.

On March 3, 2008, the RTC rendered its Decision[7] finding accused-appellant guilty as charged, the dispositive portion of which reads as follows:

> WHEREFORE, IN THE LIGHT OF THE FOREGOING, the court finds accused **VICTOR P. PADIT,** guilty beyond reasonable doubt, as principal, of the consummated offense of RAPE, as defined and penalized under Art. 335 of the Revised Penal Code, as amended, and hereby convicts him to suffer the penalty of imprisonment of *reclusion perpetua* and to pay the victim, [AAA], the sum of seventy-five thousand pesos (₱75,000.00) as civil indemnity and seventy-five thousand pesos (₱75,000.00) as moral damages; with the accessory penalties provided for by law. With costs *de oficio*.
>
> March 3, 2008, Guiuan, Eastern Samar, Philippines.
>
> SO ORDERED.[8]

The RTC gave full faith and credence to the testimony of the victim as corroborated, in its material points, by the medical findings of the physician who examined the victim.

Accused-appellant appealed the RTC Decision with the CA in Cebu City.[9]

On July 19, 2011, the CA promulgated its assailed Decision affirming with modification the judgment of the RTC. The dispositive portion of the CA Decision reads, thus:

> **WHEREFORE**, premises considered, the appealed Decision dated 3 March 2008 of the Regional Trial Court, Branch 3, Guiuan, Eastern Samar in Criminal Case No. 2266, finding accused-appellant guilty beyond reasonable doubt of consummated rape is hereby **AFFIRMED WITH MODIFICATION**. In addition to the award [of] ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, accused-appellant is hereby ordered to pay the amount of ₱30,000.00 as exemplary damages.

---

[7] *Supra* note 2.

[8] *Id*. at 70-71.

[9] See Notice of Appeal, *id.* at 79-98.

SO ORDERED.[10]

The CA held that the prosecution was able to establish the elements of rape through the victim's testimony and that it found no cogent reason to disturb the findings of the RTC with respect to the credibility of the victim.

On August 8, 2011, accused-appellant, through counsel, filed a Notice of Appeal[11] manifesting his intention to appeal the CA Decision to this Court.

In its Resolution[12] dated December 1, 2011, the CA gave due course to accused-appellant's Notice of Appeal and directed its Judicial Records Division to elevate the records of the case to this Court.

Hence, this appeal was instituted.

In a Resolution[13] dated October 11, 2012, this Court, among others, notified the parties that they may file their respective supplemental briefs, if they so desire.

In its Manifestation[14] dated December 13, 2012, the Office of the Solicitor General *(OSG)* informed this Court that it will no longer file a supplemental brief because it had already extensively discussed and refuted all the arguments raised by the appellant in its brief filed before the CA, subject, however, to the reservation that it will file a supplemental brief if appellant will raise new matters and issues.

In the same manner, accused-appellant filed a Manifestation[15] dated January 2, 2013, indicating that he no longer intends to file a supplemental brief and is adopting *in toto* and reiterates

---

[10] *Rollo,* p. 16. (Emphasis in the original)

[11] CA *rollo,* pp. 135-136.

[12] *Id.* at 138.

[13] *Rollo,* p. 22.

[14] *Id.* at 28-29.

[15] *Id.* at 35-36.

the contents and substance of his brief which was filed with the CA.

Thus, the basic issue to be resolved by this Court, in the instant appeal, is whether the prosecution was able to prove beyond reasonable doubt that the accused-appellant is guilty of rape.

The Court rules in the affirmative.

At the outset, the Court notes that the Information, dated August 2, 2006, specifically charged petitioner with rape under Article 335 of the Revised Penal Code *(RPC)*. However, upon the enactment of Republic Act No. 8353 *(RA 8353*), otherwise known as the *Anti-Rape Law of 1997,* which became effective on October 22, 1997, rape was reclassified as a crime against persons, thus, repealing Article 335 of the RPC. The new provisions on rape are now found in Articles 266-A to 266-D of the said Code. In the instant case, the crime was committed on May 5, 2006. Hence, the applicable law is the RPC as amended by RA 8353 and that the prosecution as well as the RTC and the CA committed an error in specifying the provision of law which was violated. Nonetheless, it is settled that the failure to designate the offense by statute or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged therein clearly recite the facts constituting the crime charged.[16] The character of the crime is not determined by the caption or preamble of the information nor by the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information.[17] In the instant case, the body of the Information contains an averment of the acts alleged to have been committed by petitioner and describes acts

---

[16] *People v. Sanico,* G.R. No. 208469, August 13, 2014, 733 SCRA 158, 177; *People v. Sumingwa,* 618 Phil. 650, 670 (2009); *Malto v. People,* 560 Phil. 119, 135-136 (2007).

[17] *Id.*

punishable under Article 266-A, in relation to Article 266-B, of the RPC, as amended.

The pertinent provisions of Articles 266-A and 266-B of the Revised Penal Code, as amended, provide:

> Art. 266-A. *Rape; When And How Committed. — Rape is Commuted* — 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> xxx xxx xxx
>
> ART. 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*
>
> xxx xxx xxx
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> xxx xxx xxx
>
> 5. When the victim is a child below seven (7) years old.
>
> xxx xxx xxx

Both the RTC and the CA found that the prosecution was able to prove beyond reasonable doubt all the elements of the crime charged and this Court finds no cogent reason to depart from these findings, as will be discussed below.

Accused-appellant's arguments in the instant appeal basically harp on the alleged loopholes, inconsistencies and improbabilities in the testimonies of the victim and her mother which supposedly cast doubt on their credibility as witnesses.

Settled is the rule that testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has, in fact, been committed.[18] When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true.[19] Youth and immaturity are generally badges of truth and sincerity.[20] Considering that AAA was only four (4) years old when she was raped and was only five (5) years old when she took the witness stand, she could not have invented a horrible story. For her to fabricate the facts of rape and to charge the accused falsely of a crime is certainly beyond her mental capacity.

The Court does not agree with accused-appellant's contention that the prosecution failed to prove carnal knowledge on the ground that AAA explicitly stated in her testimony that accused-appellant merely rubbed his penis against her vagina.

AAA, who was then four years old at the time of the molestation, was not expected to be knowledgeable about sexual intercourse and every stage thereof. The fact that she claimed that accused-appellant rubbed his penis against her vagina did not mean that there was no penetration. Carnal knowledge is defined as the act of a man having sexual bodily connections with a woman.[21] This explains why the slightest penetration of the female genitalia consummates the rape.[22] As such, a mere touching of the external genitalia by the penis capable of consummating the sexual act already

---

[18] *People v. Piosang,* G.R. No. 200329, June 5, 2013, 697 SCRA 587, 593.

[19] *Id.*

[20] *Id.*

[21] *People v. Butiong,* 675 Phil. 621, 630 (2011).

[22] *Id.*

constitutes consummated rape.[23] In the present case, AAA testified that she felt pain when accused-appellant "rubbed his penis [against her] vagina."[24] This Court has held that rape is committed on the victim's testimony that she felt pain.[25] In fact, AAA still felt severe pain in her vagina when she was being given a bath by her mother after her molestation.[26] This kind of pain could not have been the result of mere superficial rubbing of accused-appellant's sex organ with that of the victim. Such pain could be nothing but the result of penile penetration sufficient to constitute rape.[27]

Besides, the testimony of AAA is corroborated by the findings of the physician who examined her indicating the presence of slight hymenal abrasion upon examination of her vulva.[28] Thus, the RTC and the CA are correct in concluding that both the victim's positive testimony and the findings of the medico-legal officer complemented each other in the conclusion that there was penetration, however slight.

The Court is neither persuaded by accused-appellant's insistence that while there is no question that children, like AAA, at such an age are incapable of lying, their credibility is not only limited to their capacity to tell the truth but also their capacity to grasp things that have happened, to intelligently recall them and to completely and accurately relate them. The fact that the offended party is a minor does not mean that she is incapable of perceiving and of making her perception known.[29] Children of sound mind are likely to be more observant

---

[23] *Id.*

[24] See TSN, January 16, 2007, p. 32.

[25] *People v. Pangilinan,* 676 Phil. 16, 32 (2011), citing *People v. Tampos,* 455 Phil. 844, 859 (2003).

[26] See TSN, January 6, 2007, p. 33.

[27] *People v. Pangilinan, supra* note 25, citing *People v. Palicte,* G.R. No. 101088, January 27,1994, 229 SCRA 543, 547-548.

[28] See Medico-Legal Certificate, Exhibit "B", Folder of Documentary Exhibits, p. 6.

[29] *People v. Somodio,* 427 Phil. 363, 377 (2002).

of incidents which take place within their view than older persons, and their testimonies are likely more correct in detail than that of older persons.[30] In fact, AAA had consistently, positively, and categorically identified accused-appellant as her abuser. Her testimony was direct, candid, and replete with details of the rape.

Accused-appellant also contends that the testimony of AAA's mother that it was accused-appellant who molested her child is nothing but hearsay, considering that she only came to know of the alleged molestation when she found AAA inside accused-appellant's house and after the child told her about it when they got back home.

The Court does not agree.

The term "hearsay" as used in the law on evidence, signifies evidence which is not founded upon the personal knowledge of the witness from whom it is elicited and which consequently does not depend wholly for its credibility and weight upon the confidence which the court may have in him; its value, if any, is measured by the credit to be given to some third person not sworn as a witness to that fact, and consequently, not subject to cross- examination.[31] If one therefore testifies to facts which he learned from a third person not sworn as a witness to those facts, his testimony is inadmissible as hearsay evidence.

The reason for the exclusion of hearsay evidence is that the party against whom the hearsay testimony is presented is deprived of the right or opportunity to cross-examine the person to whom the statements are attributed. Moreover, the court is without opportunity to test the credibility of hearsay statements by observing the demeanor of the person who made them.

In the instant case, the declarant, AAA herself, was sworn as a witness to the fact testified to by her mother. Accused-

---

[30] *Id.*

[31] *People v. Pruna,* 439 Phil. 440, 460 (2002).

appellant's counsel even cross-examined AAA. Moreover, the trial court had the opportunity to observe AAA's manner of testifying. Hence, the testimony of AAA's mother on the incident related to her by her daughter cannot be disregarded as hearsay evidence.

Even assuming that the aforementioned testimony of AAA's mother is hearsay, its non-admission would not save the day for accused-appellant. Such testimony is not indispensable, as it merely serves to corroborate AAA's testimony that accused-appellant forced himself upon her. As discussed earlier, AAA's testimony, which was found to be credible by the trial court, and was corroborated by the findings of the medico-legal, is sufficient basis for conviction.

At any rate, the testimony of AAA's mother is proof of the victim's conduct immediately after the rape. It shows that AAA immediately revealed to her mother the rape incident and the identity of her defiler. Such conduct is one of the earmarks of the truth of the charge of rape.

The Court finds neither logic nor relevance in accused-appellant's argument that if he indeed committed the offense charged, why is it that of all times that AAA went to his yard and play it was only during the time alleged by the prosecution that accused-appellant decided to rape her. This matter is inconsequential as it has no bearing with respect to the elements of rape. As aptly held by the CA, the decisive factor in the prosecution for rape is whether the commission of the crime has been sufficiently proven. For a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must refer to the significant facts indispensable to the guilt or innocence of the accused for the crime charged.[32] As the inconsistencies alleged by accused-appellant had nothing to do with the elements of the crime of rape, they cannot be used as grounds for his acquittal.

---

[32] *People v. Lolos,* 641 Phil. 624, 633 (2010).

When the offended party is under twelve (12) years of age, the crime committed is termed statutory rape as it departs from the usual modes of committing rape.[33] What the law punishes is carnal knowledge of a woman below twelve years of age.[34] In the instant case, there is no dispute that AAA was four years of age when the crime was committed. Resultantly, accused-appellant was charged and proven guilty of statutory rape.

As to the penalty, Article 266-B of the RPC, as amended, provides that the death penalty shall be imposed if the victim is a child below seven years old. However, following Republic Act No. 9346,[35] the RTC, as affirmed by the CA, correctly imposed upon accused-appellant the penalty of *reclusion perpetua* in lieu of death, but it should be specified that it is without eligibility for parole, as the RTC did not state it in the dispositive portion of its Decision. Likewise, the RTC correctly awarded in AAA's favor the amounts of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages. The CA, in turn, correctly modified the RTC ruling by awarding an additional amount of ₱30,000.00 as exemplary damages. An award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, and moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering.[36] Exemplary damages are also called for, by way of public example, and to protect the young from sexual abuse.[37]

The Court additionally orders accused-appellant to pay interest of six percent (6%) per annum from the finality of this judgment

---

[33] *People v. Crisostomo,* G.R. No. 196435, January 29, 2014, 715 SCRA 99, 109, citing *People v. Dollano, Jr.,* 675 Phil. 827, 843 (2011).

[34] *Id.*

[35] *An Act Prohibiting the Imposition of Death Penalty in the Philippines.*

[36] *People v. Piosang, supra* note 18, at 599.

[37] *Id.*

until all the monetary awards for damages are fully paid, in accordance with prevailaing jurisprudence.[38]

WHEREFORE, the instant appeal is **DISMISSED** and the Decision dated July 19, 2011 of the Court of Appeals in CA-G.R. CEB CR-H.C. No. 00888 is hereby **AFFIRMED** with the following **MODIFICATIONS:** (1) accused-appellant VICTOR P. PADIT is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole; and (2) that said accused-appellant is additionally ordered to pay the victim interest of six percent (6%) per annum on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.

Carpio,[*] *Velasco*, *Jr.* (*Chairperson*)*, Perez,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 204970. February 1, 2016]

SPOUSES CLAUDIO and CARMENCITA TRAYVILLA, *petitioners, vs.* **BERNARDO SEJAS and JUVY PAGLINAWAN, represented by JESSIE PAGLINAWAN,** *respondents.*

---

[38] *Id. People of the Philippines v. Obaldo Bandril y Tabling,* G.R. No. 212205, July 6, 2015.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 10, 2014.

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; REAL ACTIONS; THE FAIR MARKET VALUE OF THE SUBJECT PROPERTY AS STATED IN THE CURRENT TAX DECLARATION OR ZONAL VALUATION OF THE BUREAU OF INTERNAL REVENUE, OR IF THERE IS NONE, THE STATED VALUE OF THE PROPERTY IN LITIGATION AS ALLEGED BY THE CLAIMANT SHALL BE THE BASIS FOR DETERMINING JURISDICTION AND THE AMOUNT OF DOCKET FEES TO BE PAID.— [W]hile petitioners' Amended Complaint was denominated as one mainly for specific performance, they additionally prayed for reconveyance of the property, as well as the cancellation of Paglinawan's TCT T-46,627. In other words, petitioners' aim in filing Civil Case No. 4633-2K5 was to secure their claimed ownership and title to the subject property, which qualifies their case as a real action. Pursuant to Section 1, Rule 4 of the 1997 Rules of Civil Procedure, a real action is one that affects title to or possession of real property, or an interest therein. Since Civil Case No. 4633-2K5 is a real action made so by the Amended Complaint later filed, petitioners should have observed the requirement under A.M. No. 04-2-04-SC relative to declaring the fair market value of the property as stated in the current tax declaration or zonal valuation of the Bureau of Internal Revenue (BIR). Since no such allegation was made in the Amended Complaint, then the value of the subject property as stated in the handwritten document sued upon and restated in the Amended Complaint should be the basis for determining jurisdiction and the amount of docket fees to be paid. The CA is correct in its general observation that in the absence of the required declaration of the fair market value as stated in the current tax declaration or zonal valuation of the property, it cannot be determined whether the RTC or first level court has original and exclusive jurisdiction over the petitioners' action, since the jurisdiction of these courts is determined on the basis of the value of the property. x x x However, the CA failed to consider that in determining jurisdiction, it could rely on the declaration made in the Amended Complaint that the property is valued at ₱6,000.00. The handwritten document sued upon and the pleadings indicate that the property was purchased by petitioners for

the price of ₱6,000.00. For purposes of filing the civil case against respondents, this amount should be the stated value of the property in the absence of a current tax declaration or zonal valuation of the BIR x x x, [pursuant to] Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC and Supreme Court Amended Administrative Circular No. 35-2004 x x x. Since the value of the subject property as stated in the Amended Complaint is just ₱6,000.00, then the RTC did not have jurisdiction over petitioners' case in the first instance; it should have dismissed Civil Case No. 4633-2K5. But it did not. In continuing to take cognizance of the case, the trial court clearly committed grave abuse of discretion.

APPEARANCES OF COUNSEL

Cabrido & Associates Law Firm for petitioners.
Percy M. Moron for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] are the following dispositions of the Court of Appeals (CA): 1) November 29, 2011 Decision[2] in CA-G.R. SP No. 02315 which granted respondents' Petition for *Certiorari* and nullified the September 3, 2007[3] and February 21, 2008[4] Orders of Branch 18 of the Regional Trial Court (RTC), 9th Judicial Region, Pagadian City in Civil Case No. 4633-2K5; and 2) November 19, 2012 Resolution[5] denying the petitioners' motion for reconsideration.

---

[1] *Rollo*, pp. 21-34.

[2] *Id*. at 36-47; penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Edgardo A. Camello and Pamela Ann Abella Maxino.

[3] CA *rollo*, p. 31; penned by Judge Reinerio (Abraham) B. Ramas.

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

[5] *Rollo* , pp. 5-6; penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Renato C. Francisco and Oscar V. Badelles.

Factual Antecedents

In 2005, petitioners Claudio and Carmencita Trayvilla instituted before the RTC Civil Case No. 4633-2K5 against respondent Bernardo Sejas (Sejas). In their Complaint[6] for specific performance and damages, petitioners claimed among others that Sejas was the registered owner of a 434-square meter parcel of land in Tukuran, Zamboanga del Sur covered by Transfer Certificate of Title No. T-8,337[7] (TCT T-8,337); that by virtue of a private handwritten document,[8] Sejas sold said parcel of land to them in 1982; that thereafter, they took possession of the land and constructed a house thereon; that they resided in said house and continued to reside therein; that Sejas later reasserted his ownership over said land and was thus guilty of fraud and deceit in so doing; and that they caused the annotation of an adverse claim. They prayed that Sejas be ordered to execute a final deed of sale over the property and transfer the same to them, and that they be awarded the sum of ₱30,000.00 as attorney's fees plus ₱1,500.00 per court appearance of counsel.

In an Amended Complaint,[9] this time for specific performance, reconveyance, and damages, petitioners impleaded respondent Juvy Paglinawan (Paglinawan) as additional defendant, claiming that Sejas subsequently sold the subject property to her, after which she caused the cancellation of TCT T-8,337 and the issuance of a new title – TCT T-46,627 – in her name. Petitioners prayed that Sejas be ordered to execute a final deed of sale in their favor and transfer the property to them; that Paglinawan's TCT T-46,627 be canceled and the property be reconveyed to them; and that they be awarded ₱50,000.00 in moral damages, in addition to the ₱30,000.00 attorney's fees and ₱1,500.00 per court appearance of counsel originally prayed for in the Complaint.

---

[6] *Id*. at 48-52.

[7] *Id*. at 53.

[8] *Id*. at 54.

[9] *Id*. at 63-68.

However, the additional docket fees for the moral damages prayed for in the Amended Complaint were not paid.[10] Likewise, for the additional causes of action, no docket fees were charged and paid.

Respondents moved for dismissal of the case, claiming lack of jurisdiction over the subject matter and prescription. The RTC denied the motion in a September 3, 2007 Order.[11]

Respondents filed a Motion for Reconsideration,[12] arguing that petitioners' case was not for specific performance but was in reality a real action or one involving title to and possession of real property, in which case the value of the property should be alleged in the complaint in order that the proper filing fee may be computed and paid; that since the value of the land was not alleged in the Amended Complaint, the proper filing fee was not paid, and for this reason the case should be dismissed; and that petitioners' cause of action is barred by prescription since the 10-year period to sue upon the handwritten contract – counted from their purchase of the land in 1982 – had already lapsed when they filed the case in 2005. However, in a February 21, 2008 Order,[13] the RTC denied the motion, stating among others that petitioners' case is not a real action but indeed one for specific performance and thus one which is incapable of pecuniary estimation.

Ruling of the Court of Appeals

Respondents filed an original Petition for *Certiorari*[14] before the CA, which was docketed as CA-G.R. SP No. 02315. On November 29, 2011, the CA issued the assailed Decision, which contained the following pronouncement:

---

[10] *Id*. at 23.

[11] CA *rollo*, p. 31.

[12] *Id*. at 32-36.

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

[14] *Id*. at 3-13.

The petition is meritorious.

Jurisdiction is defined as the authority to hear and determine a cause or the right to act in a case. In addition to being conferred by the Constitution and the law, the rule is settled that a court's jurisdiction over the subject matter is determined by the relevant allegations in the complaint, the law in effect when the action is filed, and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims asserted.

Consistent with Section 1, Rule 141 of the Revised Rules of Court which provides that the prescribed fees shall be paid in full "upon the filing of the pleading or other application which initiates an action or proceeding", the well-entrenched rule is to the effect that a court acquires jurisdiction over a case only upon the payment of the prescribed filing and docket fees.

Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC and Supreme Court Amended Administrative Circular No. 35-2004, provides that:

SEC. 7. Clerks of Regional Trial Courts. –

(a) For filing an action or a permissive OR COMPULSORY counterclaim, CROSSCLAIM, or money claim against an estate not based on judgment, or for filing a third-party, fourth-party, etc. complaint, or a complaint-in-intervention, if the total sum claimed, INCLUSIVE OF INTERESTS, PENALTIES, SURCHARGES, DAMAGES OF WHATEVER KIND, AND ATTORNEY'S FEES, LITIGATION EXPENSES AND COSTS and/or in cases involving property, the FAIR MARKET value of the REAL property in litigation STATED IN THE CURRENT TAX DECLARATION OR CURRENT ZONAL VALUATION OF THE BUREAU OF INTERNAL REVENUE, WHICHEVER IS HIGHER, OR IF THERE IS NONE, THE STATED VALUE OF THE PROPERTY IN LITIGATION OR THE VALUE OF THE PERSONAL PROPERTY IN LITIGATION x x x AS ALLEGED BY THE CLAIMANT, is:

[Table of fees omitted.]

If the action involves both a money claim and relief pertaining to property, then THE fees will be charged on both the amounts

claimed and value of property based on the formula prescribed in this paragraph a.

(b) For filing:

1. Actions where the value of the subject matter cannot be estimated

2. Special civil actions, except judicial foreclosure of mortgage, EXPROPRIATION PROCEEDINGS, PARTITION AND QUIETING OF TITLE which will [sic]

3. All other actions not involving property

[Table of fees omitted.]

The docket fees under Section 7(a), Rule 141, in cases involving real property depend on the fair market value of the same: the higher the value of the real property, the higher the docket fees due. In contrast, Section 7(b)(1), Rule 141 imposes a fixed or flat rate of docket fees on actions incapable of pecuniary estimation.

xxx xxx xxx

As can be gleaned from the records, the Amended Complaint was styled as one for 'Specific Performance and Damages,' whereby private respondents[15] sought to compel petitioner Sejas to execute the deed of sale over the subject land in their favor on the premise that they bought the said land from petitioner Sejas through a private document. They declared themselves to be the true and real owners of the subject land and had in fact taken possession over it to the exclusion of others including petitioner Sejas.

While it may appear that the suit filed is one for specific performance, hence an action incapable of pecuniary estimation, a closer look at the allegations and reliefs prayed for in the Complaint, however, shows that private respondents were not merely seeking the execution of the deed of sale in their favor. They were also asking the lower court earnestly to cancel TCT No. T-46,627 which was allegedly issued to petitioner Paglinawan through fraudulent means and have the same reconveyed to them as the owners of the subject land. The ultimate purpose then of private respondents in

[15] Herein petitioners.

filing the complaint before the RTC is to secure their vaunted ownership and title to the subject land which they claimed was purchased from petitioner Sejas. Their cause of action clearly springs from their right as purchaser of the subject land. Under these circumstances, the suit before the RTC is a real action, affecting as it did title to the real property sought to be reconveyed. A real action is one in which the plaintiff seeks the recovery of real property; or, as indicated in what is now Section 1, Rule 4 of the Rules of Court, a real action is an action affecting title to or recovery of possession of real property.

Section 7, Rule 141 of the Rules of Court, prior to its amendment by A.M. No. 04-2-04-SC, had a specific paragraph governing the assessment of the docket fees for real action, to wit:

> In a real action, the assessed value of the property, or if there is none, the estimated value thereof shall be alleged by the claimant and shall be the basis in computing the fees.

But it is important to note that, with the amendments introduced by A.M. No. 04-2-04-SC, which became effective on 16 August 2004, the paragraph in Section 7, Rule 141 of the Rules of Court, pertaining specifically to the basis for the computation of docket fees for real actions was deleted. Instead, Section 7(1) of Rule 141, as amended, provides that 'in cases involving real property, the FAIR MARKET value of the REAL property in litigation STATED IN THE CURRENT TAX DECLARATION OR CURRENT ZONAL VALUATION OF THE BUREAU OF INTERNAL REVENUE, WHICH [sic] IS HIGHER, OR IF THERE IS NONE, THE STATED VALUE OF THE PROPERTY IN LITIGATION x x x' shall be the basis for the computation of the docket fees.

Unfortunately, private respondents never alleged in their Amended Complaint, much less in the prayer portion thereof, the fair market value of the subject *res* as stated in the Tax Declaration or current zonal valuation of the Bureau of Internal Revenue, which [sic] is higher, or if there is none, the stated value thereof, to serve as basis for the receiving clerk in computing and arriving at the proper amount of filing fee due thereon. In the absence of such allegation, it cannot be determined whether the RTC or the MTC has original and exclusive jurisdiction over the petitioners' action. There is therefore no showing on the face of the complaint that the RTC has exclusive jurisdiction over the action of the private respondents. Hence, the RTC erred

in taking cognizance of the case despite private respondents' non-payment of the correct docket fees which must be computed in accordance with Section 7(1), Rule 141 of the Rules of Court, as amended.

The consistent rule is that 'a case is deemed filed only upon payment of the docket fee regardless of the actual date of filing in court,' and that jurisdiction over any case is acquired only upon the payment of the prescribed docket fee which is both mandatory and jurisdictional. x x x

xxx xxx xxx

This case at bench bears similarity to *Gochan v. Gochan*,[16] where the Supreme Court held that although the caption of the complaint filed by therein respondents Mercedes Gochan, et al. with the RTC was denominated as one for 'specific performance and damages,' the relief sought was the conveyance or transfer of real property, or ultimately, the execution of deeds of conveyance in their favor of the real properties enumerated in the provisional memorandum of agreement. Under these circumstances, the case before the RTC was actually a real action, affecting as it did title to or possession of real property. Consequently, the basis for determining the correct docket fees shall be the assessed value of the property, or the estimated value thereof as alleged in the complaint. But since Mercedes Gochan failed to allege in their complaint the value of the real properties, the Court found that the RTC did not acquire jurisdiction over the same for non-payment of the correct docket fees.

More to the point is *Huguete v. Embudo*.[17] There, petitioners argued that a complaint for annulment of a deed of sale and partition is incapable of pecuniary estimation, and thus falls within the exclusive jurisdiction of the RTC. However, the Supreme Court ruled that 'the nature of an action is not determined by what is stated in the caption of the complaint but by the allegations of the complaint and the reliefs prayed for. Where the ultimate objective of the plaintiffs, like petitioners herein, is to obtain title to real property, it should be filed in the proper court having jurisdiction over the assessed value of the property subject thereof.'

---

[16] 423 Phil. 491 (2001).

[17] 453 Phil. 170 (2003).

Likewise, in *Siapno v. Manalo*,[18] the Supreme Court disregarded the title/denomination of therein plaintiff Manalo's amended petition as one for Mandamus with Revocation of Title and Damages; and adjudged the same to be a real action, the filing fees for which should have been computed based on the assessed value of the subject property or, if there was none, the estimated value thereof. x x x

xxx xxx xxx

In fine, We rule and so hold that the RTC never acquired jurisdiction over Civil Case No. 4633-2K5, hence, its act of taking cognizance of the subject Complaint was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion is defined as capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.

Given the foregoing, this Court finds it unnecessary to dwell on the issue of prescription raised by petitioners.

WHEREFORE, premises considered, the instant Petition is hereby GRANTED. The Orders dated 03 September 2007 and 21 February 2008, respectively, of the Regional Trial Court (RTC), 9th Judicial Region, Branch 18, Pagadian City, are DECLARED NULL and VOID for having been issued without jurisdiction. The Amended Complaint filed [sic] private respondents docketed as Civil Case No. 4633-2K5 is hereby DISMISSED.

SO ORDERED.[19]

Petitioners filed a Motion for Reconsideration,[20] which the CA denied in its assailed November 19, 2012 Resolution. Hence, the present Petition.

In a March 19, 2014 Resolution,[21] the Court resolved to give due course to the instant Petition.

Issues

Petitioners raise the following issues:

---

[18] 505 Phil. 430 (2005).

[19] *Rollo*, pp. 39-47.

[20] CA *rollo*, pp. 70-77.

[21] *Rollo*, pp. 113-114.

1. Did the Court of Appeals ruled [sic] correctly when it dismissed the complaint by reason of Petitioner-Appellants' alleged non-payment of the correct dockets [sic] fees due to its [sic] failure to alleged [sic] the fair market value or the stated value of the subject property in the amended complaint?

2. Did the filing of the amended complaint sufficiently divested [sic] and ousted [sic] the trial court of its jurisdiction over the case that had initially validly attached by virtue of the Original complaint for specific performance?[22]

Petitioners' Arguments

In praying that the assailed CA dispositions be set aside and that their Amended Complaint in Civil Case No. 4633-2K5 be reinstated, petitioners contend in their Petition and Reply[23] that it was error for the CA to order the dismissal of their Amended Complaint simply because additional causes of action were alleged and new reliefs were prayed for, and the additional docket fees therefor were not paid; that while reconveyance was sought in the Amended Complaint, the principal action was still for specific performance, and the reconveyance prayed for was merely incidental thereto; that since the trial court acquired jurisdiction over the case with the filing of the original Complaint, it did not lose the same as a result of the filing of the Amended Complaint; that jurisdiction continued to attach even with the submission of the Amended Complaint; that their failure to pay the additional docket fees required for the Amended Complaint does not result in loss of jurisdiction over the case – instead, the Amended Complaint is simply not admitted and the original Complaint remains;[24] that instead of dismissing the case, the Amended Complaint should have been disregarded, or petitioners should have been ordered to pay the deficiency in docket fees within a reasonable period of time; that "the rule now is that the court may allow a reasonable time for the payment of the

---

[22] *Id*. at 26.

[23] *Id*. at 106-108; Manifestation treated as petitioners' Reply.

[24] Citing *Home Guaranty Corporation v. R-II Builders, Inc.*, 660 Phil. 517 (2011).

prescribed fees, or the balance thereof, and upon such payment, the defect is cured and the court may properly take cognizance of the action, unless in the meantime prescription has set in and consequently barred the right of action;"[25] and that the rules of procedure should be liberally applied in their case, as there is no intention to evade the payment of additional docket fees, as is shown by the payment of the original filing fees when the case was instituted.

Respondents' Arguments

Respondents, on the other hand, argue in their Comment[26] that the CA was correct in ruling that Civil Case No. 4633-2K5 should be dismissed; that while the complaint is for specific performance, the relief prayed for includes reconveyance, which is a real action – in which case the assessed value of the property should have been alleged for the proper computation of the docket fees. Thus, they pray for the denial of the Petition, with double costs against petitioners.

Our Ruling

The Court denies the Petition.

As correctly ruled by the CA, while petitioners' Amended Complaint was denominated as one mainly for specific performance, they additionally prayed for reconveyance of the property, as well as the cancellation of Paglinawan's TCT T-46,627. In other words, petitioners' aim in filing Civil Case No. 4633-2K5 was to secure their claimed ownership and title to the subject property, which qualifies their case as a real action. Pursuant to Section 1, Rule 4 of the 1997 Rules of Civil Procedure,[27] a real action is one that affects title to or possession of real property, or an interest therein.

---

[25] Citing *Tacay v. Regional Trial Court of Tagum, Davao del Norte, Branches 1 & 2*, 259 Phil. 927, 938 (1989).

[26] *Rollo*, pp. 97-102.

[27] Section 1. Venue of real actions. – Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the

Since Civil Case No. 4633-2K5 is a real action made so by the Amended Complaint later filed, petitioners should have observed the requirement under A.M. No. 04-2-04-SC[28] relative to declaring the fair market value of the property as stated in the current tax declaration or zonal valuation of the Bureau of Internal Revenue (BIR). Since no such allegation was made in the Amended Complaint, then the value of the subject property as stated in the handwritten document sued upon and restated in the Amended Complaint should be the basis for determining jurisdiction and the amount of docket fees to be paid.

The CA is correct in its general observation that in the absence of the required declaration of the fair market value as stated in the current tax declaration or zonal valuation of the property, it cannot be determined whether the RTC or first level court has original and exclusive jurisdiction over the petitioners' action, since the jurisdiction of these courts is determined on the basis of the value of the property. Under applicable rules,

Jurisdiction of RTCs, as may be relevant to the instant petition, is provided in Sec. 19 of BP 129,[29] which reads:

> Sec. 19. Jurisdiction in civil cases.— Regional Trial Courts shall exercise exclusive original jurisdiction:
>
> 1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

---

proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.

Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated.

[28] REVISED RULES ON COURT LEGAL FEES.

[29] As amended by Republic Act No. 7691, 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'."

> 2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00) or, for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts.

On the other hand, jurisdiction of first level courts is prescribed in Sec. 33 of BP 129, which provides:

> Sec. 33. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in civil cases.— Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:
>
> xxx xxx xxx
>
> 3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: Provided, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots.[30]

However, the CA failed to consider that in determining jurisdiction, it could rely on the declaration made in the Amended Complaint that the property is valued at ₱6,000.00. The handwritten document sued upon and the pleadings indicate that the property was purchased by petitioners for the price of ₱6,000.00. For purposes of filing the civil case against respondents, this amount should be the stated value of the property in the absence of a current tax declaration or zonal valuation

---

[30] *Surviving Heirs of Alfredo R. Bautista v. Lindo*, G.R. No. 208232, March 10, 2014, 718 SCRA 321, 328-329.

of the BIR. Rule 141 of the Rules of Court, as amended by A.M. No.04-2-04-SC and Supreme Court Amended Administrative Circular No. 35-2004, provides that –

> a) For filing an action or a permissive OR COMPULSORY counter-claim, CROSS-CLAIM, or money claim against an estate not based on judgment, or for filing a third-party, fourth-party, etc. complaint, or a complaint-in-intervention, if the total sum claimed, INCLUSIVE OF INTERESTS, PENALTIES, SURCHARGES, DAMAGES OF WHATEVER KIND, AND ATTORNEY'S FEES, LITIGATION EXPENSES AND COSTS and/or in cases involving property, the FAIR MARKET value of the REAL property in litigation STATED IN THE CURRENT TAX DECLARATION OR CURRENT ZONAL VALUATION OF THE BUREAU OF INTERNAL REVENUE, WHICHEVER IS HIGHER, **OR IF THERE IS NONE, THE STATED VALUE OF THE PROPERTY IN LITIGATION** OR THE VALUE OF THE PERSONAL PROPERTY IN LITIGATION AS ALLEGED BY THE CLAIMANT x x x (Emphasis supplied)

shall be the basis for the computation of the docket fees to be paid. Since the value of the subject property as stated in the Amended Complaint is just ₱6,000.00, then the RTC did not have jurisdiction over petitioners' case in the first instance; it should have dismissed Civil Case No. 4633-2K5. But it did not. In continuing to take cognizance of the case, the trial court clearly committed grave abuse of discretion.

WHEREFORE, the Petition is **DENIED**. The assailed November 29, 2011 Decision and November 19, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 02315 are **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Brion, Mendoza,* and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 212878. February 1, 2016]

MARLOW NAVIGATION PHILS., INC., MARLOW NAVIGATION CO., LTD., W. BOCKSTLEGEL REEDEREI (Germany), ORLANDO D. ALIDIO and ANTONIO GALVEZ, JR., *petitioners, vs.* **WILFREDO L. CABATAY,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; OVERSEAS EMPLOYMENT; DISABILITY BENEFITS; THE 120-DAY RULE AND 240-DAY EXTENDED PERIOD, ELUCIDATED; WHERE THE SEAMAN'S DISABILITY WENT BEYOND THE INITIAL TREATMENT OF 120 DAYS (UP TO A MAXIMUM OF 240 DAYS), A DECLARATION OF PERMANENT AND TOTAL DISABILITY CANNOT BE APPLIED FOR ALL CASES AS ITS APPLICATION MUST DEPEND ON THE CIRCUMSTANCES OF THE CASE.— In reversing the NLRC decision, the CA declared that while Cabatay's treatment was extended (up to a maximum of 240 days), it did not negate the fact that he was disabled continuously for more than 120 days and therefore permanently disabled, especially when Dr. Tay had not declared Cabatay fit to work within the extended period. This is a misappreciation of the significance of the 120-day rule and the 240-day extended period as clarified in applicable rulings of the Court. In *Vergara v. Hammonia*, the Court explained what to expect within this period in terms of the seafarer's medical condition, thus: *For the duration of the treatment but in no case to exceed 120 days, the seaman is on* ***temporary total disability*** *as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of*

*240 days, **subject to the right of the employer to declare within this period that a permanent partial or total disability already exists**. The seaman may of course also be declared fit to work at any time such declaration is justified by medical condition.* The question of why no fit-to-work declaration was issued by Dr. Tay is answered by her combined 36% disability assessment for Cabatay. The CA thus erred in holding that since his disability went beyond 120 days, he had become permanently and totally disabled. Again, in *Vergara*, the Court stressed: "*This declaration of a permanent total disability after the initial 120 days of temporary disability cannot, however, be simply lifted and applied as a general rule for all cases in all contexts. The specific context of the application should be considered, as we must do in the application of all rulings and even of the law and of the implementing regulations.*" Also, in *Splash Philippines, Inc. v. Ruizo*, the Court said that the 120-day rule "*cannot be used as a cure-all formula for all maritime compensation cases. Its application must depend on the circumstances of the case, including especially compliance with the parties' contractual duties and obligations as laid down in the POEA-SEC and/or their CBA, if one exists.*"

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario Law Office for petitioners.
Dela Cruz Entero & Associates for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the present petition for review on *certiorari*[1] which seeks to nullify the May 31, 2013 decision[2] and June 4, 2014 resolution[3] of the Court of Appeals in CA-G.R. SP No. 120698.

---

[1] *Rollo*, pp. 3-27; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id*. at 40-51; penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Fernanda Lampas Peralta and Angelita A. Gacutan.

[3] *Id*. at 78-79.

The Antecedents

The respondent Wilfredo Cabatay (*Cabatay*) entered into a ten-month contract of employment as *able seaman* with the **petitioners** Marlow Navigation, Philippines, Inc., (*agency*) and its principal Marlow Navigation Co., Ltd., (*Marlow Navigation*), for the vessel *M/V BBC OHIO*. The contract was supplemented by a collective bargaining agreement or the Total Crew Cost Fleet Agreement (*TCC-FA*)[4] between the International Workers Federation (*ITF*) and Marlow Navigation. He boarded the vessel on November 23, 2009.

While on duty on December 30, 2009, Cabatay fell from a height of four meters in his work area; his side, shoulder, and head were most affected by his fall. He was brought to a hospital in Huangpu, China, where he was diagnosed with "*Left l-4 Verterbra Transverse Bone broken* (*accident*)." He was declared unfit to work for 25 days. On January 7, 2010, he was medically repatriated.

Cabatay arrived in Manila on January 8, 2010, and was immediately referred to the company doctor, Dr. Dolores Tay (*Dr. Tay*), of the International Health Aide Diagnostic Services, Inc., for examination and treatment. He underwent several tests, including a CT scan and a repeat audiometry and MRI.

On March 19, 2010, Cabatay complained of right shoulder pain. On April 13, 2010, he underwent surgery on the *rotator cuff* on his shoulder. After surgery, he missed several appointments with Dr. Tay and failed to undergo his physiotherapy on time, starting it only on May 25, 2010. Earlier, or on May 7, 2010, Dr. Tay gave Cabatay an interim disability assessment of Grade 10 for his shoulder injury and Grade 3 for impaired hearing. She expected Cabatay's hearing and shoulder problems to be resolved within three to six months, although he was still under treatment as of June 3, 2010.

On June 9, 2010, Dr. Tay issued a combined 36% disability assessment for Cabatay based on the compensation scale

---

[4] CA *rollo*, pp. 119-134.

under the TCC-FA,[5] thus: (1) 5% for communication handicap of severe to total; (2) 2% for hearing handicap of mild to medium; (3) 3% compensation for each ear—hampering *tinnitus* and distortion of hearing; (4) 8% for his spine injury with medium severe fracture without reduction of mobility; and (5) 15% for his shoulder injury, with right shoulder elevation up to a 90-degree angle.

Meantime, or on May 11, 2010, Cabatay filed a complaint against the petitioners for permanent total disability compensation, sickness wages, damages, and attorney's fees. While he did not dispute the company doctor's findings, he argued that he was entitled to permanent total disability benefits since he had lost his employment (profession) due to his injury which, he claimed, is compensated under the TCC-FA at US$125,000.00.

The Compulsory Arbitration Rulings

In his decision[6] of January 4, 2011, Labor Arbiter (*LA*) Quintin B. Cueto III found that Cabatay had lost his employment as a seaman and awarded him permanent total disability compensation of US$125,000.00 under the TCC-FA. The evidence, LA Cueto stressed, showed that Cabatay was permanently unfit for sea service in any capacity, despite the company doctor's 36% disability grading. He considered Dr. Tay's prognosis of the resolution of Cabatay's hearing problem from three to six months a mere optimistic assessment.

The petitioners appealed to the National Labor Relations Commission (*NLRC*) which rendered a decision[7] setting aside LA Cueto's award. It also ordered the petitioners to pay Cabatay, jointly and severally, $45,000.00 in permanent partial disability compensation equivalent to Dr. Tay's combined 36% disability assessment, plus $1,000.00 attorney's fees.

Cabatay moved for, but failed to obtain, a reconsideration from the NLRC, leaving him no option but to seek relief from

---

[5] *Id.* at 131-134; TCC-FA, Annex "3".

[6] *Id*. at 160-172.

[7] *Id*. at 211-220.

the CA through a Rule 65 petition for *certiorari.* He charged the labor tribunal with grave abuse of discretion for setting aside LA Cueto's award due to his failure to question Dr. Tay's findings, without ruling on the substantive issues of the case.

The CA Decision

In its decision under review, the CA granted the petition, reversed the NLRC ruling, and reinstated LA Cueto's award. It held that under existing jurisprudence,[8] Cabatay's disability had become permanent total, considering that while he was injured on December 30, 2009, he was still being given medical attention on June 3, 2010, a period of more than 120 days, or a total of 155 days.

The CA explained that while the treatment can be extended up to a maximum of 240 days as in Cabatay's case, he is considered under temporary disability within the same period. His condition, it pointed out, "is still subject to the fact that the company physician has to make a determination whether he is fit for sea service or not; in any event, it did not negate the fact that if the seafarer was disabled continuously for more than 120 days, he is considered permanently disabled."[9] It noted that Dr. Tay had not declared Cabatay fit to work within the 240-day period.

The petitioners moved for reconsideration, reiterating the same arguments they raised in the petition. Additionally, they manifested that Cabatay had already executed the NLRC award of $46,000.00 ($45,000.00 disability compensation and $1,000.00 as attorney's fees), thereby accepting "the correctness and propriety of the judgment award."[10] This was the reason, they explained, why they earlier moved to have the case declared moot and academic.[11] The appellate court denied the motion.

---

[8] *Iloreta v. Philippine Transmarine Carriers, Inc.,* G.R. No.183908, December 4, 2009, 607 SCRA 796.

[9] *Supra* note 2, at 9, par. 3.

[10] *Rollo*, p. 55; Petitioners' Motion for Reconsideration before the CA, p. 3, par. 4.

[11] CA *rollo*, pp. 299-303.

The Petition

The petitioners now ask the Court for a reversal of the CA rulings on the grounds that: (1) Cabatay's claim had been mooted when he enforced the NLRC award; (2) he is not entitled to permanent total disability compensation as Dr. Tay gave him only a combined 36% disability rating; and to damages, as they were in good faith in responding to his condition; (3) under the circumstances, his inability to work for more than 120 days does not constitute permanent total disability; and (4) petitioners Antonio Galvez, Jr., and Orlando Alidio are not liable to Cabatay's claim since they are mere corporate officers of the agency.

The petitioners insist that Cabatay is entitled only to $45,000.00 in disability compensation representing the combined 36% disability rating given to him by Dr. Tay, and which had already been paid to him. This disability rating, they stress, was based on the compensation schedule under the very same TCC-FA relied upon by the labor arbiter for his decision. On the state of Cabatay's health, they urge the Court to take notice that his condition had "vastly improved as a result of his treatment, including arthroscopy surgery which the petitioners provided to him."[12]

Further, the petitioners maintain that while Cabatay argues that he has already lost his profession and is entitled to 100% compensation, Section 19.3 on *Permanent Medical Unfitness* of the TCC-FA provides that "*any seafarer assessed at less than 50% disability under the attached Annex 3* ***but certified as permanently unfit for further sea service by a doctor appointed mutually by the Owners/Managers and the ITF shall be entitled to 100% compensation***."[13]

The above CBA provision, they point out, was ignored in the resolution of Cabatay's claim. They submit that they proposed to have his medical condition referred to a mutually appointed

---

[12] *Rollo*, p. 16; Petition, p. 14, par. 4.

[13] CA *rollo*, p. 123.

doctor for determination, but he refused. His refusal, they argue, "should be taken as an admission against his interest."[14]

The petitioners dispute the CA's pronouncement that Cabatay's mere inability to perform his duties for 120 days rendered him totally and permanently disabled. They contend that the 120-day rule for permanent total disability does not apply to his case since the company-designated physician had already made an assessment of his disability, which should be respected, pursuant to Section 20 (B) 3 of the POEA-SEC.

Lastly, the petitioners reiterate that Cabatay is not entitled to damages and attorney's fees because they have not committed any act of bad faith in dealing with him. From the moment he was repatriated, they point out, he was taken care of, and was referred to the company doctor for examination and treatment until he attained maximum cure.

Cabatay's Position

In his comment[15] dated September 22, 2014, Cabatay prays for a dismissal of the petition for lack of merit, contending that:

1. His claim for full disability benefits had not been mooted even after he secured the execution of the $46,000.00 awarded by the NLRC. The ruling in *Career Philippines Ship Management, Inc. v. Geronimo Madjus*,[16] invoked by the petitioners, is not squarely applicable in his situation. In that case, the manning agency executed the judgment award in favor of the seafarer to prevent its imminent execution while it pursued its petition for *certiorari* with the CA.

In the same case, the Court considered the *Conditional Satisfaction of Judgment* as an amicable settlement between the parties, which rendered the agency's petition for *certiorari* academic, thereby putting closure to the case; otherwise, it would place the seafarer at a disadvantage. The Court explained that

---

[14] *Supra* note 1, at 14, par. 6.

[15] *Id*. at 82-97.

[16] 650 Phil. 157 (2010).

while the agency had other remedies available to it, such as its petition for *certiorari* itself and eventually an appeal to the Court, the seafarer could no longer pursue other claims, including the award of interest that may accrue during the pendency of the case.

In the present dispute, Cabatay points out, he was the one who enforced the NLRC award, without prejudice to his petition for *certiorari* before the CA. He simply moved for execution of the uncontested portion of the award, which is allowed under the NLRC rules of procedure; but unless he makes an unequivocal waiver of his right to pursue the case, the petitioners should not assume that he is giving up the balance of his claim.

2. He is entitled to full disability benefits. The TCC-FA, whose applicability the petitioners acknowledge, requires only that the seafarer is deprived of employment on account of an accident which occurred during his tour of duty, to be entitled to 100% compensation. Thus, all that he has to prove is the loss of his profession because of his disability.

He insists that he has already lost his employment or his "profession." The company doctor's certification showed that he has a severe communication handicap, severe fracture of the spine, and impeded elevation of the arm at 90 degrees. Moreover, the petitioners themselves have not re-hired him. This is an indication, he submits, that he would no longer pass any pre-employment medical examination (P.E.M.E).

3. The award of attorney's fees to him is proper because he had to secure the services of a lawyer in order to vindicate his rights as there was no assurance that the petitioners would have granted his just demands had the matter not gone through the legal process.

4. Finally, the inclusion of Galvez and Alidio as parties in the case is called for because they are responsible officers of an agency engaged in the hiring of ship manpower; as such, they are solidarily liable with the agency and the foreign employer for his disability compensation claim under Section 10 of R.A. No. 8042, the *Migrant Workers and Overseas Filipinos Act*.

The Court's Ruling

"*Entitlement to disability benefits by seamen on overseas work is a matter governed, not only by medical findings but, by law and by contract*," and so the Court declared in *Vergara v. Hammonia Maritime Services, Inc., et al.*[17]

Guided by this Court pronouncement, **we find merit in the petition.** Based on the medical findings, the governing law—the POEA-SEC—and the contract between the parties—the TCC-FA—as well as applicable jurisprudence, we hold that the respondent Cabatay is entitled only to disability benefits as awarded by the NLRC.

The medical findings/Cabatay's disability assessment

On record, upon his arrival in Manila on January 8, 2010, following his medical repatriation, Cabatay was immediately referred to Dr. Tay, the company-designated physician, for examination and treatment. He was under Dr. Tay's medical care and management for six months or until June 9, 2010, when she gave him a combined 36% disability assessment. All this time, he underwent several tests, a CT scan, audiometry and MRI, as well as therapy sessions, at the petitioners' expense.

Cabatay did not object to Dr. Tay's assessment, yet he filed a claim for permanent total disability compensation, which the labor arbiter granted declaring that he was entitled to full disability benefits because he had lost opportunities for his employment/profession. On appeal, the NLRC set aside the arbiter's decision and relied on Dr. Tay's disability assessment "in the absence of any substantial proof in support of complainant's bare allegation of loss of profession."[18] The CA, in turn, upheld the arbiter's award, holding that since Cabatay was "disabled continuously for more than 120 days, he is considered permanently disabled," and the "CBA provides that the seafarer is entitled to full benefits even if he suffered less than 50% of the total

---

[17] 588 Phil. 895, 908 (2008).

[18] *Supra* note 7, at 1.

disability under the schedule so long as he is no longer fit for sea duty."[19]

The POEA-SEC; the TCC-FA

We find that the CA ruling disregarded relevant provisions of the POEA-SEC and the TCC-FA. This is a reversible error as we shall discuss below.

As intimated earlier, the POEA-SEC and the TCC-FA govern Cabatay's employment with the petitioners. These two instruments are the law between the parties as the Court emphasized in *Philippine Hammonia Ship Agency, Inc. v. Eulogio Dumadag*.[20]

Under the 2002 POEA-SEC, it is the company-designated physician who declares/establishes the fitness to work or the degree of disability of a seafarer who is repatriated for medical reasons and needs further medical attention.[21] Thus, under Section 20 (B) 3, the seafarer is required to submit to a post-employment medical examination by the company-designated physician.[22]

On the other hand, under the TCC-FA,[23] "*The disability suffered by the Seafarer shall be determined by a doctor appointed mutually by the Owners/Managers and the ITF, and the Owners/Managers shall provide disability compensation to the Seafarer in accordance with the percentage specified in the table below xxx.*"[24] The TCC-FA also provides for a *Compensation Scale* under its Annex 3 upon which Dr. Tay, the company-designated physician, based her assessment of Cabatay's disability.

---

[19] *Supra* note 2, at 9, last paragraph.

[20] G.R. No. 194362, June 26, 2013, 700 SCRA 65.

[21] Section 20 (B) 2.

[22] Section 20 (B) 3.

[23] *Supra* note 4.

[24] *Id*., Section 19.2 on DISABILITY.

There is no question that there had been compliance with Section 20 (B) of the POEA-SEC in regard to Cabatay's post-employment medical examination. It is also established that he went through an intensive treatment, including special medical procedures and therapy sessions, under the care and management of Dr. Tay for six months or for 180 days within the 240-day extended period allowed under the rules implementing the employees compensation law.[25] At the conclusion of his treatment and therapy program, Dr. Tay gave him a 36% disability assessment pursuant to the compensation schedule under the TCC-FA.

As Cabatay himself admitted, he did not dispute Dr. Tay's findings and neither did he offer a contrary finding. The NLRC therefore committed no grave abuse of discretion when it awarded Cabatay disability compensation in accordance with Dr.Tay's assessment, there being no disagreement on the assessment. Be this as it may, we are not unmindful of the fact that under the TCC-FA, the seafarer's disability shall be determined by a doctor mutually appointed by the employer (owner/manager) and the union (ITF). There was no such determination in this case, either under Section 19.2 as cited above, or Section 19.3 under the TCC-FA as invoked by the petitioners.

The absence of a disability assessment by a doctor chosen by the parties, however, will not invalidate Dr. Tay's assessment, not only because Cabatay accepted Dr. Tay's findings, but also because he refused the petitioners' proposal that his medical condition be referred to a mutually appointed doctor for determination.[26] Cabatay never denied this particular submission of the petitioners.

The 120-day rule; loss of employment/profession

In reversing the NLRC decision, the CA declared that while Cabatay's treatment was extended (up to a maximum of 240

---

[25] Book IV, Rule X, Section 2, Rules and Regulations Implementing the Labor Code.

[26] *Supra* note 13.

days),[27] it did not negate the fact that he was disabled continuously for more than 120 days and therefore permanently disabled,[28] especially when Dr. Tay had not declared Cabatay fit to work within the extended period. This is a misappreciation of the significance of the 120-day rule and the 240-day extended period as clarified in applicable rulings of the Court.

In *Vergara v. Hammonia*,[29] the Court explained what to expect within this period in terms of the seafarer's medical condition, thus:

> *For the duration of the treatment but in no case to exceed 120 days, the seaman is on* ***temporary total disability*** *as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days,* ***subject to the right of the employer to declare within this period that a permanent partial or total disability already exists****. The seaman may of course also be declared fit to work at any time such declaration is justified by medical condition.* (underscoring and emphasis ours)

The question of why no fit-to-work declaration was issued by Dr. Tay is answered by her combined 36% disability assessment for Cabatay. The CA thus erred in holding that since his disability went beyond 120 days, he had become permanently and totally disabled. Again, in *Vergara*, the Court stressed: "*This declaration of a permanent total disability after the initial 120 days of temporary disability cannot, however, be simply lifted and applied as a general rule for all cases in all contexts. The specific context of the application should be*

---

[27] *Id.*

[28] *Supra* note 19.

[29] *Supra* note 17.

considered, as we must do in the application of all rulings and even of the law and of the implementing regulations."[30]

Also, in *Splash Philippines, Inc. v. Ruizo*, the Court said that the 120-day rule "*cannot be used as a cure-all formula for all maritime compensation cases. Its application must depend on the circumstances of the case, including especially compliance with the parties' contractual duties and obligations as laid down in the POEA-SEC and/or their CBA, if one exists.*"[31]

Since Dr. Tay had timely and duly made a disability assessment for Cabatay, the CA likewise erred in affirming LA Cueto's opinion that he is entitled to permanent total disability benefits because he had lost his employment/profession. Neither can Cabatay's submission that he had lost his profession in contemplation of the TCC-FA prevail over Dr. Tay's assessment, not only because he did not dispute the assessment, but also because he did not go through the procedure under the agreement on how a disability is determined, permanent total or otherwise.

Needless to say, a seafarer cannot claim full disability benefits on his mere say— so in complete disregard of the POEA-SEC and the CBA, which are, to reiterate, the law between the parties and which they are duty bound to observe.[32] And so it must be in Cabatay's case, especially when he refused the petitioners' offer[33] that his medical condition be referred to a mutually appointed doctor under Section 19.3 of the TCC-FA, to determine whether, despite Dr. Tay's combined 36% disability assessment under Annex 3 of the agreement, he is permanently unfit for further sea service. Absent such a determination (certification) by a mutually appointed doctor, we hold that Dr. Tay's assessment should stand.

This being the case, we find no need to discuss the rest of Cabatay's arguments, particularly his claim that he has not been

---

[30] *Id*. at 915.

[31] G.R. No. 193628, March 19, 2014, 719 SCRA 496.

[32] *Supra* note 30.

[33] *Supra* note 14.

re-hired by the petitioners and that he will not anymore pass a pre-employment medical examination. In any event, there is no showing that he sought a re-hiring with the petitioners and was refused, or that he was ever subjected to a P.E.M.E. and failed it.

WHEREFORE, premises considered, the petition for review on *certiorari* is **GRANTED**. The assailed decision and resolution of the Court of Appeals are **SET ASIDE** and the March 31, 2011 decision of the National Labor Relations Commission is **REINSTATED**.

SO ORDERED.

Carpio (*Chairperson*), *del Castillo, Mendoza,* and *Leonen, JJ.,* concur.

EN BANC

[A.C. No. 7618. February 2, 2016]

SPOUSES JONATHAN and ESTER LOPEZ, *complainants, vs.* **ATTY. SINAMAR E. LIMOS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; NEGLECT OF ENTRUSTED LEGAL MATTER RENDERS THE LAWYER LIABLE.— [S]ometime in June 2006, complainants secured the services of respondent in order to file a petition for adoption of a minor child named Ethan Benedict Victore, and in connection thereto, paid the latter the amount of ₱75,000.00 representing legal fees. However, despite the lapse of almost a year and for reasons unknown, respondent failed to perform anything in furtherance of the

legal matter entrusted to her by complainants. As correctly pointed out by the IBP Investigating Commissioner, respondent's acts constitute a flagrant violation of Rule 18.03, Canon 18 of the CPR, to wit:— A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. Under the foregoing provisions, once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him.

2. ID.; ID.; DUTY OF LAWYER TO ACCOUNT FOR THE MONEY RECEIVED FROM HIS CLIENT AND RETURN UPON DEMAND; VIOLATED WHEN LAWYER FAILED TO RETURN THE PAID BUT UNUSED LEGAL FEES.— [R]espondent violated Rules 16.01 and 16.03, Canon 16 of the CPR when she failed to return the amount of ₱75,000.00 representing legal fees that complainants paid her, *viz.:* x x x Rule 16.01— A lawyer shall account for all money or property collected or received for or from the client. x x x Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand. x x x. Verily, the relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client— as in this case— gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality, as well as of professional ethics.

3. ID.; ID.; PROHIBITION ON LAWYERS AGAINST ENGAGING IN DECEITFUL CONDUCT; VIOLATED WHEN LAWYER MADE MISREPRESENTATION ABOUT COMMENCING AN ADOPTION PROCEEDING ON BEHALF OF COMPLAINANTS.— [R]espondent misrepresented to complainants that she had already commenced an adoption proceeding on behalf of the latter. x x x The deceitful acts of respondent violate Rule 1.01, Canon 1 of the CPR, which

provide: A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. [This rule] instructs that, as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing. Indubitably, respondent fell short of such standard when she committed acts of deception against complainants [which] are not only unacceptable, disgraceful, and dishonorable to the legal profession [but also] reveal basic moral flaws that make [her] unfit to practice law.

4. ID.; ID.; DUTY OF A LAWYER TO RESPECT COURTS AND ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE; VIOLATED WHEN LAWYER IGNORED THE DIRECTIVES OF THE COURT AND THE IBP INVESTIGATING COMMISSIONER.— To aggravate further respondent's administrative liability, the Court notes that it repeatedly required her to comment on complainants' petition, but respondent ignored such commands. Similarly, when the instant case was referred to the IBP for investigation, report, and recommendation, respondent again disregarded the directives of the Investigating Commissioner to attend the mandatory conference and to submit a position paper. Such audacity on the part of respondent— which caused undue delay in the resolution of the instant administrative case — contravenes Canon 11 and Rule 12.04, Canon 12 of the CPR, all of which read: CANON 11— A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others. x x x CANON 12— x x x Rule 12.04— A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes.

5. ID.; PROPER PENALTY FOR THE MISCONDUCT OF LAWYER IN CASE AT BAR IS SUSPENSION FROM THE PRACTICE OF LAW FOR THREE YEARS AND RETURN OF THE UNUSED LEGAL FEES PLUS LEGAL INTEREST.— In this case, not only did respondent fail to file a petition for adoption on behalf of complainants and to return the money she received as legal fees, she likewise committed deceitful acts in misrepresenting that she had already filed such petition when nothing was actually filed, resulting in undue prejudice to complainants. On top of these, respondent showed impertinence not only to the IBP

Investigating Commissioner, but to the Court as well, when she ignored directives to comment on the complainants' petition against her and to participate in the investigation of the case. Under these circumstances, the Court imposes on respondent the penalty of suspension from the practice of law for a period of three (3) years, as recommended by the IBP. Finally, the Court sustains the IBP's recommendation ordering respondent to return the amount of ₱75,000.00 she received from complainants as legal fees. It is well to note that "[w]hile the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature— for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement." Since respondent received the aforesaid amount as part of her legal fees, the Court, thus, finds the return thereof to be in order, with legal interest as recommended by the IBP Investigating Commissioner.

APPEARANCES OF COUNSEL

Josephine M. Ducusin for complainants.

D E C I S I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is a petition[1] dated July 16, 2007 filed by complainants-spouses Jonathan and Ester Lopez (complainants) against respondent Atty. Sinamar E. Limos (respondent), praying that the latter be meted disciplinary sanctions for her alleged numerous and repeated violations of the Code of Professional Responsibility (CPR) by failing to perform her undertaking as counsel and to return complainants' money despite demands.

---

[1] Received by the Office of the Bar Confidant on September 10, 2007. *Rollo,* pp. 3-8.

The Facts

Complainants alleged that sometime in June 2006, and while living abroad, they secured the services of respondent as counsel in connection with their intention to adopt a minor child, Ethan Benedict Victore.[2] In consideration therefor, complainants, through a representative,[3] paid respondent the aggregate amount of ₱75,000.00,which was duly received by the latter.[4] A few months later, or on October 6, 2006, they purposely came back to the Philippines for a two (2)-week stay to commence the filing of the adoption case before the proper court. However, despite payment and submission of all the required documents to respondent, no petition was filed during their stay.[5]

Sometime in May 2007, complainants, through Jonathan's employer, received respondent's letter[6] dated March 6, 2007, requesting that complainants be allowed to come home to the Philippines to appear and testify in court for the adoption case she purportedly filed on behalf of complainants before the Regional Trial Court of San Fernando City, La Union, Branch 30 (RTC), docketed as Spl. Proc. Case No. 2890. Thus, complainants returned to the Philippines in June 2007, only to find out that: *(a)* Spl. Proc. Case No. 2890 referred to a petition for the declaration of the presumptive death of another person filed by another lawyer;[7] and *(b)* respondent had yet to file a petition for adoption on their behalf.[8] Utterly dismayed,

---

[2] *Id*. at 3.

[3] Sharon Nazario, who signed the Retainership Agreement (see *id*. at 21-23) on behalf of complainants. See *id*. at 4.

[4] See Official Receipt No. 0051 and Acknowledgment Receipt signed by Donna Marie Rafada; *id*. at 11.

[5] *Id*. at 4. See also *id*. at 126.

[6] *Id*. at 12.

[7] *Id*. at 126. See Certification dated July 11, 2007 issued by Clerk of Court & *Ex-Officio* Sheriff Atty. Rollie Modesto A. Laigo of the Office of the Clerk of Court of the Regional Trial Court of San Fernando City, La Union; *id*. at 13.

[8] *Id*. at 76.

complainants withdrew all their documents from respondent's custody[9] and hired another lawyer to handle the filing of the adoption case.[10] Moreover, complainants demanded the return of the amount of ₱75,000.00 given as legal fees.[11] However, respondent refused to return such money, retorting that as a standard operating procedure, she does not return "acceptance fees."[12] In view of the foregoing, complainants filed the instant administrative case against respondent before this Court.

Despite numerous directives to file a comment,[13] respondent failed to do so; thus, the Court was constrained to dispense with the filing of the same and to impose a fine in the amount of ₱2,000.00 against her.[14] The administrative case was then referred to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation,[15] wherein respondent similarly disregarded the IBP's directives to participate in the Mandatory Conference and to submit her position paper despite due notice.[16]

The IBP's Report and Recommendation

In a Report and Recommendation[17] dated January 28, 2014, the IBP Investigating Commissioner found respondent administratively liable and, accordingly, recommended that she be meted the penalty of suspension from the practice of law for three (3) years and ordered to return the amount of ₱75,000.00 with legal interest to complainants. It was likewise recommended

---

[9] See *id*. at 14.

[10] *Id*. at 5-6 and 76.

[11] See complainants' letter dated July 5, 2007; *id*. at 15.

[12] See respondent's letter dated July 5, 2007; *id*. at 16-19.

[13] See Court's Resolutions dated December 12, 2007 (*id*. at 56-57) and August 6, 2009 (*id*. at 61-62).

[14] See Court's Resolution dated January 17, 2011; *id*. at 64-65.

[15] *Id.*

[16] See IBP's Order dated July 13, 2011; *id*. at 73. See also *id*. at 126.

[17] *Id*. at 125-127. Penned by Commissioner Arsenio P. Adriano.

that respondent should show compliance with such directives within ten (10) days from receipt of the order of suspension.[18]

The IBP Investigating Commissioner found respondent guilty of violating Rule 18.03, Canon 18 of the CPR, as she neglected the legal matter entrusted to her by complainants—*i.e.,* the filing of the adoption case— for almost a year until complainants finally withdrew their documents from respondent and opted to have the filing of the case handled by another lawyer. Worse, respondent refused to return the amount of ₱75,000.00 representing legal fees paid by complainants to her. In this relation, the Investigating Commissioner added that respondent's liability was further aggravated by the fact that she: *(a)* deceived complainants by informing them that a petition for adoption had already been filed on their behalf, when in truth, there was none; and *(b)* failed to file any comment when the Court required her to do so.[19]

In a Resolution[20] dated October 10, 2014, the IBP Board of Governors adopted and approved the aforesaid report and recommendation, without mentioning, however, of the IBP Investigating Commissioner's imposition of legal interest on the amount to be returned.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for violating the CPR.

The Court's Ruling

A judicious perusal of the records reveals that sometime in June 2006, complainants secured the services of respondent in order to file a petition for adoption of a minor child named Ethan Benedict Victore, and in connection thereto, paid the latter the amount of ₱75,000.00 representing legal fees. However,

---

[18] *Id*. at 127.

[19] *Id*.

[20] See Notice of Resolution No. XXI-2014-741 issued by National Secretary Nasser A. Marohomsalic; *id*. at 124.

despite the lapse of almost a year and for reasons unknown, respondent failed to perform anything in furtherance of the legal matter entrusted to her by complainants. As correctly pointed out by the IBP Investigating Commissioner, respondent's acts constitute a flagrant violation of Rule 18.03, Canon 18 of the CPR, to wit:

> CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.
>
> xxx xxx xxx
>
> Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Under the foregoing provisions, once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him.[21] Therefore, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable,[22] as in this case.

In this relation, respondent also violated Rules 16.01 and 16.03, Canon 16 of the CPR when she failed to return the amount of ₱75,000.00 representing legal fees that complainants paid her, *viz.*:

> CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

---

[21] *Lad Vda. de Dominguez v. Agleron, Sr.,* A.C. No. 5359, March 10, 2014, 718 SCRA 219,222.

[22] See *Nebreja v. Reonal,* A.C. No. 9896, March 19, 2014, 719 SCRA 385; *Figueras v. Jimenez,* A.C. No. 9116, March 12, 2014, 718 SCRA 450; and *Abiero v. Juanino,* 492 Phil. 149 (2005).

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

xxx xxx xxx

Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand. x x x.

Verily, the relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith.[23] The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client.[24] Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client – as in this case – gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality, as well as of professional ethics.[25]

Even worse, respondent misrepresented to complainants that she had already commenced an adoption proceeding on behalf of the latter, as evidenced by the letter[26] dated March 6, 2007 she sent to Jonathan's employer requesting that he, together with her wife, Ester, be allowed to come home to the Philippines to appear and testify in court. She even provided them with a case number, Spl. Proc. Case No. 2890, which was purportedly pending before the RTC. Such misrepresentation resulted in complainants going through the trouble of coming back to the Philippines, only to find out that: *(a)* Spl. Proc. Case No. 2890 referred to a petition for the declaration of the presumptive death of another person filed by another lawyer; and *(b)* respondent had yet to file a petition for adoption

---

[23] *Bayonla vs. Reyes,* 676 Phil. 500, 509 (2011).

[24] *Navarro vs. Solidum, Jr.,* A.C. No. 9872, January 28, 2014, 714 SCRA 586, 597.

[25] *Adrimisin vs. Javier,* 532 Phil. 639, 645-646 (2006).

[26] *Rollo,* p. 12.

on their behalf. These deceitful acts of respondent clearly violate Rule 1.01, Canon 1 of the CPR, which provide:

> CANON 1— A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.
>
> Rule 1.01— A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Rule 1.01, Canon 1 of the CPR instructs that, as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing.[27] Indubitably, respondent fell short of such standard when she committed the afore-described acts of deception against complainants. Such acts are not only unacceptable, disgraceful, and dishonorable to the legal profession; they reveal basic moral flaws that make him unfit to practice law.[28]

To aggravate further respondent's administrative liability, the Court notes that it repeatedly required her to comment on complainants' petition, but respondent ignored such commands. Similarly, when the instant case was referred to the IBP for investigation, report, and recommendation, respondent again disregarded the directives of the Investigating Commissioner to attend the mandatory conference and to submit a position paper. Such audacity on the part of respondent – which caused undue delay in the resolution of the instant administrative case - contravenes Canon 11 and Rule 12.04, Canon 12 of the CPR, all of which read:

> CANON 11 — A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.
>
> xxx xxx xxx
>
> CANON 12 — A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

---

[27] *Tabang v. Gacott,* A.C. No. 6490, July 9, 2013, 700 SCRA 788, 804.

[28] See *Spouses Gibes vs. Deciembre,* 496 Phil. 799, 812 (2005).

xxx xxx xxx

Rule 12.04 — A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes.

Undoubtedly, "[t]he Court's patience has been tested to the limit by what in hindsight amounts to a lawyer's impudence and disrespectful bent. At the minimum, members of the legal fraternity owe courts of justice respect, courtesy, and such other becoming conduct essential in the promotion of orderly, impartial, and speedy justice."[29] What respondent has done was the exact opposite, and hence, she must be disciplined accordingly.

Anent the proper penalty for respondent, jurisprudence provides that in similar cases where lawyers neglected their client's affairs and, at the same time, failed to return the latter's money and/or property despite demand, the Court imposed upon them the penalty of suspension from the practice of law. In *Segovia-Ribaya v. Lawsin,*[30] the Court suspended the lawyer for a period of one (1) year for his failure to perform his undertaking under his retainership agreement with his client and to return the money given to him by the latter. Also, in *Jinon v. Jiz,*[31] the Court suspended the lawyer for a period of two (2) years for his failure to return the amount his client gave him for his legal services which he never performed. Finally, in *Agot vs. Rivera,*[32] the Court suspended the lawyer for a period of two (2) years for his: *(a)* failure to handle the legal matter entrusted to him and to return the legal fees in connection thereto; and *(b)* misrepresentation that he was an immigration lawyer, when in truth, he was not. In this case, not only did respondent fail to file a petition for adoption on behalf of complainants and to return the money she received as legal fees, she likewise committed deceitful acts in misrepresenting that she had already filed such petition when nothing was

---

[29] *Canlu* v. *Aredonia,* 673 Phil. 1, 8 (2011).

[30] See A.C. No. 7965, November 13,2013, 709 SCRA 287.

[31] See A.C. No. 9615, March 5, 2013, 692 SCRA 348.

[32] See A.C. No. 8000, August 5, 2014, 732 SCRA 12.

actually filed, resulting in undue prejudice to complainants. On top of these, respondent showed impertinence not only to the IBP Investigating Commissioner, but to the Court as well, when she ignored directives to comment on the complainants' petition against her and to participate in the investigation of the case. Under these circumstances, the Court imposes on respondent the penalty of suspension from the practice of law for a period of three (3) years, as recommended by the IBP.

Finally, the Court sustains the IBP's recommendation ordering respondent to return the amount of ₱75,000.00 she received from complainants as legal fees. It is well to note that "[w]hile the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature – for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement."[33] Since respondent received the aforesaid amount as part of her legal fees, the Court, thus, finds the return thereof to be in order, with legal interest as recommended by the IBP Investigating Commissioner.[34]

WHEREFORE, respondent Atty. Sinamar E. Limos is found **GUILTY** of violating Rule 1.01 of Canon 1, Canon 11, Rule 12.04 of Canon 12, Rules 16.01 and 16.03 of Canon 16, and Rule 18.03 of Canon 18 of the Code of Professional Responsibility. Accordingly, she is hereby **SUSPENDED** from the practice of law for a period of three (3) years, effective upon the finality of this Decision, with a sterm warning that a repetition of the same or similar acts will be dealt with more severely.

Furthermore, respondent is **ORDERED** to return to complainants-spouses Jonathan and Ester Lopez the legal fees

---

[33] *Pitcher vs. Gagate,* A.C. No. 9532, October 8, 2013, 707 SCRA 14, 25-26.

[34] See *Jinon vs. Jiz, supra* note 31.

she received from the latter in the amount of ₱75,000.00, with legal interest, within ninety (90) days from the finality of this Decision. Failure to comply with the foregoing directive will warrant the imposition of a more severe penalty.

Let copies of this Decision be served on the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts in the country for their information and guidance and be attached to respondent's personal record as attorney.

SO ORDERED.

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

Caguioa, J., on official leave.

EN BANC

[A.C. No. 9807. February 2, 2016]

ERLINDA SISTUAL, FLORDELISA S. LEYSA, LEONISA S. ESPABO and ARLAN C. SISTUAL, *complainants, vs.* **ATTY. ELIORDO OGENA,** *respondent.*

SYLLABUS

LEGAL ETHICS; NOTARY PUBLIC; PROHIBITION AGAINST PERFORMING NOTARIAL ACT IN THE ABSENCE OF PERSON SIGNATORY TO THE DOCUMENT; PENALTY.— Atty. Ogena violated the 2004 Rules on Notarial Practice specifically Rule IV, Section 2(b), which provides: A person shall not perform a notarial act if the person

> involved as signatory to the instrument or document – (1) is not in the notary's presence personally at the time of the notarization; and (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules. Doubtless, Atty. Ogena was negligent in the performance of his duty as a notary public. He failed to require the personal presence of the signatories of the documents and proceeded to notarize the aforementioned documents without the signatures of all the parties. Likewise, Atty. Ogena failed to comply with the most basic function that a notary public must do - to require the parties to present their residence certificates or any other document to prove their identities. x x x By notarizing the aforementioned documents, Atty. Ogena engaged in unlawful, dishonest, immoral or deceitful conduct. x x x Atty. Ogena should be liable for such negligence, not only as a notary public but also as a lawyer. Pursuant to the pronouncement in *Re: Violation of Rules on Notarial Practice*, Atty. Ogena should be suspended for two (2) years from the practice of law and forever barred from becoming a notary public.

D E C I S I O N

PER CURIAM:

In a Complaint,[1] dated June 1, 2006, filed before the Integrated Bar of the Philippines (*IBP*),complainants Erlinda C. Sistual, Flordelisa[2] S. Leysa, Leonisa S. Espabo, and Arlan C. Sistual *(complainants)* alleged that respondent Atty. Eliordo Ogena *(Atty. Ogena),* who was the legal counsel of their late father, Manuel A. Sistual *(Manuel),* wilfully, unlawfully and feloniously falsified several documents which included, among others, a Special Power of Attorney *(SPA),* Extra-Judicial Settlement of Estate, Affidavit of Identification of Heirs, Deed of Donation, and a Deed of Absolute Sale by making it appear that all the children of Manuel and their mother, Erlinda Sistual *(Erlinda),*

---

[1] *Rollo,* Vol. I, pp. 101-106.

[2] Indicated as "Flordeliza" in some parts of the record.

executed the documents; that as a result of the falsification of the said documents, Transfer Certificate of Title *(TCT)* No. 60467, registered in the name of "Heirs of Martin Sistual, represented by Manuel Sistual,"[3] was cancelled and was subdivided into several lots; and that these lots were sold to interested buyers.

In his Answer with Affirmative/Special Defenses and Motion to Dismiss,[4] Atty. Ogena denied the allegations. He averred that in 1987, he was engaged by Manuel to represent the heirs of Martin Sistual in a complaint for recovery of possession filed by Abid Mendal *(Abid)* and Abundio Sistual *(Abundio);*[5] that Manuel was the representative of the Heirs of Martin Sistual; that the heirs of Martin Sistual were able to obtain a favorable decision[6] in the said case; that pursuant to the said decision, Lot 464 was awarded to the heirs of Martin Sistual and TCT No. T-60467 was issued in their names; that when Manuel died on November 15, 1993, the heirs of Martin Sistual executed an SPA,[7] dated December 31, 1993, designating Bienvenido Sistual *(Bienvenido)* as their attorney-in-fact; that Erlinda, the wife of Manuel, manifested her desire to represent the heirs of Martin Sistual, so her two children, Isidro Sistual and Flordelisa Sistual, also executed an SPA in her favor; that the heirs of Martin Sistual opposed the appointment of Erlinda and executed another SPA,[8] dated October 5, 1995, in favor of Bienvenido; and that in the October 5, 1995 SPA, Atty. Ogena wrote the names of complainants Erlinda and Flordeliza Sistual but they did not sign it.

---

[3] *Rollo,* Vol. I, p. 41.

[4] *Id*. at 226-238.

[5] Docketed as Civil Case No. 230.

[6] *Rollo,* Vol. I, pp. 240-246. Penned by Judge Cristeto D. Dinopol, RTC-Branch 26, Surallah, South Cotabato.

[7] *Id*. at 247-248.

[8] *Id*. at 250-251.

As to the incident that led to the subdivision of TCT No. T-60467, Atty. Ogena explained that Bienvenido, upon the prodding of the heirs of Martin Sistual with the exception of the complainants, caused the subdivision of the property covered by TCT No. T-60467 into several sub-lots identified as TCT Nos. 76078,[9] 76079,[10] 76080,[11] 76081,[12] 76082,[13] 76083,[14] 76084,[15] 76085,[16] and 76086,[17] and that the corresponding subdivision plans and technical descriptions thereof were duly approved by the Regional Director, Bureau of Lands, Davao City; and that the subdivided lots were in the names of all the heirs of Martin Sistual *including the complainants.*

On September 7, 1996, the heirs of Dolores Sistual Tulay executed an Extrajudicial Settlement[18] whereby the 1/7 share of their mother in the lot covered by TCT No. T-60467 was waived, repudiated and relinquished in favor of their father, Domingo Tulay; that the heirs of Manuel Sistual also executed an Extrajudicial Settlement[19] waiving their 1/7 share in the same property in favor of their mother, Erlinda.

On April 10 and 15, 1997, the heirs of Martin Sistual including complainants executed two deeds of donation[20] in favor of Barangay Lamian conveying the lot covered by TCT Nos. T-76083 and T-76086 to be used for its public market.

---

[9] *Id*. at 257.

[10] *Id*. at 258.

[11] *Id*. at 259.

[12] *Id*. at 260.

[13] *Id*. at 261.

[14] *Id*. at 262.

[15] *Id*. at 263.

[16] *Id*. at 264.

[17] *Id*. at 265.

[18] *Id*. at 252-253.

[19] *Id*. at 254-254A.

[20] *Id*. at 266-270.

Atty. Ogena denied that the aforementioned documents were falsified as they were actually executed and duly signed by all the parties therein; and that all the signatures of complainants appearing in the aforementioned documents were identical; that the deeds of donation were duly attested to by Barangay Captain Conrado Toledo and the barangay kagawads;[21] and that the aforementioned documents *did not in any way prejudiced the complainants. The execution thereof did not defraud them or any of the heirs of Martin Sistual as the issuance of the nine (9) new and separate titles in the names of all the heirs, as co-owners, was beneficial and favorable to all of them.*

Finally, as to the Absolute Deed of Sale,[22] dated July 18, 1989, executed by spouses Manuel and Erlinda in favor of Socorro Langub, Atty. Ogena also denied that this was falsified as this was duly executed, signed and subscribed by all the parties. Atty. Ogena submitted a copy of the said deed of sale[23] to prove that it was duly executed and signed by Manuel and Erlinda, as the vendors; and Socorro Langub, as the vendee.

In its Report and Recommendation,[24] the IBP-Commission on Bar Discipline *(CBD)* stated that it is bereft of any jurisdiction to determine whether Atty. Ogena committed forgery in the aforementioned documents. It, however, *found several irregularities in the documents notarized by Atty. Ogena. First,* in the SPA, the signatures of Flordelisa Sistual and Isidro Sistual were absent and the Community Tax Certificates *(CTC)* of the signatories namely: Bernardina Sistual Anson, Jesusa Sistual Español, and Erlinda, were not indicated. In the Extrajudicial Settlement of Estate of Deceased Manuel, although all the heirs signed, only the CTC of Erlinda and Flordelisa were indicated. In the Affidavit of Identification of Heirs of Martin Sistual, the CTC of Solfia S. Maribago was absent; and in the Extrajudicial Settlement of Estate of Deceased Dolores

---

[21] *Id*. at 271-277.

[22] *Id*. at 278.

[23] *Id*.

[24] *Rollo,* Vol. II, pp. 2-9.

Sistual with Waiver of Hereditary Shares, only the CTC of Domingo Tulay was indicated. Thus, the IBP-CBD recommended that Atty. Ogena's notarial commission be revoked and that he be permanently disqualified from reappointment as Notary Public; and that he be suspended from the practice of law for a period of one *(1)* year.

On December 10, 2011, the IBP Board of Governors adopted and approved with modification the Report and Recommendation of the IBP-CBD. The IBP Board of Governors revoked Atty. Ogena's commission as notary public and permanently disqualified him from reappointment as Notary Public. It, however, *deleted the penalty of suspension.*[25]

On March 29, 2012, Atty. Ogena filed a motion for reconsideration before the IBP.

In a Resolution, dated November 10, 2012, the IBP Board of Governors denied the motion for reconsideration and affirmed with modification its earlier resolution, revoking Atty. Ogena's notarial commission indefinitely.

The Court agrees with the findings of the IBP except as to the penalty it imposed. To begin with, complainants' allegation of forgery was not clearly substantiated and there was no concrete proof that the complainants were prejudiced. They submitted a copy of the affidavits[26] for falsification executed by Erlinda and Flordelisa, both subscribed before the City of Prosecutor on February 20, 2006; Memoranda for Preliminary Investigation[27] issued by Office of the City Prosecutor, Koronadal, South Cotabato; Letter,[28] Memorandum,[29] and Order[30] issued by the Bureau of Lands, but these do not suffice to prove the allegation of forgery and/or falsification.

---

[25] *Id*. at 1.

[26] *Rollo,* Vol. I, pp. 6-11.

[27] *Id*. at 4-5.

[28] *Id*. at 12.

[29] *Id*. at 13.

[30] *Id*. at 14.

Atty. Ogena, however, violated the 2004 Rules on Notarial Practice specifically Rule IV, Section 2(b), which provides:

> Section 2. Prohibitions. – (a) x x x
>
> (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document –
>
> (1) is not in the notary's presence personally at the time of the notarization; and
>
> (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

Doubtless, Atty. Ogena was negligent in the performance of his duty as a notary public. He failed to require the personal presence of the signatories of the documents and proceeded to notarize the aforementioned documents without the signatures of all the parties. Likewise, Atty. Ogena failed to comply with the most basic function that a notary public must do - to require the parties to present their residence certificates or any other document to prove their identities. This Court, in *Gonzales v. Atty. Ramos,*[31] wrote:

> Notarization is not an empty, meaningless routinary act. It is invested with substantive public interest. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarial document is, by law, entitled to full faith and credit upon its face. A notary public must observe with utmost care the basic requirements in the performance of their duties; otherwise, the public's confidence in the integrity of the document would be undermined.

By notarizing the aforementioned documents, Atty. Ogena engaged in unlawful, dishonest, immoral or deceitful conduct.[32] His conduct is fraught with dangerous possibilities considering

---

[31] 499 Phil. 345, 347 (2005).

[32] *Isenhardt v. Real,* 682 Phil. 19, 24 (2012).

the conclusiveness on the due execution of a document that our courts and the public accord to notarized documents.[33] His failure to perform his duty as a notary public resulted not only in damaging complainants' rights but also in undermining the integrity of a notary public and in degrading the function of notarization. Thus, Atty. Ogena should be liable for such negligence, not only as a notary public but also as a lawyer.

Pursuant to the pronouncement in *Re: Violation of Rules on Notarial Practice,*[34] Atty. Ogena should be suspended for two (2) years from the practice of law and forever barred from becoming a notary public.

WHEREFORE, respondent Atty. Eliordo Ogena is **SUSPENDED** from the practice of law for two (2) years and is **BARRED PERMANENTLY** from being commissioned as Notary Public.

This decision is **IMMEDIATELY EXECUTORY.**

Let copies of this decision be furnished all courts in the country and the Integrated Bar of the Philippines for their information and guidance. Let also a copy of this decision be appended to the personal record of Atty. Eliordo Ogena in the Office of the Bar Confidant.

SO ORDERED.

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

Caguioa, J., on official leave.

---

[33] *Gonzales v. Ramos, supra* note 31, at 351.

[34] Now A.M. No. 09-6-1-SC, January 21, 2015.

EN BANC

[A.M. No. RTJ-13-2361. February 2, 2016]
(Formerly OCA IPI No. 13-4144-RTJ)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **PRESIDING JUDGE JOSEPH CEDRICK O. RUIZ, REGIONAL TRIAL COURT, BRANCH 61, MAKATI CITY,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUSTICES AND JUDGES; ADMINISTRATIVE CHARGES; DISCIPLINARY PROCEEDINGS AGAINST SITTING JUDGES AND JUSTICES MAY BE INSTITUTED *MOTU PROPRIO*, BY THE COURT ITSELF, UPON VERIFIED COMPLAINT, SUPPORTED BY THE AFFIDAVITS OF PERSONS WITH PERSONAL KNOWLEDGE OF THE FACTS ALLEGED, OR BY DOCUMENTS SUBSTANTIATING THE ALLEGATIONS, OR UPON ANONYMOUS COMPLAINT SUPPORTED BY PUBLIC RECORDS OF INDUBITABLE INTEGRITY.— Section 6, Article VIII of the 1987 Constitution grants the Supreme Court administrative supervision over all courts and their personnel. This grant empowers the Supreme Court to oversee the judges' and court personnel's administrative compliance with all laws, rules, and regulations, and to take administrative actions against them if they violate these legal norms. In the exercise of this power, the Court has promulgated rules of procedure in the discipline of judges. x x x. Based on [Section 1, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC], disciplinary proceedings against sitting judges and justices may be instituted: *(a)* ***motu proprio*, by the Court itself**; *(b)* upon verified complaint, supported by the affidavits of persons with personal knowledge of the facts alleged, or by documents substantiating the allegations; or *(c)* upon anonymous complaint supported by public records of indubitable integrity. It was pursuant to this power that the Court — on its own initiative — ordered the re-docketing of the OCA's report as a formal complaint against the respondent

and as a regular administrative matter for the Court's consideration.

2. ID.; ID.; ID.; ID.; THE COURT POSSESSES THE POWER TO PREVENTIVELY SUSPEND AN ADMINISTRATIVELY CHARGED JUDGE UNTIL A FINAL DECISION IS REACHED, PARTICULARLY WHEN A SERIOUS CHARGE IS INVOLVED AND A STRONG LIKELIHOOD OF GUILT EXISTS.— The Court likewise possesses the power to preventively suspend an administratively charged judge until a final decision is reached, particularly when a serious charge is involved and a strong likelihood of guilt exists. This power is inherent in the Court's power of administrative supervision over all courts and their personnel as a measure to allow unhampered formal investigation. It is likewise a preventive measure to shield the public from any further damage that the continued exercise by the judge of the functions of his office may cause. In the present case, we placed the respondent under preventive suspension because he is alleged to have committed transgressions that are classified as serious under Section 8, Rule 140 of the Rules of Court.

3. ID.; ID.; ID.; THE ACT OF EMBEZZLING PUBLIC FUNDS OR PROPERTY IS IMMORAL IN ITSELF AND CONSIDERED A CONDUCT CLEARLY CONTRARY TO THE ACCEPTED STANDARDS OF JUSTICE, HONESTY, AND GOOD MORALS. — The respondent's convictions by the Sandiganbayan for violation of Section 3(e) of R.A. No. 3019 and for malversation of public funds confirm that the administrative charges for which he may be found liable are serious charges under Section 8(2) of Rule 140 of the Rules of Court, as amended. Malversation is likewise considered as a serious charge since it is a crime involving moral turpitude. While the term moral turpitude does not have one specific definition that lends itself to easy and ready application, it has been defined as an act of baseness, vileness, or the depravity in the performance of private and social duties that man owes to his fellow man or to society in general. x x x .The act of embezzling public funds or property is immoral in itself; it is a conduct clearly contrary to the accepted standards of justice, honesty, and good morals.

4. ID.; ID.; ID.; THE PREVENTIVE SUSPENSION IMPOSED BY THE COURT PENDING INVESTIGATION IS NOT A PENALTY BUT SERVES ONLY AS A PREVENTIVE MEASURE, AND BECAUSE IT IS NOT A PENALTY, ITS IMPOSITION DOES NOT VIOLATE THE RIGHT OF THE ACCUSED TO BE PRESUMED INNOCENT.— The preventive suspension we impose pending investigation is not a penalty but serves only as a preventive measure x x x. Because it is not a penalty, its imposition does not violate the right of the accused to be presumed innocent. It also matters not that the offenses for which the respondent had been convicted were committed in 2001 when he was still the Mayor of Dapitan City. [I]t is likewise immaterial that his criminal convictions by the Sandiganbayan are still on appeal with this Court.

5. ID.; ID.; ID.; THE RETIREMENT OF THE JUDGE OR HIS SEPARATION FROM THE SERVICE DOES NOT NECESSARILY DIVEST THE COURT OF ITS JURISDICTION TO RULE ON COMPLAINTS FILED WHILE HE WAS STILL IN THE SERVICE NOR DOES IT RENDER A PENDING ADMINISTRATIVE CHARGE AGAINST HIM MOOT AND ACADEMIC.— The Court has not acted on the respondent's request for optional early retirement in view of his standing criminal convictions; he stands to suffer accessory penalties affecting his qualification to retire from office should his convictions stand. The OCA records also show that he is currently on "on leave of absence" status. In any case, that a judge has retired or has otherwise been separated from the service does not necessarily divest the Court of its jurisdiction to rule on complaints filed while he was still in the service. As we held in *Gallos v. Cordero*: The jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent had ceased in office during the pendency of his case. The Court retains jurisdiction either to pronounce the respondent public official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications x x x If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and

imposable under the situation nor does separation from office render a pending administrative charge moot and academic.

6. **ID.; ID.; ID.; A JUDGE MAY BE DISCIPLINED FOR ACTS COMMITTED PRIOR TO HIS OR HER APPOINTMENT TO THE JUDICIARY, AND IT NEED NOT BE SHOWN THAT THE RESPONDENT-JUDGE CONTINUED TO DO THE ACTS COMPLAINED OF, FOR IT IS SUFFICIENT THAT THE EVIDENCE ON RECORD SUPPORTS THE CHARGE/S AGAINST HIM OR HER.—** In the present proceedings, our function is limited to the determination of whether substantial evidence exists to hold the respondent administratively liable for acts he is alleged to have committed while he was still the mayor of Dapitan City. In this determination, it is immaterial that the respondent was not yet a member of the Judiciary when he allegedly committed the acts imputed to him; judges may be disciplined for acts committed **prior** to their appointment to the judiciary. Our Rules itself recognizes this situation, as it provides for the immediate forwarding to the Supreme Court for disposition and adjudication of charges against *justices and judges before the IBP, including those filed prior to their appointment to the judiciary.* It need not be shown that the respondent continued to do the act or acts complained of; it is sufficient that the evidence on record supports the charge/s against the respondent through proof that the respondent committed the imputed act/s violative of the Code of Judicial Conduct and the applicable provisions of the Rules of Court.

7. **ID.; ID.; ID.; ONLY SUBSTANTIAL EVIDENCE IS REQUIRED TO SUPPORT THE COURT'S CONCLUSIONS IN ADMINISTRATIVE PROCEEDINGS, AND THE STANDARD OF SUBSTANTIAL EVIDENCE IS SATISFIED WHEN THERE IS REASONABLE GROUND TO BELIEVE THAT THE RESPONDENT IS RESPONSIBLE FOR THE MISCONDUCT COMPLAINED OF, EVEN IF SUCH MIGHT NOT BE OVERWHELMING OR EVEN PREPONDERANT.—** We reiterate that only **substantial evidence** is required to support our conclusions in administrative proceedings. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. The standard of substantial is satisfied *when there is reasonable*

ground to believe that the respondent is responsible for the misconduct complained of, even if such might not be overwhelming or even preponderant. That the respondent committed acts constituting malversation or violations of the Anti-Graft and Corrupt Practices Act should be adjudged in the same manner that other acts classified as serious charges under Rule 140 (such as bribery, immorality, gross misconduct, dishonesty, and partisan political activities) should be weighed — through substantial evidence. Expressed from the point of view of criminal law, evidence to support a conviction in a criminal case is not necessary in an administrative proceeding like the present case.

8. ID.; ID.; ID.; RESPONDENT'S DENIAL CANNOT STAND AGAINST THE POSITIVE DECLARATIONS OF THE PROSECUTION WITNESSES, WHICH ARE SUPPORTED BY THE DOCUMENTS ON RECORD.— ***For purposes of the original administrative proceeding before us*** and to fully accord the respondent the due process owed him in these proceedings, we shall examine all the evidence adduced and apply to these pieces of evidence the substantial evidence rule that the present proceedings require. This approach is only proper, as the present proceeding is not an appeal from the Sandiganbayan ruling but is an original one for purposes of establishing or negating the claimed administrative liability on the part of the respondent. xxx. Viewed against the positive declarations of the prosecution witnesses, which are supported by the documents on record, the respondent's denial cannot stand. The respondent even failed to substantiate his claim that the charges against him had been politically motivated. Thus, by *substantial evidence,* we consider it fully established that the respondent actively worked for the approval of the ₱1 million cash advance from the CIF; that he facilitated the withdrawal of the ₱1 million by Nortal; and that he received and used this withdrawn amount for his personal benefit.

9. ID.; ID.; ID.; PROPER PENALTY FOR A SERIOUS CHARGE.— Section 11 of Rule 140, as amended, states that [i]f the respondent is guilty of a serious charge, *any* of the following sanctions may be imposed: (a) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned

or - controlled corporations; (b) suspension from office without salary and other benefits for more than three but not exceeding six months; or (c) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00. Considering the nature and extent of the respondent's transgressions, we find the imposition of the supreme administrative penalty of dismissal to be appropriate. The people's confidence in the judicial system is founded not only on the competence and diligence of the members of the bench, but also on their integrity and moral uprightness. We would violate this standard and unduly tarnish the image of the Judiciary if we allow the respondent's continued presence in the bench. We would likewise insult the legal profession if we allow him to remain within the ranks of legal professionals.

10. ID.; ID.; ID.; A MAGISTRATE IS JUDGED, NOT ONLY BY HIS OFFICIAL ACTS, BUT ALSO BY HIS PRIVATE MORALITY AND ACTIONS.— We emphasize that judges should be the embodiment of competence, integrity, and independence, and their conduct should be above reproach. They must adhere to exacting standards of morality, decency, and probity. **A magistrate is judged, not only by his official acts, but also by his private morality and actions.** Our people can only look up to him as an upright man worthy of judging his fellow citizens' acts if he is both qualified and proficient in law, and equipped with the morality that qualifies him for that higher plane that standing as a judge entails.

11. ID.; ID.; ID.; ID.; A CONDUCT, ACT, OR OMISSION REPUGNANT TO THE STANDARDS OF PUBLIC ACCOUNTABILITY AND WHICH TENDS TO DIMINISH THE PEOPLE'S FAITH AND CONFIDENCE IN THE JUDICIARY, MUST INVARIABLY BE HANDLED WITH THE REQUIRED RESOLVE THROUGH THE IMPOSITION OF THE APPROPRIATE SANCTIONS IMPOSED BY LAW AND BY THE STANDARDS AND PENALTIES APPLICABLE TO THE LEGAL PROFESSION. — In *Conrado Abe Lopez v. Judge Rogelio S. Lucmayon,* we ruled that: The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his sala as a private individual. **There is no dichotomy of morality: a public official is also judged by his private morals**. The Code dictates that a judge, in order

to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. As we have recently explained, a judge's official life cannot simply be detached or separated from his personal existence. The conduct of judges, official or otherwise, must always be beyond reproach and must be free from any suspicion tainting him, his exalted office, and the Judiciary. A conduct, act, or omission repugnant to the standards of public accountability and which tends to diminish the people's faith and confidence in the Judiciary, must invariably be handled with the required resolve through the imposition of the appropriate sanctions imposed by law and by the standards and penalties applicable to the legal profession.

12. **ID.; ID.; ID.; ID.; IT IS NOT A SOUND JUDICIAL POLICY TO AWAIT THE FINAL RESOLUTION OF A CRIMINAL CASE BEFORE A COMPLAINT AGAINST A LAWYER MAY BE ACTED UPON; OTHERWISE, THE COURT WILL BE RENDERED HELPLESS TO APPLY THE RULES ON ADMISSION TO, AND CONTINUING MEMBERSHIP IN THE LEGAL PROFESSION DURING THE WHOLE PERIOD THAT THE CRIMINAL CASE IS PENDING FINAL DISPOSITION, WHEN THE OBJECTIVES OF THE TWO PROCEEDINGS ARE VASTLY DISPARATE.—** Administrative Matter No. 02-9-02-SC (which took effect on October 1, 2002) provides that an administrative case against a judge of a regular court based on grounds which are also grounds for the disciplinary action against members of the Bar, shall be considered as disciplinary proceedings against such judge as a member of the Bar. It also states that **judgment in both respects may be incorporated in one decision or resolution.** Section 27, Rule 138 of the Rules of Court, on the other hand, provides that a lawyer may be removed or suspended from the practice of law, *among others,* for conviction of a crime involving moral turpitude xxx. In *Bengco v. Bernardo,* we ruled that it is not sound judicial policy to await the final resolution of a criminal case before a complaint against a lawyer may be acted upon; otherwise, this Court will be rendered helpless to apply the rules on admission to, and continuing membership in the legal profession during the whole period that the criminal case is pending final disposition, when the objectives of the two

proceedings are vastly disparate. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare and to save courts of justice from persons unfit to practice law. The attorney is called to answer to the court for his conduct as an officer of the court.

LEONEN, *J., concurring opinion*:

1. JUDICIAL ETHICS; JUSTICES AND JUDGES; THE ACTS COMMITTED BY JUDGES OR JUSTICES PRIOR TO THEIR APPOINTMENT TO THE JUDICIARY MUST NOT BE AUTOMATICALLY TAKEN TO AFFECT THEIR STANDING OR QUALIFICATION AS MEMBERS OF THE JUDICIARY.— [T]he acts committed by judges or justices prior to their appointment to the judiciary must not be automatically taken to affect their standing or qualification as members of the judiciary. x x x. While it is true that the acts of judges or justices committed prior to appointment to the judiciary may be a basis for disciplinary measures by this court, qualifications as to when a judge or justice may be removed must be made. There may be situations where a closer review of the facts and corresponding charges or crimes is necessary. For example, the Judicial and Bar Council may have known about an applicant's pending case but chose to regard him or her as qualified. Before an applicant is appointed to the judiciary, he or she is subjected to the rigorous application and nomination procedure by the Judicial and Bar Council. The Rules of the Judicial and Bar Council prescribes the minimum requirements for nominations: constitutional and statutory qualifications; competence, which includes educational preparation, experience, performance, and other accomplishments; integrity; independence; and sound physical, mental, and emotional condition.

2. ID.; ID.; AN APPLICANT NOMINATED BY THE JUDICIAL AND BAR COUNCIL FOR APPOINTMENT IS DEEMED TO HAVE THE REPUTATION FOR HONESTY, INTEGRITY, INCORRUPTIBILITY, IRREPROACHABLE CONDUCT, AND FIDELITY TO SOUND MORAL AND ETHICAL STANDARDS; AUTOMATIC DISMISSAL OF A JUDGE OR JUSTICE BASED ON HIS PENDING

CRIMINAL OR ADMINISTRATIVE CASES BEFORE COURTS UNDERMINES THE PRESIDENT'S APPOINTMENT. — In Rule 4, Section 5 of the Rules of the Judicial and Bar Council, persons are disqualified from being nominated for appointment to the judiciary when they have pending criminal or administrative cases before courts. x x x. By nominating an applicant for appointment, the Judicial and Bar Council gives its imprimatur to the applicant. It deems the applicant to have the "reputation for honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards." If we do not carefully consider the prior acts of judges or justices in relation to their judicial functions and automatically find convictions or pronouncements of guilt as a reflection of the qualifications of the judge or justice, then we disregard the Judicial and Bar Council's nomination process. This disregard is even more apparent when the appointing authority — the President — appoints a nominee from the Judicial and Bar Council's list. To automatically dismiss a judge or justice based on the above grounds undermines the President's appointment.

3. **ID.; ID.; ANY ADMINISTRATIVE COMPLAINT LEVELED AGAINST A JUDGE MUST ALWAYS BE EXAMINED WITH A DISCRIMINATING EYE, FOR ITS CONSEQUENTIAL EFFECTS ARE, BY THEIR NATURE, HIGHLY PENAL, SUCH THAT THE RESPONDENT JUDGE STANDS TO FACE THE SANCTION OF DISMISSAL OR DISBARMENT.—** In another situation, an applicant may not have any pending criminal or administrative charge when he or she applies for a post in the judiciary. After the applicant's appointment to the judiciary, a disgruntled party-litigant decides to look into the judge's past and files criminal charges against him or her. The case may or may not be relevant to the functions of the judge or may not constitute a crime of moral turpitude. However, damage to the judge's perceived integrity and probity has already been made. The judiciary must find a balance between maintaining the integrity and competence of its judges, justices, and other personnel and protecting its members from harassment that aims to prevent the miscarriage of justice. As this court has said before : [I]t is established that any administrative complaint leveled against a judge must always be examined with a

discriminating eye, for its consequential effects are, by their nature, highly penal, such that the respondent judge stands to face the sanction of dismissal or disbarment. As aforementioned, the filing of criminal cases against judges may be used as tools to harass them and may in the long run create adverse consequences.

BERSAMIN, *J., dissenting opinion*:

1. JUDICIAL ETHICS; JUSTICES AND JUDGES; ADMINISTRATIVE PENALTIES; THE COURT HAS REFRAINED FROM IMPOSING THE ADMINISTRATIVE PENALTIES EXPRESSLY PRESCRIBED BY LAW OR REGULATION IN CONSIDERATION OF THE PRESENCE OF MITIGATING FACTORS AND EVEN HUMANITARIAN AND EQUITABLE CONSIDERATIONS, AND IMPOSE THE LOWER OR LESSER PENALTY. — Although there is a distinction between administrative liability and criminal liability, for the purpose of administrative proceedings is mainly to protect the public service to enforce the constitutional tenet that a public office is a public trust, while the objective of the criminal prosecution is the punishment of the crime, any judgment in this administrative matter effectively removes the distinction considering that the Majority predicate their action against the respondent on the same evidence that will be considered in the appellate review of the convictions. Thus, the very adverse factual findings made in the Majority's opinion will prejudicially influence the review of the convictions against him. Nonetheless, the harsh outcome, if it is now unavoidable such that we must sanction the respondent, should be mitigated. It will not be unprecedented to do so here, because the Court has refrained from imposing the administrative penalties expressly prescribed by law or regulation in consideration of the presence of mitigating factors, like, among others, the respondent's length of service, his ready acknowledgement of his infractions, his remorse, his family circumstances, his advanced age, and even humanitarian and equitable considerations, and impose the lower or lesser penalty.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; STATE WITNESS; A CO-CONSPIRATOR IS NOT ALLOWED TO TESTIFY AGAINST ANOTHER

ACCUSED IN THE SAME CASE UNLESS HE IS FIRST DISCHARGED AS A STATE WITNESS, AS THE DISCHARGE IS NECESSARY TO AVOID THE SELF-INCRIMINATION OF THE WITNESS.— [T]he convictions largely depended on the direct testimony of Police Inspector Pepe E. Nortal, the respondent's co-accused, from which the trial court inferred that the respondent had *actually received* the amount of ₱1,000,000.00 as cash advance sourced from the Confidential Intelligence Fund (CIF) of Dapitan City for 2001. In contrast, the other testimonial and documentary evidence adduced by the Prosecution tended to show only that the respondent had merely *actively facilitated* the processing and withdrawal of the amount. [N]ortal's testimony should not determine the respondent's administrative liability, for how could Nortal be a reliable witness if he was himself charged in conspiracy with the respondent with having committed the crimes charged. A co-accused like Nortal — a co-conspirator at that — is not allowed to testify against another accused in the same case unless he is first discharged as a state witness. The discharge is necessary to avoid the self-incrimination of the witness.

3. **ID.; ID.; ID.; ID.; ID.; THE DISCHARGED WITNESS MUST NOT APPEAR TO BE THE MOST GUILTY; TERM "MOST GUILTY," CONSTRUED.—** The process of discharge is delineated in Section 17, Rule 119 of the *Rules of Court.* x x x. The rule requires the discharged witness not to appear to be the *most guilty,* a requirement that has been accorded the following understanding in *Jimenez, Jr. v. People, viz.:* By jurisprudence, "most guilty" refers to the highest degree of culpability in terms of participation in the commission of the offense and does not necessarily mean the severity of the penalty imposed. While all the accused may be given the same penalty by reason of conspiracy, yet one may be considered to have lesser or the least guilt taking into account his degree of participation in the commission of the offense. Before Nortal's testimony is appreciated against the respondent, there ought to be the showing that the proper procedure for his discharge was followed. If the April 29, 2013 decision of the Sandiganbayan did not indicate why Nortal was not himself tried for any criminal liability for the crimes charged against him and the respondent, then the Court, in this administrative

matter, should at the very least first satisfy itself that Nortal did not appear to be the *more* guilty between himself and the respondent. Otherwise, we would have incriminating testimony that is tainted by the witness' desire to save himself and lay the blame on the respondent.

4. CRIMINAL LAW; MALVERSATION; THE PERSON LIABLE IN MALVERSATION IS THE PUBLIC OFFICER WHO, BY REASON OF THE DUTIES OF HIS OFFICE, IS ACCOUNTABLE FOR PUBLIC FUNDS OR PROPERTY, AND APPROPRIATES THE SAME.— [T]he person liable in malversation is the public officer who, by reason of the duties of his office, is accountable for public funds or property, and appropriates the same. Here, that public official was Nortal, not the respondent, because the three documents relevant to the transaction — specifically, Disbursement Voucher No. 105.0105.3888, Check No. 1097358, and the Special Ledger — all indicated that the cash advance of ₱1,000,000.00 was payable to Nortal. Under the pertinent laws — specifically, Section 101 of Presidential Decree No. 1445 *(The State Audit Code of the Philippines)* and Section 5 of Commission on Audit (COA) Circular No. 97-002 — Nortal should liquidate the cash advance. The respondent, being only the approving authority for the release of the CIF, was liable only to explain his participation, which he was not made to do.

5. JUDICIAL ETHICS; JUDGES; ADMINISTRATIVE PENALTIES FOR SERIOUS CHARGE; PENALTY OF FINE IN THE AMOUNT OF ₱40,000.00, RECOMMENDED.— The Court is sanctioning him now as an incumbent Judge of the RTC. Under Section 11, Rule 140 of the *Rules of Court,* a judge found guilty of a serious charge may be subjected to any of the following penalties: Section 11. *Sanctions*. A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations: x x x; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00. Dismissal from the service should not be imposed because of the mitigating factors x x x noted. The next penalty

is suspension, but in the light of the respondent's manifestation of his intention to exercise his option for early retirement pursuant to Section 1 of Republic Act No. 910, as amended by Republic Act No. 9946, he could no longer be suspended. Thus, xxx recommend that he be fined in the amount of ₱40,000.00, which is the next lower penalty.

6. LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE PENALTIES; PENALTY OF DISBARMENT IS PROPER ONLY WHEN THE ATTORNEY COMMITS ANY MISCONDUCT OF A VERY SERIOUS OR GROSS NATURE IN CONNECTION TO THE DISCHARGE OF HIS PROFESSIONAL RESPONSIBILITIES.— The act complained against was done by him when he was the Mayor of Dapitan City, and did not involve his professional or ethical conduct as an attorney. Hence, disbarring him is unfair, because such penalty becomes proper only when the attorney commits any misconduct of a very serious or gross nature in connection to the discharge of his professional responsibilities.

APPEARANCES OF COUNSEL

Romero Remollo Raz & Redillas Law Offices for respondent.

D E C I S I O N

***PER CURIAM*:**

Before us is the administrative complaint filed by the Office of the Court Administrator (*OCA)* against respondent Judge Joseph Cedrick O. Ruiz, Presiding Judge of the Regional Trial Court *(RTC),* Branch 61, Makati City.

This administrative case traces its roots to the Informations for violation of Section 3(e)[1] of Republic Act *(R.A.)* No. 3019

---

[1] Section 3(e) of R.A. No. 3019 provides:

SEC. 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:

and malversation of public funds[2] filed by the People of the Philippines against the respondent judge before the Sandiganbayan. The case was docketed as Criminal Case Nos. 27467-68.

The Informations essentially alleged that the respondent, then the City Mayor of Dapitan City, had conspired with Police Inspector *(P/Insp.)* Pepe Nortal to facilitate the latter's withdrawal of ₱1 million from the Confidential and Intelligence Fund (*CJF)* and, thereafter, used this amount for his (the respondent's) personal benefit.

In its decision[3] dated April 29, 2013, the Sandiganbayan's First Division found the respondent guilty beyond reasonable doubt of the crimes charged.

The Sandiganbayan held that the prosecution successfully proved that the respondent "instigated" Nortal's withdrawal of a ₱1 million cash advance from the CIF allotted for the Mayor's Office, and that he (the respondent) received and used this amount for his personal benefit. The court found that the respondent directed Nortal's request for the cash advance because he (the respondent) already had four (4) unliquidated cash advances

---

xxx xxx xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[2] Art. 217. *Malversation of public funds or property. — Presumption of malversation.* — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer: x x x

[3] *Rollo,* pp. 1-26; penned by Associate Justice Efren N. Dela Cruz, and concurred in by Associate Justices Rodolfo A. Ponferrada and Rafael R. Lagos.

as of December 31, 2006, and that three of these cash advances (with a total of ₱1,384,280.00) already came from the CIF. The testimonies of the city treasurer, the city accountant, and the city budget officer supported the conclusion that the respondent actively worked for the approval of the ₱1 million cash advance.

The Sandiganbayan also found that the respondent acted in bad faith since the cash advance was made five (5) days after he had lost his bid for re-election, and that the proposed withdrawal covered the CIF appropriations for the entire year. The court likewise found no merit in the respondent's defense of denial.

The Sandiganbayan accordingly imposed the following penalties on the respondent: **(a)** the indeterminate penalty of six (6) years and one (1) month, as minimum, to eight (8) years. as maximum, in Criminal Case No. 27467 for violation of Section 3(e) of R.A. No. 3019; **(b)** the indeterminate penalty of twelve (12) years and one (1) day of *reclusion temporal* minimum, as minimum, to eighteen (18) years and one (1) day of *reclusion temporal maximum,* as maximum, in Criminal Case No. 27468 for malversation; and **(c)** perpetual special disqualification. The court also ordered him to pay a ₱950,000.00 fine; and ₱950,000.00 as indemnity to the City of Dapitan.

The respondent moved for the reconsideration of the judgment of conviction and likewise moved for a new trial, but the Sandiganbayan denied these motions in its resolution[4] of August 28, 2013.

The OCA received a copy of the Sandiganbayan's April 29, 2013 decision in Criminal Case Nos. 27467 and 27468, and in its Report[5] of October 4, 2013, made the following recommendations:

---

[4] *Id.* at 27-35. In the same resolution, the Sandiganbayan granted the respondent's request for correction of errors in his motion for reconsideration.

[5] *Id.* at 36-42. The Report was signed by Court Administrator Midas P. Marquez and OCA Chief of Office (Legal) Wilhelmina D. Geronga.

x x x Respectfully submitted for the consideration of this Honorable Court are the following recommendations:

1. that the instant report be considered a formal complaint against Joseph Cedrick O. Ruiz, Presiding Judge, Branch 61, Regional Trial Court, Makati City, for conviction of a crime involving moral turpitude and that the same be **RE-DOCKETED** as a regular administrative matter;

2. that Judge Joseph Cedrick O. Ruiz be **FURNISHED** a copy of this report and that he be required to comment thereon within ten (10) days from notice; and

3. that Judge Joseph Cedrick O. Ruiz be **SUSPENDED** without pay and other monetary benefits effective immediately from his receipt of this Court's resolution, pending resolution of the instant administrative matter, or until lifted by this Honorable Court.[6]

xxx xxx xxx (emphasis in the original)

The OCA reasoned out that conviction of a crime involving moral turpitude is classified as a serious charge under Section 8(5) of Rule 140 of the Rules of Court. It likewise explained that the Court's power to preventively suspend judges, although not clearly delineated under Rule 140 of the Rules of Court, is inherent in its power of administrative supervision over all courts and their personnel, and that a judge can be preventively suspended until a final decision is reached in an administrative case against him.

The records also showed that on October 18, 2013, the respondent filed with this Court a petition for review on *certiorari* assailing his convictions by the Sandiganbayan in Criminal Case Nos. 27467 and 27468. This case was docketed as **G.R. Nos. 209073-74.**[7]

---

[6] *Id.* at 42.

[7] On October 2, 2013; the respondent filed a motion for extension of time to file a petition for review on *certiorari,* but the Court denied this motion in its resolution dated October 16, 2013 for failure to show that petitioner has not lost the 15-day reglementary period to appeal, in view of the lack of statement of material date of receipt of the resolution denying

In its November 20, 2013 minute resolution,[8] the Court's Third Division resolved: (1) to re-docket the OCA report dated October 4, 2013, as a regular administrative matter, and to consider it as a formal complaint against the respondent for having been convicted of a crime involving moral turpitude; (2) to furnish the respondent a copy of the OCA's Report, and to require him to file a comment; and (3) to suspend the respondent from office without pay and other monetary benefits, effective immediately from his receipt of "this Court's Resolution, pending resolution of the instant administrative matter, or until lifted by this Court."

In his comment dated January 24, 2014, the respondent posited that the administrative complaint against him is premature because his Sandiganbayan convictions in Criminal Case Nos. 27467 and 27468 are not yet final. The respondent also stated that he went on leave of absence after his Sandiganbayan conviction, and had submitted his application for optional retirement on May 27, 2013 (to take effect on December 31, 2013). The respondent thus argued that there was no more need to suspend him from office because he should be considered already retired from government service" when he received on January 9, 2014, a copy of the Court's November 20, 2013 Resolution.

THE COURT'S RULING

We resolve to **dismiss** the respondent from the service he has dishonored and to bar him from the ranks of legal professionals whose standards he has likewise transgressed.

I. The Court's disciplinary powers over justices and judges

We find no merit in the respondent's claim that the present administrative case against him is premature because his criminal convictions by the Sandiganbayan are not yet final.

---

the motion for reconsideration. The Court, however, granted the respondent's motion for reconsideration, and admitted the respondent's petition for review on *certiorari* in its resolution of January 27, 2014. In the same resolution, the Court also required the People of the Philippines to file its Comment to the petition.

[8] *Rollo,* p. 43.

Section 6, Article VIII of the 1987 Constitution grants the Supreme Court administrative supervision over all courts and their personnel. This grant empowers the Supreme Court to oversee the judges' and court personnel's administrative compliance with all laws, rules, and regulations,[9] and to take administrative actions against them if they violate these legal norms.[10]

In the exercise of this power, the Court has promulgated rules of procedure in the discipline of judges. Section 1, Rule 140 of the Rules of Court, as amended by A. M. No. 01-8-10-SC, provides:

> SECTION 1. *How instituted.* Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted *motu proprio* by the Supreme Court or upon a verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct.

Based on this rule, disciplinary proceedings against sitting judges and justices may be instituted: (*a*) ***motu proprio,*** **by the Court itself;** (*b*) upon verified complaint, supported by the affidavits of persons with personal knowledge of the facts alleged, or by documents substantiating the allegations; or (*c*) upon anonymous complaint supported by public records of indubitable integrity.[11]

It was pursuant to this power that the Court – on its own initiative – ordered the re-docketing of the OCA's report as a

---

[9] See *Civil Service Commission v. Andal,* G.R. No. 185749, December 16, 2009, 608 SCRA 370, 377.

[10] Agpalo, *Legal and Judicial Ethics* (2009), Eighth Edition, p. 686.

[11] See *Lubaton v. Lazaro,* A.M. No. RTJ-12-2320, September 2, 2013,704 SCRA 404, 409-410.

formal complaint against the respondent and as a regular administrative matter for the Court's consideration.

The Court likewise possesses the power to preventively suspend an administratively charged judge until a final decision is reached, particularly when a serious charge is involved and a strong likelihood of guilt exists. This power is inherent in the Court's power of administrative supervision over all courts and their personnel as a measure to allow unhampered formal investigation. It is likewise a preventive measure to shield the public from any further damage that the continued exercise by the judge of the functions of his office may cause.

In the present case, we placed the respondent under preventive suspension because he is alleged to have committed transgressions that are classified as serious under Section 8, Rule 140 of the Rules of Court, which provides:

SEC. 8. *Serious charges*.— Serious charges include:

1. Bribery, direct or indirect;
2. Dishonesty and **violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);**
3. Gross misconduct constituting violations of the Code of Judicial Conduct;.
4. Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;
5. **Conviction of a crime involving moral turpitude;**
6. Willful failure to pay a just debt;
7. Borrowing money or property from lawyers and litigants in a case pending before the court;
8. Immorality;
9. Gross ignorance of the law or procedure;
10. Partisap political activities; and
11. Alcoholism and/or vicious habits. (emphasis supplied)

The respondent's convictions by the Sandiganbayan for violation of Section 3(e) of R.A. No. 3019 and for malversation of public funds confirm that the administrative charges for which he may be found liable are serious charges under Section 8(2) of Rule 140 of the Rules of Court, as amended. Malversation is likewise considered as a serious charge since it is a crime involving moral turpitude.

While the term moral turpitude does not have one specific definition that lends itself to easy and ready application,[12] it has been defined as an act of baseness, vileness, or the depravity in the performance of private and social duties that man owes to his fellow man or to society in general.[13]

Notably, jurisprudence has categorized the following acts as crimes involving moral turpitude: abduction with consent, bigamy, concubinage, smuggling, rape, attempted bribery, profiteering, robbery, murder, estafa, theft, illicit sexual relations with a fellow worker, violation of Batas Pambansa Blg. 22, intriguing against honor, violation of the Anti-Fencing Law, violation of the Dangerous Drugs Act, perjury, forgery, direct bribery, frustrated homicide, adultery, arson, evasion of income tax, barratry, blackmail, bribery, duelling, embezzlement, extortion, forgery, libel, making fraudulent proof of loss on insurance contract, mutilation of public records, fabrication of evidence, offenses against pension laws, perjury, seduction under the promise of marriage, estafa, falsification of public document, and estafa thru falsification of public document.

To our mind, malversation – considering its nature – should not be categorized any differently from the above listed crimes. The act of embezzling public funds or property is immoral in itself; it is a conduct clearly contrary to the accepted standards of justice, honesty, and good morals.[14]

---

[12] See Concurring Opinion of *J.* Brion in *Teves v. Commission on Elections,* G.R. No. 180363, April 28, 2009, 587 SCRA 1, 27.

[13] See *Re: SC Decision Dated May 20, 2008 in G.R. No. 161455 Under Rule 139-B of the Rules of Court v. Atty. Rodolfo D. Pactolin,* A.C. No. 7940, April 24, 2012, 670 SCRA 366, 371.

[14] *Supra* note 12, at 25-27.

The preventive suspension we impose pending investigation is not a penalty but serves only as a preventive measure as we explained above. Because it is not a penalty, its imposition does not violate the right of the accused to be presumed innocent. It also matters not that the offenses for which the respondent had been convicted were committed in 2001 when he was still the Mayor of Dapitan City.[15] As explained below, it is likewise immaterial that his criminal convictions by the Sandiganbayan are still on appeal with this Court.

Optional early retirement

The records show that the respondent wrote the Court a letter on May 27, 2013 (or soon after his Sandiganbayan convictions), requesting that he "be allowed to optionally retire effective November 30, 2013."[16] He later requested, in another letter,[17] that the effectivity date of his optional retirement be changed from November 30, 2013 to December 31, 2013.

The Court has not acted on the respondent's request for optional early retirement in view of his standing criminal convictions; he stands to suffer accessory penalties affecting his qualification to retire from office should his convictions stand.[18] The OCA records[19] also show that he is currently on "on leave of absence" status. In any case, that a judge has retired or has otherwise

---

[15] The respondent was appointed as Presiding Judge of Branch 49 of the RTC of Iloilo City on December 17, 2003; and as Presiding Judge of the RTC, Branch 61, Makati City on July 1, 2009.

[16] *Rollo,* p. 348.

[17] *Id.* at 350.

[18] See Articles 30-33 and 40-45, Revised Penal Code, as amended.

[19] http://oca.judiciary.gov.ph/wp, visited on April 27, 2015. The records also disclosed that the respondent filed an application for leave on the following dates: May 6-10, 14-17, 20-24, 27-31, 2013; June 3-7, 10-11, 13-14, 17-21, 24-28, 2013; July 1-5; 8-12, 15-19, 22-31, 2013; August 1-2, 5-8, 12-16, 19-20, 22-23, 27-30, 2013; September 2-6, 9-13, 16-20, 23-27, and 30, 2013; October 2-4, 7-11, 14-18,21-25, and 28-31, 2013; November 4-8, 11-15, 18-20, 25-29, 2013; and December 2-6, 9-13, 16-20, 23, 26-27, 2013.

been separated from the service does not necessarily divest the Court of its jurisdiction to rule on complaints filed while he was still in the service. As we held in *Gallos v. Cordero:*[20]

> The jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent had ceased in office during the pendency of his case. The Court retains jurisdiction either to pronounce the respondent public official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications x x x If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

Nor does separation from office render a pending administrative charge moot and academic.[21]

II. Administrative Liability

In the present case, our task is not to determine the correctness of the Sandiganbayan's ruling in Criminal Case Nos. 27467-68, a case that is separately pending before us and which we shall consider under the evidentiary rules and procedures of our criminal laws.

In the present proceedings, our function is limited to the determination of whether substantial evidence exists to hold the respondent administratively liable for acts he is alleged to have committed while he was still the mayor of Dapitan City.

In this determination, it is immaterial that the respondent was not yet a member of the Judiciary when he allegedly committed the acts imputed to him; judges may be disciplined

---

[20] See *Gallo v. Cordero,* A.M. No. MTJ-95-1035, June 21, 1995, 245 SCRA 219, 226, citing *Zarate v. Romanillos,* 312 Phil. 679 (1995).

[21] See *Concerned Trial Lawyers of Manila v. Veneracion,* A.M. No. RTJ-05-1920 (Formerly OCA I.P.I. No. 01-1141-RTJ), April 26, 2006, 488 SCRA 285, 298-299, citing *Office of the Court Administrator v. Fernandez,* A.M. No. MTJ-03-1511, August 20, 2004, 437 SCRA 81.

for acts committed **prior** to their appointment to the judiciary. Our Rules itself recognizes this situation, as it provides for the immediate forwarding to the Supreme Court for disposition and adjudication of charges against *justices and judges before the IBP, including those filed prior to their appointment to the judiciary*. It need not be shown that the respondent continued to do the act or acts complained of; it is sufficient that the evidence on record supports the charge/s against the respondent through proof that the respondent committed the imputed act/s violative of the Code of Judicial Conduct and the applicable provisions of the Rules of Court.[22]

In *Office of the Court Administrator v. Judge Sardido,*[23] the Court definitively ruled that:

> The acts or omissions of a judge may well constitute at the same time both a criminal act and an administrative offense. Whether the **criminal case against Judge Hurtado relates to an act committed before or after he became a judge is of no moment**. Neither is it material that an MTC judge will be trying an RTC judge in the criminal case. A criminal case against an attorney or judge is distinct and separate from an administrative case against him. The dismissal of the criminal case does not warrant the dismissal of an administrative case arising from the same set of facts. x x x (emphases supplied)

We reiterate that **only substantial evidence** is required to support our conclusions in administrative proceedings.[24] Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. The standard of substantial is satisfied *when there is reasonable ground to believe* that the respondent is responsible for the misconduct complained of, even if such might not be

---

[22] *Heck v. Judge Santos,* 467 Phil. 798, 818 (2004).

[23] 449 Phil. 619, 628 (2003).

[24] *Re: Allegations Made Under Oath that the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan,* A.M. No. SB-14-21-J (Formerly A.M. No. 13-10-06-SB), September 23, 2014,736 SCRA 120.

overwhelming or even preponderant.[25] That the respondent committed acts constituting malversation or violations of the Anti-Graft and Corrupt Practices Act should be adjudged in the same manner that other acts classified as serious charges under Rule 140 (such as bribery, immorality, gross misconduct, dishonesty, and partisan political activities) should be weighed – through substantial evidence.[26] Expressed from the point of view of criminal law, evidence to support a conviction in a criminal case is not necessary in an administrative proceeding like the present case.

The Sandiganbayan, in considering the respondent's guilt in the criminal case before it, **gave full probative value** to the testimonies of Fatima Ruda (OIC-City Budget Officer), Jose R. Torres (OIC-City Treasurer), Glendora Deloria (City Accountant), and Pepe Nortal (Police Inspector of the Dapitan City Police). These conclusions and approach do not mean that we shall not examine, ***on our own*** in the present proceedings, the evidence on record before us.

For purposes of the original administrative proceeding before us and to fully accord the respondent the due process owed him in these proceedings, we shall examine all the evidence adduced and apply to these pieces of evidence the substantial evidence rule that the present proceedings require. This approach is only proper, as the present proceeding is not an appeal from the Sandiganbayan ruling but is an original one for purposes of establishing or negating the claimed administrative liability on the part of the respondent.

What do the evidence on record show?

Torres testified that when his office received a Request for Obligation Allotment *(ROA)*[27] and a Disbursement Voucher

---

[25] See *Liguid v. Judge Camano,* 435 Phil. 695, 706-707 (2002).

[26] See similar discussions in Separate Concurring Opinion of Justice Arturo D. Brion in *Re: Allegations Made Under Oath that the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan, supra* note 24.

[27] No. 101-1011-05-0204-01.

(DV)[28] on May 16, 2001, for a ₱1 million cash advance payable to Nortal, he immediately sent a letter to the respondent (through the City Budget Officer) informing him that he could not accommodate the request because the CIF appropriation covered the whole of 2001, and that Nortal was not properly bonded.

On the same day, Torres' letter was returned with the respondent's handwritten notation asking him to reconsider his position. Torres eventually signed the ROA after the respondent prevailed upon him to reconsider,[29] although he still noted his objection to the payment of the claim when he received the disbursement voucher from the accounting office, on the belief that the disbursement should only cover two quarters, not the whole year.

In his affidavit, Torres stated that the CIF could not be released without the respondent's approval because this fund was an appropriation under the Office of the City Mayor.

Ruda declared on the witness stand that right after the May 11, 2001 elections, the respondent directed her to release the whole appropriation (totalling ₱1 million) for the CIF. Ruda hesitated to do as told considering that the respondent's term would end on June 30, 2001, while the amount to be released corresponded to the appropriation for the entire 2001. Ruda gave in to the respondent's request after the latter stressed to her that he (respondent) was still the mayor until the end of June 2001.

In her affidavit, Ruda stated that it was not customary for her office to release, in the middle of the year, the whole intelligence fund appropriation for the year.

Deloria testified that when she received a ROA and a DV for a ₱1 million CIF cash advance, she informed the respondent that the amount requested covered the appropriations for the entire 2001. The respondent informed her that the city government

---

[28] No. 101-0105-3888.

[29] Torres signed the ROA, but wrote, *"Provided that Police Inspector Nortal is duly bonded."*

needed the money badly. Ruda reviewed the request and found out that the payee, Nortal, had not yet posted a fidelity bond. The respondent told Ruda that he had already applied for Nortal's bond.

In her affidavit, Deloria stated that it was the first time that her office processed a request for funds intended for the entire year.

Nortal, for his part, narrated that the respondent asked him on May 16, 2001, to withdraw ₱1 million from the CIF on his (respondent's) behalf. Nortal initially refused since he might not be able to liquidate this amount as the respondent had lost in the elections. Instead, Nortal suggested that the Chief of Police be asked to make the withdrawal. The respondent, however, assured Nortal that one of his men would help him liquidate the requested amount. Nortal thus yielded to the respondent's request and proceeded to the City Budget Office to sign the covering ROA and DV.

Nortal added that the respondent's private secretary picked him up at his house on May 30, 2001, informing him that the check of ₱1 million was already at the Treasurer's Office. After securing the check, they proceeded to the Philippine National Bank *(PNB)* in Dipolog City to encash it. Thereafter, they went to the respondent's office where Norta1 handed him the ₱1 million. Nortal asked the respondent for a receipt, but the latter refused to issue one; instead, the respondent gave him ₱50,000.00 to be used in the city's drug operations.

In his affidavit, Nortal stated that the respondent told him that he (respondent) could no longer make any cash advances since he had unliquidated cash advances.

Leonilo Morales, State Auditor of the City Auditor's Office from 1997 to 2000, corroborated Nortal's affidavit when he testified that the respondent had not liquidated his cash advances from the CIF.

Aside from the testimonies of these witnesses and their respective affidavits, the records before the Sandiganbayan are

replete with documentary proof showing that the respondent committed the acts attributed to him. The respondent failed to refute these pieces of evidence before the Sandiganbayan or in the comment he filed with this Court.

The respondent's signature on the following documents showed that he facilitated Nortal's withdrawal of ₱1 million from the CIF: (a) Disbursement Voucher No. 105.0105.3888; (b) Request for Obligation Allotment; and (c) PNB Check No. 0001097358.

The respondent's signature, as approving officer, on Disbursement Voucher No. 105.0105.3888, proved that he authorized the disbursement of a ₱1 million cash advance "to defray Confidential and Intelligence Expenses."[30] The respondent's signature on the ROA also showed that he (and Nolial) requested ₱1 million to be used for confidential expenses. Finally, the respondent's signature on the PNB check established that he allowed Nortal to withdraw the requested amount.

Considering that the CIF was an appropriation under the Mayor's Office, it is unlikely that Nortal would attempt to withdraw the ₱1 million CIF cash advance without the respondent's imprimatur. In other words, Nortal – even if he wanted to – could not have withdrawn any amount from the CIF without the approval and authority of the respondent City Mayor.

That the respondent authorized the withdrawal of the entire CIF for the year 2001 after he lost in his reelection bid (and less than two months before the expiration of his term) is indicative of his bad faith. We note that several of the city's financial officers, no less, made known to him their objections to the request due to its patent irregularity.

Indeed, if the request for cash advance request had been legitimate, there would have been no need for Nortal's intervention in effecting a withdrawal as the respondent was the City Mayor and the CIF was a fund under his office. This reality validates Nortal's claim that the respondent could no longer withdraw

---

[30] *Rollo,* p. 170.

from the CIF because he already had existing unliquidated advances.

Significantly, the records show that the withdrawn amount was never liquidated as shown by the Commission on Audit's schedule of unliquidated cash advances as of January 31, 2013. No evidence also exists showing that the withdrawn fund had been used for its intended purposes, *i.e.,* for confidential or intelligence activities.

Viewed against the positive declarations of the prosecution witnesses, which are supported by the documents on record, the respondent's denial cannot stand. The respondent even failed to substantiate his claim that the charges against him had been politically motivated. Thus, by *substantial evidence,* we consider it fully established that the respondent actively worked for the approval of the ₱1 million cash advance from the CIF; that he facilitated the withdrawal of the ₱1 million by Nortal; and that he received and used this withdrawn amount for his personal benefit.

III. The Appropriate Penalty

Section Il of Rule 140, as amended, states that [i]f the respondent is guilty of a serious charge, *any* of the following sanctions may be imposed: (a) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or-controlled corporations; (b) suspension from office without salary and other benefits for more than three but not exceeding six months; or (c) a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

Considering the nature and extent of the respondent's transgressions, we find the imposition of the supreme administrative penalty of dismissal to be appropriate. The people's confidence in the judicial system is founded not only on the competence and diligence of the members of the bench, but also on their integrity and moral uprightness.[31] We would violate

---

[31] *P/S Insp. Fidel v. Judge Caraos,* 442 Phil. 236, 242 (2002).

this standard and unduly tarnish the image of the Judiciary if we allow the respondent's continued presence in the bench. We would likewise insult the legal profession if we allow him to remain within the ranks of legal professionals.

We emphasize that judges should be the embodiment of competence, integrity, and independence, and their conduct should be above reproach. They must adhere to exacting standards of morality, decency, and probity. **A magistrate is judged, not only by his official acts, but also by his private morality and actions.** Our people can only look up to him as an upright man worthy of judging his fellow citizens' acts if he is both qualified and proficient in law, and equipped with the morality that qualifies him for that higher plane that standing as a judge entails.

In *Conrado Abe Lopez v. Judge Rogelio S. Lucmayon,*[32] we ruled that:

> The Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his sala as a private individual. **There is no dichotomy of morality: a public official is also judged by his private morals**. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. As we have recently explained, a judge's official life cannot simply be detached or separated from his personal existence. (emphasis ours)

The conduct of judges, official or otherwise, must always be beyond reproach and must be free from any suspicion tainting him, his exalted office, and the Judiciary. A conduct, act, or omission repugnant to the standards of public accountability and which tends to diminish the people's faith and confidence in the Judiciary, must invariably be handled with the required resolve through the imposition of the appropriate sanctions

---

[32] A.M. No. MTJ-13-1837 [formerly OCA IPI No. 12-2463-MTJ], September 24, 2014, 736 SCRA 291, citing *Vadana v. Valencia,* 356 Phil. 317, 329-330 (1998).

imposed by law[33] and by the standards and penalties applicable to the legal profession.

Administrative Matter No. 02-9-02-SC (which took effect on October 1, 2002) provides that an administrative case against a judge of a regular court based on grounds which are also grounds for the disciplinary action against members of the Bar, shall be considered as disciplinary proceedings against such judge as a member of the Bar. It also states that **judgment in both respects may be incorporated in one decision or resolution**.

Section 27, Rule 138 of the Rules of Court, on the other hand, provides that a lawyer may be removed or suspended from the practice of law, *among others,* for conviction of a crime involving moral turpitude:

> Sec. 27. Attorneys removed or suspended by the Supreme Court on what grounds. – A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilfull disobedience of any lawful order of a superior court, or for corruptly or willful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

In *Bengco v. Bernardo,*[34] we ruled that it is not sound judicial policy to await the final resolution of a criminal case before a complaint against a lawyer may be acted upon; otherwise, this Court will be rendered helpless to apply the rules on admission to, and continuing membership in the legal profession during

---

[33] See *En Banc's* Resolution in *In Re: Undated Letter Mr. Louis* C. *Biraogo, Petitioner in Biraogo v. Limkaichong,* G.R. No. 179120, A.M. No. 09-2-19, August 11, 2009.

[34] A.C. No. 6368, June 13, 2012, 672 SCRA 8, 19, citing *Yu v. Palaña,* A.C. No. 7747, July 14, 2008, 558 SCRA 21.

the whole period that the criminal case is pending final disposition, when the objectives of the two proceedings are vastly disparate. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare and to save courts of justice from persons unfit to practice law. The attorney is called to answer to the court for his conduct as an officer of the court.

WHEREFORE, premises considered, Judge Joseph Cedrick O. Ruiz is hereby **DISMISSED FROM THE SERVICE** with forfeiture of all benefits, except accrued leave credits, and with prejudice to reemployment in the Government or any of its subdivisions, instrumentalities, or agencies including government-owned and -controlled corporations. As a consequence of this ruling, Judge Ruiz is likewise declared **DISBARRED** and **STRICKEN FROM** the roll of attorneys.

Let a copy of this Decision be (1) attached to the records of Judge Ruiz with the Office of the Bar Confidant of this Court and with the Integrated Bar of the Philippines, and (2) posted at the Supreme Court website for the information of the Bench, the Bar, and the general public.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Brion, del Castillo, Mendoza, Reyes, Perlas-Bernabe, and *Jardeleza, JJ.,* concur.

Velasco, Jr., and *Perez, JJ.,* join the dissenting opinion of *J. Bersamin.*

Leonen, J., see separate concurring opinion.

Bersamin, J., see dissenting opinion.

Peralta, J., no part.

Caguioa, J., on official leave.

CONCURRING OPINION

LEONEN, *J.*:

This court resolves an administrative Complaint filed by the Office of the Court Administrator against respondent Judge Joseph Cedrick O. Ruiz, Presiding Judge of Branch 61 of the Regional Trial Court, Makati City, for violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Law, and for conviction of a crime involving moral turpitude, which are serious charges under Rule 140, Section 8 of the Rules of Court.

Informations for violation of Section 3(e)(l) of Republic Act No. 3019 and malversation of public funds were filed against respondent before the Sandiganbayan.[1] The case was docketed as Criminal Case Nos. 27467-68.

It was alleged that respondent, as then Mayor of Dapitan City, conspired with and facilitated Police Inspector Pepe Nortal's withdrawal of ₱1 million from the Confidential and Intelligence Fund of the Mayor's Office and used it for his own benefit.[2]

On April 29, 2013, the First Division of the Sandiganbayan found respondent guilty beyond reasonable doubt.[3] Respondent moved for reconsideration and new trial; however, the Sandiganbayan denied his Motions in its August 28, 2013 Resolution.[4]

On October 18, 2013, respondent filed before this court a Petition for Review on certiorari assailing his convictions in Criminal Case Nos. 27467-68. This was docketed as G.R. Nos. 209073-74.[5]

---

[1] *Ponencia*, p. 2.

[2] *Id*.

[3] *Id*.

[4] *Id*. at 3.

[5] *Id*. at 4.

Respondent was found administratively liable. Respondent's convictions before the Sandiganbayan constitute serious charges under Rule 140, Section 8(2) and (5) of the Rules of Court:[6]

> The respondent's convictions by the Sandiganbayan for violation of Section 3(e) of R.A. No. 3019 and for malversation of public funds confirm that the administrative charges for which he may be found liable are serious charges under Section 8(2) of Rule 140 of the Rules of Court, as amended. Malversation is likewise considered as a serious charge since it is a crime involving moral turpitude.[7]

In finding respondent administratively liable, the ponencia laid down the pieces of evidence amounting to substantial evidence that respondent committed the acts complained of and is, thus, guilty of serious charges.[8]

I concur with the finding of respondent's administrative liability. Rule 140, Section 11 of the Rules of Court provides the sanctions a judge may suffer if he or she is found guilty of a serious charge:

---

[6] As amended by A.M. No. 0l-8-l0-SC (2001).

SEC. 8. *Serious charges.— Serious* charges include:

1. Bribery, direct or indirect;
2. Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);
3. Gross misconduct constituting violations of the Code of Judicial Conduct;
4. Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;
5. Conviction of a crime involving moral turpitude;
6. Willful failure to pay a just debt;
7. Borrowing money or property from lawyers and litigants in a case pending before the court;
8. Immorality;
9. Gross ignorance of the law or procedure;
10. Partisan political activities; and
11. Alcoholism and/or vicious habits.

[7] *Ponencia*, p. 6.

[8] *Id*. at 12.

SEC. 11. *Sanctions.*— A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations: Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[9]

In *National Bureau of Investigation v. Reyes,*[10] the respondent judge was dismissed from service and disbarred for being guilty of malfeasance through bribery, which is a serious charge under the Rules of Court. In *Office of the Court Administrator v. Indar,*[11] the respondent judge was dismissed for issuing decisions without conducting judicial proceedings. This constituted a serious charge under Rule 140, Section 8 of the Rules of Court.[12]

However, I must clarify that the acts committed by judges or justices prior to their appointment to the judiciary must not be automatically taken to affect their standing or qualification as members of the judiciary.

The ponencia stated that:

In this determination, it is immaterial that the respondent was not yet a member of the Judiciary when he allegedly committed the acts imputed to him; judges may be disciplined for acts committed prior to their appointment to the judiciary. Our Rules itself recognizes this situation, as it provides for the immediate forwarding to the Supreme Court for disposition and adjudication of charges against justices and judges before the IBP, *including those filed prior to their appointment to the judiciary.* It need not be shown

[9] As amended by A.M. No. 01-8-1 0-SC (2001).

[10] 382 Phil. 872 (2000) [*Per Curiam, En Banc*].

[11] 685 Phil. 272 (2012) [*Per Curiam, En Banc*].

[12] This was Judge Cader Indar's third offense.

that the respondent continued to do the act or acts complained of; it is sufficient that the evidence on record supports the charge/s against the respondent through proof that the respondent committed the imputed act/s violative of Code of Judicial Conduct and the applicable provisions of the Rules of Court.[13] (Emphasis supplied)

While it is true that the acts of judges or justices committed prior to appointment to the judiciary may be a basis for disciplinary measures by this court, qualifications as to when a judge or justice may be removed must be made.

There may be situations where a closer review of the facts and corresponding charges or crimes is necessary. For example, the Judicial and Bar Council may have known about an applicant's pending case but chose to regard him or her as qualified. Before an applicant is appointed to the judiciary, he or she is subjected to the rigorous application and nomination procedure by the Judicial and Bar Council.[14] The Rules of the Judicial and Bar Council prescribes the minimum requirements for nominations: constitutional and statutory qualifications; competence, which includes educational preparation, experience, performance, and other accomplishments; integrity; independence; and sound physical, mental, and emotional condition.[15]

In Rule 4, Section 5 of the Rules of the Judicial and Bar Council, persons are disqualified from being nominated for appointment to the judiciary when they have pending criminal or administrative cases before courts:

SEC. 5. *Disqualification.* — The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman or Deputy Ombudsman:

1. Those with pending criminal or regular administrative cases;

---

[13] *Ponencia*, p. 8.

[14] *See* CONST., Art. VIII, Secs. 8 and 9.

[15] *See* JBC - 009, Rules of the Judicial and Bar Council (2000), as amended <http://jbc. judiciary. gov.ph/index.php/jbc-rules-and-regulations/jbc-009>.

2. Those with pending criminal cases in foreign courts or tribunals; and

3. Those who have been convicted in any criminal case; or in an administrative case, where the penalty imposed is at least a fine of more than ₱10,000, unless he has been granted judicial clemency.

By nominating an applicant for appointment, the Judicial and Bar Council gives its imprimatur to the applicant. It deems the applicant to have the "reputation for honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards."[16] If we do not carefully consider the prior acts of judges or justices in relation to their judicial functions and automatically find convictions or pronouncements of guilt as a reflection of the qualifications of the judge or justice, then we disregard the Judicial and Bar Council's nomination process. This disregard is even more apparent when the appointing authority—the President— appoints a nominee from the Judicial and Bar Council's list. To automatically dismiss a judge or justice based on the above grounds undermines the President's appointment.

In another situation, an applicant may not have any pending criminal or administrative charge when he or she applies for a post in the judiciary. After the applicant's appointment to the judiciary, a disgruntled party-litigant decides to look into the judge's past and files criminal charges against him or her. The case may or may not be relevant to the functions of the judge or may not constitute a crime of moral turpitude. However, damage to the judge's perceived integrity and probity has already been made.

The judiciary must find a balance between maintaining the integrity and competence of its judges, justices, and other personnel and protecting its members from harassment that aims to prevent the miscarriage of justice. As this court has said before:

---

[16] JBC - 009, Rules of the Judicial and Bar Council (2000), as amended, Rule 4, Sec. 1 <http://jbc.judiciary.gov.ph/index.php/jbc-rules-and-regulations/jbc-009>.

[I]t is established that any administrative complaint leveled against a judge must always be examined with a discriminating eye, for its consequential effects are, by their nature, highly penal, such that the respondent judge stands to face the sanction of dismissal or disbarment. As aforementioned, the filing of criminal cases against judges may be used as tools to harass them and may in the long run create adverse consequences.[17]

ACCORDINGLY, I vote that respondent Judge Joseph Cedrick O. Ruiz, Presiding Judge of Branch 61 of the Regional Trial Court, Makati City, be **DISMISSED** from the service, with forfeiture of all benefits except accrued leave credits, and with prejudice to re-employment in Government or any of its subdivisions, instrumentalities, or agencies, including government-owned and controlled corporations. Respondent should also be **DISBARRED** and his name be stricken from the Roll of Attorneys.

DISSENTING OPINION

BERSAMIN, *J.*:

The Majority of the Court vote to dismiss the respondent Judge from the Judiciary, and to disbar him as well.

I DISSENT. I humbly submit that this administrative matter may be prematurely adjudicated in the light of the pending appeal by the respondent of his convictions. But if it is unavoidable that we find him guilty on the basis of the convictions, I urge that his dismissal from the service and his disbarment are penalties too heavy and too harsh to mete on him under the circumstance of the case.

---

[17] See *Re: Judge Adoracion Angeles, A.M No. 06-9-545-RTC,* 567 Phil. 189 (2008) [Per *J.* Nachura, Third Division], citing *Emmanuel Ymson Velasco v. Judge Adoracion* G. *Angeles, 557* Phil. 1 (2007) [Per *J.* Carpio, *En Banc*] and *Mataga v. Judge Rosete,* 483 Phil. 235 (2004) [Per *J.* Ynares-Santiago, First Division].

This administrative matter has been brought about by the receipt by the Office of the Court Administrator (OCA) of a copy of the decision rendered on April 29, 2013 in Criminal Case No. 27467 and Criminal Case No. 27468 entitled *People v. Joseph Cedrick O. Ruiz and Police Inspector Pepe Nortal* respectively charging the accused with violation of Section 3(e) of Republic Act No. 3019 and malversation of public funds, whereby the Sandiganbayan found the respondent guilty beyond reasonable doubt of the crimes charged, and sentenced him to suffer the corresponding indeterminate sentences.

In its ensuing report, the OCA recommended to the Court that the respondent, the incumbent Presiding Judge of Branch 61 of the Regional Trial Court in Makati City, be formally charged for being convicted of crimes involving moral turpitude, and that he be forthwith suspended without pay pending the resolution of the administrative matter, unless the suspension would be lifted by the Court.

I wish to point out, however, that the convictions are not yet final, but are in fact undergoing a timely appeal. By pronouncing him guilty in this administrative matter as to dismiss him from the Judiciary and to disbar him as a member of the Bar, the Majority of the Court are likely prejudicing his appeal. In order not to be unjust, I humbly opine that we should exercise self-restraint, and await the outcome of the appeal before deciding this administrative matter.

Although there is a distinction between administrative liability and criminal liability, for the purpose of administrative proceedings is mainly to protect the public service to enforce the constitutional tenet that a public office is a public trust, while the objective of the criminal prosecution is the punishment of the crime, any judgment in this administrative matter effectively removes the distinction considering that the Majority predicate their action against the respondent on the same evidence that will be considered in the appellate review of the convictions. Thus, the very adverse factual findings made in the Majority's opinion will prejudicially influence the review of the convictions against him.

Nonetheless, the harsh outcome, if it is now unavoidable such that we must sanction the respondent, should be mitigated. It will not be unprecedented to do so here, because the Court has refrained from imposing the administrative penalties expressly prescribed by law or regulation in consideration of the presence of mitigating factors, like, among others, the respondent's length of service, his ready acknowledgement of his infractions, his remorse, his family circumstances, his advanced age, and even humanitarian and equitable considerations, and impose the lower or lesser penalty.[1]

I urge the Court to show compassion to the respondent in light of the following mitigating factors in his favor, to wit:

1. He has devoted nearly 30 years of his life in the service of the Government in various capacities as a local appointed and elective public officer, and as a member of the Judiciary;[2]
2. This administrative charge relates to an act done when he was the Mayor of Dapitan City, and had nothing to do with the discharge of his office as Judge of the RTC;
3. He is being administratively sanctioned for the first time in this case. The other administrative complaints previously brought against him, according to the records of the Court, were already either dismissed,[3] or cancelled,[4] or closed and terminated.[5]

---

[1] See, *e.g., Office of the Court Administrator v. Judge Aguilar, Regional Trial Court, Branch 70, Burgos, Pangasinan,* A.M. No. RTJ-07-2087 (Formerly OCA I.P.I. No. 07-2621-RTJ), June 7, 2011.

[2] *Rollo,* pp. 348-349 (his judicial service started on December 17, 2003, upon his appointment as the Presiding Judge of Branch 49 of the RTC in Iloilo City; he was designated on July 1, 2009 as the Presiding Judge of Branch 61 of the RTC in Makati City).

[3] OCA IPI No. 04-2121-RTJ; OCA IPI No.10-3549-RTJ; OCA IPI No. 13-4060-RTJ; OCA IPI No. 09- 3232-RTJ; OCA IPI No.10-3358-RTJ; OCA IPI No. 12-3825-RTJ; OCA IPI No. 09-3169-RTJ; OCA IPI No. 12-3958-RTJ.

[4] OCA IPI No. 14-4247-RTJ.

[5] OCA IPI No. 11-10-193-RTC.

4. His convictions by the Sandiganbayan that furnished the ground for this administrative matter are still under appeal.[6] Without touching on the propriety of the convictions, I submit that the criminal trial included peculiar circumstances of relevance in the determination of the imposable penalty.

Let me focus on the last of the foregoing mitigating factors. I begin by noting that the convictions largely depended on the direct testimony of Police Inspector Pepe E. Nortal, the respondent's co-accused, from which the trial court inferred that the respondent had *actually received* the amount of ₱1,000,000.00 as cash advance sourced from the Confidential Intelligence Fund (CIF) of Dapitan City for 2001. In contrast, the other testimonial and documentary evidence adduced by the Prosecution tended to show only that the respondent had merely *actively facilitated* the processing and withdrawal of the amount. To me, however, Nortal's testimony should not determine the respondent's administrative liability, for how could Nortal be a reliable witness if he was himself charged in conspiracy with the respondent with having committed the crimes charged.

A co-accused like Nortal— a co-conspirator at that—is not allowed to testify against another accused in the same case unless he is first discharged as a state witness. The discharge is necessary to avoid the self-incrimination of the witness. The process of discharge is delineated in Section 17, Rule 119 of the *Rules of Court, viz.*:

Section 17. *Discharge of accused to be state witness.*—When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

---

[6] Docketed as G.R. Nos. 209073-74.

(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

(b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

(c) The testimony of said accused can be substantially corroborated in its material points;

(d) Said accused does not appear to be the most guilty; and

(e) Said accused has notl at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence.

The rule requires the discharged witness not to appear to be the *most guilty,* a requirement that has been accorded the following understanding in *Jimenez, Jr. v. People,*[7] *viz.*:

By jurisprudence, "most guilty" refers to the highest degree of culpability in terms of participation in the commission of the offense and does not necessarily mean the severity of the penalty imposed. While all the accused may be given the same penalty by reason of conspiracy, yet one may be considered to have lesser or the least guilt taking into account his degree of participation in the commission of the offense.

Before Nortal's testimony is appreciated against the respondent, there ought to be the showing that the proper procedure for his discharge was followed. If the April 29, 2013 decision of the Sandiganbayan did not indicate why Nortal was not himself tried for any criminal liability for the crimes charged against him and the respondent, then the Court, in this administrative matter, should at the very least first satisfy itself that Nortal did not appear to be the *more* guilty between himself and the respondent. Otherwise, we would have incriminating testimony

---

[7] G.R. Nos. 209195 & 209215, September 17, 2014.

that is tainted by the witness' desire to save himself and lay the blame on the respondent.

Moreover, the person liable in malversation is the public officer who, by reason of the duties of his office, is accountable for public funds or property, and appropriates the same.[8] Here, that public official was Nortal, not the respondent, because the three documents relevant to the transaction — specifically, Disbursement Voucher No. 105.0105.3888,[9] Check No. 1097358,[10] and the Special Ledger[11] — all indicated that the cash advance of ₱1,000,000.00 was payable to Nortal. Under the pertinent laws — specifically, Section 101 of Presidential Decree No. 1445 *(The State Audit Code of the Philippines)* and Section 5 of Commission on Audit (COA) Circular No. 97-002 — Nortal should liquidate the cash advance. The respondent, being only the approving authority for the release of the CIF, was liable only to explain his participation, which he was not made to do.

Nortal's ineligibility for the discharge to be a witness against the respondent due to his being the person directly accountable for the ₱1,000,000.00 cash advance was validated when the Ombudsman dismissed him from the service for grave misconduct.[12] The Ombudsman concluded in its resolution dated April 20, 2007 as follows:

> x x x **Pepe E. Nortal**, [he] admitted all the material allegations against him but interposed the defense of coercion and tremendous pressure from then Mayor Ruiz, which forced him to commit the unlawful act complained of even against his will.
>
> His defense is untenable, outright unbelievable and not supported with any credible evidence. **Other than the self-serving claim of respondent Nortal, there is nothing on record to show that he**

---

[8] Article 217, *Revised Penal Code.*

[9] *Rollo,* p. 161.

[10] *Id*. at 164.

[11] *Id*. at 197.

[12] *Id*. at 209.

was coerced or intimidated into committing the wrongful act of withdrawing the amount of ₱1 Million from the CIF of the Office of the Mayor for the FY 2001. In fact, the wrongful act did not end with the simple withdrawal of the said amount because, as admitted by Nortal himself, he also benefited from the proceeds thereof when he received an aggregate amount of ₱55,000.00 as his share, and which amount remained unliquidated up to the present time. Having benefited therefrom, he cannot now profess innocence to escape liability as he knew all along about the highly questionable nature of the said transaction. By all indications, and knowing fully well that a new local chief executive was about to succeed, he, together with the outgoing Mayor, devised a plan to withdraw the entire CIF for the year 2001, appropriating the same for their own private interests and, consequently, depriving the city government of the said funds. It was, therefore, a deliberate act on their part to defraud the city government of its appropriated funds, which is a patent indicia of bad faith and deceit. As such, there can be no doubt that respondent Nortal committed a misconduct of a grave nature, which is a·clear deviation from the established norms of conduct required of a public servant.[13] (bold underscoring supplied for emphasis)

What should be the mitigated liability of the respondent?

The Court is sanctioning him now as an incumbent Judge of the RTC. Under Section 11, Rule 140 of the *Rules of Court,* a judge found guilty of a serious charge may be subjected to any of the following penalties:

Section 11. *Sanctions.* A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations: *Provided,* however, that the forfeiture of benefits shall in no case include accrued leave credits;

---

[13] *Id*. at 208.

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

Dismissal from the service should not be imposed because of the mitigating factors I have noted. The next penalty is suspension, but in the light of the respondent's manifestation of his intention to exercise his option for early retirement pursuant to Section 1 of Republic Act No. 910, as amended by Republic Act No. 9946,[14] he could no longer be suspended. Thus, I recommend that he be fined in the amount of ₱40,000.00, which is the next lower penalty.

Lastly, I consider the disbarment of the respondent unfounded. The act complained against was done by him when he was the Mayor of Dapitan City, and did not involve his professional or ethical conduct as an attorney. Hence, disbarring him is unfair, because such penalty becomes proper only when the attorney commits any misconduct of a very serious or gross nature in connection to the discharge of his professional responsibilities. I also urge that at the very least we should first hear him fully on the matter.

ACCORDINGLY, I vote to punish respondent **Judge JOSEPH CEDRICK O. RUIZ** with the maximum fine of ₱40,000.00, conformably with Section 11, 3, Rule 140 of the *Rules of Court;* and to lift the sanction of his disbarment.

---

[14] *Id*. at 348.

SECOND DIVISION

[A.C. No. 8667. February 3, 2016]

INOCENCIO I. BALISTOY, *petitioner, vs.* **ATTY. FLORENCIO A. BRON,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT AND SUSPENSION; IN DISBARMENT PROCEEDINGS, THE BURDEN OF PROOF RESTS UPON THE COMPLAINANT, AND FOR THE COURT TO EXERCISE ITS DISCIPLINARY POWERS, THE CASE AGAINST THE RESPONDENT MUST BE ESTABLISHED BY CLEAR, CONVINCING AND SATISFACTORY PROOF. — We concur with the conclusion of Comm. Cachapero and the OBC that the presentation of the Wee brothers' "tampered" CTCs for the pleadings in the civil case, and Paul's medical certificates in compliance with a court order, do not warrant Atty. Bron's disbarment. There is nothing in the records that clearly indicates that Atty. Bron had knowledge of his clients' fraudulent and deceitful acts with respect to their CTCs, or having known of their defects, he had done nothing to correct their invalidity. The same observation applies to the submission of Paul's medical certificates to the RTC. xxx. [B]alistoy failed to discharge the burden of proof in his bid to disbar Atty. Bron. In *Siao Aba, et al. v. Atty. Salvador De Guzman, Jr., et al.,* the Court stressed that *"In disbarment proceedings, the burden of proof rests upon the complainant, and for the Court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof."* There is no such proof in this case.

2. ID.; ID.; ID.; ID.; THE LAWYER'S GUILT CANNOT BE PRESUMED, AS ALLEGATION IS NEVER EQUIVALENT TO PROOF, AND A BARE CHARGE CANNOT BE EQUATED WITH LIABILITY.— [I]n *Ricardo Manubay* v. *Atty. Gina C. Garcia,* the Court held: *"A lawyer may be disbarred or suspended for any misconduct showing any fault or deficiency in moral character, probity or good demeanor. The lawyer's guilt, however, cannot be presumed. Allegation is never equivalent to proof, and a bare charge cannot be*

equated with liability." Again, Balistoy failed to provide clear and convincing evidentiary support to his allegations against Atty. Bron.

3. ID.; ID.; ID.; AS A MEMBER OF THE BAR AND A NOTARY PUBLIC, A LAWYER SHOULD EXERCISE CAUTION AND RESOURCEFULNESS IN NOTARIZING THE JURAT IN THE PLEADINGS HE FILED IN THE CIVIL CASE BY SEEING TO IT THAT THE COMMUNITY TAX CERTIFICATES (CTCs) PRESENTED TO HIM ARE IN ORDER IN ALL RESPECTS. — [W]e find it necessary to impress upon Atty. Bron that as a member of the Bar and a notary public, he could have exercised caution and resourcefulness in notarizing the *jurat* in the pleadings he filed in the civil case by seeing to it that the CTCs presented to him were in order in all respects. That he failed to do so betrays carelessness in his performance of the notarial act and his duty as a lawyer. For this, he should be reprimanded.

D E C I S I O N

BRION, *J.*:

We resolve the present petition for review on *certiorari,*[1] to nullify the May 10, 2013 resolution[2] of the Board of Governors (*BOG*) of the Integrated Bar of the Philippines (*IBP*) dismissing the *complaint-affidavit for disbarment*[3] filed before the Office of the Bar Confidant (*OBC*) by the complainant Inocencio I. Balistoy (*Balistoy*) against the respondent Atty. Florencio A. Bron (*Atty. Bron*).

The Facts

Balistoy was the plaintiff in Civil Case No. 03-105743 (*civil case*), entitled *Inocencio I. Balistoy v. Paul L. Wee and Peter L. Wee*, for damages, pending with the Regional Trial Court

---

[1] *Rollo*, pp. 250-254; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id*. at 303; Notice of Resolution signed by IBP National Secretary Nasser A. Marohomsalic.

[3] *Id.* at 2-4.

(*RTC*), Branch 30, Manila. Atty. Bron was the counsel for the defendants, the Wee brothers.

On March 5, 2003, Atty. Bron filed a *Motion to Dismiss and Motion for Issuance of Order to Show Cause with Counterclaim*[4] in the case. Paul and Peter executed the verification and certification of non-forum shopping for the motion, exhibiting Community Tax Certificate (*CTC*) No. 12249877,[5] issued on January 9, 2003 in Quezon City, for Paul, and CTC No. 1385810, issued on January 29, 2003,[6] in Manila, for Peter. On January 20, 2004, Atty. Bron filed an Answer[7] for the defendants who exhibited CTC No. 12249877[8] for Paul and CTC No. 12249883 for Peter,[9] both CTCs issued on January 9, 2003, in Manila.

Meantime, Balistoy discovered that the CTCs exhibited by Paul and Peter had already expired and that the CTC Paul used for the answer had the same number as the CTC he showed for the motion to dismiss, but the place of issue was changed from Manila to Quezon City.

Balistoy went to the Office of the Treasurer of the City of Manila and the Bureau of Internal Revenue in Quezon City to verify the discrepancies in the CTCs of Paul and Peter. Manila Treasurer Liberty M. Toledo issued a certification[10] stating that CTC No. 12249877 "was not among those allotted by the BIR to the City of Manila in the year 2003." On the other hand, Eloisa C. Tamina, the Chief of the Accountable Forms Division of the BIR, Quezon City, certified[11] that the CTCs bearing serial numbers **CC12003**12249877 to **CC12003**12249883, and

---

[4] *Id*. at 5-12.

[5] *Id*. at 12.

[6] *Id*.

[7] *Id*. at 15-27.

[8] *Id*. at 27.

[9] *Id*.

[10] *Id*. at 30; dated February 3, 2006.

[11] *Id*. at 31; Certification dated February 8, 2006.

CC1200212249877 to **CC12002**12249883 were issued to the Municipal Treasurer of Taguig, Metro Manila, on September 26, 2003, and to the Provincial Treasurer of Pampanga, on October 2, 2002, respectively.

Regarding the civil case, Balistoy learned that Atty. Bron and his clients failed to appear at the hearing on September 6, 2006. This prompted Judge Lucia P. Purugganan of the RTC, Branch 30, to issue an order[12] on the same day, declaring the defendants were deemed to have waived their right to present evidence, and that the case was considered submitted for decision. According to the order, when the case was called for the reception of evidence on September 6, 2006, Atty. Bron appeared in the morning of that day and manifested before the clerk of court that one of the defendants' nephews suffered injuries in a vehicular accident,[13] thus, the reason for their failure to attend the hearing.

The defendants moved for reconsideration[14] of the order. This time, Balistoy faulted Atty. Bron for his "inconsistent allegations" in the motion. He alluded to Atty. Bron's claim that at 9:00 o'clock in the morning of September 6, 2006, Paul told him by phone that he suffered knee injuries in a vehicular accident and had to be lifted to a clinic along Aurora Blvd., in Quezon City for medical attention.[15] Atty. Bron attached to the motion the medical certificate (unsigned)[16] dated November 27, 2006, of a Dr. Joy M.Villano who attended to Paul.

On June 20, 2007, Atty. Bron moved for a resetting of the hearing[17] on the ground that Paul, who was scheduled to testify on that day and who had just arrived from Malaysia with a fever, was placed under quarantine. Judge Purugganan granted

---

[12] *Id*. at 38.

[13] *Id*. par. 1.

[14] *Id*. at 32-35.

[15] *Id*. at 32; Motion for Reconsideration, p. 1, last paragraph.

[16] *Id*. at 32.

[17] *Id.* at 39, Order dated June 20, 2007, RTC , Br. 30, p. 1, par. 1l.

the motion[18] subject to the submission of proof that Paul had indeed been quarantined on June 20, 2007. In compliance, Atty. Bron submitted a medical certificate[19] dated June 18, 2007, stating that Paul had a fever and was under the care of a Dr. Pierette Y. Kaw.

Balistoy also verified the authenticity of the medical certificate and discovered that it did not come from the NAIA; and that the NAIA arrival logbook showed that Paul was not registered as a passenger coming from Malaysia on June 18, 2007.[20]

Armed with his discoveries, Balistoy filed the present complaint.

Atty. Bron's Position

In a comment[21] dated October 9, 2010, as required by the Court,[22] Atty. Bron prayed for a dismissal of the complaint as it was filed, he claimed, in retaliation for his diligent discharge of his duties as counsel for the Wee brothers. He offered the following arguments:

1. ***The notarial act of January 21, 2004***

Atty. Bron knows Paul and Peter Wee so well such that he could have notarized the *jurat* in the verification of the pleadings he filed in their defense with or without their community tax certificates (*CTCs*). To prove his point, he claimed that his law office assigned the Wee brothers to him as clients, but aside from that, they had engaged him (in 2001 and 2002) in their individual businesses as labor and business law consultant.

On Balistoy's claim that the CTCs exhibited by Paul and Peter were falsified, Atty. Bron maintained that he did not "procure" the subject CTCs, nor had he the opportunity, at the

---

[18] *Id*.

[19] *Id*. at 41.

[20] *Id.* at 305.

[21] *Rollo*, pp. 55-62.

[22] Resolution dated August 16, 2010; *rollo*, p. 47.

time of the execution of the notarial act, to verify whether the CTCs were duly issued by the proper authorities. Moreover, he added, Balistoy had already filed a criminal complaint regarding the disputed CTCs.

2. ***The Motion for Reconsideration***

Atty. Bron moved to reconsider the RTC's September 6, 2006 order to clarify why he asked for a resetting of the hearing. His failure to present evidence on that day was due to lack of witnesses and not because he was unprepared for the hearing. He claimed he was at the court premises as early as 10:00 o'clock in the morning of that day waiting for Paul to testify, but the latter figured in an accident on his way to the court; the other witness, a Ms. Concepcion Ramos, was not also available as she was not aware that she would be presented on that day. Likewise, he did not "procure" Paul's accident or his medical certificate.

3. ***The June 20, 2007 resetting***

The same predicament, Atty. Bron stressed, may be said of the June 20, 2007 incident—he was present in court, while his witness (Paul) was not available. Paul's executive secretary, a Ms. Jacqueline Francisco, informed him that Paul had just arrived from Malaysia and was advised to go on self- quarantine. Again, he said he did not "procure" the medical certificate Paul presented to the court and had no opportunity to verify its authenticity. Neither did he manifest before the court that the NAIA issued a medical certificate to Paul or that the court ordered him (Atty. Bron) to secure a medical certificate from the NAIA.

4. ***Respondent in good faith***

In conclusion, Atty. Bron stressed that in performing the notarial act for his clients, or moving for reconsideration of the September 6, 2006 RTC order and asking for the postponement of the June 20, 2007 hearing, he had acted in good faith and without the slightest intention to cause prejudice to Balistoy.

Referral to the Integrated Bar of the Philippines

In a resolution[23] dated January 13, 2011, the Court referred the complaint to the IBP for investigation, report, and recommendation. The IBP's Commission on Bar Discipline assigned the case to Commissioner Oliver A. Cachapero.

Comm. Cachapero required the parties to submit position papers on the case. In his submission,[24] Balistoy reiterated the allegations in his complaint-affidavit. He insisted that Atty. Bron committed deceit, gross misconduct, malpractice, and clear violations of the law and the rules on notarial practice.

For his part,[25] Atty. Bron again asked for a dismissal of the complaint on grounds that (1) his performance of notarial functions in 2003 and January 2004 is not a violation of the notarial rule which took effect on August 1, 2004;[26] and (2) the complaint has no basis, it being just a manifestation of Balistoy's obsession to get even with those who, he believed, did him wrong like the Wee brothers who, allegedly, were responsible for his loss of livelihood, and their lawyer, who ruined his life.

Atty. Bron argued that even if the notarization of a document presented by parties whose CTCs had expired is an offense punishable by the rules, he cannot be penalized for his performance of notarial acts before the effectivity of the rules in August 2004.

Even on the assumption that the notarial rules can be given retroactive effect, Atty. Bron argued, he cannot be made liable for violating the rules; neither is he guilty of gross misconduct in handling the civil case against the Wee brothers. Regarding the CTC issue, Atty. Bron clarified that it was not he, but the secretary in his law office, who indicated the particulars of the

---

[23] *Rollo*, p. 77.

[24] *Id.* at 98-100.

[25] *Id*. at 104-120; Position Paper dated September 9, 2011.

[26] A.M. No. 02-8-13-SC.

subject CTCs in the verification and certification attached to the motion to dismiss the civil case.

On the other hand, in the preparation of the answer which he himself encoded, he asked for the presentation of the current CTCs of the Wee brothers, but no new CTCs were produced; he was thus compelled to accept their old CTCs as he was pressed for time for the filing of the pleading. In any case, he stressed, the CTCs were merely exhibited to him and he had no hand in securing them.

In regard to his alleged misrepresentations in relation to the non-appearance of the defendants at the hearings of the civil case, Atty. Bron maintained that in the two instances when the hearing was postponed, Paul Wee gave him medical certificates which he had no hand in obtaining and the physicians who issued the certificates were not known to him. At any rate, he explained, the reconsideration of the RTC's September 6, 2006 order was addressed to the sound discretion of the court.

The IBP Action

In his report and recommendation[27] dated September 26, 2011, Comm. Cachapero recommended that the complaint be dismissed for lack of merit.

While he was convinced that Paul Lee or someone acting in his behalf "rigged" his CTC No. 12249877, particularly the actual place where it was issued, Comm. Cachapero found Balistoy to have failed to adduce evidence that Atty. Bron was aware of his client's fraudulent, deceitful or dishonest act. He also failed to present proof that Atty. Bron had discovered the same fraud or deception and failed to rectify it by advising his client, or if his client refuses, by doing something such as informing the injured person or his counsel so that they may take appropriate steps.[28]

---

[27] *Id*. at 304-307.

[28] Canon 41, Canons of Professional Ethics.

The same is true with respect to the submission of two medical certificates to the RTC which Balistoy described were falsified. Comm. Cachapero found no clear and convincing proof of Atty. Bron's participation in the supposed falsification.

On May 10, 2013, the IBP Board of Governors (*BOG*) passed Resolution N. XX-2013-565[29] adopting and approving Comm. Cachapero's recommendation and dismissing the complaint.

The Petition

Undaunted, Balistoy now asks the Court to set aside the IBP resolution, contending that the IBP BOG erred when it declared that there is no substantial evidence to make Atty. Bron liable for violation of the rules on notarization and for gross misconduct in the practice of law.

Balistoy insists that Atty. Bron prepared, notarized, and filed a motion to dismiss and an answer to the civil case, knowing that the CTCs his clients showed him were fraudulent, thereby consenting to a wrongdoing. Further, Atty. Bron submitted a falsified medical certificate for his client Paul Wee who was supposedly quarantined upon arrival from Malaysia, in compliance with a court order for him to present proof that Paul could not attend the hearing on June 20, 2007.

Balistoy submits that the documentary evidence he presented in relation to Atty. Bron's "wrongdoings" is sufficient proof of the charges against him.

Atty. Bron's Comment

In a comment[30] dated May 14, 2014, Atty. Bron prays that the petition be dismissed for Balistoy's failure to move for reconsideration of the IBP BOG's resolution dismissing his complaint. He submits that such a failure resulted in the IBP BOG resolution attaining finality.

---

[29] *Id*. at 303; Notice of Resolution signed by IBP National Secretary Nasser A. Marohomsalic.

[30] *Id*. at 311-315.

In support of his position, Atty. Bron cites the concurring opinion[31] in *Oca v. Atty. Daniel B. Liangco*,[32] which in turn cited the Court's June 17 Resolution in B.M. No. 1755 where the Court emphasized the application of Section 12, Rule 139-B of the Rules of Court, thus: *In case a decision is rendered by the BOG [Board of Governors] that exonerates the respondent or imposes a sanction less than suspension or disbarment, the aggrieved party can file a motion for reconsideration within the 15-day period from notice. If the motion is denied, said party can file a petition for review under Rule 45 of the Rules of Court with this Court within fifteen (15) days from notice of the resolution resolving the motion. If no motion for reconsideration is filed, the decision shall become final and executory and a copy of said decision shall be furnished this Court.*

Referral of the Case to the Office of the Bar Confidant (*OBC)*

On July 28, 2014, the Court referred[33] the case to the OBC for evaluation, report and recommendation. On April 28, 2015, the OBC submitted its report,[34] recommending that the disbarment case be dismissed for "insufficient evidence proving Respondent's participation in the fraudulent or deceitful acts."[35]

The OBC stressed that while Balistoy's discoveries are enough to cast doubt on the validity of the CTC's, they are not conclusive to warrant Atty. Bron's disbarment as Balistoy failed to clearly prove that Atty. Bron was aware of his clients' fraudulent acts at the time he notarized the documents or that he did not take steps to correct the situation.

---

[31] Penned by Justice Presbitero J. Velasco, Jr.

[32] A.C. No. 5355, December 13, 2011, 662 SCRA 103, 124,125,

[33] *Rollo*, p. 318; Resolution dated July 28, 2014.

[34] *Id*. at 319-321.

[35] *Id*. at 321; OBC recommendation.

The Court's Ruling

The petition is without merit.

The IBP BOG committed no reversible error in dismissing the complaint for disbarment against Atty. Bron. As the IBP's Comm. Cachapero and the OBC aptly concluded, Balistoy failed to sufficiently prove that Atty. Bron was aware of his clients' fraudulent and deceitful acts in relation to the presentation of their CTCs, particularly Paul Wee, and the submission of the medical certificates to the RTC, again, with respect to Paul.

Like Comm. Cachapero, the OBC noted that based on the records, Paul's CTC (No. 12249877) might have been tampered with, specifically in regard to the place of its issuance. It stressed that the two CTCs with identical numbers had been issued by the BIR to both the treasurers of Manila and Quezon City, and both certificates were issued to him in Manila and in Quezon City. The OBC considered "this scenario highly improbable" as the assignment of CTC numbers is sequential, which means that no set of numbers is repeated or assigned twice; moreover, the certificates that were supposedly issued to the Wee brothers were discovered to have been issued by the BIR to the treasurer of Taguig, and not to the treasurer of Manila or Quezon City.

We concur with the conclusion of Comm. Cachapero and the OBC that the presentation of the Wee brothers' "tampered" CTCs for the pleadings in the civil case, and Paul's medical certificates in compliance with a court order, do not warrant Atty. Bron's disbarment. There is nothing in the records that clearly indicates that Atty. Bron had knowledge of his clients' fraudulent and deceitful acts with respect to their CTCs, or having known of their defects, he had done nothing to correct their invalidity. The same observation applies to the submission of Paul's medical certificates to the RTC.

Under the circumstances, we find no evidence that Atty. Bron had a hand in the falsification of the Wee Brothers' CTCs or Paul's medical certificates, although we have reservations over his claim that he did not have the opportunity to determine their genuineness. In any event, as the lawyer maintained, his

notarization of the motion to dismiss and the answer in the civil case did not give merit to the Wee brothers' defense nor did it weaken Balistoy's case.[36] Neither did the submission of Paul's medical certificates constitute a gross misconduct in the practice of law by Atty. Bron as the evidence do not show that he was the one who "procured" the medical certificates or caused Paul's getting sick in Malaysia. In sum, Balistoy failed to discharge the burden of proof in his bid to disbar Atty. Bron.

In *Siao Aba, et al. v. Atty. Salvador De Guzman, Jr., et al.,*[37] the Court stressed that *"In disbarment proceedings, the burden of proof rests upon the complainant, and for the Court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof.*" There is no such proof in this case.

Further, In *Ricardo Manubay v. Atty. Gina C. Garcia*,[38] the Court held: "*A lawyer may be disbarred or suspended for any misconduct showing any fault or deficiency in moral character, probity or good demeanor. The lawyer's guilt, however, cannot be presumed. Allegation is never equivalent to proof, and a bare charge cannot be equated with liability*." Again, Balistoy failed to provide clear and convincing evidentiary support to his allegations against Atty. Bron.

The foregoing notwithstanding, we find it necessary to impress upon Atty. Bron that as a member of the Bar and a notary public, he could have exercised caution and resourcefulness in notarizing the *jurat* in the pleadings he filed in the civil case by seeing to it that the CTCs presented to him were in order in all respects. That he failed to do so betrays carelessness in his performance of the notarial act and his duty as a lawyer.[39] For this, he should be reprimanded.

---

[36] *Id*. (page between 13 & 15); Atty. Bron's Position Paper, p. 12.

[37] A.C. No. 7649, December 14, 2011, 662 SCRA 361.

[38] A.C. No. 4700, April 21, 2000.

[39] *Ramirez v. Ner,* A.C. 500*,* September 27, 1967, 21 SCRA 267.

In the light of the above discussion, we find no need to discuss the question of procedure raised by Atty. Bron.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. The complaint for *disbarment* against Atty. Florencio C. Bron is **DISMISSED**. Atty. Bron, however, is **REPRIMANDED** for his lack of due care in notarizing the motion to dismiss and the answer in Civil Case No. 03-105743.

SO ORDERED.

Carpio (*Chairperson*), *del Castillo,* and *Mendoza, JJ.,* concur.

Leonen, J., on leave.

SECOND DIVISION

[A.M. OCA IPI No. 09-3210-RTJ. February 3, 2016]

JUVY P. CIOCON-REER, ANGELINA P. CIOCON, MARIVIT P. CIOCON-HERNANDEZ, and REMBERTO C. KARAAN, SR., *complainants, vs.* **JUDGE ANTONIO C. LUBAO, Regional Trial Court, Branch 22, General Santos City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; A PERSON ASSUMING TO BE AN ATTORNEY OR AN OFFICER OF A COURT, AND ACTING AS SUCH WITHOUT AUTHORITY IS LIABLE FOR INDIRECT CONTEMPT OF COURT; PENALTY.— The Court ruled that under Section 3(e), Rule 71 of the 1997 Rules of Civil Procedure, a person "[a]ssuming to be an attorney or an officer of a court, and acting as such without authority," is liable for

indirect contempt of court. The penalty for indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank is a fine not exceeding ₱30,000 or imprisonment not exceeding six months, or both. The penalty for indirect contempt committed against a lower court is a fine not exceeding ₱5,000 or imprisonment not exceeding one month, or both.

2. ID.; ID.; ID.; A COURT RESOLUTION IS NOT TO BE CONSTRUED AS A MERE REQUEST FROM THE COURT AND IT SHOULD NOT BE COMPLIED WITH PARTIALLY, INADEQUATELY, OR SELECTIVELY; VIOLATION IN CASE AT BAR.— The Court's Resolution is not to be construed as a mere request from the Court and it should not be complied with partially, inadequately, or selectively. The Court will not tolerate Karaan's temerity and disrespect to the Court and its processes by not paying the fine imposed on him in the Court's 20 June 2012 Resolution. However, while the OCA recommended that Karaan be sentenced to one month imprisonment at the Manila City Jail, the Court is giving Karaan one last chance to comply with the Court's 20 June 2012 Resolution but the Court is increasing the fine imposed on him to ₱15,000. Again, the Court takes into account Karaan's old age. This will be the last time that the Court is giving him such consideration, and the Court with not hesitate to impose more serious sanctions against him should be again defy this Court.

3. ID.; ID.; ID.; SUBJECT TO LIMITATION, THE RIGHT OF A PARTY TO SELF REPRESENTATION IS RECOGNIZED BY THE COURT; APPLICATION IN CASE AT BAR.—As regards the unauthorized practice of law, the Court already noted in its 20 June 2012 Resolution that Karaan had a *modus operandi* of offering free paralegal advice and making the parties execute a special power of attorney that would make him an agent of the litigants that would allow him to file suits, pleadings, and motions with himself as one of the plaintiffs acting on behalf of his "clients." This circumstance does not appear to be present in this case. The report states that in Civil Case No. 2022-99, Karaan is the only plaintiff. He does not appear to be acting on behalf of anyone. Karaan signed the Pre-Trial Brief and the Ex-Parte Ugent Omnibus Motions, Manifestations, Oppositions, and Objections, Among Others, as a plaintiff and on his own behalf.

> In *Santos v. Judge Lacurom*, the Court recognized the party's right to self representation under Section 34, Rule 138 of the Rules of Court. x x x Hence, Karaan was not engaged in the practice of law in filing the pleadings. However, since Karaan is already represented by counsel, the trial court is correct in requiring his counsel to file the pre-trial brief.

R E S O L U T I O N

CARPIO, *J.*:

In its Resolution promulgated on 20 June 2012,[1] the Court found Remberto C. Karaan, Sr. (Karaan)[2] guilty of indirect contempt for unauthorized practice of law. The Court ruled that under Section 3(e), Rule 71 of the 1997 Rules of Civil Procedure, a person "[a]ssuming to be an attorney or an officer of a court, and acting as such without authority," is liable for indirect contempt of court. The penalty for indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank is a fine not exceeding ₱30,000 or imprisonment not exceeding six months, or both. The penalty for indirect contempt committed against a lower court is a fine not exceeding ₱5,000 or imprisonment not exceeding one month, or both.

The Office of the Court Administrator (OCA) recommended that Karaan be cited for indirect contempt and be sentenced to serve an imprisonment of ten days at the Manila City Jail, and to pay a fine of ₱1,000. The Court, however, considered that at that time, Karaan was already 71 years old. Thus, in consideration of his old age and state of health, the Court deemed it proper to remove the penalty of imprisonment and to instead increase the recommended fine to ₱10,000. The dispositive portion of the Resolution reads:

> WHEREFORE, we DENY the motion for reconsideration of the Court's Resolution dated 24 November 2010 dismissing the complaint against Judge Antonio C. Lubao for being judicial in nature. We

---

[1] 688 Phil. 339 (2012).

[2] Referred to in the OCA 's Memorandum as Remberto C. Kara-an, Sr.

find REMBERTO C. KARAAN, SR. GUILTY of indirect contempt under Section 3(e), Rule 71 of the 1997 Rules of Civil Procedure and impose on him a Fine of Ten Thousand Pesos (₱10,000).

Let a copy of this Resolution be furnished all courts of the land for their guidance and information. The courts and court employees are further directed to report to the Office of the Court Administrator any further appearance by Remberto C. Karaan, Sr. before their *sala*.

SO ORDERED.[3]

In a Memorandum, dated 11 August 2015, the OCA referred to the Court the Report dated 9 March 2015 of Executive Judge Ma. Ofelia Contreras-Soriano of the Metropolitan Trial Court (MeTC) of Malabon, Presiding Judge Sheryll Dolendo Tulabing of Branch 56 of Malabon, and Assisting Judge John Voltaire C. Venturina of Branch 55 of Malabon concerning Karaan's continuing unauthorized practice of law. The report reads:

xxx xxx xxx

As far as Malabon MeTC is concerned, there is only one remaining case involving Mr. Kara-an where he is the Plaintiff – Civil Case No. 2022-99, entitled "*Remberto C. Kara-an v. Gabriel Singson, et al.*" In this case, Mr. Kara-an was ordered by Judge Edward Pacis, then Acting Presiding Judge of Branch 55, to secure the services of a counsel *de parte* and if he cannot secure one, the Court referred him either to the Public Attorney's Office, the IBP or the UP Office of the Legal Aid. For a while, Mr. Kara-an seemed to abide by the Court Order as the Public Attorney's Office appeared for the plaintiff. However, on December 5, 2014, Mr. Kara-an filed a pre-trial brief on his own volition and without the assistance of Atty. Mark Anthony Articulo of the Public Attorney's Office even though Atty. Articulo or the Public Attorney's Office remained to be his counsel of record. Judge Sheryl Tulabing, before whom the case was then pending, denied the admission of the pre-trial brief, pursant to OCA Circular No. 69-2012, since the drafting and filing of such pre-trial brief constituted practice of law and Mr. Kara-an being already represented by counsel, has been expressly prohibited from engaging in the unauthorized practice of law. Instead, Judge Tulabing gave Atty.

[3] *Supra* at 346-347.

Articulo a period of twenty (20) days within which to submit plaintiff's pre-trial brief. Atty. Articulo complied and manifested that he was not consulted by the Plaintiff when the latter filed his pre-trial brief. But on February 18, 2015, Mr. Kara-an, again, on his own and without the assistance of Atty. Articulo, filed an "Ex-Parte Urgent Omnibus Motions, Manifestation, Oppositions, and Objections Among Others To: The attached Null and Void Order of the Honorable Presiding Judge Sheryll Dolendo Tulabing dated January 26, 2015 which is apparently Non-Existent in Contemplation of Law per Art. 5, Chapter 1, Civil Code of the Philippines." x x x.

The OCA further informed this Court that Karaan received a copy of the Court's 20 June 2012 Resolution on 28 June 2012 as evidenced by Registry Receipt No. 4581. Karaan ignored the Court's Resolution. In a letter dated 11 May 2015, Atty. Lilian C. Barribal-Co, OCA Chief of Office, Financial Management Office, informed Atty. Wilhelmina D. Geronga (Atty. Geronga), OCA Chief of Office, Legal Office, that the records of their office showed that Karaan did not pay the fine of ₱10,000 imposed by the Court. In a letter dated 22 June 2015, Ms. Araceli C. Bayuga, SC Chief Judicial Staff Officer, Cash Collection and Disbursement Division, FMBO, likewise informed Atty. Geronga that the Official Cashbook showed that Karaan was not among those who made payments for Court fine.

The OCA reported that despite the Court's magnanimity, Karaan disregarded its authority by ignoring its directives contained in the Resolution of 20 June 2012. Karaan not only failed to pay the fine imposed on him but continued to defy the Court by engaging in the unauthorized practice of law. The OCA recommends that:

1. for his repeated unauthorized practice of law, Mr. Remberto C. Kara-an, Sr. be once again cited for Indirect Contempt of Court;

2. Mr. Kara-an, Sr. be sentenced to one (1) month imprisonment at the Manila City Jail and to pay a fine of One thousand Pesos (₱1,000.00) with a Final Warning that a repetition of any of the offenses, or any similar or other offense against the courts, judges, or court employees will merit further and more serious sanctions;

3. Mr. Kara-an, Sr. be ordered to immediately pay the fine of Ten Thousand Pesos (₱10,000.00) imposed on him in the Court's Resolution dated 20 June 2012. Otherwise the appropriate penalty of imprisonment as determined by the Court shall be imposed on him; and

4. Let an Order of Arrest be issued directing the National Bureau of Investigation (NBI) to arrest Mr. Kara-an, Sr. and put him at the Manila City Jail.

The Court's Resolution is not to be construed as a mere request from the Court and it should not be complied with partially, inadequately, or selectively.[4] The Court will not tolerate Karaan's temerity and disrespect to the Court and its processes by not paying the fine imposed on him in the Court's 20 June 2012 Resolution. However, while the OCA recommended that Karaan be sentenced to one month imprisonment at the Manila City Jail, the Court is giving Karaan one last chance to comply with the Court's 20 June 2012 Resolution but the Court is increasing the fine imposed on him to ₱15,000. Again, the Court takes into account Karaan's old age. This will be the last time that the Court is giving him such consideration, and the Court will not hesitate to impose more serious sanctions against him should he again defy this Court.

As regards the unauthorized practice of law, the Court already noted in its 20 June 2012 Resolution that Karaan had a *modus operandi* of offering free paralegal advice and making the parties execute a special power of attorney that would make him an agent of the litigants that would allow him to file suits, pleadings, and motions with himself as one of the plaintiffs acting on behalf of his "clients." This circumstance does not appear to be present in this case. The report states that in Civil Case No. 2022-99, Karaan is the only plaintiff. He does not appear to be acting on behalf of anyone. Karaan signed the Pre-Trial Brief and the Ex-Parte Urgent Omnibus Motions, Manifestations, Oppositions, and Objections, Among Others, as a plaintiff and on his own behalf.

---

[4] *Bumagan-Bansig v. Celera,* A.C. No. 5581, 14 January 2014, 713 SCRA 158.

In *Santos v. Judge Lacurom*,[5] the Court recognized the party's right to self representation under Section 34, Rule 138 of the Rules of Court. The Court ruled:

> The Rules recognize the right of an individual to represent himself in any case in which he is a party. The Rules state that a party may conduct his litigation personally or by aid of an attorney, and that his appearance must be either personal or by a duly authorized member of the Bar. The individual litigant may personally do everything in the progress of the action from commencement to termination of the litigation. A party's representation on his own behalf is not considered to be a practice of law as "one does not practice law by acting for himself, any more than he practices medicine by rendering first aid to himself."
>
> xxx xxx xxx
>
> The Court, however, notes the use of the disjunctive word "or" under the Rules, signifying disassociation and independence of one thing from each of the other things enumerated, to mean that a party must choose between self representation or being represented by a member of the bar. During the course of the proceedings, a party should not be allowed to shift from one form of representation to another. Otherwise, this would lead to confusion, not only for the other party, but for the court as well. If a party, originally represented by counsel, would later decide to represent himself, the prudent course of action is to dispense with the services of counsel and prosecute or defend the case personally.[6]

Hence, Karaan was not engaged in the practice of law in filing the pleadings. However, since Karaan is already represented by counsel, the trial court is correct in requiring his counsel to file the pre-trial brief.

WHEREFORE, we order Remberto C. Karaan, Sr. to pay a Fine of Fifteen Thousand Pesos (₱15,000) and to submit to the Court his compliance within ten days from receipt of this Resolution. We further warn him that a repetition of the same or similar act, as well as his continued defiance of this Court,

---

[5] 531 Phil. 239 (2006).

[6] *Id*. at 249-250.

will be dealt with more severely. We direct the Cash Collection and Disbursement Division, Fiscal Management and Budget Office, Supreme Court and the Financial Management Office, Office of the Court Administrator to report to this Court Karaan's compliance or non-compliance with the Court's Resolution within fifteen days from his receipt thereof.

SO ORDERED.

Brion, del Castillo, and *Mendoza, JJ.,* concur.

Leonen, J., on leave.

THIRD DIVISION

[G.R. No. 180642. February 3, 2016]

NUEVA ECIJA I ELECTRIC COOPERATIVE INCORPORATED (NEECO I), *petitioner, vs.* **ENERGY REGULATORY COMMISSION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL FROM THE QUASI-JUDICIAL AGENCIES TO THE COURT OF APPEALS; THE RIGHT TO APPEAL IS AN ESSENTIAL PART OF OUR JUDICIAL SYSTEM SUCH THAT COURTS SHOULD PROCEED WITH CAUTION SO AS NOT TO DEPRIVE A PARTY OF THE RIGHT TO APPEAL; ELUCIDATED.— It is settled that the right to appeal is a statutory right and one who seeks to avail of it must comply with the statute or rules. Procedural rules on appeal are not to be belittled or simply disregarded precisely because these prescribed procedures exist to ensure an orderly and speedy administration of justice. Under Section 6, Rule 43 of the Rules

of Court, a petition for review should be "accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers." Failure to comply therewith shall be a sufficient ground for the outright dismissal of the petition. However, it is also equally settled that while merely statutory in nature, the right to appeal is an essential part of our judicial system such that courts should proceed with caution so as not to deprive a party of the right to appeal, but rather, ensure that every party-litigant has the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities. The Court has thus pronounced that, before an appeal may be denied due course outright for lack of copies of essential pleadings and portions of the case record, the sufficiency of the documents actua1ly accompanying the petition must be first assessed by the CA to determine whether they sufficiently substantiate the allegations in the petition. If they do, then the petitioner is deemed to have substantially complied with the rules.

2. **ID.; ID.; ID.; THREE GUIDEPOSTS FOR THE COURT OF APPEALS TO OBSERVE IN DETERMINING THE NECESSITY OF ATTACHING THE PLEADINGS AND PORTIONS OF THE RECORDS TO THE PETITION, ENUMERATED.—** In *Galvez v. Court of Appeals,* the Court held: [T]he mere failure to attach copies of the pleadings and other material portions of the record as would support the allegations of the petition for review is not necessarily fatal as to warrant the outright denial of due course. x x x [Tlhe significant determinant of the sufficiency of the attached documents is whether the accompanying documents support the allegations of the petition. x x x The policy generated three guideposts for the CA to observe in determining the necessity of attaching the pleadings and portions of the records to the petition, to wit: *First,* not all pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition.

Second, even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also be found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached. *Third,* a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that the petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.

3. **POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 7832 (ANTI-ELECTRICITY AND ELECTRIC TRANSMISSION LINES/MATERIALS PILFERAGE ACT OF 1994); A MERE ADMINISTRATIVE ISSUANCE OF THE NATIONAL ELECTRIFICATION ADMINISTRATION (NEA) CANNOT PREVAIL AGAINST AND IS DEEMED REPEALED BY THE LEGISLATIVE ENACTMENT IN SEC. 10 OF R.A. NO. 7832; SUSTAINED IN CASE AT BAR.—** In *SURNECO,* the Court held that NEA Memorandum No. 1-A which authorized rural electric cooperatives to use the multiplier scheme as a method to recover system loss was a mere administrative issuance that cannot prevail against and is deemed repealed by the legislative enactment in Section 10 of R.A. No. 7832 imposing caps on the recoverable rate of system loss. The Court also held that Section 10 of R.A. No. 7832 was self-executory and did not require the issuance of enabling set of rules or any action by the ERC. The caps should have therefore been applied as of January 17, 1995 when R.A. No. 7832 took effect.

4. **ID.; ID.; REPUBLIC ACT NO. 9136 (ELECTRIC POWER INDUSTRY REFORM ACT OF 2001/EPIRA LAW); THE ENERGY REGULATORY COMMISSION (ERC) UPON EVALUATING THE TECHNICAL PARAMETERS STATED IN SECTION 43 OF THE EPIRA LAW MAY ACTUALLY ADOPT AND MAINTAIN THE PREVAILING CAPS IN SECTION 10 OF REPUBLIC ACT NO. 7832.—** The Court interpreted [Section 43(f) of the EPIRA Law] in *SURNECO* to mean that the EPIRA Law actually allowed the caps imposed by Section 10 of R.A. No. 7832 to remain until they are replaced by the ERC pursuant to its

delegated authority to prescribe new system loss caps, based on technical parameters such as load density, sales mix, cost of service, delivery voltage, and other technical considerations it may promulgate. The imposable system loss caps are thus within the discretion of the ERC and, until and unless it decrees new caps, those imposed by Section 10 of R.A. No. 7832 shall subsist. From the provision, it can also be deduced that the ERC, upon evaluating the technical parameters stated in Section 43 of EPIRA Law, may actually adopt and maintain the prevailing caps in Section 10 of R.A. No. 7832 if it finds them consistent with its mandate to ensure reasonable rates of electricity.

5. ID.; INHERENT POWERS OF THE STATE; POLICE POWER; THE REGULATION OF RATES IMPOSED BY PUBLIC UTILITIES SUCH AS ELECTRICITY DISTRIBUTORS IS AN EXERCISE OF THE STATE'S POLICE POWER; SUSTAINED.— The regulation of rates imposed by public utilities such as electricity distributors is an exercise of the State's police power. The Court reiterated this tenet in *SURNECO.* x x x As the State agency mandated to regulate and to approve rates imposed by electric cooperatives, the ERC merely exercised its task of protecting the public interest imbued in the rates imposed by NEECO I when it directed the latter to refund its over-recoveries to its consumers. The ERC was ensuring that the PPA mechanism remains a purely cost-recovery mechanism and not a revenue-generating scheme for the electric cooperatives, which are organized under P.D. No. 269 to engage in the distribution of electricity on a **non-profit basis.** x x x The police power of the State to regulate the rates imposed by public utilities is also the same reason why the caps set in R.A. No. 7832 cannot be deemed to have impaired the loan agreement between NEA and the Asian Development Bank imposing a 15% system loss cap and providing a "power cost adjustment clause." All private contracts must yield to the superior and legitimate measures taken by the State to promote public welfare. The police power legislation adopted by the State in R.A. No. 7832 to promote the general welfare of the people must imperatively prevail.

6. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE DUE PROCESS SIMPLY REQUIRES AN OPPORTUNITY TO EXPLAIN ONE'S SIDE OR TO SEEK RECONSIDERATION

OF THE ACTION OR RULING COMPLAINED OF; PRESENT IN CASE AT BAR.— The Court thus emphasized that: Administrative due process simply requires an opportunity to explain one's side or to seek reconsideration of the action or ruling complained of. It means being given the opportunity to be heard before judgment, and for this purpose, a formal trial-type hearing is not even essential. It is enough that the parties are given a fair and reasonable chance to demonstrate their respective positions and to present evidence in support thereof. NEECO I underwent the same administrative procedure and was accorded similar opportunities to present its side and objections. It attended the conferences conducted by the ERC on January 8, 2004 and on November 8, 2005. It was also allowed to file documentary submissions and seek a reconsideration of the ERC Order dated July 27, 2006.

7. ID.; STATUTES; INTERPRETATIVE REGULATIONS; PUBLICATION IN THE OFFICIAL GAZETTE OR THEIR FILING WITH OFFICE OF THE NATIONAL ADMINISTRATIVE REGISTER AT THE U.P. LAW CENTER WAS NOT NECESSARY; RATIONALE; APPLICATION IN CASE AT BAR.— The Court held in *ASTEC* that the ERC Orders dated June 17, 2003 and January 14, 2005 containing the policy guidelines on the treatment of discounts extended by power suppliers did not modify, amend or supplant R.A. No. 7832 and its IRR; they merely interpreted the computation of the cost of purchased power. As such interpretative regulations, their publication in the Official Gazette or their filing with the Office of the National Administrative Register at the U.P. Law Center was not necessary. Procedural due process demands that administrative rules and regulations be published in order to be effective. However, by way of exception, interpretative regulations need not comply with the publication requirement set forth in Section 18, Chapter 5, Book I, and the filing requirement in Sections 3 and 4, Chapter 2, Book VII, of the Administrative Code. Interpretative regulations add nothing to the law and do not affect substantial rights of any person; hence, in this case, they need to be subjected to the procedural due process of publication or filing before electric cooperatives may be ordered to abide by them.

8. REMEDIAL LAW; JUDGMENTS; *STARE DECISIS*; DEFINED.— The principle of *stare decisis* enjoins adherence to the foregoing judicial precedents set forth in *ASTEC* and *SURNECO.* The principle means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. Absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.

APPEARANCES OF COUNSEL

De Chavez Bugayong Concepcion & Sagayo Law Offices for petitioner.

Office of the Solicitor General for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Resolution[2] dated July 11, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 99268 which dismissed the appeal filed by petitioner Nueva Ecija I Electric Cooperative Incorporated (NEECO I) for failure to comply with Sections 5 and 6 of Rule 43 of the Rules of Court.

The Facts

NEECO I is a rural electric cooperative organized and existing by virtue of Presidential Decree (P.D.) No. 269;[3] it is a member

---

[1] *Rollo,* pp. 17-60.

[2] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Edgardo F. Sundiam and Monina Arevalo-Zenarosa concurring; *id*. at 63-64.

[3] *Id*. at 20.

of the Central Luzon Electric Cooperatives Association (CLECA).

NEECO I was among the various rural electric cooperatives directed by the Energy Regulatory Commission (ERC) to refund their over-recoveries arising from the implementation of the Purchased Power Adjustment (PPA) Clause under Republic Act (R.A.) No. 7832 or the Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994.

The petitions of other rural electric cooperatives against the said ERC directives were resolved by the Court *en banc* on September 18, 2002 in *Association of Southern Tagalog Electric Cooperatives, Inc. v. ERC*[4] (hereinafter referred to as *ASTEC),* the background facts[5] of which are the same antecedents that gave rise to the present controversy.

R.A. No. 7832 was enacted on December 8, 1994, imposing a cap on the recoverable rate of system loss that may be charged by rural electric cooperatives to their consumers. Section 10 of the law provides:

> Section 10. *Rationalization of System Losses by Phasing out Pilferage Losses as a Component Thereof.*— There is hereby established a cap on the recoverable rate of system losses as follows:
>
> xxx xxx xxx
>
> (b) For rural electric cooperatives:
>
> (i) Twenty-two percent (22%) at the end of the first year following the effectivity of this Act;
>
> (ii) Twenty percent (20%) at the end of the second year following the effectivity of this Act;
>
> (iii) Eighteen percent (18%) at the end of the third year following the effectivity of this Act;
>
> (iv) Sixteen percent (16%) at the end of the fourth year following the effectivity of this Act; and

[4] G.R. No. 192117, September 18, 2012, 681 SCRA 119.

[5] *Id*. at 124-134.

(v) Fourteen percent (14%) at the end of the fifth year following the effectivity of this Act.

Provided, That the ERB is hereby authorized to determine at the end of the fifth year following the effectivity of this Act, and as often as is necessary, taking into account the viability of rural electric cooperatives and the interest of the consumers, whether the caps herein or theretofore established shall be reduced further which shall, in no case, be lower than nine percent (9%) and accordingly fix the date of the effectivity of the new caps.

xxx xxx xxx

The Implementing Rules and Regulations (IRR) of R.A. No. 7832 required every rural electric cooperative to file with the Energy Regulatory Board (ERB), on or before September 30, 1995, an application for approval of an amended PPA Clause incorporating the cap on the recoverable rate of system loss to be included in its schedule of rates. Section 5, Rule IX of the IRR of R.A. No. 7832 provided for the following guiding formula for the amended PPA Clause:

Section 5. *Automatic Cost Adjustment Formula.—*

xxx xxx xxx

The automatic cost adjustment of every electric cooperative shall be guided by the following formula:

Purchased Power Adjustment Clause

$$(PPA) = \frac{A}{B\ (C+D)} - E$$

Where:

A = Cost of electricity purchased and generated for the previous month

B = Total kWh purchased and generated for the previous month

C = The actual system loss but not to exceed the maximum recoverable rate of system loss in kWh plus actual

company use in kWh but not to exceed 1% of total kWh purchased and generated

D = kWh consumed by subsidized consumers

E = Applicable base cost of power equal to the amount incorporated into their basic rate per kWh

In compliance therewith, various associations of rural electric cooperatives throughout the Philippines filed on behalf of their members applications for approval of amended PPA Clauses.[6]

NEECO I's application for approval was filed in its behalf by CLECA on February 8, 1996 and it was docketed as ERB Case No. 96-37. It was later on consolidated with identical petitions filed by other associations of electric cooperatives in the country.[7]

On February 19, 1997, the ERB issued an Order[8] granting electric cooperatives with provisional authority to use and implement the following PPA formula pursuant to the mandatory provisions of R.A. No. 7832 and its IRR, *viz*:

$$PPA = \frac{A}{B - (C + Cl + D)} - E$$

Where:

A = Cost of Electricity purchased and generated for the previous month less amount recovered from pilferages, if any.

B = Total kWh purchased and generated for the previous month

C = Actual system loss but not to exceed the maximum recoverable rate of system loss in kWh

---

[6] *Id*. at 125-126.

[7] CA *rollo,* p. 21.

[8] *Id*. at 74-91.

C1 = Actual company use in kWh but not to exceed 1% of total kWh purchased and generated

D = kWh consumed by subsidized consumers

E = Applicable base cost of power equal to the amount incorporated into their basic rate per kWh.[9]

The order further directed all electric cooperatives: (1) to submit their monthly implementation of the PPA formula from February 1996 to January 1997 for the ERB's review, verification and confirmation; and (2) thereafter, (from February 1997 and onward), to submit on or before the 20th day of the current month, their implementation of the PPA formula of the previous month for the same purposes.[10]

NEECO I implemented the approved formula in its electric power billings for the period July 1999 to April 2005. For the month of February in 1996, however, NEECO I did not impose PPA charges while for the period March 1996 to June 1999, it used a 'multiplier' scheme.[11]

In the interim or on June 8, 2001,[12] R.A. No. 9136, otherwise known as Electric Power Industry Reform Act of 2001 (EPIRA Law), was enacted creating the ERC which replaced and succeeded the ERB. Consequently, all pending cases before the ERB were transferred to the ERC and the case for NEECO I was re-docketed as ERC Case No. 2001-340.[13]

Upon discerning that the earlier policy issued by ERB anent the PPA formula was silent on whether the calculation of the cost of electricity purchased and generated should be "gross"

---

[9] *Id*. at 81-82.

[10] *Id*. at 82.

[11] *Rollo,* pp. 87-88.

[12] See *Kapisanan ng mga Kawani ng Energy Regulatory Board v. Commissioner Barin,* 553 Phil. 1, 3 (2007). The law took effect on June 26, 2001.

[13] CA *rollo,* p. 21.

or "net" of the discounts, the ERC issued an Order[14] dated June 17, 2003, clarifying as follows:

> Let it be noted that the power cost is said to be at "gross" if the discounts are not passed-on to the end-users whereas it is said to be at "net" if the said discounts are passed-on to the end-users.
>
> To attain uniformity in the implementation of the PPA formulae, the [ERC] has resolved that:
>
> 1. In the confirmation of past PPAs, the power cost shall still be based on "gross"; and
> 2. In the confirmation of future PPAs, the power cost shall be based on "net".[15]

In an Order[16] dated January 14, 2005, the ERC refined its policy on PPA computation and confirmation, to wit:

> A. The computation and confirmation of the PPA prior to the [ERC's] Order dated June 17, 2003 shall be based on the approved PPA Formula;
>
> B. The computation and confirmation of the PPA after the [ERC's] Order dated June 17, 2003 shall be based on the power cost "net" of discount; and
>
> C. If the approved PPA Formula is silent on the terms of discount, the computation and confirmation of the PPA shall be based on the power cost at "gross," subject to the submission of proofs that said discounts are being extended to the end-users.[17]

In a subsequent Order[18] dated July 27, 2006, the ERC further clarified the foregoing policy on the PPA confirmation scheme.

---

[14] *Id*. at 92-103.

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

[16] *Id.* at 104-120.

[17] *Id*. at 112.

[18] *Rollo,* pp. 87-95. The ERC was composed of Chairman Rodolfo B. Albano, Jr. and Commissioners Raul A. Tan, Alejandro Z. Barin and Maria Teresa A.R. Castaneda.

According to the ERC, to ensure that only the actual costs of purchased power are recovered by distribution utilities (DUs), the following principles shall govern the treatment of the Prompt Payment Discount granted by power suppliers to DUs including rural electric cooperatives:

I. The over-or-under recovery will be determined by comparing the allowable power cost with the actual revenue billed to end-users.

II. Calculation of the DU's allowable power cost as prescribed in the PPA formula:

   a. If the PPA formula explicitly provides the manner by which discounts availed from the power supplier/s shall be treated, the allowable power cost will be computed based on the specific provision of the formula, which may either be at "net" or "gross"; and

   b. If the PPA formula is silent in terms of discounts, the allowable power cost will be computed at "net" of discounts availed from the power supplier/s, if there [is] any.

III. Calculation of the DU's actual revenues/actual amount billed to end-users.

   a. On actual PPA computed at net of discounts availed from power supplierls:

      a.l. If a DU bills at net of discounts availed from the power supplier/s (i.e., gross power cost minus discounts from power supplier/s) and the DU is not extending discounts to end-users, the actual revenue should be equal to the allowable power cost; and

      a.2. If a DU bills at net of discounts availed from the power supplier/s (i.e., gross power cost minus discounts from power supplier/s) and the DU is extending discounts to end-users, the discount extended to end-users shall be added back to the actual revenue.

   b. On actual PPA computed at gross

b.1. If a DU bills at gross (i.e., gross power cost not reduced by discounts from power supplier/s) and the DU is extending discounts to end-users, the actual revenue will be calculated as: gross power revenue less discounts extended to end-users. The result shall then be compared to the allowable power cost; and

b.2. If a DU bills at gross (i.e., gross power cost not reduced by discounts from power supplier/s) and the DU is not extending discounts to end-users, the actual revenue shall be taken as is which shall be compared to the allowable power cost.

IV. In the calculation of the DU's actual revenues, the amount of discounts extended to end-users shall, in no case, be higher than the discounts availed by the DU from its power supplier/s.[19]

In the same order, the ERC evaluated documents and records submitted by NEECO I and discovered that it had over-recoveries amounting to ₱60,797,451.00 due to the following:

a. For the period March 1996 to June 1999, NEECO I utilized the 1.4 multiplier scheme which allowed it to recover roughly 29% system loss instead of the cap which was lower, pursuant to [R.A.] No. 7832, otherwise known as the "Anti-Electricity and Electric Transmission Lines/ Materials Pilferage Act of 1994." This resulted to an over-recovery of PhP9,393,186.00;

b. For the period July 2003 to April 2005, NEECO I's power cost computation was not reduced by the PPD availed from the National Power Corporation (NPC) resulting to an over-recovery of PhP18,578,476.00;

c. In its power cost computations for the months of May 2002 and June 2002, NEECO I adopted the April 2002 and May 2002 billings of NPC, respectively, based on its actual Purchased Power Cost Adjustment (PPCA). Considering that NPC's actual power costs in May 2002

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

and June 2002 were lower compared to its April 2002 and May 2002 base cost of PhP0.40/kWh (pursuant to the Presidential Directive May 8, 2002), NEECO I should have used NPC's May 2002 and June 2002 billings. This resulted to over-recoveries amounting to PhP4,192,972.00 and PhP4,047,598.00, respectively[;]

d. NEECO I failed to comply with the [IRR] of R.A. No. 7832 which provides that the pilferage recoveries should be deducted from the total purchased power cost used in the PPA computation. Thus, its actual PPA charges should have been reduced by its pilferage recoveries amounting to PhP2,255,171.00;

e. For the month of May 2001, NEECO I's PPA power cost computation was not reduced by the Fuel and Power Cost Adjustment (FPCA) which resulted to an over-recovery of PhPl,534,470.00; and

f. The new grossed-up factor mechanism adopted by the [ERC] which provided a true-up mechanism to allow the DUs to recover the actual costs of purchased power.[20]

Accordingly, NEECO I was directed to refund its over-recoveries in the amount of ₱0.1199/kWh starting the next billing cycle from its receipt of the ERC order until such time that the full amount of ₱60,797,451.00 shall have been refunded.[21]

---

[20] *Id*. at 90-92.

[21] *Id*. at 92-93. The dispositive portion reads in full, thus:

WHEREFORE, the foregoing premises considered, the [ERC] hereby confirms the [PPA] or [NEECO I] for the period March 1996 to April 2005 which resulted to an over-recovery amounting to **SIXTY MILLION SEVEN HUNDRED NINETY[-]SEVEN THOUSAND FOUR HUNDRED FIFTY [-] ONE PESOS (PhP60,797,451.00)** equivalent to **Php0.1199/kWh**. In this connection, NEECO I is hereby directed to refund the amount of Php0.1199/kWh starting the next billing cycle from receipt of this Order until such time that the full amount shall have been refunded.

Accordingly, NEECO I is directed to:

a) Submit within ten (10) days from the initial implementation of the refund, a sworn statement indicating its compliance with the aforesaid directive;

NEECO I thereafter filed a *Manifestation and Motion for Reconsideration with Deferment of Implementation of the Alleged Over-Recoveries*[22] arguing, among others, that: (a) its use of the 1.4 multiplier scheme was pursuant to the policy of the National Electrification Administration (NEA) which directly manages and supervises NEECO I; (b) despite the fact that it submitted reports to the ERC on a monthly basis, NEECO I did not receive any warning or comment as to its use of the multiplier scheme; (c) there was a confusion as to the application of the 'gross' or 'net' of discount formula because NEECO I was actually giving discounts to its customers; (d) the recovery of pilferages were not deducted since these were mere kWh consumptions already recovered and included in the monthly sales; (e) it was not given the opportunity to be apprised of the method and procedure on the re-confirmation process made by ERC's technical staff; (f) the "running average" in the computation of the system loss of NEECO I was the usual practice since the time that it was supervised by the NEA; (g) the retroactive application of the PPA formula deprived NEECO I of due process; (h) R.A. No. 7832 is unconstitutional for being an *ex post facto* law; and (i) the policies issued by ERC are unenforceable because they were not published in a newspaper of general circulation neither were they furnished to the University of the Philippines (U.P.) Law Center.[23]

In an Order[24] dated May 9, 2007, the ERC denied NEECO I's motion on the ground that it "merely reiterates the same

---

b) Reflect the PPA refund as a separate item in the bill using the phrase "Previous Years' Adjustment on Power Cost"; and

c) Accomplish and submit a report in accordance with the attached prescribed format, on or before the 30th day of January of the succeeding year and every year thereafter until the amount shall have been fully refunded.

SO ORDERED. (Emphasis in the original)

[22] *Id*. at 96-101.

[23] *Id*. at 97-99.

[24] *Id*. at 105-106.

arguments earlier raised and does not present any substantial reason not previously invoked."[25]

Ruling of the CA

NEECO I thereafter filed a petition for review before the CA but the same was denied due course in the herein assailed Resolution[26] dated July 11, 2007 for the following infirmities:

> 1. It failed to append the petition filed with [the ERB], the responsive pleading thereto and other pertinent pleadings and paper supporting it;
>
> 2. It failed to contain a concise statement of facts of the case required in Section 6, Rule 43 of the Revised Rules of Court;
>
> 3. It did not implead the [CLECA] as a party respondent, as mandated by Section 6, Rule 43[.] In fact, it only named ERB as the sole respondent, which is not even required to be impleaded by the rules; and
>
> 4. That CLECA, which is the petitioner before the ERB, was not furnished with a copy of the petition pursuant to Section 5, Rule 43[.][27]

NEECO I's motion for reconsideration[28] was denied in the CA Resolution[29] dated November 9, 2007.

The Present Petition

NEECO I seeks the reversal of the CA issuances and the remand of its case for a resolution on the merits. In the alternative, NEECO I also prays that the substantive merits of its case be evaluated and the ERC Orders dated July 27, 2006 and May 9, 2007 be declared null and void.[30]

---

[25] *Id*. at 105.

[26] *Id*. at 63-64.

[27] *Id*.

[28] CA *rollo,* pp. 134-147.

[29] *Rollo,* pp. 66-68.

[30] *Id*. at 57.

NEECO I explains that the documents it was able to submit to the CA were the only ones turned over to its new counsel. It was also unable to locate copies of the pleadings filed before the ERB and such other supporting documents in its own office records because it underwent several changes in management. lt also attempted to secure from the ERC copies of the required pleadings but its efforts were futile since the records of ERC Case No. 2001-340 (formerly ERB Case No. 96-37) could no longer be located. ERC also certified that only the following issuances relative to ERC Case No. 2001-340 are on file with its office: ERC Orders dated May 9, 2007, July 27, 2006, April 25, 1997, June 17, 2003 and January 14, 2005.[31]

NEECO I asserts that the outright dismissal of its appeal was unjustified because it has substantially complied with Rule 43 by attaching the foregoing ERC orders as well as the ERC Order dated February 19, 1997 to the petition for review it filed before the CA.[32]

Ruling of the Court

The petition has partial merit.

It is settled that the right to appeal is a statutory right and one who seeks to avail of it must comply with the statute or rules. Procedural rules on appeal are not to be belittled or simply disregarded precisely because these prescribed procedures exist to ensure an orderly and speedy administration of justice.[33]

Under Section 6,[34] Rule 43 of the Rules of Court, a petition for review should be "accompanied by a clearly legible duplicate

[31] *Id*. at 27-29.

[32] *Id*. at 29-31.

[33] *Spouses Lanaria v. Planta,* 563 Phil. 400, 416 (2007).

[34] **Section 6.** *Contents of the petition.* —The petition for review shall: (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for

original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers." Failure to comply therewith shall be a sufficient ground for the outright dismissal of the petition.[35]

However, it is also equally settled that while merely statutory in nature, the right to appeal is an essential part of our judicial system such that courts should proceed with caution so as not to deprive a party of the right to appeal, but rather, ensure that every party-litigant has the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities.[36]

The Court has thus pronounced that, before an appeal may be denied due course outright for lack of copies of essential pleadings and portions of the case record, the sufficiency of the documents actually accompanying the petition must be first assessed by the CA to determine whether they sufficiently substantiate the allegations in the petition. If they do, then the petitioner is deemed to have substantially complied with the rules.

In *Galvez v. Court of Appeals,*[37] the Court held:

---

the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein.

[35] **Section 7.** *Effect of failure to comply with requirements.* — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

[36] *Supra* note 33.

[37] G.R. No. 157445, April 3, 2013, 695 SCRA 10.

[T]he mere failure to attach copies of the pleadings and other material portions of the record as would support the allegations of the petition for review is not necessarily fatal as to warrant the outright denial of due course when the clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the RTC, and other attachments of the petition sufficiently substantiate the allegations.

xxx xxx xxx

x x x [T]he significant determinant of the sufficiency of the attached documents is whether the accompanying documents support the allegations of the petition.[38]

The Court espoused a similar reasoning in *Posadas-Moya and Associates Construction Co., Inc. v. Greenfield Development Corporation:*[39]

Without a doubt, the CA had sufficient basis to actually and completely dispose of the case. The other documents that respondents insist should have been appended to the Petition will not necessarily determine whether the CA can properly decide the case. Besides, these documents were already part of the records of this case and could have easily been referred to by the appellate court if necessary.

Time and time again, this Court has reiterated the doctrine that the rules of procedure are mere tools intended to facilitate rather than to frustrate the attainment of justice. A strict and rigid application of the rules must always be eschewed if it would subvert their primary objective of enhancing fair trials and expediting justice. Technicalities should never be used to defeat the substantive rights of the other party. Parties or litigants must be accorded the amplest opportunity for the proper and just determination of their causes, free from the constraints of technicalities.

In denying due course to the Petition, the appellate court gave premium to form and failed to consider the important rights of the parties. At the very least, petitioner substantially complied with

---

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

[39] 451 Phil. 647 (2003).

the procedural requirements of Section 6 of Rule 43 of the Rules of Court.[40] (Citation omitted)

The Court also adjudged the petitioner in *Silverio v. CA*[41] to have substantially complied with the rule on attachment of relevant lower court judgments and pleadings, thus:

> [I]t was inappropriate for the [CA] to deny the petition on the ground alone that the petitioner failed to attach to the said petition a duplicate original or true copy of the MTC decision because it was supposed to review the decision not of the MTC but of the RTC, notwithstanding that the latter affirmed *in toto* the judgment of the MTC. In short, the failure to attach the MTC decision did not adversely affect the sufficiency of the petition because it was, in any event, accompanied by the RTC decision sought to be reviewed.[42]

In *National Housing Authority v. Basa, Jr., et al.,*[43] the Court found satisfactory the annexes to an appeal which was denied by the CA, *viz.*:

> Nevertheless, even if the pleadings and other supporting documents were not attached to the petition, the dismissal is unwarranted because theCA records containing the promissory notes and the real estate and chattel mortgages were elevated to this Court. Without a doubt, we have sufficient basis to actually and completely dispose of the case.[44]

The policy generated three guideposts[45] for the CA to observe in determining the necessity of attaching the pleadings and portions of the records to the petition, to wit:

---

[40] *Id*. at 660-661.

[41] 454 Phil. 750 (2003).

[42] *Id*. at 756-757.

[43] 632 Phil. 471 (2010).

[44] *Id*. at 489, citing *DBP v. Family Foods Manufacturing Co. Ltd., et al.,* 611 Phil. 843, 851 (2009).

[45] *Supra* note 37, at 22.

First, not all pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition.

Second, even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also be found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.

Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that the petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.

According to the CA, without the petition filed before the ERB, the responsive pleadings thereto and other supporting documents, it had no basis to determine whether NEECO I's appeal was impressed with merit or not.

The Court disagrees. A scrutiny of the ERC issuances annexed to NEECO I's petition with the CA shows that they were ample enough to enable the appellate court to still act on the appeal despite the deficient pleadings and documents. The ERC Order[46] dated February 9, 1997 confirmed the background facts of the case as alleged in NEECO I's petition. The Order[47] dated July 27, 2006, substantially summarized the ERC policy on PPA confirmation process upon which the factual findings on NEECO I's over-recoveries were based. The rest of the attached issuances[48] extensively recapitulated the events preceding the controversy

[46] CA *rollo,* pp. 74-91.

[47] *Id*. at 54-61.

[48] *Id*. at 92-120.

elevated to the CA. These attachments adequately provided the CA with the necessary infonnation it needed to pass upon assigned errors in NEECO I's appeal and to determine their merit *sans* the initiatory pleadings and documents from the defunct ERB. The CA thus committed grave error in denying the appeal and depriving NEECO I the right to be heard.

The CA likewise erred in concluding that CLECA had to be impleaded as a respondent to the petition. The rulings for which the CA's review was sought were issued by the ERC and not CLECA, which was the representative organization of NEECO I in the ERC proceedings. Also, to include CLECA as a petitioner or even to furnish it with a copy of the CA petition was unnecessary since the ERC Orders dated July 27, 2006 and May 9, 2007 only concerned NEECO I and not all of the rural electric cooperatives in Central Luzon as represented by CLECA.

Although the subsequent procedural step will be a remand of the case to the CA, it will be more judicious to resolve the substantive merits of NEECO I's appeal in present recourse in view of the Court's supervening pronouncements in the *ASTEC* case and in *Surigao del Norte Electric Coop., Inc. (SURNECO) v. ERC*[49] involving rural electric cooperatives similarly ordered by the ERC to refund their over-recoveries based on the same ERC policy on PPA confirmation process as laid down in its Orders dated June 17, 2003 and January 14, 2005. The arguments advanced by NEECO I in support of its averment of nullity of the ERC Orders dated July 27, 2006 and May 9, 2007 were already exhaustively traversed and definitively settled by the Court in the said cases.

On the use of the multiplier scheme as a method to recover system loss

In *SURNECO,* the Court held that NEA Memorandum No. 1-A which authorized rural electric cooperatives to use the multiplier scheme as a method to recover system loss was a

[49] 646 Phil. 402 (2010).

mere administrative issuance that cannot prevail against and is deemed repealed by the legislative enactment in Section 10 of R.A. No. 7832 imposing caps on the recoverable rate of system loss.[50]

The Court also held that Section 10 of R.A. No. 7832 was self-executory and did not require the issuance of enabling set of rules or any action by the ERC. The caps should have therefore been applied as of January 17, 1995 when R.A. No. 7832 took effect.[51]

NEECO I cannot thus insist on the continued validity of the multiplier scheme it has been adopting pursuant to the NEA Memorandum No. 1-A.

On whether Section 10 of R.A. No. 7832 was superseded and repealed by EPIRA LAW

NEECO I anchored its argument on Section 43(f) of the EPIRA Law which reads:

> In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. **To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of [R.A.] No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate**.

---

[50] *Id*. at 413-414.

[51] *Id.*

The ERC shall determine such form or rate-setting methodology, which shall promote efficiency. x x x (Emphasis ours)

The Court interpreted the provision in *SURNECO* to mean that the EPIRA Law actually allowed the caps imposed by Section 10 of R.A. No. 7832 to remain until they are replaced by the ERC pursuant to its delegated authority to prescribe new system loss caps, based on technical parameters such as load density, sales mix, cost of service, delivery voltage, and other technical considerations it may promulgate.[52]

The imposable system loss caps are thus within the discretion of the ERC and, until and unless it decrees new caps, those imposed by Section 10 of R.A. No. 7832 shall subsist. From the provision, it can also be deduced that the ERC, upon evaluating the technical parameters stated in Section 43 of EPIRA Law, may actually adopt and maintain the prevailing caps in Section 10 of R.A. No. 7832 if it finds them consistent with its mandate to ensure reasonable rates of electricity.

On whether: (a) the cap on the recoverable rate of system loss prescribed in Section 10 of R.A. No. 7832 is arbitrary and violative of the non-impairment clause; and (b) the PPA computation based on the cost of power net of discount is illegal and unconstitutional for being an unlawful taking of property

The regulation of rates imposed by public utilities such as electricity distributors is an exercise of the State's police power. The Court reiterated this tenet in *SURNECO,* thus:

The regulation of rates to be charged by public utilities is founded upon the police powers of the State and statutes prescribing rules for the control and regulation of public utilities are a valid exercise thereof. When private property is used for a public purpose and is affected with public interest, it ceases to be *juris privati* only and

[52] *Id*. at 419.

becomes subject to regulation. The regulation is to promote the common good. Submission to regulation may be withdrawn by the owner by discontinuing use; but as long as use of the property is continued, the same is subject to public regulation.[53]

As the State agency mandated to regulate and to approve rates imposed by electric cooperatives, the ERC merely exercised its task of protecting the public interest imbued in the rates imposed by NEECO I when it directed the latter to refund its over-recoveries to its consumers. The ERC was ensuring that the PPA mechanism remains a purely cost-recovery mechanism and not a revenue-generating scheme for the electric cooperatives,[54] which are organized under P.D. No. 269 to engage in the distribution of electricity on a **non-profit basis.**

Verily then, no unlawful taking of property can also result from the imposition of the "net of discount" principle in the PPA computation as it merely preserves the true nature of the PPA formula as an adjustment mechanism strictly for the purpose of recovering the costs actually incurred in the purchase of electricity.

"[I]f the PPA is computed without factoring the discounts given by power suppliers to electric cooperatives, electric cooperatives will impermissibly retain or even earn from the implementation of the PPA."[55]

The Court articulated this fact in *ASTEC,* and held that the nature of the PPA formula precludes an interpretation that includes discounts in the computation of the cost of purchased power.[56] Rural electric cooperatives cannot therefore incorporate in the PPA formula costs that they did not incur. Consumers must not shoulder the gross cost of purchased power; otherwise, rural

---

[53] *Id*. at 418, citing *Republic of the Philippines v. Manila Electric Co.* 440 Phil. 389, 397 (2002).

[54] *Id.*

[55] *Supra* note 4, at 157.

[56] *Id*. at 156.

electric cooperatives will unjustly profit from discounts extended to them by power suppliers.[57]

The police power of the State to regulate the rates imposed by public utilities is also the same reason why the caps set in R.A. No. 7832 cannot be deemed to have impaired the loan agreement between NEA and the Asian Development Bank imposing a 15% system loss cap and providing a "power cost adjustment clause." All private contracts must yield to the superior and legitimate measures taken by the State to promote public welfare. The police power legislation adopted by the State in R.A. No. 7832 to promote the general welfare of the people must imperatively prevail.[58]

On whether NEECO I was deprived of due process

The Court has resolved in *SURNECO* that the ERC observed administrative due process when it enjoined electric cooperatives to refund their over-recoveries. They were duly informed of the need for their monthly documentary submissions and were allowed to submit them accordingly. Hearings and exit conferences with the representatives of electric cooperatives were also conducted. These conferences entailed discussions on preliminary figures and their further verification to determine and correct any inaccuracies. The electric cooperatives were also allowed to file motions for reconsideration of the ERC orders respectively directing them to make the refunds.[59] The Court thus emphasized that:

> Administrative due process simply requires an opportunity to explain one's side or to seek reconsideration of the action or ruling complained of. It means being given the opportunity to be heard before judgment, and for this purpose, a formal trial-type hearing is not even essential. It is enough that the parties are given a fair and reasonable chance

[57] *Id*. at 156-157.

[58] *Supra* note 49, at 418-419.

[59] *Id*. at 420.

to demonstrate their respective positions and to present evidence in support thereof.[60] (Citations omitted)

NEECO I underwent the same administrative procedure and was accorded similar opportunities to present its side and objections. It attended the conferences conducted by the ERC on January 8, 2004 and on November 8, 2005.[61] It was also allowed to file documentary submissions and seek a reconsideration of the ERC Order dated July 27, 2006.[62]

On whether the ERC Orders dated June 17, 2003 and January 14, 2005 as supplements to the TRR of R.A. No. 7832 were void because they were not published in the Official Gazette or in a newspaper of general circulation

The Court held in *ASTEC* that the ERC Orders dated June 17, 2003 and January 14, 2005 containing the policy guidelines on the treatment of discounts extended by power suppliers did not modify, amend or supplant R.A. No. 7832 and its IRR; they merely interpreted the computation of the cost of purchased power.[63]

As such interpretative regulations, their publication in the Official Gazette or their filing with the Office of the National Administrative Register at the U.P. Law Center was not necessary. Procedural due process demands that administrative rules and regulations be published in order to be effective. However, by way of exception, interpretative regulations need not comply with the publication requirement set forth in Section 18, Chapter 5, Book I,[64] and

---

[60] *Id.*

[61] CA *rollo,* p. 57.

[62] *Rollo,* pp. 87, 96-101.

[63] *Supra* note 4, at 152.

[64] **SECTION 18**. When Laws Take Effect. — Laws shall take effect after fifteen (15) days following the completion of their publication in

the filing requirement in Sections 3 and 4, Chapter 2, Book VII,[65] of the Administrative Code. Interpretative regulations add nothing to the law and do not affect substantial rights of any person;[66] hence, in this case, they need not be subjected to the procedural due process of publication or filing before electric cooperatives may be ordered to abide by them.

On whether the PPA formula was invalid for having been applied retroactively

This issue was likewise comprehensively settled in *ASTEC,* in this wise:

Petitioners further assert that the policy guidelines are invalid for having been applied retroactively. According to petitioners, the ERC applied the policy guidelines to periods of PPA implementation prior to the issuance of its 14 January 2005 Order. x x x [B]asic

---

the Official Gazette or in a newspaper of general circulation, unless it is otherwise provided.

[65] **SECTION 3**. Filing. — (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party or persons.

(2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.

(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.

SECTION 4. Effectivity. — ln addition to other rule-making requirements provided by law not inconsistent with this Book, each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by law, or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

[66] *Supra* note 4, at 151, 157-158.

[is the] rule "that no statute, decree, ordinance, rule or regulation (or even policy) shall be given retrospective effect unless explicitly stated so." A law is retrospective if it "takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability, in respect of transactions or consideration already past."

The policy guidelines of the ERC on the treatment of discounts extended by power suppliers are not retrospective. The policy guidelines did not take away or impair any vested rights of the rural electric cooperatives. The usage and implementation of the PPA formula were provisionally approved by the ERB in its Orders dated 19 Febuary 1997 and 25 April 1997. The said Orders specifically stated that the provisional approval of the PPA formula was subject to review, verification and confirmation by the ERB. Thus, the rural electric cooperatives did not acquire any vested rights in the usage and implementation of the provisionally approved PPA formula.

Furthermore, the policy guidelines of the ERC did not create a new obligation and impose a new duty, nor did it attach a new disability. x x x [T]he policy guidelines merely interpret R.A. No. 7832 and its IRR, particularly on the computation of the cost of purchased power. The policy guidelines did not modify, amend or supplant the lRR.[67] (Citations omitted)

NEECO I is, nevertheless, entitled to a re-computation of its over-recoveries.

Notwithstanding the foregoing, the amount of over-recoveries ascertained by the ERC must be re-computed in view of the invalid grossed-up factor mechanism utilized in the ERC Order dated July 27, 2006, which states that one cause of the over-recovery was the failure of NEECO I to use the new grossed-up factor mechanism adopted by the ERC which provided a true-up mechanism that allows the DUs to recover the actual cost of purchased power.[68]

---

[67] *Id*. at 158-159.

[68] *Rollo*. p. 92.

This is pursuant to the Court's findings in *ASTEC,* to wit:

[T]he grossed-up factor mechanism **amends** the IRR of R.A. No. 7832 as it serves as an **additional numerical standard** that must be observed and applied by rural electric cooperatives in the implementation of the PPA. While the IRR explains, and stipulates, the PPA formula, the IRR neither explains nor stipulates the grossed-up factor mechanism. The reason is that the grossed-up factor mechanism is admittedly "**new**" and provides a "**different result**," having been formulated only ***after*** the issuance of the lRR.

The grossed-up factor mechanism is not the same as the PPA tonnula provided in the IRR of R.A. No. 7832. Neither is the grossed-up factor mechanism subsumed in any of the five variables of the PPA formula. Although both the grossed-up factor mechanism and the PPA formula account for system loss and use of electricity by cooperatives, they serve different quantitative purposes.

The grossed-up factor mechanism serves as a threshold amount to which the PPA formula is to be compured. According to the ERC, any amount collected under the PPA that exceeds the Recoverable Cost computed under the grossed-up factor mechanism shall be refunded to the consumers. The Recoverable Cost computed under the grossed-up factor mechanism is "the maximum allowable cost to be recovered from the electric cooperative's customers for a given month." **In effect, the PPA alone does not serve as the variable rate to be collected from the consumers**. The PPA formula and the grossed-up factor mechanism will both have to be observed and applied in the implementation of the PPA.

Furthermore, the grossed-up factor mechanism accounts for a variable that is not included in the five variables of the PPA formula. In particular, the grossed-up factor mechanism accounts for the amount of power sold in proportion to the amount of power purchased by a rural electric cooperative, expressed as the Gross-Up Factor. It appears that the Gross-Up Factor limits the Recoverable Cost by allowing recovery of the Cost of Purchased Power only in proportion to the amount of power sold. This is shown by integrating the formula of the Gross-Up Factor with the formula of the Recoverable Cost, thus:

The grossed-up factor mechanism consists of the following formulas:

$$\textit{Gross-Up Factor} = \frac{\textit{Kwh Sales + Coop Use}}{\textit{Kwh Purchased (1-\% System Loss)}}$$

Recoverable Cost= Gross-Up Factor x Cost of Purchased Power

Integrating the above-stated formulas will result in the following formula:

$$\textit{Recoverable Cost} = \frac{\textit{Kwh Sales+ Coop Use}}{\textit{Kwh Purchased (1-\% System Loss)}} \; x \; \textit{Cost of Purchased Power}$$

On the other hand, the PPA formula provided in the IRR of R.A. No. 7832 does not account for the amount of power sold. It accounts for the amount of power purchased and generated, expressed as the variable "B" in the following PPA formula:

Purchased Power Adjustment Clause

$$(\text{PPA}) = \frac{A}{B - (C + D)} - E$$

Where:

A = Cost of electricity purchased and generated for the previous month

B = **Total Kwh purchased and generated for the previous month**

C = The actual system loss but not to exceed themaximum recoverable rate of system loss in Kwh plus actual company use in Kwhrs but not to exceed 1% of total Kwhrs purchased and generated

D = Kwh consumed by subsidized consumers

E = Applicable base cost of power equal to the amount incorporated into their basic rate per Kwh

In light of these, the grossed-up factor mechanism does not merely interpret R.A. No. 7832 or its IRR. It is also not merely internal in nature. **The grossed-up factor mechanism amends the IRR by providing an additional numerical standard that must be observed and applied in the implementation of the PPA**. The grossed-up

factor mechanism is therefore an administrative rule that should be published and submitted to the U.P. Law Center in order to be effective.

x x x [Since] it does not appear from the records that the grossed-up factor mechanism was published and submitted to the U.P. Law enter[,] x x x it is ineffective and may not serve as a basis for the computation of over-recoveries. The portions of the over-recoveries arising from the application of the mechanism are therefore invalid.

Furthermore, the application of the grossed-up factor mechanism to periods of PPA implementation prior to its publication and disclosure renders the said mechanism invalid for having been applied retroactively. The grossed-up factor mechanism imposes an additional numerical standard that clearly "creates a new obligation and imposes a new duty x x x in respect of transactions or consideration already past."

Rural electric cooperatives cannot be reasonably expected to comply with and observe the grossed-up factor mechanism without its publication. x x x.[69] (Citations omitted and emphasis in the original)

The principle of *stare decisis* enjoins adherence to the foregoing judicial precedents set forth in *ASTEC* and *SURNECO.* The principle means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. Absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.[70]

Indeed, since the questions raised in the present petition were already comprehensively examined and settled in *ASTEC* and *SURNECO,* any further arguments thereon are deemed proscribed.

---

[69] *Supra* note 4, at 162-165.

[70] *Aquino v. Philippine Ports Authority,* G.R. No. 181973, April 17, 2013, 696 SCRA 666, 678, citing *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation,* 573 Phil. 320, 337 (2008).

WHEREFORE, premises considered, the petition is hereby **PARTLY GRANTED.** The portions of the over-recoveries that may have arisen from the application of the grossed-up factor mechanism in the Order dated July 27, 2006 of the Energy Regulatory Commission are hereby declared **INVALID.** Accordingly, the Energy Regulatory Commission is hereby **DIRECTED** to compute the portions of the over-recoveries arising from the application of the grossed-up factor mechanism and to implement the collection of any amount previously refunded by Nueva Ecija I Electric Cooperative Incorporated to its consumers on the basis of the grossed-up factor mechanism.

SO ORDERED.

Velasco, Jr. (*Chairperson*)*, Peralta, Perez,* and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 181186. February 3, 2016]

SIGUION REYNA MONTECILLO AND ONGSIAKO LAW OFFICES, *petitioner, vs.* **HON. NORMA CHIONGLO-SIA, in her Capacity as Presiding Judge of Branch 56 of the Regional Trial Court of Lucena City, and the TESTATE ESTATE OF DECEASED SUSANO RODRIGUEZ, Represented by the Special Administratrix,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE GENERAL RULE IS THAT A PERSON NOT A PARTY

TO THE PROCEEDINGS IN THE TRIAL COURT CANNOT MAINTAIN AN ACTION FOR *CERTIORARI* IN THE COURT OF APPEALS OR THE SUPREME COURT TO HAVE THE ORDER OR DECISION OF THE TRIAL COURT REVIEWED; EXCEPTION IN CASE AT BAR.— The "aggrieved party" referred to in Section 1, Rule 65 of the Rules of Court is one who was a party to the original proceedings that gave rise to the original action for *certiorari* under Rule 65. x x x The general rule, therefore, is that a person **not** a party to the proceedings in the trial court **cannot** maintain an action for *certiorari* in the CA or the Supreme Court to have the order or decision of the trial court reviewed. Under normal circumstances, the CA would have been correct in dismissing a petition for *certiorari* filed by a non-party. The peculiar facts of this case, however, call for a less stringent application of the rule. x x x While the general rule laid down in *Tang* (which limits the availability of the remedy of *certiorari* under Rule 65 only to parties in the proceedings before the lower court) must be strictly adhered to, it is not without exception. x x x Considering that the RTC's order of reimbursement is specifically addressed to SRMO and the established fact that SRMO only received the subject money in its capacity as counsel/agent of Gerardo, there is then more reason to apply the exception here. Unlike *Tang,* which involved neighboring lot owners as petitioners, SRMO's interest can hardly be considered as merely incidental. That SRMO is being required to reimburse *from its own coffers* money already transmitted to its client is sufficient to give SRMO **direct** interest to challenge the RTC's order. Neither can SRMO be considered a total stranger to the proceedings. We have stated in one case that "a counsel becomes the eyes and ears in the prosecution or defense of his or her client's case." This highly fiduciary relationship between counsel and client makes the party/non-party delineation prescribed by *Tang* inadequate in resolving the present controversy. As a corollary, we have, in a number of instances, ruled that technical rules of procedures should be used to promote, not frustrate, the cause of justice. Rules of procedure are tools designed not to thwart but to facilitate the attainment of justice; thus, their strict and rigid application may, for good and deserving reasons, have to give way to, and be subordinated by, the need to aptly dispense substantial justice in the normal cause. In this case, ordering SRMO to reimburse

the widow's allowance from its own pocket would result in the unjust enrichment of Gerardo, since the latter would retain the money at the expense of his own counsel. To avoid such injustice, a petition for *certiorari* is an adequate remedy available to SRMO to meet the situation presented.

2. **CIVIL LAW; CONTRACTS; AGENCY; AN AGENT IS NOT PERSONALLY LIABLE FOR THE OBLIGATIONS OF THE PRINCIPAL UNLESS HE PERFORMS ACTS OUTSIDE THE SCOPE OF HIS AUTHORITY OR HE EXPRESSLY BINDS HIMSELF TO BE PERSONALLY LIABLE; EXCEPTION, NOT PRESENT IN CASE AT BAR.—** Under the law of agency, an agent is not personally liable for the obligations of the principal unless he performs acts outside the scope of his authority or he expressly binds himself to be personally liable. Otherwise, the principal is solely liable. Here, there was no showing that SRMO bound itself personally for Gerardo's obligations. SRMO also acted within the bounds of the authority issued by Gerardo, as the transferee *pendente lite* of the widow's interest, to receive the payment.

3. **REMEDIAL LAW; CIVIL ACTIONS; PARTIES; TRANSFEREE *PENDENTE LITE*; UNLESS THE COURT UPON MOTION DIRECTS THE TRANSFEREE *PENDENTE LITE* TO BE SUBSTITUTED, THE ACTION IS SIMPLY CONTINUED IN THE NAME OF THE ORIGINAL PARTY; APPLICATION IN CASE AT BAR.—** It appears that the RTC's primary justification for ordering SRMO to return the money from its own pocket is due to the latter's failure to formally report the transfer of interest from Remedios to Gerardo. While it certainly would have been prudent for SRMO to notify the RTC, the Rules of Court do not require counsels of parties to report any transfer of interest. The Rules do not even mandate the substitution of parties in case of a transfer of interest. x x x Otherwise stated, unless the court upon motion directs the transferee *pendente lite* to be substituted, the action is simply continued in the name of the original party. For all intents and purposes, the Rules already consider Gerardo joined or substituted in the proceeding *a quo,* commencing at the exact moment when the transfer of interest was perfected between original party-transferor, Remedios, and the transferee *pendente lite,* Gerardo. Given the foregoing, we find that the

RTC was unjustified in ordering SRMO, in its own capacity, to return the money to the Estate despite the fact, as certified to by Gerardo's heirs, that SRMO had already accounted for all monies or funds it had received on its client's behalf to Gerardo. If the RTC was convinced that the Estate had a right to reimbursement, it should have ordered the party who ultimately benefited from any unwarranted payment—not his lawyer–to return the money.

4. **ID.; ID.; ID.; REAL PARTY IN INTEREST; A REAL PARTY IN INTEREST IS THE PERSON WHO WILL SUFFER (OR SUFFERED) THE WRONG; ESTABLISHED IN CASE AT BAR.—** Another important consideration for allowing SRMO to file a petition for *certiorari* is the rule on real party in interest, which is applicable to private litigation. A real party in interest is one "who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit." Simply put, a real party in interest is the person who will suffer (or has suffered) the wrong. In this case, it is SRMO who stands to be injured by the RTC's order of reimbursement considering that it is being made to return money received on behalf of, and already accounted to, its client.

5. **ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSON; PROVISION FOR SUPPORT; THE RIGHT TO SUPPORT IS A PURE PERSONAL RIGHT ESSENTIAL TO THE LIFE OF THE RECIPIENT, SO THAT IT CANNOT BE SUBJECT TO ATTACHMENT OR EXECUTION, NEITHER CAN IT BE RENOUNCED OR TRANSMITTED TO A THIRD PERSON.—** Section 3, Rule 83 of the Rules of Court provides for the allowance granted to the widow and family of the deceased person during the settlement of the estate. This allowance is rooted on the right and duty to support under the Civil Code. The right to support is a purely personal right essential to the life of the recipient, so that it cannot be subject to attachment or execution. Neither can it be renounced or transmitted to a third person. Being intransmissible, support cannot be the object of contracts.

6. **ID.; ID.; ID.; ID.; SUPPORT IN ARREARS MAY BE COMPENSATED, RENOUNCED AND TRANSMITTED BY ONEROUS OR GRATUITOUS TITLE; PRESENT IN**

CASE AT BAR.— Nonetheless, it has also been held that support in arrears is a different thing altogether. It may be compensated, renounced and transmitted by onerous or gratuitous title. The Estate constends that since Remedios already sold her Estate to Gerardo on February 29, 1988, she was no longer entitled to any widow's allowance from that point on. SRMO, on the other hand, maintains that the right of Remedios to receive widow's allowance remains from 1988 up to 1991 because she remained a nominal party in the case, and that this formed part of the interests sold to Gerardo.

7. ID.; ID.; ID.; ID.; ID.; FAILURE TO IMPLEAD INDISPENSABLE PARTIES IS FATAL TO THE ESTATE CHALLENGE; RATIONALE.— However, neither of the parties to the Deed of Sale is impleaded in the present petition; hence, this particular issue cannot be fully resolved. Following the principle of relativity of contracts, the Deed of Sale is binding only between Remedios and Gerardo, and they alone acquired rights and assumed obligations thereunder. Any ruling that affects the enforceability of the Deed of Sale will therefore have an effect on their rights as seller and buyer, respectively. Both are, therefore, indispensable parties insofar as the issue of enforceability of the Deed of Sale is concerned. The failure to implead them is fatal to the Estate's challenge on this front.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Jose Flores, Jr. for private respondent.

D E C I S I O N

JARDELEZA, *J.*:

We resolve the core issue of whether a law firm acting as counsel for one of the patties in the intestate proceedings *a quo* can file a petition for *certiorari* before the Court of Appeals to protect its own interests.

I

Petitioner Siguion Reyna Montecillo & Ongsiako Law Offices *(SRMO)* acted as counsel for Remedios N. Rodriguez *(Remedios)* when she commenced an action for the intestate settlement of the estate of her deceased husband Susano J. Rodriguez before the Regional Trial Court *(RTC)* of Lucena City. Her action was docketed as Sp. Proc. No. 4440.[1] During the pendency of the intestate proceedings, Remedios asked for the payment of widow's allowance. This, however, was denied by the RTC in an Order dated August 8, 1983.[2] On review, the Court of Appeals *(CA)* promulgated a decision reversing the RTC's Order and granted Remedios a monthly widow's allowance of ₱3,000.00 effective August 1982.[3]

On February 29, 1988, while the case was pending before the CA, Remedios executed a Deed of Sale of Inheritance *(Deed of Sale)* wherein she agreed to sell all her rights, interests and participation in the estate of Susano J. Rodriguez to a certain Remigio M. Gerardo *(Gerardo)* in consideration of ₱200,000.00.[4]

As a condition subsequent to the sale, Remedios, on March 1, 1988, executed a special power of attorney[5] *(SPA)* authorizing Gerardo to, among others, "receive from any person, entity, government agency or instrumentality, or from any court, any property, real or personal, cash, checks or other commercial documents which may be due to me or payable to me by virtue of any contract, inheritance or any other legal means," and to "receive said property ... in his own name and for his own account and to deposit the same at his sole discretion for his own account, and dispose of [the] same without any

---

[1] *Rollo,* pp. 40-43.

[2] *Id.* at 45-47.

[3] *Id.* at 71-89.

[4] *Id.* at 65-67.

[5] *Id.* at 233-234.

limitation."[6] Gerardo later on executed a document titled as "Substitution of Attorney-in-Fact,"[7] where he designated SRMO as substitute attorney pursuant to the power of substitution granted to him in the earlier SPA. Gerardo subsequently executed his own SPA authorizing SRMO "[t]o appear ... and represent [Gerardo] in any and all proceedings and incidents in the aforementioned case."[8]

After the CA's decision regarding the widow's allowance became final and executory, SRMO, on April 24, 1991, accordingly filed a motion with the RTC for the payment of the allowance then amounting to a total of ₱315,000.00.[9] A few months after, the Estate of Deceased Susano J. Rodriguez *(Estate)* remitted to SRMO three (3) checks totaling this amount.[10]

A Partial Project of Partition of the Estate dated January 10, 1997[11] was approved by the RTC on January 20, 1997.[12] Sometime in 2002, Remedios filed an "Urgent Omnibus Motion and Notice of Termination of the Services of Petitioner's Counsel of Record."[13] Therein, Remedios questioned the RTC's Order approving the partition and denied the execution of the Deed of Sale in favor of Gerardo. She also demanded that SRMO return the amount it received from the partition.[14] Before the motion could be resolved, however, Remedios filed a Notice of Withdrawal of the same motion.[15]

---

[6] *Id.* at 233.

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

[8] *Id.* at 96.

[9] *Id.* at 90-91.

[10] *Id.* at 127.

[11] *Id.* at 107-110.

[12] *Id.* at 111.

[13] *Id.* at 97-100.

[14] *Id.* at 98.

[15] *Id.* at 14.

The withdrawal of the motion notwithstanding, the RTC, in an Order dated August 21, 2003, *motu proprio* directed SRMO to reimburse the Estate the amount of ₱315,000.00 representing the widow's allowance it received in 1991.[16]

In its Explanation with Motion to Excuse Reimbursement,[17] SRMO moved to be excused from reimbursing the Estate. According to SRMO, when it sought the payment of the widow's allowance, it was merely seeking the enforcement of a judgment credit in favor of its client, Remedios, who had, in turn, sold her interests to Gerardo, also represented by SRMO.[18]

In its Order dated December 22, 2003, the RTC denied SRMO's motion.[19] It disagreed with SRMO's position because (1) "the sale of inheritance was never made known" to the RTC and that (2) the sale cannot comprehend a widow's allowance because such allowance is "personal in nature."[20]

Aggrieved by the RTC's orders, SRMO elevated the case to the CA through a petition for *certiorari*.[21] SRMO argued that it merely acted as representative of Gerardo, Remedios' successor-in-interest, when it received the sum corresponding to the widow's allowance.[22] Without going into the merits of the case, however, the CA denied SRMO's petition on the ground that the latter was not a party in the case before the lower court and therefore had no standing to question the assailed order.[23] The CA later denied SRMO's motion for reconsideration.[24]

---

[16] *Id.* at 127.

[17] *Id.* at 146-149.

[18] *Id.* at 146-147.

[19] *Id.* at 128.

[20] *Id.*

[21] *Rollo,* pp. 129-141.

[22] *Id.* at 135-136.

[23] *Id.* at 11-18.

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

SRMO is now before this Court contending that while it was not a party in the intestate proceedings, it is nevertheless an "aggrieved party" which can file a petition for *certiorari.* It claims that the RTC's order of reimbursement violated SRMO's right to due process. SRMO further argues that the RTC erred in ordering it to reimburse the widow's allowance since SRMO received said allowance only in favor of Gerardo as buyer of Remedios' interests pursuant to the Deed of Sale.

In its Comment, the Estate maintains that SRMO has no standing to file the petition for *certiorari* as it is not "the real party in interest who stands to lose or gain from the verdict [that] the Court may hand in the case at bar."[25] Having only acted in the proceedings below as counsel for Remedios and, upon transfer of interest, for Gerardo, SRMO had no personality independent of its client.[26] Recognizing that SRMO received the amount not for its own benefit but only in representation of its client, the Estate claims that SRMO is only being made to return the amount it received for and in behalf of its client; it is not being made to pay out of its own pocket.[27] The Estate also asserts that since Remedios already sold her share in the estate to Gerardo on February 29, 1988, she was no longer entitled to any widow's allowance from that time on.[28]

II

Section 1, Rule 65 of the Rules of Court provides in full:

Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, ***a person aggrieved thereby may file a verified***

---

[25] *Id.* at 318.

[26] *Id.*

[27] *Id.*

[28] *Rollo,* p. 325.

petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

(Emphasis supplied.)

The "aggrieved party" referred to in the above-quoted provision is one who was a party to the original proceedings that gave rise to the original action for *certiorari* under Rule 65. In *Tang v. Court of Appeals,*[29] we explained:

Although Section 1 of Rule 65 provides that the special civil action of *certiorari* may be availed of by a "person aggrieved" by the orders or decisions of a tribunal, **the term "person aggrieved" is not to be construed to mean that any person who feels injured by the lower court's order or decision can question the said court's disposition via *certiorari.*** To sanction a contrary interpretation would open the floodgates to numerous and endless litigations which would undeniably lead to the clogging of court dockets and, more importantly, the harassment of the party who prevailed in the lower court.

In a situation wherein the order or decision being questioned underwent adversarial proceedings before a trial court, the "person aggrieved" referred to under Section 1 of Rule 65 who can avail of the special civil action of *certiorari* pertains to one who was a party in the proceedings before the lower court. The correctness of this interpretation can be gleaned from the fact that a special civil action for *certiorari* may be dismissed *motu proprio* if the party elevating the case failed to file a motion for reconsideration of the questioned order or decision before the lower court. Obviously, only one who was a party in the case before the lower court can file a motion for reconsideration since **a stranger to the litigation would not have the legal standing**

---

[29] G.R. No. 117204, February 11, 2000, 325 SCRA 394.

to interfere in the orders or decisions of the said court. In relation to this, if a non-party in the proceedings before the lower court has no standing to file a motion for reconsideration, logic would lead us to the conclusion that he would likewise have no standing to question the said order or decision before the appellate court via *certiorari.*[30]

(Emphasis supplied.)

The general rule, therefore, is that a person **not** a party to the proceedings in the trial court **cannot** maintain an action for *certiorari* in the CA or the Supreme Court to have the order or decision of the trial court reviewed. Under normal circumstances, the CA would have been correct in dismissing a petition for *certiorari* filed by a non-party. The peculiar facts of this case, however, call for a less stringent application of the rule.

The facts show that SRMO became involved *in its own capacity* only when the RTC ordered it to return the money that it received on behalf of its client. The order of reimbursement was directed to SRMO *in its personal capacity*—not in its capacity as counsel for either Remedios or Gerardo. We find this directive unusual because the order for reimbursement would typically have been addressed to the parties of the case; the counsel's role and duty would be to ensure that his client complies with the court's order. The underlying premise of the RTC's order of reimbursement is that, logically, SRMO kept or appropriated the money. But the premise itself is untenable because SRMO. never claimed the amount for its own account. In fact, it is uncontroverted that SRMO only facilitated the transfer of the amount to Gerardo.[31]

Under the law of agency, an agent is not personally liable for the obligations of the principal unless he performs acts outside the scope of his authority or he expressly binds himself

---

[30] *Id.* at 402-403.

[31] *Rollo,* p. 318.

to be personally liable.[32] Otherwise, the principal is solely liable. Here, there was no showing that SRMO bound itself personally for Gerardo's obligations. SRMO also acted within the bounds of the authority issued by Gerardo, as the transferee *pendente lite* of the window's interest, to receive the payment.[33]

It appears that the RTC's primary justification for ordering SRMO to return the money from its own pocket is due to the latter's failure to formally report the transfer of interest from Remedios to Gerardo.[34] While it certainly would have been prudent for SRMO to notify the RTC, the Rules of Court do not require counsels of parties to report any transfer of interest. The Rules do not even mandate the substitution of parties in case of a transfer of interest. Rule 3, Section 19 of the Rules of Court provides:

> Section. 19. *Transfer of interest.* — In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

Otherwise stated, unless the court upon motion directs the transferee *pendente lite* to be substituted, the action is simply continued in the name of the original party. For all intents and purposes, the Rules already consider Gerardo joined or substituted in the proceeding *a quo,* commencing at the exact moment when the transfer of interest was perfected between original party-transferor, Remedios, and the transferee *pendente lite,* Gerardo.[35]

---

[32] CIVIL CODE, Art. 1897.

[33] Although the documents evidencing such authority were executed *after* the widow's allowance was paid, Gerardo expressly ratified and confirmed all that SRMO have done in relation to the intestate proceedings, which necessarily includes SRMO's act of receiving the widow's allowance on behalf of Gerardo. See *rollo,* pp. 94-96.

[34] *Rollo,* p. 128.

[35] *Santiago Land Development Corp. v. Court of Appeals,* G.R. No. 106194, January 28, 1997, 267 SCRA 79, 87-88.

Given the foregoing, we find that the RTC was unjustified in ordering SRMO, in its own capacity, to return the money to the Estate despite the fact, as certified to by Gerardo's heirs, that SRMO had already accounted for all monies or funds it had received on its client's behalf to Gerardo.[36] If the RTC was convinced that the Estate had a right to reimbursement, it should have ordered the party who ultimately benefited from any unwarranted payment—not his lawyer—to return the money.

While the general rule laid down in *Tang* (which limits the availability of the remedy of *certiorari* under Rule 65 only to parties in the proceedings before the lower court) must be strictly adhered to, it is not without exception. In *Republic v. Eugenio, Jr.,*[37] we allowed the wife of a respondent in two cases filed by the Anti-Money Laundering Council *(AMLC)* to challenge via *certiorari* the inquiry orders issued by the respective regional trial courts. There, we found that the wife had adequately demonstrated her joint ownership of the accounts subject of the inquiry orders. Thus, notwithstanding the fact that she was not named as a respondent in the cases filed by the AMLC or identified as a subject of the inquiry orders, we ruled that her joint ownership of the accounts clothed her with standing to assail, via *certiorari,* the inquiry orders authorizing the examination of said accounts in violation of her statutory right to maintain said accounts' secrecy.[38]

Considering that the RTC's order of reimbursement is specifically addressed to SRMO and the established fact that SRMO only received the subject money in its capacity as counsel/agent of Gerardo, there is then more reason to apply the exception here. Unlike *Tang,* which involved neighboring lot owners as petitioners, SRMO's interest can hardly be considered as merely incidental. That SRMO is being required to reimburse *from its own coffers* money already transmitted to its client is sufficient to give SRMO **direct** interest to

---

[36] *Rollo,* pp. 345, 350-352.

[37] G.R. No. 174629, February 14, 2008, 545 SCRA 384.

[38] *Id.* at 417-418.

challenge the RTC's order. Neither can SRMO be considered a total stranger to the proceedings. We have stated in one case that "a counsel becomes the eyes and ears in the prosecution or defense of his or her client's case."[39] This highly fiduciary relationship between counsel and client makes the party/non-party delineation prescribed by *Tang* inadequate in resolving the present controversy.

As a corollary, we have, in a number of instances, ruled that technical rules of procedures should be used to promote, not frustrate, the cause of justice. Rules of procedure are tools designed not to thwart but to facilitate the attainment of justice; thus, their strict and rigid application may, for good and deserving reasons, have to give way to, and be subordinated by, the need to aptly dispense substantial justice in the normal cause.[40] In this case, ordering SRMO to reimburse the widow's allowance from its own pocket would result in the unjust enrichment of Gerardo, since the latter would retain the money at the expense of his own counsel. To avoid such injustice, a petition for *certiorari* is an adequate remedy available to SRMO to meet the situation presented.

Another important consideration for allowing SRMO to file a petition for *certiorari* is the rule on real party in interest, which is applicable to private litigation.[41] A real party in interest is one "who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit."[42] In *Ortigas & Co., Ltd. v. Court of Appeals,*[43] we stated:

---

[39] *Ong Lay Hin v. Court of Appeals,* G.R. No. 191972, January 26, 2015, 748 SCRA 198, 207.

[40] *Crisologo v. JEWM Agro-lndustrial Corporation,* G.R. No. 196894, March 3, 2014, 717 SCRA 644, 660-661.

[41] *Kilosbayan, lncorporated v. Morato,* G.R. No. 118910, July 17, 1995, 246 SCRA 540, 562.

[42] RULES OF COURT, Rule 3, Sec. 2.

[43] G.R. No. 126102, December 4, 2000, 346 SCRA 748.

... "Interest" within the meanmg of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest.[44]

Simply put, a real party in interest is the person who will suffer (or has suffered) the wrong. In this case, it is SRMO who stands to be injured by the RTC's order of reimbursement considering that it is being made to return money received on behalf of, and already accounted to, its client.

III

Section 3, Rule 83 of the Rules of Court[45] provides for the allowance granted to the widow and family of the deceased person during the settlement of the estate. This allowance is rooted on the right and duty to support under the Civil Code. The right to support is a purely personal right essential to the life of the recipient, so that it cannot be subject to attachment or execution.[46] Neither can it be renounced or transmitted to a third person.[47] Being intransmissible, support cannot be the object of contracts.[48] Nonetheless, it has also been held that support in arrears is a different thing altogether. It may be compensated, renounced and transmitted by onerous or gratuitous title.[49]

---

[44] *Id.* at 757-758.

[45] Section. 3. *Allowance to widow and family.* — The widow and minor or incapacitated children of a deceased person, during the settlement of the estate, shall receive therefrom, under the direction of the court, such allowance as are provided by law.

[46] FAMILY CODE, Art. 205.

[47] *De Asis v. Court of Appeals,* G.R. No. 127578, February 15, 1999,303 SCRA 176, 181.

[48] See CIVIL CODE, Art. 1347.

[49] *Versoza v. Versoza,* G.R. No. L-25609, November 27, 1968, 26 SCRA 78, 84.

The Estate contends that since Remedios already sold her Estate to Gerardo on February 29, 1988, she was no longer entitled to any widow's allowance from that point on.[50] SRMO, on the other hand, maintains that the right of Remedios to receive widow's allowance remains from 1988 up to 1991 because she remained a nominal party in the case, and that this formed part of the interests sold to Gerardo.[51]

However, neither of the parties to the Deed of Sale is impleaded in the present petition; hence, this particular issue cannot be fully resolved. Following the principle of relativity of contracts,[52] the Deed of Sale is binding only between Remedios and Gerardo, and they alone acquired rights and assumed obligations thereunder. Any ruling that affects the enforceability of the Deed of Sale will therefore have an effect on their rights as seller and buyer, respectively. Both are, therefore, indispensable parties insofar as the issue of enforceability of the Deed of Sale is concerned.[53] The failure to implead them is fatal to the Estate's challenge on this front.

WHEREFORE, the petition is **GRANTED.** The September 24, 2007 Decision and December 28, 2007 Resolution of the Court of Appeals in CA- G.R. SP No. 83082 are **SET ASIDE.** The Orders dated August 21, 2003 and December 22, 2003 issued by Branch 56 of the Regional Trial Court of Lucena City in Sp. Proc. No. 4440 are likewise **SET ASIDE.**

SO ORDERED.

Velasco, Jr. (Chairperson), *Leonardo-de Castro,*[*] *Peralta,* and *Perez,*[**] *JJ.,* concur.

---

[50] *Rollo,* p. 319.

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

[52] CIVIL CODE, Art. 1311.

[53] See *Villanueva v. Nite*, G.R. No. 148211, July 25, 2006, 496 SCRA 459, 466.

[*] Designated as Additional, Member per Raffle dated February 1, 2016.

[**] Designated as Regular Member of the Third Division per Special Order No. 2311 dated January 14,2016.

SECOND DIVISION

[G.R. No. 181789. February 3, 2016]

GMA NETWORK, INC., *petitioner, vs.* **NATIONAL TELECOMMUNICATIONS COMMISSION, CENTRAL CATV, INC., PHILIPPINE HOME CABLE HOLDINGS, INC., and PILIPINO CABLE CORPORATION,** *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; NATIONAL TELECOMMUNICATIONS COMMISSION (NTC) RULES OF PROCEDURES AND PRACTICES; NTC HAS POWER TO ISSUE PROVISIONAL RELIEFS.— Section 3, Part VI of the NTC Rules of Procedure and Practices grants the NTC the power to issue **provisional reliefs** upon the filing of a complaint or at any subsequent stage. For this reason, the NTC has the authority to determine the propriety of the issuance of a cease and desist order, which is a provisional relief. Provisional reliefs or remedies are writs and processes that are available during the pendency of the action. A litigant may avail of provisional remedies to preserve and protect certain rights and interests pending the issuance of the final judgment in the case. These remedies are provisional because they are **temporary measures** availed of during the pendency of the action; they are **ancillary** because they are mere incidents in and are dependent on the result of the main action. The ancillary nature of provisional remedies means that they are adjunct to the main suit. Consequently, it is not uncommon that the issues in the main action are closely intertwined, if not identical, to the allegations and counter-allegations of the opposing parties in support of their contrary positions concerning the propriety or impropriety of the provisional relief. The distinguishing factor between the resolution of the provisional remedy and the main case lies in the temporary character of the ruling on the provisional relief, thus, the term "provisional." **The resolution of the provisional remedy, however, should be confined to the necessary issues attendant to its resolution without delving into the merits of the main case**.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion and Lucila for petitioner.

Miguel Damaso for respondents Sky Cable and PCC.

Picazo Buyco Tan Fider and Santos for respondent Home Cable.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioner GMA Network, Inc. *(petitioner)* seeking the reversal of the decision[2] of the Court of Appeals *(CA)* dated October 10, 2007, and its resolution[3] dated February 18, 2008, in CA-G.R. SP No. 92543. The CA held that the respondent National Telecommunications Commission *(NTC)* did not gravely abuse its discretion in denying the petitioner's motion for the issuance of a cease and desist order *(CDO)* and the motion for reconsideration that followed.

The Antecedents

On April 23, 2003, the petitioner filed a complaint before the NTC against respondents Central CATV, Inc. *(Skycable)*, Philippine Home Cable Holdings, Inc. *(Home Cable)*, and Pilipino Cable Corporation *(PCC)*.[4] The petitioner alleged that the respondents had entered into several transactions that created prohibited monopolies and combinations of trade in commercial mass media.[5] These transactions allegedly violated the

---

[1] *Rollo*, pp. 30-49.

[2] Penned by Associate Justice Marlene Gonzales-Sison; concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, *id.* at 87-97.

[3] *Id.* at 99-100.

[4] *Id.* at 88.

[5] *Id.* at 501.

Constitution, Executive Order No. 205 dated June 30, 1987,[6] and its implementing rules and regulations.[7]

According to the petitioner, Lopez, Inc. and its affiliate, ABS-CBN Broadcasting Corporation and its officers, own the majority stocks of Sky Vision Corporation *(Sky Vision)*. Sky Vision wholly owns Skycable, which operates cable TV in Metro Manila.[8]

Sky Vision and Telemondial Holdings, Inc. *(THI)* established PCC, which operates cable TV in the provinces. Sky Vision and THI entered into several transactions, resulting in Sky Vision's ownership of PCC.[9] Consequently, Sky Vision holds indirect equity interests in the cable companies owned by Skycable and PCC.[10]

On the other hand, *Home Cable* is a wholly owned subsidiary of Unilink Communications Corporation *(Unilink)*. Home Cable is authorized to operate cable TV in Metro Manila, which authority was expanded to Cavite, Cebu, Tarlac, and Batangas.[11]

On July 18, 2001, Lopez, Inc. and its affiliates, Benpres Holdings Corporation and ABS-CBN Broadcasting Corporation *(Benpres Group)*, executed a **Master Consolidation Agreement *(MCA)*** with PLDT and Mediaquest Holdings, Inc. *(PLDT Group)* to consolidate their respective ownerships, rights, and interests in **Sky Vision** and **Unilink** under a holding company, Beyond Cable Holdings, Inc.[12]

The petitioner prayed for the following reliefs in its complaint:

---

[6] Entitled, *Regulating the Operation of Cable Antenna Television (CATV) Systems in the Philippines, and for Other Purposes.*

[7] *Rollo,* pp. 335-337.

[8] *Id*. at 331.

[9] *Id.* at 332-333.

[10] *Id.* at 333.

[11] *Id.* at 333-334.

[12] *Id.* at 334-335.

(1) declaring unlawful, and therefore null and void: (a) the mergers, consolidation, and common control of the respondents Skycable and Home Cable under Beyond Cable; (b) the mergers and consolidation of the cable companies under respondents PCC; (c) the acquisition of the assets, permits and controlling shares of stock of the cable companies by the respondents Sky Cable, Home Cable and PCC; and (d) the "functional convergence" of the Bayantel and the Skycable/ PCC cable companies, for being contrary to law; ***and consequently, ordering the respondents to cease and desist permanently from implementing such mergers, consolidation, common control and functional convergence;*** and

(2) Ordering respondents and their component cable companies to maintain the quality of complainant GMA's signal, free from signal distortion and/or degradation, in their respective systems under pain of cancellation or revocation of their licenses or permits to operate should they continue to fail to do so;[13] (emphasis supplied)

On September 22, 2003, the petitioner filed with the NTC a **motion for the issuance of a cease and desist order** based on Section 20(g) of the Public Service Law. The petitioner asked the NTC to order the respondents to cease and desist from continuing the implementation of their operational merger and from implementing any further merger or consolidation of respondents' ownership, property, privileges, and right or any part thereof **without the approval of the NTC**.[14]

On November 11, 2003, the petitioner filed a *Manifestation (Re: Motion for Issuance of Cease and Desist Order),* citing news articles allegedly confirming that further steps had been undertaken toward the consolidation.[15] The petitioner also filed several motions for the urgent resolution of its motion for the issuance of a cease and desist order.[16]

---

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

[14] *Id.* at 576.

[15] *Id.* at 589-590.

[16] *Id.* at 597-623.

The NTC's Ruling

The NTC denied the petitioner's motion for the issuance of a cease and desist order.[17] The NTC ruled that the resolution of this motion would necessarily resolve the main case without the parties' presentation of evidence.[18]

The NTC also denied the petitioner's motion for reconsideration, prompting the petitioner to file a petition for *certiorari* before the CA, imputing grave abuse of discretion on the NTC.[19]

The CA's Ruling

The CA dismissed the petition and found no grave abuse of discretion on the part of the NTC.[20]

The CA ruled that the NTC has the discretionary power to issue a cease and desist order and, therefore, cannot be compelled to do so.[21]

The CA further held that the petitioner's complaint and motion both included a prayer for the issuance of a cease and desist order. The resolution of this prayer necessitates the parties' presentation of evidence.[22]

The CA did not rule on the constitutional and legal issues of the respondents' alleged mergers, acquisitions, consolidation, and corporate combinations. According to the CA, the NTC is the proper body that can act on the petitioner's factual allegations of market control and manipulation because the NTC has the presumed understanding of the market and commercial conditions of the broadcasting industry.[23]

---

[17] NTC Order dated November 8, 2004, *id.* at 624-625.

[18] *Ibid.*

[19] NTC Order dated October 13, 2005, *id.* at 635.

[20] CA Decision dated October 10, 2007, *supra* note 2.

[21] *Id.* at 92-93.

[22] *Id.* at 93.

[23] *Id.* at 54, 65, 68, and 96.

The CA denied the petitioner's motion for reconsideration,[24] prompting the petitioner to file the present petition.

The Petitioner's Position

The petitioner argues that the CA erred in finding no grave abuse of discretion on the part of the NTC when it denied the motion for the issuance of a cease and desist order.

According to the petitioner, the NTC abandoned its duty to issue a cease and desist order despite the petitioner's overwhelming and unrefuted evidence that Skycable, PCC, and Home Cable had already consolidated their operations under the MCA **without the prior approval of the NTC and the Congress**.[25]

The petitioner concludes that the **NTC should have issued the cease and desist order** to prevent the implementation of the alleged consolidation. The order would stop the continuing violation of the Constitution, the laws,[26] Home Cable's certificate of authority, and established jurisprudence.[27] The cease and desist order would also prevent the main case from becoming moot and academic.[28]

The Private Respondents' Position

Skycable and PCC

Skycable and PCC argued as follows:

---

[24] CA Resolution dated February 18, 2008, *supra* note 3.

[25] *Rollo*, pp. 54, 65, and 68.

[26] The petitioner cites the following laws that the petitioner allegedly violated: Article 16 Section 11(1) of the Constitution; Section 20(g) of the Public Service Law; Section 4 of Act No. 3247 entitled An Act to Prohibit Monopolies and Combinations in Restraint of Trade; Article 186 of the Revised Penal Code; Section 10 of RA 7969; and Home Cable 's Certificate of Authority which specifically requires prior congressional approval before a merger with any corporation.

[27] *Rollo,* pp. 55-62.

[28] *Id.* at 50-51, 54, 64-65, and 69.

First, the petitioner delved into the merits of the case instead of establishing the alleged grave of abuse of discretion of the NTC. The petitioner is asking the Court not only to make factual findings but to pre-empt the decision of the NTC without the benefit of a trial.[29]

Second, no merger has taken place under the MCA because Beyond Cable has not actually taken over the operations of Sky Cable, PCC, and Home Cable.[30]

Third, the petitioner has not shown any right that may have been violated. Section 20(g) of Commonwealth Act No. 146 or the Public Service Act expressly allows the negotiation or completion of merger and consolidation prior to the NTC's approval.[31]

Fourth, Skycable did not violate its congressional franchise since Skycable did not relinquish its franchise and had maintained its separate and distinct legal personality.[32]

Fifth, competition still exists in the cable industry in the areas covered by the Skycable and PCC operations.[33]

Home Cable

Home Cable echoed the arguments of PCC and Sky Cable.[34]

Home Cable also argued that the petition is dismissible as it lacks the following mandatory procedural requirements: (a) signature page bearing the signature of the petitioner's duly authorized counsel; (b) verification signed by the petitioner's duly authorized representative; (c) certificate of non-forum shopping; and (d) the petitioner's written authorization in favor

---

[29] *Id.* at 1582, 1589-1591.

[30] *Id.* at 1592-1593.

[31] *Id.* at 1595-1596 and 1601-1602.

[32] *Id.* at 1596-1597.

[33] *Id.* at 1597-1600.

[34] *Id.* at 1624-1631.

of the person signing the verification and certification of non-forum shopping.[35]

The Court's Ruling

The main issue in the present petition involves the NTC's denial of the motion for the issuance of a cease and desist order. The present case does not involve the petitioner's main complaint before the NTC.

Preliminarily, we deny the procedural arguments of Home Cable. We note that the petitioner had attached in its petition the signature page of its counsel,[36] the verification and certification of non-forum shopping signed by Dick B. Perez,[37] and the Secretary's Certificate authorizing Dick B. Perez to file the petition. [38]

As to the main issue in the present case, we rule that the CA committed grave abuse of discretion for its use of the wrong considerations in denying the petitioner's motion for the issuance of a cease and desist order **on the ground** that its resolution would resolve the main case without trial. We nevertheless join the CA's conclusion of denial based on the nature of the petitioner's motion as a provisional remedy.

Section 3, Part VI of the NTC Rules of Procedure and Practices grants the NTC the power to issue **provisional reliefs** upon the filing of a complaint or at any subsequent stage. For this reason, the NTC has the authority to determine the propriety of the issuance of a cease and desist order, which is a provisional relief.[39]

---

[35] *Id.* at 1622-1624.

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

[37] *Id.* at 81-82.

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

[39] In *Associated Communications and Wireless Services, LTD., et al. v. Dumlao, et al.* [440 Phil. 787, 804-806 (2002)], the Court recognized the power of the NTC to issue a cease and desist order upon compliance with the due process requirements.

Provisional reliefs or remedies are writs and processes that are available during the pendency of the action.[40] A litigant may avail of provisional remedies to preserve and protect certain rights and interests pending the issuance of the final judgment in the case.[41] These remedies are provisional because they are **temporary measures** availed of during the pendency of the action; they are **ancillary** because they are mere incidents in and are dependent on the result of the main action.[42]

The ancillary nature of provisional remedies means that they are adjunct to the main suit.[43] Consequently, it is not uncommon that the issues in the main action are closely intertwined, if not identical, to the allegations and counter-allegations of the opposing parties in support of their contrary positions concerning the propriety or impropriety of the provisional relief.[44]

The distinguishing factor between the resolution of the provisional remedy and the main case lies in the temporary character of the ruling on the provisional relief, thus, the term "provisional."[45] **The resolution of the provisional remedy, however, should be confined to the necessary issues attendant to its resolution without delving into the merits of the main case**.[46]

In other words, although a resolution of a motion for the issuance of a provisional relief necessarily involves issues

---

[40] V. Francisco, *The Revised Rules of Court in the Philippines: Provisional Remedies*, p. 1 (1985).

[41] *Ibid.*

[42] *Calderon v. Roxas, et al.*, G.R. No. 185595, January 9, 2013, 688 SCRA 330, 340.

[43] *Philippine National Bank v. Court of Appeals,* 353 Phil. 473, 479 (1998).

[44] *Hutchison Ports Phil. Ltd. v. Subic Bay Metropolitan Authority, et al.,* 393 Phil. 843, 859 (2000).

[45] *Buyco v. Baraquia,* 623 Phil. 596, 600-601 (2009).

[46] *Hutchison Ports Phil. Ltd. v. Subic Bay Metropolitan Authority, et al., supra* note 44, at 859.

intertwined with the main action, **this reality is not a legal obstacle** to the authorized agency's resolution of a prayer for a provisional relief on a temporary basis pending the resolution of the main case.

In fact, Section 3, Part VI of the NTC Rules of Procedure and Practices provides that the NTC may grant the provisional relief, on its own initiative or upon a party's motion, **based on the pleading and the attached affidavits and supporting documents**, ***without prejudice to a final decision after completion of the hearing***.

In these lights, we reverse the CA's findings and rule that the NTC gravely abused its discretion in denying the motion for the issuance of a cease and desist order based **only** on the ground that it would necessarily resolve the main action.

Be that as it may, we cannot grant the petitioner's prayer asking the Court to issue the cease and desist order. The petitioner failed to comply with the requirements for its issuance.

In *Garcia v. Mojica*,[47] the Court ruled that a cease and desist order is similar in nature to a *status quo* order rather than a temporary restraining order or a preliminary injunction since a *status quo* order does not direct the doing or undoing of acts, unlike in the case of prohibitory or mandatory injunctive relief.[48]

According to *Garcia,* a *status quo* order, as the very term connotes, is merely intended to maintain the last, actual, peaceable, and uncontested state of things which preceded the controversy.[49] This order is resorted to when the projected proceedings in the case made the conservation of the *status quo* desirable or essential, but either the affected party **did not pray for such relief or the *allegations in the party's pleading did not sufficiently make out a case for a temporary restraining order***.[50]

---

[47] 372 Phil. 892-893 (1999).

[48] *Id.* at 900.

[49] *Ibid*. citing F. Regalado, *Remedial Law Compendium*, Vol. I, p. 651 (1997).

[50] *Ibid*.

There were cases, however, when the Court treated a *status quo* order as a writ of **preliminary injunction**. In *Prado, et al. v. Veridiano II, et al.*,[51] the Court ruled that the *status quo* order in that case was in fact a writ of preliminary injunction, which enjoined the defendants from continuing not only *the public bidding in that case but also subsequent bidding until the trial court had resolved the issues*.[52] The Court applied the requirements for the issuance of a writ of preliminary injunction in determining the propriety for the issuance of a *status quo order*.[53]

In the present case, the petitioner prayed that the NTC order the respondents to **cease and desist from *continuing the implementation of their operational merger and from implementing any further merger or consolidation of respondents' ownership, property, privileges, and rights or any part thereof without the approval of the NTC.***[54]

The above allegations confirm that the petitioner's prayer for the issuance of a cease and desist order is actually a prayer for the issuance of a preliminary injunction. Thus, the petitioner's entitlement to the issuance of a cease and desist order depends on its compliance with the requisites for the issuance of a preliminary injunction.

To be entitled to the injunctive writ, the petitioner must show that (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[55]

---

[51] G.R. No. 98118, December 6, 1991, 204 SCRA 654, 670.

[52] *Id.* at 670-671.

[53] *Ibid.*

[54] *Rollo,* p. 579.

[55] *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas Province*, G.R. No. 183367, March 14, 2012, 668 SCRA 253, 261.

The petitioner failed to comply with the above requirements.

The petitioner failed to prove the **first** requirement, specifically, that *it has a clear and unmistakable right to be protected.*

An injunction will not issue to protect a right not in *esse* or a right that is merely **contingent** and **may never arise** since, to be protected by injunction, the alleged right must be clearly founded on or granted by law or is enforceable as a matter of law.[56]

A writ of preliminary injunction may be issued ***only upon clear showing of an actual existing right*** to be protected during the pendency of the principal action. When the complainant's right or title is doubtful or disputed, it does not have a clear legal right and, therefore, the issuance of injunctive relief is improper.[57]

Resolving the propriety of the issuance of a cease and desist order based on the petitioner's factual allegations and legal basis, we find that the petitioner failed to clearly establish its right to be protected under Section 20(g) of the Public Service Act. The petitioner alleged that the respondents have consolidated their operations without the requisite approval from the NTC.

Section 20(g) of the Public Service Act provides as follows:

Acts requiring the approval of the Commission. - Subject to established limitations and exceptions and saving provisions to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the Commission previously had:

xxx xxx xxx

(g) To sell, alienate, mortgage, encumber or lease its property, franchises, certificates, privileges, or rights or any part thereof; or **merge or consolidate its property, franchises privileges or rights, or any part thereof, with those of any other public service**. The **approval herein required**

---

[56] *Heirs of Melencio Yu, et al. v. CA, et al.,* G.R. No. 182371, September 4, 2013, 705 SCRA 84, 95-96.

[57] *The Incorporators of Mindanao Institute Inc., et al. v. UCCP, et al.*, G.R. No. 171765, March 21, 2012, 668 SCRA 637, 649.

> **shall be given, after notice to the public and hearing the persons interested at a public hearing**, if it be shown that there are just and reasonable grounds for making the mortgaged or encumbrance, for liabilities of more than one year maturity, or the sale, alienation, lease, merger, or consolidation to be approved, and that the same are not detrimental to the public interest, and in case of a sale, the date on which the same is to be consummated shall be fixed in the order of approval: **Provided, however, that nothing herein contained shall be construed to prevent the transaction from being negotiated or completed before its approval** or to prevent the sale, alienation, or lease by any public service of any of its property in the ordinary course of its business. (emphasis supplied)

Clearly, the above provision expressly permits the **negotiation or completion** of transactions involving merger or consolidation of property, franchises, privileges or rights **even prior** to the required NTC approval.

Applying Section 20(g) of the Public Service Act to the present case, the respondents' negotiation and even completion of transactions constituting the alleged consolidation of property, franchises, privileges, or rights – **by themselves** – are permitted and do not violate the provision. What the provision prohibits is the implementation or consummation of the transaction without the NTC's approval.

The petitioner submitted newspaper articles as proof of the alleged implementation of the consolidation. The petitioner's reliance on these newspaper articles is misplaced.

The Manila Bulletin article merely reported the Debt Restructuring Agreement signed by the creditors of Sky Vision, Skycable, and Home Cable.[58] The report even described the consolidation as merely a proposed consolidation, to wit: "*xxx With the signing of the MOA, the creditors of the three entities are granting their consents to the proposed consolidation of ownership of the PLDT group and Benpres Group in these entities.*"[59]

---

[58] *Rollo,* p. 594.

[59] *Ibid.*

The Philippine Daily Inquirer articles[60] showed that the completion of the consolidation was still expected, negating the consummation or implementation of the transaction.

At any rate, we emphasize that Section 20(g) of the Public Service Act **does not** preclude the negotiation and completion of the transactions for merger or consolidation prior to the NTC approval.

Since Section 20(g) of the Public Service Act – the petitioner's basis for the issuance of the cease and desist order – allows the negotiation and completion of transactions of mergers and consolidation, the complained acts of the respondents (based solely on newspaper reports) cannot be a source of the petitioner's entitlement to a cease and desist order. To be precise, the evidence before us does not show that a merger or consolidation has taken place beyond the negotiation or completion stage and should be barred for lack of NTC approval. There is not even a showing that a request for approval has been made, which request requires notice to the public and public hearings before it can be approved. Under these evidentiary facts, the motion for a cease and desist order **is clearly still premature.**

Since the petitioner did not clearly establish a right sought to be protected, we need not discuss the other requirements for the issuance of an injunctive writ.

WHEREFORE, we **GRANT** the petition and **REVERSE** and **SET ASIDE** the decision of the Court of Appeals dated October 10, 2007, and its resolution dated February 18, 2008. However, we **DENY** the petitioner's prayer for the issuance of a cease and desist order.

SO ORDERED.

Carpio (Chairperson), *del Castillo,* and *Mendoza, JJ.,* concur.

Leonen, J., on leave.

---

[60] *Id.* at 596 and 608.

SECOND DIVISION

[G.R. No. 190846. February 3, 2016]

TOMAS P. TAN, JR., *petitioner, vs.* **JOSE G. HOSANA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTIONS OF FACT ARE NOT PROPER IN A PETITION THEREFOR; EXCEPTIONS NOT PRESENT IN THE CASE AT BAR.— Whether Tomas paid the purchase price of ₱700,000.00 is a question of fact not proper in a petition for review on *certiorari*. Appreciation of evidence and inquiry on the correctness of the appellate court's factual findings are not the functions of this Court, as we are not a trier of facts. This Court does not address questions of fact which require us to rule on "the truth or falsehood of alleged facts," except in the following cases: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. The present case does not fall under any of these exceptions.

2. ID.; EVIDENCE; ADMISSIBILITY OF EVIDENCE; A VOID CONTRACT IS ADMISSIBLE AS EVIDENCE.— While the terms and provisions of a void contract cannot be enforced since it is deemed inexistent, it does not preclude the admissibility of the contract as evidence to prove matters that

occurred in the course of executing the contract, *i.e.,* what each party has given in the execution of the contract x x x. In the present case, the deed of sale was declared null and void by the positive provision of the law prohibiting the sale of conjugal property without the spouse's consent. It does not, however, preclude the possibility that Tomas paid the consideration stated therein. The admission of the deed of sale as evidence is consistent with the liberal policy of the court to admit the evidence which appears to be relevant in resolving an issue before the courts.

3. ID.; ID.; AN OFFER TO PROVE THE REGULAR EXECUTION OF THE DEED OF SALE IS BASIS FOR THE COURT TO DETERMINE THE PRESENCE OF THE ESSENTIAL ELEMENTS OF THE SALE, INCLUDING THE CONSIDERATION PAID.— The offer of the deed of sale to prove its regularity necessarily allowed the lower courts to consider the terms written therein to determine whether all the essential elements for a valid contract of sale are present, including the consideration of the sale. The fact that the sale was declared null and void does not prevent the court from relying on consideration stated in the deed of sale to determine the amount paid by the petitioner for the purpose of preventing unjust enrichment.

4. ID.; ID.; THE CONSIDERATION STATED IN THE NOTARIZED DEED OF SALE IS *PRIMA FACIE* EVIDENCE OF THE AMOUNT PAID BY THE PETITIONER.— The notarized deed of sale is a public document and is *prima facie* evidence of the truth of the facts stated therein. x x x In the present case, the consideration stated in the deed of sale constitutes *prima facie* evidence of the amount paid by Tomas for the transfer of the property to his name. Tomas failed to adduce satisfactory evidence to rebut or contradict the consideration stated as the actual consideration and amount paid to Milagros and Jose. The deed of sale was declared null and void by a positive provision of law requiring the consent of both spouses for the sale of conjugal property. There is, however, no question on the presence of the consideration of the sale, except with respect to the actual amount paid. While the deed of sale has no force and effect as a contract, it remains *prima facie* evidence of the actual consideration paid.

APPEARANCES OF COUNSEL

David C. Naval for petitioner.
Rosales & Associates Law Office for respondent.

D E C I S I O N

BRION, *J.*:

Before us is a petition for review on *certiorari*[1] challenging the August 28, 2009 decision[2] and November 17, 2009 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 88645.

The Facts

The respondent Jose G. Hosana (*Jose*) married Milagros C. Hosana (*Milagros*) on January 14, 1979.[4] During their marriage, Jose and Milagros bought a house and lot located at Tinago, Naga City, which lot was covered by Transfer Certificate of Title (*TCT*) No. 21229.[5]

On January 13, 1998, Milagros sold to the petitioner Tomas P. Tan, Jr. (*Tomas*) the subject property, as evidenced by a deed of sale executed by Milagros herself and as attorney-in-fact of Jose, by virtue of a Special Power of Attorney (*SPA*) executed by Jose in her favor.[6] The Deed of Sale stated that the purchase price for the lot was ₱200,000.00.[7] After the sale,

---

[1] *Rollo*, pp. 4-20.

[2] *Id.* at 26-36. Penned by CA Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Bienvenido L. Reyes (now with the Supreme Court) and Antonio L. Villamor.

[3] *Id.* at 46-47.

[4] *Id.* at 27.

[5] *Id.*

[6] *Id.*

[7] *Id.* at 29.

TCT No. 21229 was cancelled and TCT No. 32568 was issued in the name of Tomas.[8]

On October 19, 2001, Jose filed a *Complaint for Annulment of Sale/Cancellation of Title/Reconveyance and Damages* against Milagros, Tomas, and the Register of Deeds of Naga City.[9] The complaint was filed before the Regional Trial Court (*RTC)*, Branch 62, Naga City. In the complaint, Jose averred that while he was working in Japan, Milagros, without his consent and knowledge, conspired with Tomas to execute the SPA by forging Jose's signature making it appear that Jose had authorized Milagros to sell the subject property to Tomas. [10]

In his *Answer*, Tomas maintained that he was a buyer in good faith and for value.[11] Before he paid the full consideration of the sale, Tomas claimed he sought advice from his lawyer-friend who told him that the title of the subject lot was authentic and in order.[12] Furthermore, he alleged that the SPA authorizing Milagros to sell the property was annotated at the back of the title.[13]

Tomas filed a cross-claim against Milagros and claimed compensatory and moral damages, attorney's fees, and expenses for litigation, in the event that judgment be rendered in favor of Jose.[14]

The RTC declared Milagros in default for her failure to file her answer to Jose's complaint and Tomas' cross-claim.[15] On the other hand, it dismissed Tomas' complaint against the Register of Deeds since it was only a nominal party.[16]

---

[8] *Id.* at 27.

[9] *Id.* at 27-28. Docketed as Civil Case No. 2001-0341.

[10] *Id.* at 28.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

After the pre-trial conference, trial on the merits ensued. [17]

Jose presented his brother, Bonifacio Hosana (*Bonifacio*), as sole witness. Bonifacio testified that he learned of the sale of the subject property from Milagros' son.[18] When Bonifacio confronted Milagros that Jose would get angry because of the sale, Milagros retorted that she sold the property because she needed the money. Bonifacio immediately informed Jose, who was then in Japan, of the sale.[19]

Jose was furious when he learned of the sale and went back to the Philippines. Jose and Bonifacio verified with the Register of Deeds and discovered that the title covering the disputed property had been transferred to Tomas.[20]

Bonifacio further testified that Jose's signature in the SPA was forged.[21] Bonifacio presented documents containing the signature of Jose for comparison: Philippine passport, complaint-affidavit, duplicate original of SPA dated 16 February 2002, notice of *lis pendens*, community tax certificate, voter's affidavit, specimen signatures, and a handwritten letter.[22]

On the other hand, Tomas submitted his own account of events as corroborated by Rosana Robles (*Rosana*), his goddaughter. Sometime in December 1997, Tomas directed Rosana to go to the house of Milagros to confirm if Jose knew about the sale transaction. Through a phone call by Milagros to Jose, Rosana was able to talk to Jose who confirmed that he was aware of the sale and had given his wife authority to proceed with the sale. Rosana informed Tomas of Jose's confirmation.[23]

---

[17] *Id.*

[18] *Id.* at 21.

[19] *Id.* at 28-29.

[20] *Id.* at 29.

[21] *Id.*

[22] *Id.* at 22.

[23] *Id.* at 29.

With the assurance that all the documents were in order, Tomas made a partial payment of ₱350,000.00 and another ₱350,000.00 upon the execution of the *Deed of Absolute Sale* (Deed of Sale). Tomas noticed that the consideration written by Milagros on the Deed of Sale was only ₱200,000.00; he inquired why the written consideration was lower than the actual consideration paid. Milagros explained that it was done to save on taxes. Tomas also learned from Milagros that she needed money badly and had to sell the house because Jose had stopped sending her money.[24]

The RTC Ruling

In its decision dated December 27, 2006,[25] the RTC decided in favor of Jose and nullified the sale of the subject property to Tomas. The RTC held that the SPA dated June 10, 1996, wherein Jose supposedly appointed Milagros as his attorney-in-fact, was actually null and void.

Tomas and Milagros were ordered to jointly and severally indemnify Jose the amount of ₱20,000.00 as temperate damages.[26]

The CA Ruling

Tomas appealed the RTC's ruling to the CA.

In a decision dated August 28, 2009,[27] the CA affirmed the RTC ruling that the deed of sale and the SPA were void. However, the CA modified the judgment of the RTC: *first*, by deleting the award of temperate damages; and *second*, by directing Jose and Milagros to reimburse Tomas the purchase price of ₱200,000.00, with interest, under the principle of unjust enrichment. Despite Tomas' allegation that he paid ₱700,000.00 for the subject lot, the CA found that there was no convincing evidence that established this claim.[28]

---

[24] *Id.* at 29-30.

[25] *Id.* at 21-24.

[26] *Id.* at 24.

[27] *Id.* at 26-36.

[28] *Id.* at 35.

Tomas filed a motion for the reconsideration of the CA decision on the ground that the amount of ₱200,000.00 as reimbursement for the purchase price of the house and lot was insufficient and not supported by the evidence formally offered before and admitted by the RTC. Tomas contended that the actual amount he paid as consideration for the sale was ₱700,000.00, as supported by his testimony before the RTC.[29]

The CA denied the motion for reconsideration for lack of merit in a resolution dated November 17, 2009.[30]

The Petition

Tomas filed the present petition for review on *certiorari* to challenge the CA ruling which ordered the reimbursement of ₱200,000.00 only, instead of the actual purchase price he paid in the amount of ₱700,000.00.[31]

Tomas argues that, *first*, all matters contained in the deed of sale, including the consideration stated, cannot be used as evidence since it was declared null and void; *second*, the deed of sale was not specifically offered to prove the actual consideration of the sale;[32] *third*, his testimony establishing the actual purchase price of ₱700,000.00 paid was uncontroverted;[33] and, *fourth*, Jose must return the full amount actually paid under the principle of *solutio indebiti*.[34]

Jose, on the other hand, argues that *first*, Jose is estopped from questioning the purchase price indicated in the deed of sale for failing to immediately raise this question; and *second*, the terms of an agreement reduced into writing are deemed to

---

[29] *Id.* at 37-44.

[30] *Id.* at 46-47.

[31] *Id.* at 9.

[32] *Id.* at 11.

[33] *Id.* at 13-15.

[34] *Id.* at 15-17.

include all the terms agreed upon and no other evidence can be admitted other than the terms of the agreement itself.[35]

The Issues

The core issues are (1) whether the deed of sale can be used as the basis for the amount of consideration paid; and (2) whether the testimony of Tomas is sufficient to establish the actual purchase price of the sale.

OUR RULING

We affirm the CA ruling and deny the petition.

Whether Tomas paid the purchase price of ₱700,000.00 is a question of fact not proper in a petition for review on *certiorari*. Appreciation of evidence and inquiry on the correctness of the appellate court's factual findings are not the functions of this Court, as we are not a trier of facts.[36]

This Court does not address questions of fact which require us to rule on "the truth or falsehood of alleged facts,"[37] except in the following cases:

(1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings

---

[35] *Id.* at 105-109.

[36] *Bognot v. RRI Lending Corporation*, G.R. No. 180144, September 24, 2014, 736 SCRA 357, 366.

[37] *First Dominion Resources Corporation v. Peñaranda*, G.R. No. 166616, January 27, 2006, 480 SCRA 504.

of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[38]

The present case does not fall under any of these exceptions.

Whether Tomas sufficiently proved that he paid ₱700,000.00 for the subject property is a factual question that the CA had already resolved in the negative.[39] The CA found Tomas' claim of paying ₱700,000.00 for the subject property to be unsubstantiated as he failed to tender any convincing evidence to establish his claim.

We uphold the CA's finding.

In civil cases, the basic rule is that the party making allegations has the burden of proving them by a preponderance of evidence.[40] Moreover, the parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent.[41]

Preponderance of evidence is the **weight, credit, and value** of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence."[42] Preponderance of evidence is a phrase that, in the last analysis, means probability of the truth. It is evidence that is more convincing to the court as it is worthier of belief than that which is offered in opposition thereto.[43]

We agree with the CA that Tomas' bare allegation that he paid Milagros the sum of ₱700,000.00 cannot be considered as

---

[38] *New City Builders, Inc. v. National Labor Relations Commission*, G.R. No. 149281, June 15, 2005, 460 SCRA 220, 221, 227.

[39] *Rollo,* p. 35.

[40] *Ramos v. Obispo*, G.R. No. 193804, February 27, 2013, 692 SCRA 240, 248.

[41] *Id.*

[42] *Id.* at 249.

[43] *Id.*

proof of payment, without any other convincing evidence to establish this claim. Tomas' bare allegation, while uncontroverted, does not automatically entitle it to be given weight and credence.

It is settled in jurisprudence that one who pleads payment has the burden of proving it;[44] the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.[45] A mere allegation is not evidence,[46] and the person who alleges has the burden of proving his or her allegation with the requisite quantum of evidence, which in civil cases is preponderance of evidence.

The force and effect of a void contract is distinguished from its admissibility as evidence.

The next question to be resolved is whether the CA correctly ordered the reimbursement of ₱200,000.00, which is the consideration stated in the Deed of Sale, based on the principle of unjust enrichment.

The petitioner argues that the CA erred in relying on the consideration stated in the deed of sale as basis for the reimbursable amount because a null and void document cannot be used as evidence.

We find no merit in the petitioner's argument.

A void or inexistent contract has no force and effect from the very beginning.[47] This rule applies to contracts that are declared void by positive provision of law, as in the case of a sale of conjugal property without the other spouse's written consent.[48] A void contract is equivalent to nothing and is absolutely

---

[44] *Supra* note 36, at 367.

[45] *Id*.

[46] *Supra* note 40, at 249.

[47] *Fuentes v. Roca*, G.R. No. 178902, April 21, 2010, 618 SCRA 702, 711.

[48] *Id.*

wanting in civil effects.[49] It cannot be validated either by ratification or prescription.[50] When, however, any of the terms of a void contract have been performed, an action to declare its inexistence is necessary to allow restitution of what has been given under it.[51]

It is basic that if a void contract has already "been performed, the restoration of what has been given is in order."[52] This principle springs from Article 22 of the New Civil Code which states that "every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same." Hence, the restitution of what each party has given is a consequence of a void and inexistent contract.

While the terms and provisions of a void contract cannot be enforced since it is deemed inexistent, it does not preclude the admissibility of the contract as evidence to prove matters that occurred in the course of executing the contract, *i.e.,* what each party has given in the execution of the contract.

Evidence is the *means* of ascertaining in a judicial proceeding *the truth respecting a matter of fact*, sanctioned by the Rules of Court.[53] The purpose of introducing documentary evidence is to ascertain the truthfulness of a matter at issue, which can be the entire content or a specific provision/term in the document.

The deed of sale as documentary evidence may be used as a means to ascertain the truthfulness of the consideration stated and its actual payment. The purpose of introducing the deed of sale as evidence is not to enforce the terms written in the contract, which is an obligatory force and effect of a valid contract. The deed of sale, rather, is used as a means to determine matters

---

[49] *Id.*

[50] *Id.*

[51] *Id.* at 712.

[52] *Nool v. Court of Appeals*, 342 Phil. 106, 110 (1997).

[53] Section 1, Rule 128 of the Rules of Court.

that occurred in the execution of such contract, *i.e.,* the determination of what each party has given under the void contract to allow restitution and prevent unjust enrichment.

Evidence is admissible when it is relevant to the issue and is **not excluded** by the law of these rules.[54] There is no provision in the Rules of Evidence which excludes the admissibility of a void document. The Rules only require that the evidence is relevant and not excluded by the Rules for its admissibility.[55]

Hence, a void document is admissible as evidence because the purpose of introducing it as evidence is to ascertain the truth respecting a matter of fact, not to enforce the terms of the document itself.

It is also settled in jurisprudence that with respect to evidence which appears to be of *doubtful* relevancy, incompetency, or admissibility, the safer policy is to be liberal and not reject them on doubtful or technical grounds, but admit them unless plainly irrelevant, immaterial, or incompetent; for the reason that their rejection places them beyond the consideration of the court, if they are thereafter found relevant or competent. On the other hand, their admission, if they turn out later to be irrelevant or incompetent, can easily be remedied by completely discarding them or ignoring them.[56]

In the present case, the deed of sale was declared null and void by positive provision of the law prohibiting the sale of conjugal property without the spouse's consent. It does not, however, preclude the possibility that Tomas paid the consideration stated therein. The admission of the deed of sale as evidence is consistent with the liberal policy of the court to admit the evidence which appears to be relevant in resolving an issue before the courts.

---

[54] Section 3 of Rule 128.

[55] *Id.*

[56] *Geronimo v. Sps. Calderon*, G.R. No. 201781, December 10, 2014.

An offer to prove the regular execution of the deed of sale is basis for the court to determine the presence of the essential elements of the sale, including the consideration paid.

Tomas argues that the Deed of Sale was not specifically offered to prove the actual consideration of the sale and, hence, cannot be considered by the court. Tomas is incorrect.

The deed of sale in the present case was formally offered by both parties as evidence.[57] Tomas, in fact, formally offered it for the purpose of proving its execution and the regularity of the sale.[58]

The offer of the deed of sale to prove its regularity necessarily allowed the lower courts to consider the terms written therein to determine whether all the essential elements[59] for a valid contract of sale are present, including the consideration of the sale. The fact that the sale was declared null and void does not prevent the court from relying on consideration stated in the deed of sale to determine the actual amount paid by the petitioner for the purpose of preventing unjust enrichment.

Hence, the specific offer of the Deed of Sale to prove the actual consideration of the sale is not necessary since it is necessarily included in determining the regular execution of the sale.

---

[57] *Rollo*, pp. 49, 52.

[58] *Id.* at 52.

[59] Article 1318 in relation to Article 1458 of the Civil Code.

The essential elements of a contract of sale are the following:

a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price;

b) Determinate subject matter; and

c) Price certain in money or its equivalent.

The consideration stated in the notarized Deed of Sale is prima facie evidence of the amount paid by the petitioner.

The notarized deed of sale is a public document and is *prima facie* evidence of the truth of the facts stated therein.[60]

Prima facie evidence is defined as evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense and which if not rebutted or contradicted, will remain sufficient.[61]

In the present case, the consideration stated in the deed of sale constitutes *prima facie* evidence of the amount paid by Tomas for the transfer of the property to his name. Tomas failed to adduce satisfactory evidence to rebut or contradict the consideration stated as the actual consideration and amount paid to Milagros and Jose.

The deed of sale was declared null and void by a positive provision of law requiring the consent of both spouses for the sale of conjugal property. There is, however, no question on the presence of the consideration of the sale, except with respect to the actual amount paid. While the deed of sale has no force and effect as a contract, it remains *prima facie* evidence of the actual consideration paid.

As earlier discussed, Tomas failed to substantiate his claim that he paid to Milagros the amount of ₱700,000.00, instead of the amount of ₱200,000.00 stated in the deed of sale. No documentary or testimonial evidence to prove payment of the higher amount was presented, apart from Tomas' sole testimony. Tomas' sole testimony of payment is self-serving and insufficient

---

[60] *Sps. Santos v. Sps. Lumbao*, G.R. No. 169129, March 28, 2007, 519 SCRA 408, 426.

[61] *Wa-acon v. People*, G.R. No. 164575, December 6, 2006, 510 SCRA 429, 438.

to unequivocally prove that Milagros received ₱700,000.00 for the subject property.

Hence, the consideration stated in the deed of sale remains sufficient evidence of the actual amount the petitioner paid and the same amount which should be returned under the principle of unjust enrichment.

Unjust enrichment exists "when a person unjustly retains a benefit at the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity, and good conscience."[62] The prevention of unjust enrichment is a recognized public policy of the State and is based on Article 22 of the Civil Code.[63]

The principle of unjust enrichment requires Jose to return what he or Milagros received under the void contract which presumably benefitted their conjugal partnership.

Accordingly, the CA correctly ordered Jose to return the amount of ₱200,000.00 since this is the consideration stated in the Deed of Sale and given credence by the lower court. Indeed, even Jose expressly stated in his comment that Tomas is entitled to recover the money paid by him in the amount of ₱200,000.00 as appearing in the contract.

WHEREFORE, we hereby **DENY** the petition for review on *certiorari*. The decision dated August 28, 2009 and the resolution dated November 17, 2009, of the Court of Appeals in CA-G.R. CV No. 88645 is **AFFIRMED**. Costs against the petitioner.

SO ORDERED.

Carpio (Chairperson), *del Castillo,* and *Mendoza, JJ.,* concur.

Leonen, J., on leave.

---

[62] *Gonzalo v. Tarnate, Jr.*, G.R. No. 160600, January 15, 2014, 713 SCRA 224.

[63] *Id.*

SECOND DIVISION

[G.R. No. 193748. February 3, 2016]

MERVIC REALTY, INC. and VICCY REALTY, INC., *petitioners, vs.* **CHINA BANKING CORPORATION,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION; CLOSE FAMILY CORPORATIONS ARE NOT ALLOWED TO JOINTLY FILE REHABILITATION PETITIONS.— The rules in effect at the time the rehabilitation petition was filed were the Interim Rules. The Interim Rules took effect on **December 15, 2000,** ***and did not allow the joint or consolidated filing of rehabilitation petitions.*** x x x The 2008 Rules took effect on January 16, 2009. By the time the Court decided *Asiatrust* in 2011, the 2008 Rules were already in effect but the Court saw no valid reason to retroactively apply these. More significantly, Rule 9, Section 2 of the 2008 Rules allows the retroactive application of the 2008 Rules to pending rehabilitation proceedings only when these have not yet undergone the initial hearing stage at the time of the effectivity of the 2008 Rules x x x. In the present case, the rehabilitation court conducted the initial hearing on January 22, 2007, and approved the rehabilitation plan on April 15, 2008 – long before the effectivity of the 2008 Rules on January 16, 2009. Clearly, the 2008 Rules cannot be retroactively applied to the rehabilitation petition filed by the petitioners.

2. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE QUESTION OF AMENDMENT OF THE ARTICLES OF INCORPORATION (AOI) REQUIRES A FACT-FINDING TASK THAT THE COURT DOES NOT USUALLY UNDERTAKE IN A RULE 45 PETITION.— We observe that the rehabilitation court did not rule on the issue of venue although China Bank raised this jurisdictional defect at the outset. The Court of Appeals, on the other hand, found Quezon City as the petitioners' principal place of business. Also, while the petitioners attached

copies of their certified amended AOIs and GIS, China Bank disputed the authenticity and completeness of these documents. Suffice it to say that at this late stage of the case, the Court cannot and will not resolve the question of whether the petitioners have amended their AOIs. Such an exercise would require us to examine the authenticity and completeness of the documents submitted to prove or contradict the supposed amendments. We stress that this is a fact-finding task that the Court does not usually undertake, particularly in a Rule 45 petition where only questions of law may be raised.

APPEARANCES OF COUNSEL

Karlo L. Calingasan for petitioners.

Lim Vigilia Alcala Dumlao Alameda & Casiding for respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is an appeal by *certiorari*[1] assailing the June 10, 2010 decision[2] and the September 14, 2010 resolution[3] of the Court of Appeals in CA-G.R. SP No. 103557.

Antecedents

On **October 16, 2006**, Mervic Realty, Inc. and Viccy Realty, Inc. (the *petitioners*) jointly filed a petition for the declaration of state of suspension of payments with a proposed rehabilitation plan[4] (*rehabilitation petition*) before the Regional Trial Court

---

[1] *Rollo*, pp. 9-33. The petition is filed under Rule 45 of the Rules of Court.

[2] *Id.* at 37-51. The assailed decision and resolution are penned by Associate Justice Amy C. Lazaro-Javier, and concurred in by Associate Justice Sesinando E. Villon and (now Supreme Court) Associate Justice Estela M. Perlas-Bernabe.

[3] *Id.* at 81.

[4] *Id.* at 89-96. Docketed as SEC Corp. Case No. S6-002-MN.

of Malabon City, Branch 74 (*rehabilitation court*) for approval.[5] The rehabilitation petition was filed under A.M. No. 00-8-10-SC dated November 21, 2000, or the **2000 Interim Rules of Procedure on Corporate Rehabilitation** (the *Interim Rules*).[6]

The petitioners alleged that they are duly organized domestic real estate corporations with principal place of business in Malabon City. They disclosed that their common president is Mario Siochi and that a majority of their stockholders and officers are members of the Siochi family.[7] The petitioners averred that they were financially stable until they were hit by the Asian financial crisis in 1997. As a result of the financial crisis, they foresaw the impossibility of meeting their obligations when they fall due.[8]

The petitioners thus prayed that the rehabilitation court issue a stay order to suspend the enforcement of claims against them.[9] They alleged that as of September 30, 2006, their combined total obligations inclusive of interests, penalties, and other charges had reached ₱193,156,559.00.[10]

Finding the petition sufficient in form and substance, the rehabilitation court issued a stay order that suspended the enforcement of all claims against the petitioners.[11] The rehabilitation court likewise appointed a rehabilitation receiver.[12]

The respondent China Banking Corporation (*China Bank*), a creditor of the petitioners, opposed the rehabilitation petition.[13] It alleged that it had acquired title to and initiated extrajudicial

---

[5] *Id.* at 13.

[6] A.M. No. 00-8-10-SC, November 21, 2000.

[7] *Id.* at 90.

[8] *Id*.

[9] *Id.* at 96.

[10] *Id.* at 92.

[11] *Id.* at 279-282. The stay order was issued on October 19, 2006.

[12] *Id.* at 39. Mr. Villamor A. Aguilar was the appointed receiver.

[13] *Id.* at 288-297. China Bank filed its opposition on January 19, 2007.

foreclosure proceedings over some of Mervic Realty, Inc.'s real properties.[14] It argued that the petitioners are separate entities and should have filed separate petitions even if the majority of their common stockholders and officers belong to the Siochi family; that the assets of one corporation cannot be considered the assets of the other; that their financial conditions are not the same; that they have different creditors; that their obligations vary; and that the feasibility of rehabilitation for one corporation may not necessarily be true for the other.[15]

China Bank also questioned the venue of the rehabilitation petition.[16] Under Section 2, Rule 3 of the Interim Rules, petitions for corporate rehabilitation shall be filed with the Regional Trial Court having jurisdiction over the territory where the debtor's principal office is located. According to China Bank, the Articles of Incorporation (*AOI*) of the petitioners show that their principal place of business is located in Quezon City, not in Malabon City.[17]

The RTC Ruling

The rehabilitation court approved the rehabilitation plan and denied China Bank's opposition. It held that there is no misjoinder of causes of action since the petitioners' cause of action is solely for their corporate rehabilitation; and that to require them to separately file their respective rehabilitation petitions will lead to multiplicity of suits. The rehabilitation court did not rule on the issue of venue.

The dispositive portion of the decision reads:

WHEREFORE, the Rehabilitation Plan filed with this Court and made as an Annex and integral part of this order is hereby **APPROVED**. Petitioners are strictly enjoined to abide by its terms

---

[14] *Id.* at 38. Covered by TCT Nos. R-28696, M-10463 and R-27373.

[15] *Id.* at 288-289.

[16] *Id.* at 296.

[17] *Id.* at 296.

and conditions and they shall, unless directed otherwise, submit a quarterly report on the progress of the implementation of the Rehabilitation Plan. x x x.

SO ORDERED.[18]

China Bank filed a petition for review with the Court of Appeals to challenge the approved rehabilitation plan.[19]

The Court of Appeals Ruling

The Court of Appeals granted China Bank's petition for review and dismissed the petition for rehabilitation on the ground of improper venue, citing Section 2, Rule 3 of the Interim Rules, *viz:*

Section 2 – Petitions for rehabilitation pursuant to these Rules shall be filed in the Regional Trial Court having jurisdiction over the territory where the debtor's principal office is located.

The Court of Appeals found that the petitioners' respective AOIs show that their principal office is located in Quezon City.[20]

The Court of Appeals held that residence is vital when dealing with venue. A corporation is, in a metaphysical sense, a resident of the place where its principal office is located as stated in the AOI.[21] It is true that venue may be changed by consent of the parties, and even an improper venue may be waived by the defendant's failure to raise it at the proper time. The Court of Appeals, however, found that China Bank timely and vigorously asserted that Quezon City, not Malabon City, is the proper venue.[22]

---

[18] *Id.* at 326-329 and pp. 555-558. Assisting Judge Leonardo L. Leonida issued the April 15, 2008 order.

[19] *Id.* at 330-348. China Bank also applied for the issuance of a temporary restraining order or writ of preliminary injunction.

[20] *Id.* at 48.

[21] *Id.*

[22] *Id.* at 50.

The Court of Appeals reversed the rehabilitation court's decision, thus,

ACCORDINGLY, the petition is **GRANTED.** The order dated April 15, 2008 is **SET ASIDE** and a new one rendered **DISMISSING** the petition a quo for improper venue.[23]

The petitioners moved[24] but failed to obtain a reconsideration of the Court of Appeal's decision.[25] Hence, they came to the Court for relief via the present petition.

The Petition

The petitioners submit that the Court of Appeals erred in dismissing the petition for rehabilitation on the ground of improper venue.

They claim that Mervic Realty, Inc. amended its AOI on February 15, 1985[26] and that Viccy Realty, Inc. adopted Mervic Realty, Inc.'s principal place of business in Malabon City.[27] The petitioners thus insist that they properly filed the rehabilitation petition in Malabon City.[28] They reiterate that they are close family corporations and that it would be impractical to file separate rehabilitation petitions. The petitioners claim that the rehabilitation court fully acquired jurisdiction over the petition the moment they complied with all jurisdictional requirements.[29]

Finally, the petitioners justify the approval of the rehabilitation plan by claiming that their businesses are still in operation and that their desired financial targets can still be implemented.

---

[23] *Id.* at 51.

[24] *Id.* at 53-56.

[25] *Id.* at 81.

[26] *Id.* at 664-672.

[27] *Id.* at 673-680.

[28] *Id.* at 23.

[29] Citing Section 9, Rule 4 of the Interim Rules, *id.* at 24.

China Bank's Comment[30]

In response, China Bank maintains that the Interim Rules mandate that the rehabilitation petition be filed in the place where the *principal debtor's principal office* is located. China Bank argues that Viccy Realty Inc.'s General Information Sheet (*GIS*) shows Quezon City as its principal place of business, contrary to the petitioners' claim that Viccy Realty, Inc. adopted Mervic Realty, Inc.'s principal office in Malabon City.[31]

China Bank also claims that the petitioners did not submit a copy of Viccy Realty, Inc.'s AOI to the rehabilitation court to prove that it had transferred its principal office to Malabon City. Neither was its Bylaws submitted. China Bank thus insists that the rehabilitation court of Malabon City did not acquire jurisdiction over the petition.[32] In support of this allegation, China Bank claims that it has submitted to the rehabilitation court a *verification of documents* from the Securities and Exchange Commission showing that Viccy Realty Inc.'s principal office is located in Quezon City.[33]

The Petitioner's Reply[34]

The petitioners maintain that Mervic Realty, Inc. amended its AOI in 1985 and made Malabon City its principal place of business.[35] They reiterate that Mervic Realty, Inc. owns 80% of the shares of Viccy Realty, Inc., and that the latter adopted the principal office of the former.[36] The petitioners also submit that China Bank had waived the issue of venue because all its notices had been addressed to their principal office in Malabon City.[37]

---

[30] *Id.* at 691-698. Comment filed on February 18, 2011.

[31] *Id.* at 693.

[32] *Id.*

[33] *Id.* at 694.

[34] *Id.* at 702-705. Reply filed on June 6, 2011.

[35] *Id.* at 703.

[36] *Id.*

[37] *Id.*

The petitioners invoke Section 97 of the Corporation Code, which purportedly provides an exception to the general rule and makes the stockholders and/or officers of a close corporation personally liable for corporate debts. Thus, a joint rehabilitation petition filed by a close family corporation should be allowed.

Finally, the petitioners invoke A.M. No. 00-8-10-SC dated December 2, 2008, or the 2008 Rules of Procedure on Corporate Rehabilitation (*2008 Rules*) which allow the joint filing of rehabilitation petition by a group of companies. They posit that the 2008 Rules may be applied to their rehabilitation petition filed in 2006.[38]

Issues

We clarify at the outset that the Court will not delve into the feasibility of the petitioners' rehabilitation. The viability of the rehabilitation plan is not at issue here. Whether the petitioners, as they claim, can still be financially revived is an issue separate from the procedural aspects of the case.

The main issue is ***whether the petitioners, which are close family corporations, can jointly file the petition for rehabilitation under the Interim Rules.***

If the answer is yes, then we determine whether they have chosen the correct venue. If the answer is no, then the Court can resolve the petition without ruling on the petitioners' *factual claims* that they have amended their AOIs, have moved their principal place of business from Quezon City to Malabon City, and have thus filed the rehabilitation petition in the proper venue.

Our Ruling

We **deny** the petition for lack of merit.

The rules in effect at the time the rehabilitation petition was filed were the Interim Rules. The Interim Rules took effect on **December 15, 2000,** ***and did not allow the joint or consolidated filing of rehabilitation petitions.***

---

[38] *Id.* at 704.

We note that the present dispute is not without a precedent. The Court resolved the same issue in the case of *Asiatrust Development Bank v. First Aikka Development, Inc*.[39] Like the present case, the two corporations in this cited case had interlocking stockholders and officers when they filed a joint rehabilitation petition in Baguio City. However, one corporation's principal place of business was in Pasig City, which is beyond the jurisdiction of the rehabilitation court in Baguio City.[40]

In *Asiatrust*, the Court held that the consolidation of petitions involving two separate entities is not proper.[41] Although the corporations had interlocking directors, owners, officers, as well as intertwined loans, the two corporations were separate, each one with its own distinct personality.[42] In determining the feasibility of rehabilitation, the court evaluates the assets and liabilities of each of these corporations separately and not jointly with other corporations.[43]

Thus, the Court dismissed the rehabilitation petition but only with respect to the corporation located in Pasig City. The Court found that the other corporation properly filed its rehabilitation petition in Baguio City because its principal office is located in that city.[44] Thus, we remanded the case to the rehabilitation court of Baguio City for further proceedings but *only* with respect to the *corporation located in that city*.[45]

In the present case, the dispute's concern is not only whether the petitioners could jointly file the rehabilitation petition (which the Court disallowed in *Asiatrust*), but also whether the rehabilitation petition was filed in the proper venue.

---

[39] 665 Phil. 313 (2011).

[40] *Id*. at 327.

[41] *Id*. at 327-328.

[42] *Ibid*.

[43] *Id.* at 328.

[44] *Ibid*.

[45] *Id*. at 332.

Notwithstanding our ruling in *Asiatrust,* the petitioners beg the Court to liberally apply the Interim Rules. As mentioned, they also invoke the 2008 Rules which allow a group of companies to file a joint rehabilitation petition.[46] In short, the petitioners ask the Court to apply a rule that did not exist when they filed the rehabilitation petition.

We find no legal basis to retroactively apply the 2008 Rules.

The 2008 Rules took effect on January 16, 2009.[47] By the time the Court decided *Asiatrust* in 2011, the 2008 Rules were already in effect but the Court saw no valid reason to retroactively apply these.

More significantly, Rule 9, Section 2 of the 2008 Rules allows the retroactive application of the 2008 Rules to pending rehabilitation proceedings only when these have not yet undergone the initial hearing stage at the time of the effectivity of the 2008 Rules:

> SEC.2. Transitory Provision.—Unless the court orders otherwise to prevent manifest injustice, any pending petition for rehabilitation that has not undergone the initial hearing prescribed under the Interim Rules of Procedure for Corporate Rehabilitation at the time of the effectivity of these Rules shall be governed by these Rules.

In the present case, the rehabilitation court conducted the initial hearing on January 22, 2007,[48] and approved the rehabilitation plan on April 15, 2008 – long before the effectivity of the 2008 Rules on January 16, 2009. Clearly, the 2008 Rules cannot be retroactively applied to the rehabilitation petition filed by the petitioners.

On this basis alone, the Court holds that the present petition lacks merit.

---

[46] See 2008 Rules, Rule 3, Section 2.

[47] See 2008 Rules, Rule 9, Section 3.

[48] *Rollo*, p. 326.

Even if we liberally and retroactively apply the 2008 Rules, the issue of venue remains. To resolve whether Malabon City should be the proper venue, we have to determine if the petitioners have indeed validly amended their AOIs.

We observe that the rehabilitation court did not rule on the issue of venue although China Bank raised this jurisdictional defect at the outset. The Court of Appeals, on the other hand, found Quezon City as the petitioners' principal place of business. Also, while the petitioners attached copies of their certified amended AOIs and GIS, China Bank disputed the authenticity and completeness of these documents.

Suffice it to say that at this late stage of the case, the Court cannot and will not resolve the question of whether the petitioners have amended their AOIs. Such an exercise would require us to examine the authenticity and completeness of the documents submitted to prove or contradict the supposed amendments. We stress that this is a fact-finding task that the Court does not usually undertake, particularly in a Rule 45 petition where only questions of law may be raised.[49]

WHEREFORE, premises considered, we **DENY** the petition and **AFFIRM** the June 10, 2010 decision and the September 14, 2010 resolution of the Court of Appeals in CA- G.R. SP No. 103557.

Costs against the petitioners Mervic Realty, Inc. and Viccy Realty, Inc.

SO ORDERED.

Carpio (*Chairperson*), *del Castillo,* and *Mendoza, JJ.,* concur.

Leonen, J., on leave.

---

[49] RULES OF COURT, Rule 45, Section 1.

THIRD DIVISION

[G.R. No. 194960. February 3, 2016]

PRO BUILDERS, INC., *petitioner, vs.* **TG UNIVERSAL BUSINESS VENTURES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEALS FROM QUASI-JUDICIAL AGENCIES TO THE COURT OF APPEALS; DECISIONS OR AWARDS OF THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC) MAY BE APPEALED TO THE COURT OF APPEALS IN A PETITION FOR REVIEW.— Executive Order (EO) No. 1008 vests upon the CIAC original and exclusive jurisdiction over disputed arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment of breach thereof. Section 19 thereof declares the arbitral award of the CIAC as final and unappealable, except on questions of law, which are appealable to the Supreme Court. By virtue of the amendments introduced by R.A. No. 7902 and promulgation of the 1997 Rules of Civil Procedure, as amended, the CIAC was included in the enumeration of quasi-judicial agencies whose decisions or awards may be appealed to the Court of Appeals in a petition for review under Rule 43. Such review of the CIAC award may involve either questions of fact, of law, or of fact and law. The CIAC Revised Rules of Procedure Governing Construction Arbitration provide for the manner and mode of appeal from CIAC decisions or awards in Section 18 thereof x x x. Applying the aforestated rules, the Court of Appeals is correct in taking cognizance of TG's appeal filed via petition for review.

2. ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI*; FINDINGS OF THE COURT OF APPEALS ARE DEEMED CONCLUSIVE SUBJECT TO CERTAIN EXCEPTIONS, SUCH AS WHEN THE SAME AND THE TRIAL COURT ARE CONTRADICTORY; EXCEPTION PRESENT IN

THE CASE AT BAR.— The issues raised by Pro Builders involve a question of fact. A question of fact exists when the issue raised on appeal pertains to the truth or falsify of the alleged facts. If the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual. The general rule that findings of facts of the Court of Appeals are deemed conclusive is subject to certain exceptions, such as: (1) when the factual findings of the [Court of Appeals] and the trial court are contradictory x x x. Indeed, the factual finding of Court of Appeals is contrary to the Arbitral Tribunal. This necessitates a review of the evidence adduced in this case.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DOCTRINE OF WAIVER; FAILURE OF THE OWNER'S PROJECT MANAGER TO ACT ON THE PROGRESS BILLINGS WITHIN THE TIME ALLOWED UNDER THE AGREEMENT IS AN EFFECTIVE WAIVER OF ITS RIGHT TO CONTEST THE COMPUTATIONS THEREIN.— Clearly, it is the Project Manager's responsibility to evaluate, certify and recommend the payment of the progress billings. Pursuant to the Agreement, the appropriate recommendation should be completed within fifteen (15) calendar days from receipt of complete billing documents. Pro Builders sent four (4) progress billings to TG from August to October 2007. None of these progress billings were acted upon, paid or contested by TG in violation of the Agreement. On account of TG's failure to act upon the progress billings, it had effectively waived its right to question the accuracy and veracity of Pro Builders' computation, thus the amounts stated in the progress billings are deemed valid and binding on TG x x x. In *F.F. Cruz & Co., Inc. v. HR Construction Corp*., the Court held that the owner is barred from contesting the contractor's valuation of the completed works when it waived its right to demand the joint measurement requirement. In the same vein, truly with more reason should it be concluded that TG had effectively waived its right to contest the computations in the progress billings since it failed to even act, one way or the other, on the progress billings within the time allowed under the Agreement.

APPEARANCES OF COUNSEL

Dennis R. Gascon for petitioner.

Parlade Hildawa Parlade Eco & Panga Law Offices for respondent.

D E C I S I O N

PEREZ, *J.*:

This Petition for Review on *Certiorari* assails the Decision[1] dated 13 October 2010 and Resolution[2] dated 16 December 2010 issued by the Court of Appeals in CA-G.R. SP No. 106407 which modified the Decision of the Arbitral Tribunal of the Construction Industry Arbitration Commission (CIAC).

Factual Antecedents

On 29 May 2007, TG Universal Business Ventures, Inc. (TG) entered into an Owner-Contractor Agreement (Agreement) with Pro Builders, Inc. (Pro Builders) for the construction of a 15-storey building at Asiatown I.T. Park in Lahug, Cebu City. In consideration of the sum of Seventy Million Pesos (₱70,000,000.00), Pro Builders undertook to provide the labor, materials and equipment, and to perform all structural works for the project. On the other hand, TG undertook to pay Pro Builders a down payment of Twenty-One Million Pesos (₱21,000,000.00), or equivalent to 30% of the amount of contract. Pursuant to the Agreement, the completion of the project is slated on 31 May 2008 but is subject to extension upon request of Pro Builders to TG, through its Project Manager, Prime Edifice, Inc., on the grounds of force majeure or fortuitous event and/or additional work approved by TG, or any other special circumstances as

---

[1] *Rollo,* pp. 88-131; Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon concurring.

[2] *Id*. at 132.

may be determined by TG.[3] Upon signing of the Agreement, Pro Builders posted a performance bond obtained from Prudential Guarantee and Assurance, Inc.

The Notice of Award was issued to Pro Builders on 15 May 2007. The project site was turned over to Pro Builders on 22 May 2007. The construction was set to officially begin on 1 June 2007.[4]

On 19 June 2007, Pro Builders received the 30% down payment equivalent to ₱21,000,000.00.

Extremely unsatisfied with the progress of the works, TG took over the project, hired another contractor to finish the work, and demanded the balance of its overpayment from Pro Builders. The parties failed to reach an amicable settlement, prompting TG to file a Request for Arbitration with the CIAC praying for the payment of cost to complete the project, amounting to ₱13,489,807.48.[5]

Request for Arbitration filed by TG

According to the Project Manager, Project Manager, Prime Edifice, Inc., Pro Builders missed its target milestone for July 2007. On 28 August 2007, Project Manager, Prime Edifice, Inc. wrote to Pro Builders raising serious concerns on the latter's ability to complete the project as scheduled. Project Manager, Prime Edifice, Inc. presented a Performance Evaluation for the period ending 28 August 2007 showing that Pro Builders only accomplished 13.37% out of the 19.09% target accomplishment or a variance of 5.72%. Project Manager, Prime Edifice, Inc. attributed Pro Builders' failure to meet the target to its inability to deploy the required manpower and equipment. On 31 August 2007, Project Manager, Prime Edifice, Inc. recommended to TG a full takeover by a more competent contractor to take effect immediately. ProBuilders responded to Project Manager,

---

[3] *Id*. at 139; Article 10.02 of the Owner-Contractor Agreement.

[4] *Id*. at 169; Admitted Facts as cited in the Arbitral Tribunal's Decision. These facts were indicated in the Minutes of the Construction Meeting No. 2 dated 22 May 2007.

[5] Records, Folder No. 3; See Statement of Accounts.

Prime Edifice, Inc.'s letter and alleged that some of the delays were attributable to TG, such as the delayed release of down payment and delivery of owner-supplied materials, particularly the reinforcing bars (rebars). For September 2007, Project Manager, Prime Edifice, Inc. revealed that Pro Builders again failed to meet its September milestones, accomplishing only 18.11% out of the 33.42% target accomplishment or slippage of –15.32%.

Due to the dismal performance of Pro Builders, TG invoked Article 9 of the Agreement or the Option to Complete Work Takeover. Pro Builders refused to turn over the works and demanded the payment of its unpaid progress billings.

On 11 January 2008, TG sent a Statement of Account to Pro Builders demanding payment of the excess cost to complete the project amounting to ₱13,489,807.48, which is broken down as follows:

₱5,582,921.10 — unconsumed down payment (21,000,000.00-15,417,078.90 assessed value of Pro Builders accomplishment as of 15 October 2007)

₱7,771,553.04 — additional expenses by engaging another contractor ₱135,333.34—miscellaneous expenses (violation of Asiatown's guidelines, damage to property, lot rental)[6]

On 26 February 2008, TG filed a claim against the surety bond and performance bond.

The summary of TG's claim is as follows:

Unliquidated down payment	₱5,582,921.10
Cost to complete	7,771,553.04
Miscellaneous expenses	135,333.34
Litigation expenses	700,000.00
Attorney's fees	300,000.00
Total Claims	**₱14,489,807.48**[7]

[6] *Rollo,* p. 349.

[7] *Id*. at 441; See Term of Reference.

Pro Builder's Amended Answer with Counterclaims

In its Answer, Pro Builders claimed that TG incurred delay when it only delivered 16% of the total requirement of rebars, an owner-supplied material. Pro Builders insisted that the targeted milestones were duly accomplished. Pro Builders added that the reckoning date of the performance evaluation should be within seven days upon receipt of the 30% down payment. Pro Builders counterclaimed for the following amounts and damages:

Unpaid work accomplishment	₱ 2,104,642.11
Compensatory damages	5,000,000.00
Rental deposit of the forms & scaffoldings for the period of one year	1,500,000.00
Surety bond	157,000.00
Construction all risk bond	142,000.00
Performance bond	96,450.00
Litigation expenses	1,000,000.00
Exemplary damages	500,000.00
Attorney's fees	200,000.00
Total counterclaims	**₱10,700,092.11**[8]

An Arbitral Tribunal was created and composed of Jacinto M. Butalid, as Chairman, Guadalupe O. Mansueto and Kian Hun T. Tiu.

The Arbitral Tribunal limited the issues to the following:

1. Who between the parties failed to comply with the terms and conditions of the Contract Agreement?

    1.1. Was Respondent-CONTRACTOR in delay in the Performance of the Construction Agreement?

[8] *Id*. at 164-165; See Amended Answer with Counterclaims.

1.2. Was CLAIMANT in delay in the release of down payment and delivery of the Owner-Supplied materials?

2. Is CLAIMANT entitled to its claim for unliquidated down payment in the amount of Php5,582,921.10?

3. Is CLAIMANT entitled to the amount of Php 7,771,553.04 as cost to complete the Project?

3.1. How much was CLAIMANT's cost to complete the works?

3.2. How much was the Claimant's cost to complete the works IN EXCESS of the balance of the original contract price?

4. Is CLAIMANT entitled to its claim of Php 135,333.34 as miscellaneous expenses?

5. Is CLAIMANT entitled to its claim for litigation expenses in the amount of Php700.000.00? If so, how much?

6. Is CLAIMANT entitled to its claim for attorney's fees in the amount of Php300,000.00? If so, how much?

7. Is Respondent-CONTRACTOR entitled to its counterclaim of Php2,104,642.11 as unpaid work accomplishment?

8. Is Respondent-CONTRACTOR entitled to its counterclaim of Php 5,000,000.00 as compensatory damages? If so, how much?

9. Is Respondent-CONTRACTOR entitled to its counterclaim of Php 1,500,000.00 as rental deposit of the forms & scaffoldings for the period of one year?

10. Is Respondent-CONTRACTOR entitled to its counterclaim of Php 157,000.00 as cost incurred for its surety bond?

11. Is Respondent-CONTRACTOR entitled to its counterclaim of Php 142,000.00 as cost incurred for the construction all risk bond?

12. Is Respondent-CONTRACTOR entitled to its counterclaim of Php 96,450.00 as cost incurred for the performance bond?

13. Is Respondent-CONTRACTOR entitled to its counterclaim of Php 1,000,000.00 as litigation expenses? If so, how much?

14. Is Respondent-CONTRACTOR entitled to its counterclaim of Php 500,000.00 as exemplary damages? If so, how much?

15. Is Respondent-CONTRACTOR entitled to its counterclaim of Php200,000.00 as attorney's fees? If so, how much?

16. Is Respondent-Surety solidarily liable on its performance and surety bonds up to the total amount thereof?

17. Whether or not the right of the CLAIMANT to claim against the subject surety and performance bonds of the respondent PRUDENTIAL had already expired and/or become time-barred or deemed waived?

18. Whether or not the CLAIMANT as well as the other third-party Respondents are legally obliged jointly and severally to indemnify, pay or reimburse PRUDENTIAL in the unlikely event that the latter is held liable to pay CLAIMANT by virtue of the subject surety and performance bonds.[9]

Arbitral Tribunal's Decision

On 1 October 2008, the Arbitral Tribunal rendered a Decision, the dispositive portion of which reads:

In view of the foregoing, it is hereby ordered that:

1. [TG] to pay [Pro Builders] for unpaid accomplishment in the amount of Php2,104,642.11.

2. [Pro Builders] to pay [TG] the amount of Php58,333.34 miscellaneous expenses as reimbursement of the said amount paid by [TG] for the rental of the staging area used by the [Pro Builders].

OFFSETTING Number 1 and 2, [TG] shall pay CONTRACTOR PRO Builders, Inc. the amount of Php2,046,308.77.

[TG's] claim for Unliquidated Down Payment, Cost to Complete the works, miscellaneous expenses except rental of the staging area, exemplary damages, litigation expenses and attorney's fees are denied for lack of merits.

---

[9] *Id*. at 173-174.

[Pro Builders'] claim for compensatory damages, exemplary damages, rental deposit of forms and scaffoldings, cost of Surety Bond, Performance Bond and All Risk Bond, litigation expenses and attorney's fees are denied for lack of merits.[10]

The Arbitral Tribunal found that both parties failed to comply with their respective obligations and responsibilities under the Agreement. The Arbitral Tribunal expounded that Pro Builders failed to meet its target due to inability to deploy the required resources, *i.e.* manpower and equipment. Pro Builders also committed violations of concrete protocol. On the other hand, TG made the down payment only on 19 June 2007 and not upon execution of the Agreement as provided therein. TG also did not pay Pro Builders' progress billings and change order and incurred delay in the delivery of the owner-supplied rebars.

The Arbitral Tribunal denied TG's claim of ₱5,582,921.10 representing the unliquidated portion of the down payment. The Arbitral Tribunal gave credence to Pro Builders' billed amount of ₱23,104,642.11 as the value of the accomplished works.

The Arbitral Tribunal did not agree with TG's claim of ₱7,771,553.04 as the cost to complete the project. The Arbitral Tribunal held that said value can only be determined after the project has been fully completed. The Arbitral Tribunal favored TG's claim of ₱58,333.34 for the advanced rental of the staging area after finding that TG paid in advance the rental for a property adjacent to the project site used by Pro Builders.

The Arbitral Tribunal did not find any justification to award cost of litigation and compensatory damages to both parties.

The Arbitral Tribunal ruled that Pro Builders is entitled to ₱2,104,642.11 as the amount of unpaid accomplishment by subtracting the ₱21,000.000.00 down payment from the total accomplishment of ₱23,104,642.11.

The Arbitral Tribunal found that Pro Builders is not entitled to its claim for rental deposit for the forms and scaffoldings.

---

[10] *Id*. at 188.

With respect to the cost of the bonds, the Arbitral Tribunal held that there is no provision in the contract or in the policy issued by Prudential for the reimbursement of the costs of the bonds. But the Arbitral Tribunal held that Prudential and Pro Builders are solidarily liable on its performance and surety bonds upon the total amount thereof. In the event that Prudential would be made to pay any liability by virtue of the surety and performance bonds, the Arbitral Tribunal stressed that it is only the third-party respondents who will be legally obliged to pay or reimburse the bonding company.

Aggrieved, TG filed a petition for review with the Court of Appeals challenging in part the Decision of the Arbitral Tribunal, specifically on the following points:

1. TG was remiss in its obligation when it failed to give Pro Builders the down payment on time.
2. TG was not entitled to reimbursement of ₱5,582,921.10 which was the balance of the unspent 30% down payment.
3. TG was not allowed to charge ₱7,771,553.04 to Pro Builders representing the cost of what it had spent in completing the construction.
4. TG did not have any right to miscellaneous expenses of ₱77,200.00.
5. TG was not entitled to attorney's fees and expenses for litigation, cost of rectification and exemplary damages.[11]

The Court of Appeals Decision

On 13 October 2010, the Court of Appeals rendered the assailed Decision favoring TG, the decretal portion reads:

ACCORDINGLY, the petition is **GRANTED IN PART.** The Decision dated October 1, 2008 of the Arbitral Tribunal of the Construction Industry Arbitration Commission in CIAC Case No. 04-2008 is **MODIFIED:**

---

[11] *Id*. at 119-120.

a) ordering Pro Builders, Inc. to pay petitioner TG Universal Business Ventures, Inc. ₱5,582,921.10 as balance of the unspent 30% down payment; ₱7,771,553.04 as petitioner's cost in completing the subject construction; ₱77,200.00 as additional miscellaneous expenses; and ₱500,000.00 as attorney's fees and expenses of litigation.

b) declaring that petitioner is **NOT ENTITLED** to cost of rectification and exemplary damages.

c) deleting the award of ₱2,104,642.11 to Pro Builders Inc.

The Decision is **AFFIRMED IN ALL OTHER RESPECTS.**[12]

The Court of Appeals found that all inadequate performance was attributable to Pro Builders alone.

The appellate court found no delay in the down payment of ₱21,000,000.00 as its release on 19 June 2007 coincided with Pro Builder's posting of the surety bond. The Court of Appeals found merit in the claim for ₱5,582,921.10 by subtracting the down payment of ₱21,000,000.00 by Pro Builder's accomplishments worth ₱l5,417,078.90. The appellate court sustained TG's estimate of Pro Builder's accomplishment to ₱l5,417,078.90 because it was supported by documentary evidence. The appellate court added that TG's receipt of Pro Builder's progress billings did not estop the former from disputing the real amount of the latter's undertakings in the project. As the cost to complete the balance of the construction, the Court of Appeals held that TG is entitled to payment of ₱7,771,553.04 when it took over the project. Said amount is supported by documents presented by TG but which were disregarded by the Arbitral Tribunal. The appellate court also awarded ₱77,200.00 to TG, which is the total cost of damages that Pro Builders caused upon the properties of Asiatown I.T. Park where the project was built. Attorney's fees and expenses of litigation were also awarded to TG by the appellate court because it found that TG was compelled to initiate the proceedings before the Arbitral Tribunal.

---

[12] *Id*. at 51-52.

Pro Builders sought a reconsideration of the unfavorable Decision but it was denied by the Court of Appeals in its Resolution[13] dated 16 December 2010.

Petition

At the outset, Pro Builders implores us to delve into the facts as an exception to the rule that this Court is not a trier of facts. Pro Builders cites as ground the conflicting findings of the Arbitral Tribunal and the Court of Appeals.

Pro Builders asserts that the Court of Appeals erred in declaring that its accomplishments is worth only ₱15,417,078.90. Pro Builders refuted the joint evaluation used as basis by the Court of Appeals in denying its valuation on the ground that said joint evaluation was done solely by Project Manager, Prime Edifice, Inc. while Pro Builders' engineers had no participation in the evaluation. Moreover, said evaluation was submitted only on 11 January 2008, long after the contract was terminated. Pro Builders also defend the finding of the Arbitral Tribunal that its progress billings are more accurate and reliable than TG's valuation. Consequently, Pro Builders asserts that it still has a collectible of ₱2,104,642.11 and from that amount, the sum of ₱58,333.34 representing the rental of the staging area, should be deducted. TG then is obliged to pay ₱2,046,308.77 to Pro Builders.

Pro Builders echoes the Arbitral Tribunal's ruling that the cost overrun cannot be computed because at the time the case was submitted to the Arbitral Tribunal, the project was still not finished.

Pro Builders questions the award of attorney's fees and expenses of litigation for lack of basis.

Finally, Pro Builders avers that TG availed of the wrong remedy when it filed a petition for partial review before the Court of Appeals. Pro Builders maintains that the arbitral award of the CIAC is appealable on questions of law to this Court.

---

[13] *Id*. at 132.

OUR RULING

Procedural Issue

Executive Order (EO) No. 1008 vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. Section 19 thereof declares the arbitral award of the CIAC as final and unappealable, except on questions of law, which are appealable to the Supreme Court. By virtue of the amendments introduced by R.A. No. 7902 and promulgation of the 1997 Rules of Civil Procedure, as amended, the CIAC was included in the enumeration of quasi-judicial agencies whose decisions or awards may be appealed to the Court of Appeals in a petition for review under Rule 43. Such review of the CIAC award may involve either questions of fact, of law, or of fact and law.

The CIAC Revised Rules of Procedure Governing Construction Arbitration provide for the manner and mode of appeal from CIAC decisions or awards in Section 18 thereof, which reads:

> SECTION 18.2 Petition for review.— A petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court.[14]

Applying the aforestated rules, the Court of Appeals is correct in taking cognizance of TG's appeal filed via petition for review.

Substantive Issues

The issues raised by Pro Builders involve a question of fact. A question of fact exists when the issue raised on appeal pertains to the truth or falsity of the alleged facts. If the question posed requires a re-evaluation of the credibility of witnesses, or the

---

[14] *J Plus Asia Development Corporation v. Utility Assurance Corporation,* G.R. No. 199650, 26 June 2013, 700 SCRA 134, 146-147.

existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual.[15]

The general rule that findings of facts of the Courts of Appeals are deemed conclusive is subject to certain exceptions, such as:

(1) when the factual findings of the [Court of Appeals] and the trial court are contradictory;

(2) when the findings are grounded entirely on speculation, surmises, or conjectures;

(3) when the inference made by the [Court of Appeals] from its findings of fact is manifestly mistaken, absurd, or impossible;

(4) when there is grave abuse of discretion in the appreciation of facts;

(5) when the (Court of Appeals], in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;

(6) when the judgment of the (Court of Appeals] is premised on a misapprehension of facts;

(7) when the [Court of Appeals] fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;

(8) when the findings of fact are themselves confticting;

(9) when the findings of fact are conclusions without citation of the specific evidence on which they are base; and

(10) when the findings of fact of the (Court of Appeals] are premised on the absence of evidence but such findings are contradicted by the evidence on record.[16]

---

[15] *Bases Conversion Development Authority v. Reyes,* G.R. No. 194247, 19 June 2013, 699 SCRA 217, 226.

[16] *National Transmission Commission v. Alphaomega Integrated Corporation,* G.R. No. 184295, 30 July 2014, 731 SCRA 299, 309-310.

Indeed, the factual finding of the Court of Appeals is contrary to the Arbitral Tribunal. This necessitates a review of the evidence adduced in this case.

Valuation of Pro Builders' Accomplished Works

The focal point of this controversy is the monetary equivalent of the accomplished works of Pro Builders.

Based on Pro Builders' computation, which were wholly based on its progress billings, the monetary value of its accomplishments is ₱22,482,934.34, broken down as follows:

Billing Period	**Billed Amount**
June 1- July 31, 2007	7,187,694.16
August 1-31, 2007	6,142,108.17
Sept. 1-30, 2007	6,844,363.73
Oct. 1-15, 2007	2,308,777.28
SUBTOTAL	22,482,943.34
Change Order	621,698.77
TOTAL	**23,104,642.11**[17]

By deducting the downpayment of ₱21,000,000.00 from the estimate of ₱22,482,943.34 and adding the amount of the change order of ₱621,698.77, Pro Builders claims that it is entitled to additional payment of ₱2,104,642.11.

Per TG's computation, the amount of Pro Builder's accomplishments is only ₱15,417,078.90, as supported by documentary evidence such as the Joint Evaluation allegedly made by both parties' representatives; photographs showing suspended slabs at the second floor; letter taking note of a joint inspection of the construction; summary of additive and deductive works; and written computation made by Pro Builders of the value of its Work Accomplishment. Thus, TG contends that

[17] *Rollo,* p. 180.

Pro Builders must return the amount of ₱5,582,921.10 in excess of the ₱21,000,000.00 down payment.

We are called to determine which of the parties' valuation of accomplished works should be credited.

The Arbitral Tribunal gave more credence to the valuation of Pro Builders on the ground that TG's valuation lacked details. On the contrary, the Court of Appeals favored TG's valuation.

We find Pro Builders' valuation of the accomplished works to be more accurate.

A joint evaluation was agreed upon by the parties. Pro Builders initially demanded for a joint assessment of its accomplishment. TG responded that it is amenable for a joint assessment and added that such assessment had already been completed.

As found by the Arbitral Tribunal however, the alleged joint evaluation conducted by TG is in fact one-sided. It need not be emphasized that the Arbitral Tribunal's expertise is well recognized in the field of construction arbitration, as CIAC is indeed the body upon which the law vested with exclusive jurisdiction over any dispute arising from, or connected with construction contracts.[18] In a letter dated 28 November 2007, Engineer Glenn Realiza, TGU Project Inspector sent his evaluation to Pro Builders' Project-in-Charge, Engineer Jeffrey Blanco (Engr. Blanco), months after the takeover and asked for the latters' feedback. The letter reads:

November 28, 2007

Engr. Jeffrey Blanco
BPI Project in Charge
TGU Project

Dear Jeff:

I am sending you my evaluation of your accomplishment (structural works only) from foundation to second floor. The additive portion is your accomplishment for the third floor while the deductive covers for your unaccomplished works from foundation to second floor.

---

[18] Executive Order No. 1008, Section 4.

Please give me your feedback regarding this matter within 3 days so I can finalize the evaluation and forward it to our project manager.

Truly yours,

Red Glenn H. Realiza
TGU Project Inspector[19]

Project Manager, Prime Edifice, Inc. was appointed as Project Manager by TG Universal and has "authority at the job site throughout the duration of the PROJECT and xxx to **certify to the satisfactory completion and implementation of this Agreement**."[20]

Still on 11 January 2008, Project Manager, Prime Edifice, Inc. President Engineer Ed Hitosis wrote to Pro Builders' President Architect Paul G. Morgia demanding the settlement of ₱13,489,807.48 and inadvertently admitted that assessment of Pro Builders' accomplishment was done only by Project Manager, Prime Edifice, Inc., thus:

We have completed the assessment of your accomplishment for the above project as of October 15, 2007 as well as updated the cost of the project given your original scope of work as quoted by the new contractor, ALCCON pursuant to Article 9, "OPTION TO COMPLETE WORK TAKEOVER" of your contract with TG Universal Business Ventures which states:

xxx xxx xxx

We have attached our computation for your review. We appreciate your prompt action regarding the settlement of the total amount of **PESOS: Thirteen Million Four Hundred Eighty-Nine Thousand Eight Hundred Seven and 48/100 (₱13,489,807.48) Only.**[21]

Documents attached to the Joint Evaluation, such as numerous photographs showing the suspended slabs at the second floor and a detailed computation of the works accomplished from mobilization, excavation, concreting works and formworks are

---

[19] *Rollo,* p. 266.

[20] *Id*. at 133; See Owner-Contractor Agreement. (Emphasis ours)

[21] *Id*. at 348.

self-serving because there was no showing that Pro Builders participated in the computation of their accomplished works.

Pro Builders' contention that Engineer Blanco and Engineer Bucol had participated in the project survey but the computation and evaluation were done solely by Project Manager, Prime Edifice, Inc. was sustained by the Arbitral Tribunal. We agree that:

> The documents on cost overrun (official receipts, check disbursement vouchers, billings, etc) mentioned by the CLAIMANT in its Memorandum/Draft Decision were not participated in by the CONTRACTOR, nor had been confronted by the· CLAIMANT during the hearing for the CONTRACTOR to deny, comment or admit.[22]

On the other hand, the progress billings prepared by Pro Builders provide an accurate summary of Pro Builders' accomplishments. Article 5.03 of the Agreement states:

> 5.03 The CONTRACTOR shall submit to the OWNER through the: PROJECT MANAGER progress billing based on actual accomplishment of the various phases of the PROJECT. The PROJECT MANAGER shall process, certify to the correctness of, and make appropriate recommendations, and based on the recommendations, the OWNER shall make the actual payments. The appropriate recommendation shall be completed within fifteen (15) calendar days from receipt of complete billing documents. Final Payment shall be made in accordance with Article 17 of this Agreement.[23]

Clearly, it is the Project Manager's responsibility to evaluate, certify and recommend the payment of the progress billings. Pursuant to the Agreement, the appropriate recommendation should be completed within fifteen (15) calendar days from receipt of complete billing documents. Pro Builders sent four (4) progress billings to TG from August to October 2007. None of these progress billings were acted upon, paid or contested by TG in violation of the Agreement. On account of TG's failure

---

[22] *Id*. at 182.

[23] *Id*. at 137.

to act upon the progress billings, it had effectively waived its right to question the accuracy and veracity of Pro Builders' computation, thus the amounts stated in the progress billings are deemed valid and binding on TG, thus:

Progress Billing Date	% of Accomplishment	Amount
1 August 2007	10.27%	₱4,312,616.49[24]
13 September 2007	19.04%	₱7,997,881.41[25]
1 October 2007	29.21%	₱12,104,449.63[26]
30 October 2007	32.65%	**₱2,104,642.11**[27]

[24] Records, Folder No.5, Exhibit "R-25". The amount is based on the following computation:

A. Total Contract Amount	₱70,000,000.00	
B. 10.27% Accompishment to date	7,187,694.00	
Less:		
Downpayment (30.00%)		2,156,308.25
Retention 10%		718,769.42
C. Total Amount Due		₱4,312,616.49

[25] *Id*.; Exhibit "R-26". The amount is based on the following computation:

A.Total Contract Amount	₱70,000,000.00	
B. 19.04% Accomplishment to date	₱13,329,802.00	
Less:		
Downpayment (30.00%)		3,998,940.69
Retention 10%		1,332,980.23
C. Total Amount Due		
(plus billing # 1-not yet paid)		₱7,997.881.41

[26] *Id*.; Exhibit "R-28". The amount is based on the following coniputation:

A. Total Contract Amount	₱70,000,000.00	
B. 29.21% Accomplishment to date	20,174,166.06	
Less:		
Downpayment (30.00%)		6,052,249.82
Retention		2,107,416.61
C. Total Amount Due		
(plus billing # 1 & 2- not yet paid)		₱12,104,499,63

[27] *Id*., Exhibit "R-29". The amount is based on the following computation:

In *F.F. Cruz & Co., Inc. v. HR Construction Corp.,*[28] the Court held that the owner is barred from contesting the contractor's valuation of the completed works when it waived its right to demand the joint measurement requirement. In the same vein, truly with more reason should it be concluded that TG had effectively waived its right to contest the computations in the progress billings since it failed to even act, one way or the other, on the progress billings within the time allowed under the Agreement.

As shown by the numbers, Pro Builders is entitled to payment of ₱2,104,642.11 for unpaid accomplishment of works, which amount is arrived at by subtracting the 30% down payment from the total unpaid billings and adding the change order.

Necessarily, TG's claim for cost to complete project is denied in view of its own failure to comply with its obligations under the Agreement.

Both Parties were in Breach of the Agreement

We likewise affirm the Arbitral Tribunal's finding that both parties failed to comply with their obligations under the Agreement. Records reveal that in the Notice of Award, Pro Builders was instructed "to mobilize within 7 days upon receipt of the 30% down payment."[29] TG Universal however failed to pay the down payment during the signing, as provided for in the Agreement. Pro Builders received the down payment only on 19 June 2007.[30] Thereafter, Pro Builders sought a clarification from TG as to the exact date of Day 1 of the construction citing as grounds the delay in the receipt of down

---

A. 32.65% Accomplishment to date	22,482.943.34	
B. Additional & Change order work	621,698.77	
Less:		
Downpayment (30.00%)		21,000,000.00
C. Total Amount Due		
(billing # 1st up to 4th & RFI 11, 20, 25, 39 & 40)		₱2,104,642.11

[28] 684 Phil. 330, 353 (2012).

[29] *Rollo,* p. 357.

[30] Records, Folder No. 3; Annex "D" of Supplemental Complaint.

payment, delay in the delivery of rebars and cement, rebar testing and heavy rainfall causing soil erosion.[31] Pro Builders was asked to support its claims with documents. Upon submission by Pro Builders, TG found these submitted documents lacking in particulars. It was also proven during the proceedings before the Arbitral Tribunal that Pro Builders had failed to provide sufficient manpower and equipment which caused further delay to the project. As culled from the circumstances cited above, it is clear that both parties had been remiss in their respective obligations. The respective violations of the parties were encapsulated in the Decision of the Arbitral Tribunal, to wit:

[Pro Builders'] failure to comply with its Obligations/Responsibilities

Violations of concrete protocol as shown in the Concrete Pouring permits and Pouring Logs (Exhibit "C-26).

The [Pro Builders'] Technical and Financial Annexes (TFIA) showing the equipment it will provide, but was not able to do so for the project (Exhibit "C-5").

As testified by Engr. Hitosis and Engr. Realiza of the project Management Team, (Exhibit "R-31")the table below shows the type and the number of equipment required in the project, as well as, the actual number furnished by the [Pro Builders].

Equipment	June 1-30, 2007		July 1-31, 2007		August 1-31, 2007	
Required	TFIA	Actual	TFIA	Actual	TFIA	Actual
4 Tower Crane	0	0	0	0	2	1
lPOa4y2loader	1	0	1	0	0	0
Back Hoe hb 405	2	1	2	1	2	1
Mini Roller 1 ton	2	2	2	1	2	1
1 bagger mixer	1	0	1	0	1	0
Vibrator	0	2	5	4	5	1
Electric bar cutter	0	2	2	2	2	1
Mdale Crane 25TONE	0	1	0	1	0	1

[31] *Id.*, Folder No. 5; Exhibit "R-8".

The [Pro Builders'] Technical and Financial Annexes (TFIA) to the Contract show the number of men to carry out the various phases of work. The table below shows these and the actual number of workmen in the job site. (Joint Affidavit of [TG's] Engineers).

Period Covered	No. of Manpower in TFJA	No. of Manpower at Jobsite
June 1-30, 2007	55	45
July 1-31, 2007	83	81
August 1-31, 2007	158	110

xxx xxx xxx

[TG's) failure to comply with the Obligations/Responsibilities

The 30% down payment was made on 19 June 2008, not upon execution of the Agreement on 29 May 2007 as provided therein.

Not one of the [Pro Builders'] progress billings (No. 1 to No.4) and the Change Order was ever paid by the [TG].

[Pro Builders] claims delay in the delivery of the owner-supplied rebars, as follows:

a. On 26 June 2007, [TO's] structural engineers, Aromin & Sy, computed bar requirements to be 1,091,964.53 kilograms (Exhibit "R-10-A"). As of 13 July 2007, only 437,990.08 kilograms or rebars were delivered (Exhibits "R-10-B").

b. As of 13 August 2007, a total of 967,954.38 kilograms of rebars were delivered far short of the 1,431,637.36 kilograms Per cutting list of rebar requirements from the foundation to the third floor approved by the [TO's] structural engineers (Exhibit "R-12-A").

c. The delivery of the balance of rebars required were done only on 09 October 2007 (Exhibit "C-17").

d. The excavation works for the footings and the foundations of the building was completed by the [TO] only on 24 August 2007, not on 31 July 2007 as required (Affidavit of Arch.

Paul G. Morgia, PBI President, and Engr. Jeffrey Blanco, Project Engineer of the [Pro Builders]).

Arbitral Tribunal's Findings

On the delay by the [Pro Builders] in the performance of the construction agreement, the [Pro Builders] contends that had [TG] approved their request for the adjustment of Day 1 of the contract in accordance with the Notice of Award, the slippage would have been insignificant, if any,

The Notice of Award (Exhibit "R-2") dated 15 May 2007 states, among others, that "you are hereby instructed to mobilize within 7 days upon receipt of the 30% down payment x x x. Project duration shall be 360 calendar days.

One of the Admitted Facts (Item 5.1) states that during the Pre-Construction Meeting No. 2 held on 22 May 2007, "Day 1 of the Construction officially slated on June 1, 2007". (Annex B, Supplemental Complaint).

On 09 July 2007, [Pro Builders] asked for time extension without specifying the number of days, but was require by the project Manager to submit additional documents (Exhibit "R-8").

On 16 July 2007, [Pro Builders] complied with the submittal of the required documents and asked for the start of Day 1 of the construction to be 15 July 2007 (instead of June 26 as provided for in the Notice of Award). [Pro Builders] contends that this was never acted by the Project Manager of the [TG] (Exhibit "R-9").

What the [Pro Builders] submitted was a Revised Work Schedule, but did not take into account a lot of factors, most especially, the time allocation for each activity. (Annex K, Complaint).

There was no S-Curve or PERT/CPM Network diagram submitted by the [Pro Builders] from where the corresponding monthly accomplishment can be assessed.

On 02 August 2007, the [Pro Builders] submitted Progress Billing No. 1 covering the period from June 1 to July 31, 2007. (Exhibit "R-25B" & "R-29").

On 28 August 2007, the project Manager wrote the [Pro Builders] raising serious concerns on the latter's ability to complete the project as scheduled (No. 14, Complaint).

[Pro Builders'] failure to meet its target could be accounted by its inability to deploy the required resources, i.e. manpower and equipment both of which are major factors in the concrete production output of the [Pro Builders] (Exhibits "C-6" to "C-10").

[TG] assessed the [Pro Builders'], monthly accomplishment to be behind schedule. The slippage as of 28 August 2007 was (-) 5.72% (Annex "G", Complaint) and (-) 15.32% on 30 September 2007 (Annex "M", Complaint).

On the delivery of owner-supplied reinforcing bars, the fact that as of 13 August 2007,967,954.38 kilograms or approximately 968 tons had been delivered is undisputed. However, the parties' disagreement is with respect to the quantity of rebars required for the project.

The [Pro Builders] presented the transmittal letter dated 25 September 2007 with the attached Rebar Requirement, to wit:

a. From foundation to 3rd floor (Exhibit "C-125-c")	- 1,431,637.76 kilograms
b. From 4th floor to 9th floor (Exhibit "C-125-b")	- 1,225, 020.06 kilograms
c. From l0th floor to Helipad level (Exhibit "C-125-a")	- 1,263, 647.61 kilograms
TOTAL	- 3,920,505.33 kilograms

The rebar requirements from foundation to the 3rd floor as alleged by [Pro Builders] is 1,431,637.76 kilograms as against [TG's] 967,954,38 kilograms. On cross-examination by the Counsel of the [TG's]. Arch. Morgia confirmed that based on their Bill of Quantities the rebar requirement from foundation to the 3rd floor is more of less 900,000 kilograms (TSN, page 266.)

In the [Pro Builders'] Bid Form (Exhibit "C-117") and the Bill of Quantities (Exhibit "C-117-a") attached to the Contract, the total rebar requirement of the project from basement to roof deck is 2,705,850.33 kilograms only. During the hearing, Arch. Morgia alleged that the rebar requirements in the letter of PRO Builders dated 25 September 2007 was due to changes in design. However, there was no evidence presented to establish the [Pro Builders']

contention that there were indeed design changes approved by the [TG].

As to the alleged delay in the delivery of concrete, [TG's] Summary of concrete Pouring Activities (Exhibit "C-25") indicates the dates of delivery, volume of concrete delivered and location in the project of the concrete pouring activities. These data were based on the Concrete Pouring permits of the [Pro Builders], which bear the date of approval and signatures of [TG's] project inspectors.

Referring to the circumstances enumerated in the preceding paragraphs, the Arbitral Tribunal finds both parties had failures to comply with their respective obligations and responsibilities as provided for in the Owner-Contractor Agreement.[32] (Emphasis supplied)

With respect to Pro Builders' counterclaims, the same are correctly denied for lack of factual and legal bases.

In sum, we resolve to reinstate in its entirety the 1 October 2008 Decision of the CIAC.

WHEREFORE, based on the foregoing, we **GRANT** the petition. The 13 October 2010 Decision of the Court of Appeals in CA-G.R. SP No. 106407 is **REVERSED AND SET ASIDE.** The Decision of the Construction Industry Arbitration Commission dated 1 October 2008 in CIAC Case No. 04-2008 is **REINSTATED.**

SO ORDERED.

Velasco, Jr. (Chairperson), *Peralta, Reyes,* and *Jardeleza, JJ.,* concur.

---

[32] *Rollo,* pp. 177-179.

SECOND DIVISION

[G.R. No. 196651. February 3, 2016]

UWE MATHAEUS, *petitioner, vs.* **SPOUSES ERIC and GENEVIEVE MEDEQUISO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; HAVE AUTHORITY TO NOTARIZE DOCUMENTS *EX-OFFICIO* BUT ONLY WHEN THE MATTER IS RELATED TO THE EXERCISE OF THEIR OFFICIAL FUNCTIONS; NOTARIZATION OF VERIFICATIONS AND CERTIFICATIONS AGAINST FORUM SHOPPING DOES NOT FORM PART OF THEIR OFFICIAL FUNCTIONS.— We have held that "Clerks of Court are notaries public *ex-officio*, and may thus notarize documents or administer oaths **but only** when the matter is related to the exercise of their official functions. x x x [C]lerks of court should not, in their *ex-officio* capacity, take part in the execution of private documents bearing no relation at all to their official functions." Even if it is to be conceded that the CA Petition for Review in CA-G.R. CEB SP No. 04236 is merely a continuation of the proceedings in Civil Case No. 5579, this Court cannot agree with petitioner's argument that the notarization of verifications and certifications on non-forum shopping constitutes part of a clerk of court's *daily* official functions. We are not prepared to rule in petitioner's favor on this score; as it is, the workload of a clerk of court is already heavy enough. We cannot add to this the function of notarizing complaints, answers, petitions, or any other pleadings on a *daily* or *regular* basis; such a responsibility can very well be relegated to commissioned notaries public. Besides, if the practice – specifically the notarization by clerks of court of pleadings filed in cases pending before their own salas or courts – is allowed, unpleasant consequences might ensue; it could be subject to abuse, and it distracts the clerks of court's attention from the true and essential work they perform.

2. REMEDIAL LAW; APPEALS; DISMISSAL OF THE APPEAL FOR NON-COMPLIANCE WITH THE REQUIREMENT

OF VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING IS PROPER.— Petitioner's procedural misstep forms part of a series of lapses committed in the prosecution of his case. In the MTCC level, he failed to file a verified Answer to respondents' Complaint. Secondly, he did not furnish a copy thereof to respondents. As a result, the MTCC expunged his responsive pleading and rendered judgment against him. This time, at the level of the CA, he committed another mistake; that is, he caused his Petition for Review to be notarized by the RTC Clerk of Court where his case is pending. At this point, petitioner and his counsel are expected to be more circumspect in their actions, avoiding the commission of questionable acts that jeopardize their case. Under Sections 1 and 2, Rule 42 of the 1997 Rules of Civil Procedure, a party desiring to appeal from a decision of the RTC rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the CA, submitting together with the petition a certification on non-forum shopping. Under Section 3 of the same Rule, "[t]he failure of the petitioner to comply with any of the foregoing requirements x x x shall be sufficient ground for the dismissal thereof." Specifically with respect to certifications against forum-shopping, we have repeatedly held that "non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of 'substantial compliance' or presence of 'special circumstances or compelling reasons.'" Taking the foregoing circumstances and considerations to mind, the Court is not inclined to relax the rules for the petitioner's benefit; it perceives no compelling reasons or circumstances to rule in his favor. Quite the contrary, the CA pronouncement ordering the dismissal of his Petition for Review is just, and thus should stand.

APPEARANCES OF COUNSEL

Wilfredo S. Toledo for petitioner.
Artemio P. Cabatos for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside the September 14, 2009 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CEB SP No. 04236 dismissing petitioner Uwe Mathaeus' Petition for Review, as well as the CA's April 6, 2011 Resolution[3] denying petitioner's Motion for Reconsideration.[4]

Factual Antecedents

In Civil Case No. 5579, the Tagbilaran Municipal Trial Court in Cities (MTCC), Branch 1 issued a January 12, 2007 Decision[5] ordering petitioner to pay respondents spouses Eric and Genevieve Medequiso, the amount of ₱30,000.00 with legal interest, attorney's fees, and costs.

Petitioner interposed an appeal, docketed as Civil Case No. 7269, before the Regional Trial Court (RTC) of Bohol, Branch 48. On September 30, 2008, the RTC issued a Decision[6] affirming the MTCC judgment.

Petitioner moved to reconsider,[7] but the RTC – in an April 13, 2009 Order[8] – upheld its judgment.

---

[1] *Rollo*, pp. 16-58.

[2] *Id*. at 136-137; penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Franchito N. Diamante and Samuel H. Gaerlan.

[3] *Id*. at 148; penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Ingles.

[4] *Id*. at 138-146.

[5] *Id*. at 74-76; penned by Presiding Judge Sisinio C. Virtudazo.

[6] *Id*. at 90-95; penned by Presiding Judge Pablo R. Magdoza.

[7] *Id*. at 96-104.

[8] *Id*. at 107; penned by Presiding Judge Pablo R. Magdoza.

Ruling of the Court of Appeals

Petitioner filed a Petition for Review[9] with the CA, docketed as CA-G.R. CEB SP No. 04236. However, in its assailed September 14, 2009 Resolution, the CA dismissed the Petition, decreeing thus:

> Perusal of the instant petition filed by the petitioner within the period prayed for discloses that the required Verification and Certification on Non-Forum Shopping was sworn to not before a notary public but before a clerk of court of the Regional Trial Court in Tagbilaran City, Bohol.
>
> Although Section 242 of Article III of the Revised Administrative Code authorizes clerks of court to act as notaries public ex-officio, the Supreme Court has consistently ruled that clerks of court may notarize or administer oaths only when the matter is related to the exercise of their official functions.[10] A Verification in an appeal via a Petition for Review is not within the scope of the matters wherein clerks of court are at liberty to notarize or administer oath. Hence, the same is considered improperly verified and treated as unsigned and dismissible.
>
> WHEREFORE, the petition is hereby DISMISSED.
>
> SO ORDERED.[11]

Petitioner moved for reconsideration,[12] but in its assailed Resolution, the CA stood its ground.

Hence, the instant Petition.

In a December 4, 2013 Resolution,[13] this Court resolved to give due course to the Petition.

---

[9] *Id*. at 108-135.

[10] Citing *Exec. Judge Astorga v. Solas,* 413 Phil. 558, 562 (2001), and *Noynay-Arlos v. Conag*, 465 Phil. 849, 855-856 (2004).

[11] *Rollo*, pp. 136-137.

[12] *Id*. at 138-146.

[13] *Id*. at 176-177.

Issues

Petitioner raises the following issues for resolution:

I

WHETHER OR NOT THERE WAS A PROPER VERIFICATION AND CERTIFICATION OF THE PETITION FOR REVIEW UNDER RULE 42 THAT WARRANTS A DISMISSAL OF THE PETITION BY THE COURT OF APPEALS.

II

WHETHER OR NOT A STRICT ADHERENCE TO SECTION 6 OF THE REVISED RULE ON SUMMARY PROCEDURE IS TO BE RESORTED [TO] TAKING INTO CONSIDERATION THAT THE ANSWER OF THE PETITIONER WAS NOT EXPUNGED FROM THE RECORDS OF THE MTCC CASE.

III

WHETHER OR NOT THE PECULIARITY OF THE MTCC CASE AND THE ADVENT OF A.M. 08-9-7-SC (RULE OF PROCEDURE FOR SMALL CLAIMS CASES) ENTITLES A LIBERAL INTERPRETATION OF THE RULES TO GIVE THE PETITIONER HIS DAY IN COURT AND ALLOW HIM TO PRESENT HIS EVIDENCE DURING A FULL BLOWN TRIAL.[14]

Petitioner's Arguments

In his Petition and Reply[15] seeking reversal of the assailed CA dispositions and the RTC's September 30, 2008 Decision, as well as the remand of the case to the MTCC for further proceedings, petitioner argues that – contrary to the CA's pronouncement that a clerk of court's administration of an oath in a verification contained in a petition for review is not within the scope of his official functions – Atty. Romulo T. Puagang (Clerk of Court of the Bohol RTC) may validly notarize the verification in the CA petition, as it is merely a continuation of

---

[14] *Id*. at 38.

[15] *Id*. at 167-173.

the proceedings in Civil Case No. 5579; that the *Astorga*[16] case refers to documents that are alien to a clerk of court's functions – the CA petition cannot be said to be alien to the proceedings in Civil Case No. 5579; that his filing of an unverified Answer in Civil Case No. 5579 – which led the MTCC to discard the same and render judgment against him – should not be taken against him, because as a non-lawyer and foreigner who prepared and filed the same without furnishing copies to the opposing party, he did not know the judicial rules of procedure; that therefore, his Answer in Civil Case No. 5579 should be admitted; that with the admission of his Answer, proceedings in the MTCC should be reopened and continued; that liberality in the application of the rules on summary procedure is underscored by the subsequent issuance of the rules of procedure on small claims cases, which prohibit the appearance of attorneys; and that the case should be reopened in order that the parties may present their respective evidence.

Respondent's Arguments

In their Comment[17] seeking denial of the Petition, respondents plainly point out that the Petition is frivolous and dilatory; that in deciding the case, the MTCC, RTC and CA unanimously rendered judgment against petitioner; and that petitioner's arguments deserve no merit.

Our Ruling

The Court denies the Petition.

We have held that "Clerks of Court are notaries public *ex-officio*, and may thus notarize documents or administer oaths **but only** when the matter is related to the exercise of their official functions. x x x [C]lerks of court should not, in their *ex-officio* capacity, take part in the execution of private documents bearing no relation at all to their official functions."[18]

---

[16] *Supra* note 10.

[17] *Rollo*, pp. 150-151.

[18] *Cruz v. Atty. Centron*, 484 Phil. 671, 676 (2004). Emphasis supplied.

Even if it is to be conceded that the CA Petition for Review in CA-G.R. CEB SP No. 04236 is merely a continuation of the proceedings in Civil Case No. 5579, this Court cannot agree with petitioner's argument that the notarization of verifications and certifications on non-forum shopping constitutes part of a clerk of court's *daily* official functions. We are not prepared to rule in petitioner's favor on this score; as it is, the workload of a clerk of court is already heavy enough. We cannot add to this the function of notarizing complaints, answers, petitions, or any other pleadings on a *daily* or *regular* basis; such a responsibility can very well be relegated to commissioned notaries public. Besides, if the practice – specifically the notarization by clerks of court of pleadings filed in cases pending before their own salas or courts – is allowed, unpleasant consequences might ensue; it could be subject to abuse, and it distracts the clerks of court's attention from the true and essential work they perform.

Petitioner's procedural misstep forms part of a series of lapses committed in the prosecution of his case. In the MTCC level, he failed to file a verified Answer to respondents' Complaint. Secondly, he did not furnish a copy thereof to respondents. As a result, the MTCC expunged his responsive pleading and rendered judgment against him. This time, at the level of the CA, he committed another mistake; that is, he caused his Petition for Review to be notarized by the RTC Clerk of Court where his case is pending. At this point, petitioner and his counsel are expected to be more circumspect in their actions, avoiding the commission of questionable acts that jeopardize their case.

Under Sections 1 and 2, Rule 42 of the 1997 Rules of Civil Procedure, a party desiring to appeal from a decision of the RTC rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the CA, submitting together with the petition a certification on non-forum shopping. Under Section 3 of the same Rule, "[t]he failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and

the documents which should accompany the petition shall be sufficient ground for the dismissal thereof."

Specifically with respect to certifications against forum-shopping, we have repeatedly held that "non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of 'substantial compliance' or presence of 'special circumstances or compelling reasons.'"[19] Taking the foregoing circumstances and considerations to mind, the Court is not inclined to relax the rules for the petitioner's benefit; it perceives no compelling reasons or circumstances to rule in his favor. Quite the contrary, the CA pronouncement ordering the dismissal of his Petition for Review is just, and thus should stand.

WHEREFORE, the Petition is **DENIED**. The September 14, 2009 and April 6, 2011 Resolutions of the Court of Appeals in CA-G.R. CEB SP No. 04236 are **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), *Brion,* and *Mendoza, JJ.,* concur.

Leonen, J., on leave.

---

[19] *Fernandez v. Villegas*, G.R. No. 200191, August 20, 2014, 733 SCRA 548, 557, citing *Ingles v. Estrada*, G.R. Nos. 141809, 147186, and 173641, April 8, 2013, 695 SCRA 285, 317-319 and *Altres v. Empleo*, 594 Phil. 246, 261-262 (2008); also, *Jacinto v. Gumaru, Jr.*, G.R. No. 191906, June 2, 2014, 724 SCRA 343, 356 and *Vda. de Formoso v. Philippine National Bank*, 665 Phil. 184, 193 (2011).

SECOND DIVISION

[G.R. No. 198994. February 3, 2016]

IRIS MORALES, *petitioner, vs.* **ANA MARIA OLONDRIZ, ALFONSO JUAN OLONDRIZ, JR., ALEJANDRO MORENO OLONDRIZ, ISABEL ROSA OLONDRIZ and FRANCISCO JAVIER MARIA OLONDRIZ,** *respondents.*

SYLLABUS

1. **CIVIL LAW; SUCCESSION; PRETERITION; THE COMPLETE AND TOTAL OMISSION OF A COMPULSORY HEIR FROM THE TESTATOR'S INHERITANCE WITHOUT THE HEIR'S EXPRESS DISINHERITANCE.—** Preterition consists in the omission of a compulsory heir from the will, either because he is not named or, although he is named as a father, son, etc., he is neither instituted as an heir nor assigned any part of the estate without expressly being disinherited – tacitly depriving the heir of his legitime. Preterition requires that the omission is total, meaning the heir did not also receive any legacies, devises, or advances on his legitime. In other words, preterition is the complete and total omission of a compulsory heir *from the testator's inheritance* without the heir's express disinheritance.

2. **ID.; ID.; ID.; LEGAL EFFECTS OF PRETERITION; CASE AT BAR.—** Under the Civil Code, the preterition of a compulsory heir **in the direct line** shall annul the institution of heirs, but the devises and legacies shall remain valid insofar as the legitimes are not impaired. Consequently, if a will does not institute any devisees or legatees, the preterition of a compulsory heir in the direct line will result in total intestacy. In the present case, the decedent's will evidently omitted Francisco Olondriz as an heir, legatee, or devisee. As the decedent's illegitimate son, Francisco is a compulsory heir in the direct line. Unless Morales could show otherwise, Francisco's omission from the will leads to the conclusion of his preterition. x x x The decedent's will does not contain specific legacies or devices and Francisco's preterition annulled the institution

of heirs. The annulment effectively caused the *total abrogation* of the will, resulting in total intestacy of the inheritance. The decedent's will, no matter how valid it may appear extrinsically, is null and void. The conduct of separate proceedings to determine the intrinsic validity of its testamentary provisions would be superfluous.

3. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*, EXPLAINED; FAILURE TO SHOW THAT THE PROBATE COURT COMMITTED GRAVE ABUSE OF DISCRETION IN PASSING UPON THE INTRINSIC VALIDITY OF THE WILL.— *Certiorari* is a limited form of review confined to errors of jurisdiction. An error of jurisdiction is one where the officer or tribunal acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. As discussed, it is well within the jurisdiction of the probate court to pass upon the intrinsic validity of the will if probate proceedings might become an idle ceremony due to the nullity of the will. On the other hand, grave abuse of discretion is the capricious and whimsical exercise of judgment equivalent to an evasion of positive duty, or a virtual refusal to act at all in contemplation of the law. It is present when power is exercised in a despotic manner by reason, for instance, of passion and hostility. Morales failed to show that the RTC acted in such a capricious and despotic manner that would have warranted the CA's grant of her petition for *certiorari.* On the contrary, the RTC acted appropriately in accordance with the law and jurisprudence.

APPEARANCES OF COUNSEL

J. Charlie G. Bite for petitioner.
Reuben Carlo O. General for respondents.

D E C I S I O N

BRION, *J.*:

This is a petition for review on *certiorari* filed by Iris Morales from the May 27, 2011 decision and October 12, 2011 resolution

of the Court of Appeals *(CA)* in **CA-G.R. SP No. 102358.**[1] The CA denied Morales' petition for certiorari from the Regional Trial Court's *(RTC)* July 12, 2007 and October 30, 2007 orders in **SP. Proc. No. 03-0060 and SP. Proc. No. 03-0069**.[2]

Antecedents

Alfonso Juan P. Olondriz, Sr. *(the decedent)* died on June 9, 2003. He was survived by his widow, Ana Maria Ortigas de Olondriz, and his children: Alfonso Juan O. Olondriz, Jr., Alejandro Marino O. Olondriz, Isabel Rosa O. Olondriz, Angelo Jose O. Olondriz, and Francisco Javier Maria Bautista Olondriz. His widow and children are collectively referred to as *the respondent heirs.*

Believing that the decedent died intestate, the respondent heirs filed a petition with the Las Piñas RTC for the partition of the decedent's estate and the appointment of a special administrator on July 4, 2003. The case was raffled to **Branch 254** and docketed as **Sp. Proc. Case No. SP-03-0060.**

On July 11, 2003, the RTC appointed Alfonso Juan O. Olondriz, Jr. as special administrator.

However, on July 28, 2003, Iris Morales filed a separate petition with the RTC alleging that the decedent left a will dated July 23, 1991. Morales prayed for the probate of the will and for her appointment as special administratrix. Her petition was also raffled to **Branch 254** and docketed as **Sp. Proc. Case No. SP-03-0069.**

The pertinent portions of the decedent's will reads:

1. Upon my death, IRIS MORALES OLONDRIZ shall be the executor hereof and administrator of my estate until its distribution in accordance herewith. x x x

---

[1] Both penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Hakim S. Abdulwahid and Ricardo R. Rosario. *Rollo,* pp. 23-33.

[2] RTC, Las Piñas City, Branch 253 through Presiding Judge Salvador V. Timbang, Jr. *Rollo,* pp. 130-134.

> 2. My entire estate shall be divided into six (6) parts to be distributed equally among and between (1) IRIS MORALES OLONDRIZ, my children (2) ALFONSO JUAN OLONDRIZ, JR., (3) ALEJANDRO OLONDRIZ, (4) ISABEL OLONDRIZ, (5) ANGELO OLONDRIZ, and their mother (6) MARIA ORTEGAS OLONDRIZ, SR.[3]

Notably, the will omitted Francisco Javier Maria Bautista Olondriz, an illegitimate son of the decedent.

On September 1, 2003, Morales filed a manifestation in **Sp. Proc. Case No. SP-03-0060** and moved to suspend the intestate proceedings in order to give way to the probate proceedings in **Sp. Proc. Case No. SP-03-0069.** The respondent heirs opposed Morales' motion for suspension and her petition for allowance of the will.

On November 27, 2003, the RTC consolidated **Sp. Proc. Case No. SP-03-0060** with **Sp. Proc. Case No. SP-03-0069**.

On January 6, 2004, the respondent heirs moved to dismiss the probate proceedings because Francisco was preterited from the will.

On January 10, 2006, Morales agreed to the holding of an evidentiary hearing to resolve the issue of preterition. Thus, the RTC ordered the parties to submit their factual allegations to support or negate the existence of preterition. Only the respondent heirs complied with this order.

After several postponements at the instance of Morales, the reception of evidence for the evidentiary hearing was scheduled on May 29, 2006. However, Morales failed to appear, effectively waiving her right to present evidence on the issue of preterition.

On June 23, 2006, the RTC, through Judge Gloria Butay Aglugub, suspended the intestate proceedings in **Sp. Proc. Case No. SP-03-0060** and set the case for probate. The RTC reasoned that probate proceedings take precedence over intestate proceedings.

---

[3] *Rollo,* p. 34.

The respondent heirs moved for reconsideration of the suspension order but the RTC denied the motion on September 1, 2006. The RTC also summarily revoked the Letters of Administration previously issued to Alfonso Jr.

The respondent heirs moved for reconsideration of the summary revocation of the Letters of Administration. They also moved for the inhibition of Judge Aglugub of Branch 254.

On November 16, 2006, the RTC granted the motion for inhibition. The case was transferred to **Branch 253** presided by Judge Salvador V. Timbang, Jr.

On July 12, 2007, the RTC resolved (1) the respondent heirs' motion for reconsideration of the revocation of the Letters of Administration and (2) Morales' motion to be appointed Special Administratrix of the estate. The RTC noted that while testacy is preferred over intestacy, courts will not hesitate to set aside probate proceedings if it appears that the probate of the will might become an idle ceremony because the will is intrinsically void.

The RTC observed: (1) that Morales expressly admitted that Francisco Javier Maria Bautista Olondriz is an heir of the decedent; (2) that Francisco was clearly omitted from the will; and (3) that based on the evidentiary hearings, Francisco was clearly preterited. Thus, the RTC reinstated Alfonso Jr. as administrator of the estate and ordered the case to proceed in intestacy.

Morales moved for reconsideration which the RTC denied on October 30, 2007, for lack of merit.

On February 7, 2008, Morales filed a petition for *certiorari* against the orders of the RTC. Morales alleged that the RTC acted with grave abuse of discretion in proceeding intestate despite the existence of the will. The petition was docketed as **CA-G.R. SP No. 102358.**

On May 27, 2011, the CA dismissed Morales' petition for *certiorari.* The CA reasoned that while probate proceedings take precedence over intestate proceedings, the preterition of a

compulsory heir in the direct line annuls the institution of heirs in the will and opens the entire inheritance into intestate succession.[4] Thus, the continuation of the probate proceedings would be superfluous and impractical because the inheritance will be adjudicated intestate. The CA concluded that the RTC did not act with grave abuse of discretion.

Morales moved for reconsideration which the CA denied on October 12, 2011. Hence, she filed the present petition for review on *certiorari* on December 5, 2011.

The Petition

Morales maintains that the RTC committed grave abuse of discretion when it ordered the case to proceed intestate because: (1) the probate of a decedent's will is mandatory; (2) the RTC Branch 254 already ordered the case to proceed into probate; (3) the order setting the case for probate already attained finality; (3) the probate court cannot touch on the intrinsic validity of the will; and (4) there was no preterition because Francisco received a house and lot *inter vivos* as an advance on his legitime.

The respondent heirs counter: (1) that it is within the RTC's jurisdiction to reverse or modify an interlocutory order setting the case for probate; (2) that the petitioner failed to mention that she did not appear in any of the evidentiary hearings to disprove their allegation of preterition; (3) that the RTC and the CA both found that Francisco was preterited from the will; and (4) that Francisco's preterition annulled the institution of heirs and opened the case into intestacy. They conclude that the RTC did not exceed its jurisdiction or act with grave abuse of discretion when it reinstated Alfonso Jr. as the administrator of the estate and ordered the case to proceed intestate.

Our Ruling

We join the ruling of the CA.

Preterition consists in the omission of a compulsory heir from the will, either because he is not named or, although he is named

---

[4] *Id.* at 28.

as a father, son, etc., he is neither instituted as an heir nor assigned any part of the estate without expressly being disinherited — tacitly depriving the heir of his legitime.[5] Preterition requires that the omission is total, meaning the heir did not also receive any legacies, devises, or advances on his legitime.[6]

In other words, preterition is the complete and total omission of a compulsory heir *from the testator's inheritance* without the heir's express disinheritance.

Article 854 of the Civil Code states the legal effects of preterition:

> Art. 854. The preterition or omission of one, some, or all of the **compulsory heirs in the direct line**, whether living at the time of the execution of the will or born after the death of the testator, **shall annul the institution of heir**; but the devises and legacies shall be valid insofar as they are not inofficious.
>
> If the omitted compulsory heirs should die before the testator, the institution shall be effectual, without prejudice to the right of representation. (emphasis supplied)

Under the Civil Code, the preterition of a compulsory heir **in the direct line** shall annul the institution of heirs, but the devises and legacies shall remain valid insofar as the legitimes are not impaired. Consequently, if a will does not institute any devisees or legatees, the preterition of a compulsory heir in the direct line will result in total intestacy.[7]

In the present case, the decedent's will evidently omitted Francisco Olondriz as an heir, legatee, or devisee. As the decedent's illegitimate son, Francisco is a compulsory heir in

---

[5] *Nuguid v. Nuguid,* G.R. No. L-23445, June 23, 1966, 17 SCRA 449, 454, citing VI Manresa, *Commentarios al Codigo Civil Español*, 7th Ed. (1951), p. 424; *Aznar v. Duncan,* G.R. No. L-24365, 17 SCRA 590, 595, citing VI Manresa, p. 428.

[6] *Nuguid, id.* at 454; see also *Aznar, supra* note 5, citing Sanchez Roman – Tomo VI, Vol. 2, p. 1133.

[7] *Nuguid, id*. at 459.

the direct line. Unless Morales could show otherwise, Francisco's omission from the will leads to the conclusion of his preterition.

During the proceedings in the RTC, Morales had the opportunity to present evidence that Francisco received donations *inter vivos* and advances on his legitime from the decedent. However, Morales did not appear during the hearing dates, effectively waiving her right to present evidence on the issue. We cannot fault the RTC for reaching the reasonable conclusion that there was preterition.

We will not entertain the petitioner's factual allegation that Francisco was not preterited because this Court is not a trier of facts. Furthermore, the CA concurred with the RTC's conclusion. We see no cogent reason to deviate from the factual findings of the lower courts.

The remaining question is whether it was proper for the RTC to (1) pass upon the intrinsic validity of the will during probate proceedings and (2) order the case to proceed intestate because of preterition.

The general rule is that in probate proceedings, the scope of the court's inquiry is limited to questions on the extrinsic validity of the *will*; the probate court will only determine the will's formal validity and due execution.[8] However, this rule is not inflexible and absolute.[9] It is not beyond the probate court's jurisdiction to pass upon the intrinsic validity of the will when so warranted by exceptional circumstances.[10] When practical considerations demand that the intrinsic validity of the will be passed upon even before it is probated, the probate court should meet the issue.[11]

---

[8] *Nepomuceno v. Court of Appeals,* 223 Phil. 418, 423 (1985).

[9] *Id.* at 424.

[10] See *Nuguid, supra* note 5; *Nepomuceno, supra*; *Balanay v. Hon. Martinez,* 159-A Phil. 718, 723 (1975).

[11] *Balanay*, *supra* note 10, at 723, citing *Nuguid, supra* note 5.

The decedent's will does not contain specific legacies or devices and Francisco's preterition annulled the institution of heirs. The annulment effectively caused the *total abrogation* of the will, resulting in total intestacy of the inheritance.[12] The decedent's will, no matter how valid it may appear extrinsically, is null and void. The conduct of separate proceedings to determine the intrinsic validity of its testamentary provisions would be superfluous. Thus, we cannot attribute error – much less grave abuse of discretion – on the RTC for ordering the case to proceed intestate.

Finally, there is no merit in the petitioner's argument that the previous order setting the case for probate barred the RTC from ordering the case to proceed intestate. The disputed order is merely interlocutory and can never become final and executory in the same manner that a final judgment does.[13] An interlocutory order does not result in *res judicata*.[14] It remains under the control of the court and can be modified or rescinded at any time before final judgment.[15]

Certiorari is a limited form of review confined to errors of jurisdiction. An error of jurisdiction is one where the officer or tribunal acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[16] As discussed, it is well within the jurisdiction of the probate court to pass upon the intrinsic validity of the will if probate proceedings might become an idle ceremony due to the nullity of the will.

On the other hand, grave abuse of discretion is the capricious and whimsical exercise of judgment equivalent to an evasion of

---

[12] *Nuguid, supra* note, at 455-459.

[13] *Montilla v. Court of Appeals,* 244 Phil. 166, 171 (1998); *Denso (Phils.), Inc. v. Intermediate Appellate Court,* 232 Phil. 256, 263-264 (1989).

[14] *Macahilig v. Magalit,* 398 Phil. 802, 804 (2000).

[15] *Manila Electric Co. v. Artiaga,* 50 Phil. 144, 147 (1929).

[16] *Villareal v. Aliga*, G.R. No. 166995, January 13, 2014, 713 SCRA 52-54.

positive duty, or a virtual refusal to act at all in contemplation of the law.[17] It is present when power is exercised in a despotic manner by reason, for instance, of passion and hostility. Morales failed to show that the RTC acted in such a capricious and despotic manner that would have warranted the CA's grant of her petition for *certiorari.* On the contrary, the RTC acted appropriately in accordance with the law and jurisprudence.

WHEREFORE, the petition is **DISMISSED**. Costs against the petitioner.

SO ORDERED.

Carpio (Chairperson), *del Castillo,* and *Mendoza, JJ.,* concur.

Leonen, J., on leave.

SECOND DIVISION

[G.R. No. 199371. February 3, 2016]

PETRON LPG DEALERS ASSOCIATION and TOTAL GAZ LPG DEALERS ASSOCIATION, *petitioners, vs.* **NENA C. ANG, ALISON C. SY, NELSON C. ANG, RENATO C. ANG, and/or OCCUPANTS OF NATIONAL PETROLEUM CORPORATION,** *respondents.*

---

[17] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 119322, June 4, 1996, 257 SCRA 200-201; *Salma v. Hon. Miro,* 541 Phil. 685, 686 (2007); *Ligeralde v. Patalinghug*, G.R. No. 168796, April 15, 2010, 618 SCRA 315.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH WARRANT; PROBABLE CAUSE FOR ISSUANCE OF A SEARCH WARRANT, PRESENT; PROBABLE CAUSE FOR PURPOSES OF ISSUING A SEARCH WARRANT AND FOR PURPOSES OF FILING A CRIMINAL COMPLAINT, DISTINGUISHED.— [A]pplying *Ty* in its entirety to the present case, the Court finds that there exists probable cause for the issuance of search warrants as applied for by petitioners. Probable cause for purposes of issuing a search warrant refers to "such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the item(s), article(s) or object(s) sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched." On the other hand, probable cause for purposes of filing a criminal information refers to "such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondents are probably guilty thereof. It is such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested." Thus, while *Ty* refers to preliminary investigation proceedings, and the instant case is concerned with applications for the issuance of search warrants, both are resolved based on the same degree of proof; the pronouncement in *Ty* may therefore apply to the present controversy.

2. ID.; ID.; ID.; FACTS DISCOVERED DURING SURVEILLANCE OPERATIONS BY THE AUTHORITIES CONSTITUTE PERSONAL KNOWLEDGE WHICH COULD FORM THE BASIS FOR THE ISSUANCE OF A SEARCH WARRANT.— On the claim of lack of personal knowledge, the Court subscribes to petitioners' argument that facts discovered during surveillance conducted by De Jemil and Antonio – on the basis of information and evidence provided by petitioners – constitute personal knowledge which could form the basis for the issuance of a search warrant. Indeed, as was declared in *Cupcupin v. People*, which petitioners cite, the surveillance and investigation conducted by an agent of the NBI obtained from confidential

information supplied to him enabled him to gain personal knowledge of the illegal activities complained of.

APPEARANCES OF COUNSEL

Adarlo Caoile & Associates for petitioners.
Gatchalian Castro and Mawis for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Facts discovered during surveillance operations conducted by the authorities on the basis of information and evidence provided by the complainants constitute personal knowledge which could form the basis for the issuance of a search warrant.

This Petition for Review on *Certiorari*[1] seeks to set aside the September 2, 2011 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 89220 and its November 17, 2011 Resolution[3] dismissing petitioners' appeal and denying their Motion for Reconsideration, respectively.

Factual Antecedents

Petitioners Petron LPG Dealers Association and Total Gaz LPG Dealers Association, together with other liquefied petroleum gas (LPG) dealers' associations, filed a letter-complaint[4] before the National Bureau of Investigation–Ilocos Regional Office (NBI-IRO), requesting assistance in the surveillance, investigation, apprehension and prosecution of respondents Nena C. Ang, Alison C. Sy, Nelson C. Ang, Renato C. Ang, and

---

[1] *Rollo*, pp. 25-52.

[2] *Id*. at 53-60; penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr.

[3] *Id*. at 61-62.

[4] *Id*. at 111-112.

National Petroleum Corporation (Nation Gas) for alleged illegal trading of LPG products and/or underfilling, possession and/or sale of underfilled LPG products in violation of Sections 2 (a) and (c), in relation to Sections 3 and 4 of *Batas Pambansa Blg*. 33[5] as amended by Presidential Decree No. 1865[6] (BP 33, as amended), which provide —

Section 2. Prohibited Acts. – The following acts are prohibited and penalized:

(a) Illegal trading in petroleum and/or petroleum products;

(b) xxx xxx xxx

(c) Underdelivery or underfilling beyond authorized limits in the sale of petroleum products or possession of underfilled liquefied petroleum gas cylinder for the purpose of sale, distribution, transportation, exchange or barter;

xxx xxx xxx

Sec. 3. Definition of terms. For the purpose of this Act, the following terms shall be construed to mean:

Illegal trading in petroleum and/or petroleum products-

xxx xxx xxx

(C) Refilling of liquefied petroleum gas cylinders without authority from said Bureau, or refilling of another company's or firm's cylinders without such company's or firm's written authorization;

xxx xxx xxx

Sec. 4. Penalties. Any person who commits any act herein prohibited shall, upon conviction, be punished with a fine of not less than twenty thousand pesos (₱20,000) but not more than fifty

---

[5] An Act Defining and Penalizing Certain Prohibited Acts Inimical to the Public Interest and National Security Involving Petroleum and/or Petroleum Products, Prescribing Penalties therefor and for Other Purposes, promulgated on June 6, 1979.

[6] Amending Batas Pambansa Blg. 33, x x x, by Including Short-Selling and Adulteration of Petroleum and Petroleum Products and Other Acts in the Definition of Prohibited Acts, Increasing the Penalties therein, and for Other Purposes, issued on May 25, 1983.

thousand pesos (₱50,000), or imprisonment of at least two (2) years but not more than five (5) years, or both, in the discretion of the court. In cases of second and subsequent conviction under this Act, the penalty shall be both fine and imprisonment as provided herein. Furthermore, the petroleum and/or petroleum products, subject matter of the illegal trading, adulteration, shortselling, hoarding, overpricing or misuse, shall be forfeited in favor of the Government: Provided, That if the petroleum and/or petroleum products have already been delivered and paid for, the offended party shall be indemnified twice the amount paid, and if the seller who has not yet delivered has been fully paid, the price received shall be returned to the buyer with an additional amount equivalent to such price; and in addition, if the offender is an oil company, marketer, distributor, refiller, dealer, sub-dealer and other retail outlets, or hauler, the cancellation of his license.

Trials of cases arising from this Act shall be terminated within thirty (30) days after arraignment.

When the offender is a corporation, partnership, or other juridical person, the president, the general manager, managing partner, or such other officer charged with the management of the business affairs thereof, or employee responsible for the violation shall be criminally liable; in case the offender is an alien, he shall be subject to deportation after serving the sentence.

If the offender is a government official or employee, he shall be perpetually disqualified from office.

In particular, respondents were alleged to be refilling Shellane, Gasul, Totalgaz, Starflame, and Superkalan Gaz LPG cylinders and selling, distributing and transporting the same without the required written authorization from the alleged respective owners of these cylinders – namely, Pilipinas Shell Petroleum Corporation, Petron Gasul Corporation, Total (Philippines) Corporation, Caltex (Philippines) Corporation (Caltex), and Superkalan Gaz Corporation.

Acting on the letter-complaint, the NBI-IRO – through its agent Marvin de Jemil (De Jemil) – conducted surveillance and test-buy operations. Thus, on November 24, 2005, De Jemil and an undercover NBI asset, Leonardo Antonio (Antonio), proceeded to the sales office of one of Nation Gas's alleged

customers in Vigan City, Barba Gas Marketing Center (Barba Gas) – a dealer of LPG and cylinders. De Jemil and Antonio waited until a Barba Gas delivery truck was loaded with Starflame LPG cylinders. The truck then left, with De Jemil's vehicle tailing behind. The truck proceeded to and entered a fenced compound located in Magsingal, Ilocos Sur. The entrance to the compound contained a sign which read "LPG Refilling Plant". De Jemil interviewed residents within the vicinity, and it was learned that the compound belonged to or was occupied by Nation Gas.

De Jemil and Antonio waited at a distance. After about one hour, the Barba Gas truck emerged from the compound. De Jemil then followed the truck back to the Barba Gas sales office at Jose Singson street in Vigan, where the refilled Starflame LPG cylinders were unloaded. The two then proceeded to the test-buy phase of the operation; with an empty eleven-kilogram (11 kg.) Starflame LPG tank in hand, they went to Barba Gas and purchased one of the refilled Starflame LPG cylinders unloaded from the truck. The Barba Gas employee took De Jemil's empty cylinder and replaced it with a filled one. De Jemil paid ₱510.00 for the filled cylinder and received a dated receipt[7] for the purchase. Thereafter, the filled Starflame LPG cylinder was examined, weighed, inspected, marked, and photographed.

Ruling of the Regional Trial Court

On December 7, 2005, the NBI, through De Jemil, filed two Applications for Search Warrant[8] to conduct a search of the Magsingal LPG refilling plant. The applications were filed before the Regional Trial Court (RTC) of Bauang, La Union. Judge Ferdinand A. Fe of RTC Branch 67 propounded the required searching questions, to which De Jemil and Antonio provided the answers.[9] De Jemil further submitted a sketch and vicinity/

---

[7] *Rollo*, p. 124.

[8] *Id*. at 84-91, 97-101.

[9] *Id*. at 128-151; Transcripts of the question-and-answer inquiry conducted by Judge Fe.

location map[10] of the place to be searched; a December 6, 2005 Certification[11] or authority to apply for a search warrant issued by his superior, Atty. Rustico Q. Vigilia, NBI-IRO Regional Director; the receipt for the test-buy refilled Starflame LPG cylinder obtained from Barba Gas on November 24, 2005; written Certifications[12] to the effect that Nation Gas is not an authorized LPG refiller of Pilipinas Shell Petroleum Corporation, Petron Gasul Corporation, Total (Philippines) Corporation, Caltex and, Superkalan Gaz Corporation; corporate documents of Nation Gas obtained from the Securities and Exchange Commission (SEC); and photographs[13] of the Barba Gas delivery truck involved in the refilling operation on November 24, 2005, unloading of the refilled LPG cylinders from the delivery truck after coming from the Magsingal refilling plant, the refilled Starflame LPG cylinder purchased and obtained from the test-buy, and the blank seal covering the test-buy refilled Starflame LPG cylinder – supporting the allegation that the refilling was not authorized as the seal was not a Caltex Starflame seal.

The trial court issued Search Warrant Nos. 2005-59 and 2005-60,[14] which were served the following day, or on December 8, 2005, at the Magsingal LPG refilling plant. Items specified in the search warrants were seized and duly inventoried and receipted.[15] Thereafter, a Consolidated Return of Search Warrants[16] was filed.

On February 7, 2006, respondents filed a Motion to Quash[17] Search Warrant Nos. 2005-59 and 2005-60, arguing that the issuing court did not comply with the requirements for issuance

[10] *Id*. at 113.

[11] *Id*. at 96.

[12] *Id*. at 119-123.

[13] *Id*. at 125-127.

[14] *Id*. at 152-155.

[15] *Id*. at 162-163.

[16] *Id*. at 156-157.

[17] *Id*. at 165-187.

of a valid search warrant; that there is no probable cause to issue the subject search warrants, as the certifications issued by the complainants – to the effect that Nation Gas was not an authorized refiller – was not authenticated, the same being mere private documents which required authentication; that De Jemil and Antonio have no personal knowledge of the charges, as well as the truthfulness and authenticity of said certifications; that the issuing court should not have consolidated the two applications, but should have considered them separately in order to arrive at an independent evaluation thereof; that the seizure of Shellane, Gasul, Total Gaz, and Superkalan cylinders was unlawful since there is no specific allegation and evidence of underfilling or illegal refilling – if at all, the inspection was limited to determining if the cylinders were refilled with or without the authority of the complainants; that as a result, the warrants issued were illegal general warrants; and that the warrants covered machinery and equipment classified as real property.

On August 4, 2006, the issuing court released an Order[18] quashing the subject warrants. It held that De Jemil and Antonio had no personal knowledge that Nation Gas was not an authorized LPG refiller of the complaining LPG companies/associations; that no member or representative of the complainants was presented as witness to the search warrant applications; that there is no evidence of illegal refilling since De Jemil and Antonio did not witness the supposed refilling of Barba Gas's Starflame LPG cylinders – including the test-buy cylinder – by Nation Gas; that the certifications issued by the LPG companies were hearsay and not based on personal knowledge, since the testimonies or depositions of those who issued them were not taken and presented to the issuing court; that Caltex's certification does not at all state that Nation Gas was an unauthorized refiller; and that the testimonies or depositions of those who tested the Starflame cylinder – who merely issued a certification of test results – were not taken and submitted to the court, thus rendering said certification mere hearsay. The issuing court concluded that there is no probable cause to issue the subject warrants,

[18] *Id*. at 256-264.

and there is no reasonable ground to believe that an offense has been committed by the respondents. It decreed, thus:

> WHEREFORE, premises considered, Search Warrants Nos. 2005-59 and 2005-60 are hereby ordered QUASHED for lack of probable cause.
>
> The objects seized by virtue thereof are declared inadmissible for any purpose. The applicant, NBI Supervising Agent Marvin E. De Jemil, or any of his authorized representatives, who was authorized to temporarily retain possession and custody of the seized goods/objects for safekeeping at the warehouse located at Barangay Dilan, Urdaneta, Pangasinan, is ordered to immediately return all the seized items to the respondents.
>
> SO ORDERED.[19]

Petitioners filed a Motion for Reconsideration;[20] however, the same was denied in a January 11, 2006 Order.[21]

Ruling of the Court of Appeals

Petitioners interposed an appeal before the CA. On September 2, 2011, the assailed Decision was rendered denying petitioners' appeal. The appellate court held, as follows:

> The appellants[22] argue that aside from the testimony of De Jemil and Antonio, other documents were presented at the time of the hearing on the application for Search Warrant No. 2005-59. They posit that these are sufficient to establish probable cause and as such, there was no need for the presentation of persons who certified that Nation was not authorized to refill the branded LPG cylinders. They point out that probable cause is only concerned with probabilities and the standard for its determination is only that of a reasonable prudent man. They stress that after the surveillances and test-buy operations done by De Jemil and Antonio, the two already acquired personal knowledge of the offenses committed by the respondents-

---

[19] *Id*. at 263-264.

[20] *Id*. at 265-285.

[21] *Id*. at 307.

[22] Herein petitioners.

appellees.[23] It is claimed too that the RTC's finding, that the certification did not state Nation was not authorized to refill, was a vain attempt to steer clear of respondents-appellees' lack of authorization. It is alleged further that although De Jemil and Antonio did not sign the inspection report detailing the weight of the LPG cylinder acquired during the test-buy operations, they were physically present and actually involved in the weighing done, giving them personal knowledge of the under filling by Nation. The appellants aver too that there is no proof that those who weighed the acquired cylinder were employed by them.

xxx xxx xxx

In reviewing what transpired below, the Court's 'task…is not to conduct a *de novo* determination of probable cause but only to determine whether there is substantial evidence in the records supporting the Judge's decision.' This being the rule, the petition must fail.

The determination of probable cause for the issuance of a search warrant requires that the facts surrounding the basis for the application must be within the personal knowledge of the applicant or his witnesses. If this does not obtain, the finding of probable cause of a judge may be set aside and the search warrant issued by him based on his finding may be quashed since 'the Judge must strictly comply with the requirements of the Constitution and the statutory provisions.' The circumstances at hand reveal that there is enough basis for the RTC to quash the Subject Warrants.

De Jemil and Antonio relied on sources furnished to them made by persons not presented as witnesses. They, thus, testified as to the truth of facts they had no personal knowledge of. 'Search warrants are not issued on loose, vague or doubtful basis of fact, nor on mere suspicion or belief.' For instance, de Jemil testified as follows:

"Q You said that the gas tanks are under filled, is that correct?
A Yes, your Honor.

Q What you mean to convey is that the gas tanks do not contain the required gas to be put inside the gas tanks required by law?
A Yes, your Honor.

---

[23] Herein respondents.

Q How were you able to verify this?
A It was examined and inspected by the personnel of the LPG Dealers Association, your Honor.

xxx xxx xxx

Q Do you know who owns that refilling station in Magsingal?

xxx xxx xxx

A The Nation Petroleum Corporation, your Honor.

Q And you claimed that the refilling is being done in that refilling station…?
A Yes…

Q Why, is it an authorized refilling station for Caltex?
A No, your Honor.

Q …[W]hat brand of LPG gas is it authorized to make refills?
A He [sic] was not authorized to refill branded LPG cylinders including Caltex LPG cylinders as well as other branded LPG cylinders, your Honor.

xxx xxx xxx

Q Do you have a certification to show that it is not authorized as a refilling center?
A Yes, your Honor."

while a portion of Antonio's testimony goes:

Q What was the result of the test-buy?
A After [the] testing conducted by Mr. Kenneth Igoy and Mr. Alex Dosuhan of the LPG Dealers Association, the examination turned out positive that the LPG cylinder subject of the test-buy was under-filled and that the Nation Gas was also using [an] unauthorized seal…"

[From] their answers, [it could be gleaned that] De Jemil and Antonio had no personal knowledge that the LPG acquired during the test-buy was under-filled and that Nation had no authorization. They may have seen a truck carrying empty cylinders enter Nation's premises and exit after with alleged under-filled cylinders but the requirement of the law is more precise. They should have had personal knowledge that the cylinder concerned was under-filled and that Nation lacked authority. It cannot be ignored that both De Jemil and Antonio did not see the subject cylinder being filled [nor] did

they test its weight personally. Furthermore, they were just furnished a certification that Nation did not have any right to refill. Indeed, their respective sworn statements read in part as follows:

> '5.I likewise secured a Certification dated 27 August 2005 from Atty. Adarlo who confirmed that Nation Gas is not one of those entities authorized to refill LPG cylinders bearing the brands of Pilipinas Shell Petroleum Corporation, Petron Corporation, Total (Philippines) Corporation, Caltex Philippines, Inc.[,] and Superkalan Gaz Corporation.'
>
> – o X o –
>
> '5.Pinagbigay-alam sa akin na ang Nation Gas ay walang pahintulot na nagkakarga ng mga Shellane, Petron Gasul, Totalgaz, Caltex Starflame[,] at Superkalan Gaz na tangke ng LPG dahil ang Nation [G]as ay hindi pinahintulutan ng mga nabanggit na mga lehitimong kompanya.'
>
> WHEREFORE, premises considered, the instant petition is DENIED.
>
> SO ORDERED.[24]

Petitioners filed a Motion for Reconsideration,[25] which was denied through the CA's second assailed Resolution of November 17, 2011. Hence, the instant Petition.

In an August 28, 2013 Resolution,[26] this Court resolved to give due course to the Petition.

Issues

Petitioners allege that:

THE COURT OF APPEALS MADE A DECISION NOT IN ACCORD WITH THE REVISED RULES OF COURT AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT AS REGARDS THE DETERMINATION OF PERSONAL KNOWLEDGE OF WITNESSES IN SEARCH WARRANT APPLICATIONS. CERTAINLY, THERE IS A NEED TO REVERSE AND SET ASIDE THE RULING OF

---

[24] *Rollo*, pp. 55-59.

[25] *Id*. at 67-83.

[26] *Id*. at 473-474.

THE COURT OF APPEALS THAT NBI AGENT DE JEMIL AND HIS WITNESSES HAD NO PERSONAL KNOWLEDGE THAT THE RESPONDENTS COMMITTED ILLEGAL TRADING AND UNDERFILLING OF LIQUEFIED PETROLEUM GAS (LPG) PRODUCTS FOR THE PURPOSE OF DETERMINING PROBABLE CAUSE IN SEARCH WARRANT APPLICATIONS.[27]

Petitioners' Arguments

In their Petition and Reply[28] seeking reversal of the assailed CA dispositions and a declaration of validity as to the subject Search Warrants, petitioners essentially argue that in resolving the appeal, the appellate court failed to consider that in search warrant applications, proof beyond reasonable doubt is not required – rather, only probable cause is needed; that based on the evidence submitted with the applications, such probable cause existed; that De Jemil and Antonio had personal knowledge of the offenses being committed by the respondents, that is, they actually witnessed the illegal refilling and underfilling of the subject test-buy LPG cylinder, as the same was examined and weighed in their presence; that under Section 2(3) of BP 33, as amended, there is a presumption of underfilling when the seal is broken, absent or removed; that while the complainants' witnesses were not introduced into the proceedings, De Jemil and Antonio were nonetheless able to acquire personal knowledge of respondents' illegal acts when they conducted their surveillance and test-buy operations; and that personal knowledge acquired during surveillance and investigation conducted based on the tip of a confidential informant satisfies the requirement of probable cause for the issuance of a search warrant.[29]

Respondent's Arguments

In their Comment[30] seeking denial of the Petition, respondents claim that the Petition raises issues of fact; that under the Rules

---

[27] *Id*. at 33.

[28] *Id*. at 462-471.

[29] Citing *Cupcupin v. People*, 440 Phil. 712 (2002) and *People v. Sucro*, 272-A Phil. 362 (1991).

[30] *Rollo*, pp. 441-459.

of Criminal Procedure, the applicant for a search warrant and his witnesses should have personal knowledge of facts in order to establish probable cause; that the issuing court and the CA are unanimous in their findings that the applications for search warrant should be denied; that De Jemil and Antonio have no personal knowledge that the subject test-buy LPG cylinder was refilled by respondents, as they did not enter the premises of the Magsingal LPG refilling plant; that there is no truth to De Jemil and Antonio's claim that they actually examined and weighed the test-buy LPG cylinder, as they admitted during the proceedings that it was the LPG dealers' association that inspected and weighed the same; that the surveillance and test-buy operations failed to establish the accusations leveled against respondents, and for this reason, the lack of personal knowledge by De Jemil and Antonio and failure to present the complainants' witnesses were not cured.

Our Ruling

The Court grants the Petition.

In *Del Castillo v. People*,[31] the relevant principles governing the issuance of a search warrant were discussed, as follows:

> The requisites for the issuance of a search warrant are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized. x x x Probable cause for a search warrant is defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion; it requires less than evidence which would justify conviction. The judge, in determining probable cause, is to consider

[31] 680 Phil. 447 (2012).

the totality of the circumstances made known to him and not by a fixed and rigid formula, and must employ a flexible, totality of the circumstances standard. x x x[32]

Petitioners claim that respondents are engaged in the illegal trading and refilling of Shellane, Gasul, Totalgaz, Starflame, and Superkalan Gaz LPG cylinders, as they were not authorized dealers or refillers of Pilipinas Shell Petroleum Corporation, Petron Gasul Corporation, Total (Philippines) Corporation, Caltex, and Superkalan Gaz Corporation. Additionally, they accuse respondents of underfilling LPG cylinders. To prove illegal trading and refilling, they presented written certifications to the effect that Nation Gas was not an authorized LPG refiller of Pilipinas Shell Petroleum Corporation, Petron Gasul Corporation, Total (Philippines) Corporation, Caltex, and Superkalan Gaz Corporation. And to prove underfilling, they presented photographs as well as the results of an examination of the refilled Starflame LPG cylinder obtained through De Jemil's test-buy.

The Court finds the evidence presented sufficient to prove probable cause; the issuing court and the CA thus patently erred in quashing the search warrants. Where the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record, the same cannot bind this Court.[33]

In *Ty v. NBI Supervising Agent De Jemil*,[34] the Court declared that what BP 33, as amended prohibits is the refilling and underfilling of a branded LPG cylinder by a refiller who has no written authority from the brand owner; this proceeds from the principle that the LPG brand owner is deemed owner as well of the duly embossed, stamped and marked LPG cylinders, even if these are in the possession of its customers or consumers. Such illegal refilling/underfilling may be proved by: 1) conduct of surveillance operations; 2) the conduct of a test-buy; 3) written

---

[32] *Id.* at 456-457.

[33] *Baricuatro, Jr. v. Court of Appeals*, 382 Phil. 15, 24-25 (2000).

[34] 653 Phil. 356 (2010).

certifications from LPG companies such as Pilipinas Shell Petroleum Corporation, Petron Gasul Corporation, and Total (Philippines) Corporation – detailing and listing the entities duly authorized to deal in or refill their respective LPG cylinders, and excluding a particular LPG trader/refiller from the lists contained in said certifications; and 4) the written report and findings on the test and examination of the test-buy cylinder. Thus, the Court held:

Probable violation of Sec. 2 (a) of BP 33, as amended

First. The test-buy conducted on April 15, 2004 by the NBI agents, as attested to by their respective affidavits, tends to show that Omni illegally refilled the eight branded LPG cylinders for PhP 1,582. This is a clear violation of Sec. 2 (a), in relation to Secs. 3 (c) and 4 of BP 33, as amended. It must be noted that the criminal complaints, as clearly shown in the complaint-affidavits of Agent De Jemil, are not based solely on the seized items pursuant to the search warrants but also on the test-buy earlier conducted by the NBI agents.

Second. The written certifications from Pilipinas Shell, Petron[,] and Total show that Omni has no written authority to refill LPG cylinders, embossed, marked or stamped Shellane, Petron Gasul, Totalgaz[,] and Superkalan Gaz. In fact, petitioners neither dispute this nor claim that Omni has authority to refill these branded LPG cylinders.

Third. Belying petitioners' contention, the seized items during the service of the search warrants tend to show that Omni illegally refilled branded LPG cylinders without authority.

xxx xxx xxx

As petitioners strongly argue, even if the branded LPG cylinders were indeed owned by customers, such fact does not authorize Omni to refill these branded LPG cylinders without written authorization from the brand owners Pilipinas Shell, Petron[,] and Total. In *Yao, Sr. v. People*, a case involving criminal infringement of property rights under Sec. 155 of RA 8293, in affirming the courts *a quo*'s determination of the presence of probable cause, this Court held that from Sec. 155.1 of RA 8293 can be gleaned that 'mere unauthorized use of a container bearing a registered trademark in connection with the sale, distribution or advertising of goods or services which is likely to cause confusion, mistake or deception

among the buyers/consumers can be considered as trademark infringement.' The Court affirmed the presence of infringement involving the unauthorized sale of Gasul and Shellane LPG cylinders and the unauthorized refilling of the same by Masagana Gas Corporation as duly attested to and witnessed by NBI agents who conducted the surveillance and test-buys.

Similarly, in the instant case, the fact that Omni refilled various branded LPG cylinders even if owned by its customers but without authority from brand owners Petron, Pilipinas Shell[,] and Total shows palpable violation of BP 33, as amended. As aptly noted by the Court in *Yao, Sr. v. People*, only the duly authorized dealers and refillers of Shellane, Petron Gasul and, by extension, Total may refill these branded LPG cylinders. Our laws sought to deter the pernicious practices of unscrupulous businessmen.

Fourth. The issue of ownership of the seized branded LPG cylinders is irrelevant and hence need no belaboring. BP 33, as amended, does not require ownership of the branded LPG cylinders as a condition *sine qua non* for the commission of offenses involving petroleum and petroleum products. Verily, the offense of refilling a branded LPG cylinder without the written consent of the brand owner constitutes the offense regardless of the buyer or possessor of the branded LPG cylinder.

After all, once a consumer buys a branded LPG cylinder from the brand owner or its authorized dealer, said consumer is practically free to do what he pleases with the branded LPG cylinder. He can simply store the cylinder once it is empty or he can even destroy it since he has paid a deposit for it which answers for the loss or cost of the empty branded LPG cylinder. Given such fact, what the law manifestly prohibits is the refilling of a branded LPG cylinder by a refiller who has no written authority from the brand owner. Apropos, a refiller cannot and ought not to refill branded LPG cylinders if it has no written authority from the brand owner.

Besides, persuasive are the opinions and pronouncements by the DOE: brand owners are deemed owners of their duly embossed, stamped and marked LPG cylinders even if these are possessed by customers or consumers. The Court recognizes this right pursuant to our laws, i.e., Intellectual Property Code of the Philippines. Thus the issuance by the DOE [of] Circular No. 2000-05-007, the letter-opinion dated December 9, 2004 of then DOE Secretary Vincent S. Perez addressed to Pilipinas Shell, the June 6, 2007 letter of then

DOE Secretary Raphael P.M. Lotilla to the LPGIA, and DOE Department Circular No. 2007-10-0007 on LPG Cylinder Ownership and Obligations Related Thereto issued on October 13, 2007 by DOE Secretary Angelo T. Reyes.

Fifth. The ownership of the seized branded LPG cylinders, allegedly owned by Omni customers as petitioners adamantly profess, is of no consequence.

The law does not require that the property to be seized should be owned by the person against whom the search [warrant] is directed. Ownership, therefore, is of no consequence, and it is sufficient that the person against whom the warrant is directed has control or possession of the property sought to be seized. Petitioners cannot deny that the seized LPG cylinders were in the possession of Omni, found as they were inside the Omni compound.

xxx xxx xxx

Probable violation of Sec. 2 (c) of BP 33, as amended

Anent the alleged violation of Sec. 2 (c) in relation to Sec. 4 of BP 33, as amended, petitioners strongly argue that there is no probable cause for said violation based upon an underfilling of a lone cylinder of the eight branded LPG cylinders refilled during the test-buy. Besides, they point out that there was no finding of underfilling in any of the filled LPG cylinders seized during the service of the search warrants. Citing DOE's Bureau of Energy Utilization Circular No. 85-3-348, they maintain that some deviation is allowed from the exact filled weight. Considering the fact that an isolated underfilling happened in so many LPG cylinders filled, petitioners are of the view that such is due to human or equipment error and does not in any way constitute deliberate underfilling within the contemplation of the law.

Moreover, petitioners cast aspersion on the report and findings of LPG Inspector Navio of the LPGIA by assailing his independence for being a representative of the major petroleum companies and that the inspection he conducted was made without the presence of any DOE representative or any independent body having technical expertise in determining LPG cylinder underfilling beyond the authorized quantity.

Again, we are not persuaded.

Contrary to petitioners' arguments, a single underfilling constitutes an offense under BP 33, as amended by PD 1865, which clearly criminalizes these offenses. In *Perez v. LPG Refillers Association of the Philippines, Inc.*, the Court affirmed the validity of DOE Circular No. 2000-06-010 which provided penalties on a per cylinder basis for each violation x x x.

xxx xxx xxx

The Court made it clear that a violation, like underfilling, on a per cylinder basis falls within the phrase of any act as mandated under Sec. 4 of BP 33, as amended. Ineluctably, the underfilling of one LPG cylinder constitutes a clear violation of BP 33, as amended. The finding of underfilling by LPG Inspector Navio of the LPGIA, as aptly noted by Manila Assistant City Prosecutor Catalo who conducted the preliminary investigation, was indeed not controverted by petitioners.[35]

An examination of petitioners' evidence in the instant case reveals that it is practically identical to that presented in the *Ty* case. A complaint was filed with the NBI, which conducted surveillance and test-buy operations; written certifications were submitted to the effect that the respondent was not an authorized refiller of the LPG companies' branded cylinders; finally, an inspection of the test-buy cylinder was conducted, and the results thereof embodied in a written document which was submitted as evidence in the proceedings. Moreover, photographs taken indicate that Barba Gas was not an exclusive dealer/distributor of Caltex Starflame cylinders and LPG products, and that the cylinders involved – including the test-buy cylinder – belonged to Caltex, the same being stamped with its Starflame mark.

Thus, applying *Ty* in its entirety to the present case, the Court finds that there exists probable cause for the issuance of search warrants as applied for by petitioners. Probable cause for purposes of issuing a search warrant refers to "such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the item(s), article(s) or object(s) sought in connection with said offense or subject to seizure and destruction by law is in the

[35] *Id*. at 371-381.

place to be searched."[36] On the other hand, probable cause for purposes of filing a criminal information refers to "such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondents are probably guilty thereof. It is such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested."[37] Thus, while *Ty* refers to preliminary investigation proceedings, and the instant case is concerned with applications for the issuance of search warrants, both are resolved based on the same degree of proof; the pronouncement in *Ty* may therefore apply to the present controversy.

On the claim of lack of personal knowledge, the Court subscribes to petitioners' argument that facts discovered during surveillance conducted by De Jemil and Antonio – on the basis of information and evidence provided by petitioners – constitute personal knowledge which could form the basis for the issuance of a search warrant. Indeed, as was declared in *Cupcupin v. People*,[38] which petitioners cite, the surveillance and investigation conducted by an agent of the NBI obtained from confidential information supplied to him enabled him to gain personal knowledge of the illegal activities complained of.

WHEREFORE, the Petition is **GRANTED**. The September 2, 2011 Decision and November 17, 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 89220 are **REVERSED and SET ASIDE**. The validity of Search Warrant Nos. 2005-59 and 2005-60 is **SUSTAINED.**

SO ORDERED.

Carpio (Chairperson), *Brion,* and *Reyes,*[*] *JJ.,* concur.

Leonen, J., on leave.

---

[36] *People v. Tuan*, 642 Phil. 379, 399 (2010), citing *People v. Aruta*, 351 Phil. 868, 880 (1998).

[37] *People v. Borje*, G.R. No. 170046, December 10, 2014.

[38] *Supra* note 29.

[*] Per Raffle dated February 1, 2016.

THIRD DIVISION

[G.R. No. 205764. February 3, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEE QUIJANO ENAD,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS FOR A SUCCESSFUL PROSECUTION OF ILLEGAL SALE OF DRUGS.— For a successful prosecution of offenses involving the illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165, all the following elements must be proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor. The delivery of the illicit drug to the poseur-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti,* as evidence. Moreover, since the *corpus delicti* in dangerous drugs cases constitutes the dangerous drugs itself, proof beyond reasonable doubt that the seized item is the very same object tested to be positive for dangerous drugs and presented in court as evidence is essential in every criminal prosecution under R.A. 9165. Because the existence of the dangerous drug is crucial to a judgment of conviction, it is indispensable that the identity of the prohibited drug be established with the same unwavering exactitude as that requisite to make a finding of guilt to ensure that unnecessary doubts concerning the identity of the evidence are removed.

2. ID.; ID.; ID.; CHAIN OF CUSTODY; LINKS IN THE CHAIN OF CUSTODY IN BUY-BUST OPERATION, NOT ESTABLISHED IN CASE AT BAR.— The links that must be established in the chain of custody in a buy- bust situation are as follows: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized

to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court. Here, the prosecution failed to establish beyond reasonable doubt the first three links in the chain of custody.

3. ID.; ID.; ID.; ID.; WHEN THE PROSECUTION FAILED TO ESTABLISH THE UNBROKEN CHAIN OF CUSTODY OF THE DRUGS SEIZED, ACCUSED DESERVES AN ACQUITTAL.— A reading of the *proviso* embodied in the above provision clearly states that non-compliance by the apprehending team with Section 21 of R.A. 9165 is not fatal as long as (1) there is justifiable ground therefor and (2) the integrity and evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer/team. In this case, although a physical inventory of the bag of marijuana seized from appellant was made in the presence of a representative from the media and an elective public official at the PDEA Office, the prosecution offered no justification why a DOJ representative was not present and why the same item was not photographed. Significantly, the integrity and evidentiary value of the drugs seized from appellant was not preserved by the apprehending team because the prosecution failed (a) to identify who actually placed the marking "LQE" thereon, (b) to show that it was marked in the presence of the appellant, and (c) to prove the chain of custody of the said item from the crime scene until it reached the crime laboratory. Reliance on the legal presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved will be inadequate to uphold appellant's conviction. After all, the burden of proving the guilt of an accused rests on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense. When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt becomes a matter of right, irrespective of the reputation of the accused who enjoys the right to be presumed innocent until the contrary is shown. All told, the Court finds that the prosecution failed (a) to establish an unbroken chain of custody of the bag of marijuana seized from appellant, (b) to prove that the specimen found to be positive for marijuana upon

laboratory examination, was the same dangerous drugs seized from him, and (c) to proffer any justifiable ground for the non-compliance with Section 21 of R.A. 9165. These flaws cast serious doubt on whether the specimen found to be positive of marijuana upon laboratory examination was the same drugs seized from appellant and offered in evidence before the trial court. With the failure of the prosecution to prove with moral certainty the identity and the unbroken chain of custody of the dangerous drugs seized from him, appellant deserves exoneration from the crime charged.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Orlando M. Salatandre, Jr. for accused-appellant.

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the Decision[1] dated February 28, 2012 of the Court of Appeals (CA) in CA-G.R. CEB CR HC No. 01109, which affirmed the judgment[2] of the Regional Trial Court (RTC) of Toledo City, Cebu, Branch 29, finding accused-appellant Lee Quijano Enad guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002,* in Criminal Case No. TCS-5357.

On August 16, 2005, an Information was filed charging appellant with violation of Section 5, Article II of RA 9165, the accusatory portion of which reads:

That on the 14th day of August 2005 at around 11:45 o'clock in the morning, at Barangay Bayong, Municipality of Balamban, Province

---

[1] Penned by Associate Justice Nina G. Antonia-Valenzuela, with Associate Justices Myra V. Garcia-Fernandez and Abraham B. Borreta, concurring; CA, *rollo,* pp. 81-98.

[2] Penned by Executive Judge Cesar O. Estrera; *id.* at 34-45.

of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously SELL and DELIVER to one of the poseur-buyers of the PNP in the amount of ₱200.00 with Serial Nos. SN DQ547867 and GM030950 one (1) plastic bag containing 2,722.00 grams of dried suspected marijuana wrapped in a newspaper which when subjected for laboratory examination gave positive results for the presence of Marijuana, a dangerous drug.

CONTRARY TO LAW.[3]

Upon his arraignment on June 30, 2006, appellant, assisted by counsel, pleaded not guilty to the charge.

On September 1, 2006, the pre-trial was terminated. Thereafter, trial on the merits ensued.

For the prosecution, three (3) witnesses testified, namely: Police Inspector (P/Insp.) Leoncio G. Demauro, a member of the Philippine Drug Enforcement Agency (PDEA), Region VII, Cebu City, who was designated as back-up and arresting officer; P/Insp. Arceliano A. Bañares, also a member of the PDEA who was designated as poseur-buyer; and Jude Daniel Mendoza, the Forensic Chemical Officer/Medical Technologist of the Philippine National Police (PNP) Crime Laboratory Region 7, Cebu City.

According to the prosecution, in the first week of August 2005, Police Superintendent (P/Supt.) Amado Marquez ordered Police Chief Inspector (PCI) Carmelo Dayon to verify the report of an informant anent the rampant sale of illegal drugs by appellant in Balamban, Cebu. PCI Dayon then instructed P/Insps. Demauro and Bañares to conduct a surveillance operation against appellant, which they conducted for a week in coordination with the Balamban Police Station.

On August 14, 2005, upon being directed by PCI Dayon and armed with a pre-operation report, P/Insps. Demauro and Bañares conducted a buy- bust operation against appellant in Barangay Bayong, at the junction road going to Barangay Magsaysay in

[3] Records, p. 1.

Balamban, Cebu. P/Insp. Bafiares acted as the poseur-buyer, while P/Insp. Demauro acted as the back-up and arresting officer. During the operation, they were also assisted by SPO2 Jude Dennis Aguanta of the Balamban Police Station, three (3) barangay tanods and an informant. Upon reaching Barangay Bayong, they first staked out along the highway in front of a store. Thereafter, they saw appellant.

The informant then told P/Insp. Demauro through radio that appellant was on his way to their position on board a motorcycle or *habal-habal*. P/Insp. Bañares quickly positioned himself on the side of the road which was twenty (20) meters away from the store where P/Insp. Demauro was standing in a discreet position. P/Insp. Bañares then approached and held the motorcycle being boarded by appellant. P/Insp. Bañares introduced himself as a band member and told the *habal-habal* driver that he needs illegal drugs for their performance. Upon hearing the conversation of P/Insp. Bañares and the driver, appellant butted in and asked how much is needed. Appellant said that the marijuana costs ₱1,500.00 per kilo and asked P/Insp. Bañares if he had the money. P/Insp. Bañares pulled out from his right pocket the boodle money which was sandwiched between two (2) One Hundred Peso bills ₱100.00 and gave it to appellant. In turn, appellant opened the bag with suspected dried marijuana. After seeing the contents, P/Insp. Bañares took the bag and made the pre-arranged signal that the transaction was already consummated. P/Insp. Bañares immediately introduced himself as a police officer and recovered the money from appellant. P/Insp. Demauro also rushed in and arrested the appellant who offered no resistance.

P/Insps. Bañares and Demauro brought the appellant to a nearby store and presented him before barangay tanods, then proceeded to the office. P/Insp. Demauro prepared the booking sheet, the arrest report, as well as the requests for laboratory examination of the suspected dried marijuana marked as "LQE" and dated 08-14-2005, and for medical examination of appellant. The letter requests were forwarded to Jude Mendoza of the PNP Crime Laboratory Region 7. As shown by Chemistry Report No. D-1192-2005, the specimen was found positive for marijuana.

On the other hand, appellant was the sole witness for the defense. According to the defense, on August 14, 2005 at around 11 o'clock in the morning, appellant was riding a motorcycle *(habal-habal),* together with its driver, on his way to Barangay Cambuhawe, Sitio Lacdon, Balamban, to visit his cousin, Lito Lapinid. When they reached the Mount Manunggal area, their motorcycle was flagged down by two (2) unknown men. Once the motorcycle stopped, the driver was asked if he had a driver's license and where they were going. The driver showed his license and replied that appellant was going to Balamban. Appellant was also asked for his identification card and community tax certificate, but he failed to show them as he left them at home. Upon being asked where he was residing, appellant replied that he was a resident of San Fernando. Thereafter, the two men, who turned out to be police officers, frisked him and the driver but found nothing. When the two men requested appellant to come with them to the police station to verify his residence, he hesitated and protested, but was nonetheless forced to go.

Once at the police station, appellant saw one of the two men bring a black bag and was told to admit that he owned it. Appellant vehemently refused to admit its ownership as the bag contained marijuana. One of the police officers also told him that if he will admit ownership of the bag, they will charge him with violation of Section 11 of R.A. 9165, and he would be able to post bail; otherwise, he would be charged with violation of Section 5 and would not be able to post bail. When appellant still refused to admit ownership of the bag, one of the police officers boxed him once on the right side of his body. Appellant was then forced to sign the booking sheet and arrest report. When informed that he was being charged with selling of illegal drugs, appellant told the police that they broke his hemi and that they had no pity on him despite the fact that he has a family.

On August 10, 2009, the RTC rendered a Decision finding appellant guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165. The dispositive portion of the decision states:

WHEREFORE, premises considered, the Court hereby renders judgment finding the accused, Lee Quijano Enad, **GUILTY** beyond reasonable doubt of Violation of Section 5, Article II of R.A. 9165 for the sale of 2,722 grams of marijuana and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and [to pay] a fine of Five Hundred Thousand Pesos (₱500,000.00).

The confiscated dried marijuana leaves are hereby ordered confiscated in favor of the government, to be turned over to the Office of the Provincial Prosecutor of Cebu, which, in turn, shall coordinate with the proper government agency for the proper and immediate disposition and destruction of the same.

SO ORDERED.[4]

The trial court found that the testimonial and documentary evidence presented by the prosecution, all tending to prove that appellant was arrested in the course of a buy-bust operation, deserves more credence than his self- serving and bare defense of denial. Having caught appellant *in flagrante delicto* selling dangerous drugs to the police officers themselves, his warrantless arrest by the PDEA agents and the incidental search and seizure of the buy-bust money from him, are both valid.

The trial court ruled that the prosecution has adequately shown that an illegal sale of drugs took place between the PDEA agents and appellant. It pointed out that the identities of the poseur-buyer (P/lnsp. Bañares), the seller (appellant), the object (2,722 grams of marijuana), and the consideration (buy-bust money), the delivery or receipt of the thing sold and payment therefor are likewise established through the credible testimonies of P/Insps. Bañares and Demauro, who were the main members of the buy-bust team, and the presentation of the said marijuana and buy-bust money during the trial of the case.

The trial court added that without proof of motive to falsely impute a serious crime against appellant, the presumption of regularity in the performance of official duty and the findings of the trial court on the credibility of witnesses shall prevail over his defenses of denial and frame-up.

---

[4] CA *rollo,* p. 45.

The trial court likewise ruled that the police officers have substantially complied with the requirement of Section 21 of R.A. 9165, as indicated by the following circumstances: (a) immediately after appellant's arrest, the marking and physical inventory of the confiscated marijuana and black bag were immediately conducted by the arresting officers in the presence of Barangay Captain Clemente Rosales and mediaman Edgar Escalante as shown by the Certificate of Inventory; (b) the confiscated items were immediately turned over to the PNP Regional Crime Laboratory for quantitative and qualitative examination on the same day of confiscation; and (c) the forensic laboratory examination results was also issued within 24 hours from receipt of the subject specimen.

The trial court further noted that the fact that the specimen was not photographed is a minor lapse which does not affect the integrity of the confiscated items, and that the failure to immediately mark and inventory the drugs in the very place where they were confiscated is also justifiable because the arrest and seizure of the illegal drugs were made in the course of a buy-bust operation which was conducted in the middle of a national highway. Hence, the immediate marking and inventory of the items in the PDEA Office is justifiable and reliable in view of the presence of a public official and a member of the media.

Aggrieved by the RTC decision, appellant filed an appeal before the CA, raising the sole issue:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[5]

In his Brief, appellant argued that the testimonies of the prosecution witnesses are bereft of anything to show who had custody of the seized marijuana from the crime scene to the police station, until it reached the crime laboratory for examination, and who made the marking "LQE" on the seized

[5] *Id.* at 25.

item at the police station. He also faulted the police officers for failing to mark the marijuana immediately after they were seized from him. He contended that these gaps in the chain of custody of the marijuana allegedly seized from him created doubt as to the integrity of the evidence — the *corpus delicti* itself. He added that no justifiable reason was offered as to the arresting officer's non-compliance with the procedural requirements of Section 21, Article II of R.A. 9165, and its implementing rules and regulations on the custody and disposition of seized dangerous drugs, and that the prosecution failed to prove that the integrity and evidentiary value of the seized drugs have been preserved.

Appellant further pointed out the following inconsistencies in the testimonies of the prosecution witnesses: (a) P/Insp. Demauro testified that the first surveillance operation was done in San Fernando where appellant was residing, but later stated that they went instead to Carcar to confirm appellant's illicit trade, and avoided San Fernando; (b) As to time when the alleged buy-bust operation was conducted, P/Insp. Demauro testified that it happened at around 11:45 o'clock in the morning, while P/lnsp. Bañares stated that it was held at around 7 o'clock in the morning; and (c) P/Insp. Demauro stated that during the buy-bust operation, he was hiding but peeped out so he had a clear view of the suspect and the poseur-buyer, contrary to P/Insp. Bañares' claim that P/Insp. Demauro was in front of the store.

In its Appellee's Brief, the Office of the Solicitor General (OSG) insisted that all the elements for the successful prosecution of illegal sale have been proven, to wit: (1) the buyer was clearly identified as P/Insp. Bañares and the seller as appellant; (2) the object of the sale was established to be marijuana, weighing 2,722 grams; (3) the marijuana was, in fact, delivered by appellant to the poseur-buyer; and (4) payment was made using the marked money, which was given to appellant during the buy-bust operation. It also asserted that there was substantial compliance with the procedural requirements on the custody and disposition of seized dangerous drugs, and that the integrity of the drugs seized from appellant was preserved.

The OSG claimed that the chain of custody of the seized drugs was not shown to have been broken, thus:

> x x x The factual milieu of the case reveals that after P/Insp. Arceliano Bañares seized and confiscated the dangerous drugs, as well as the marked money, accused-appellant was immediately arrested and brought to the police station where the plastic bag of suspected dried marijuana was marked with "LQE." Immediately thereafter, the confiscated substance, [together] with a letter of request for examination, was submitted to the PNP Crime Laboratory for examination to determine the presence of any dangerous drug. The specimen submitted was positive for marijuana, a dangerous drug. Thus, it is without doubt that there was an unbroken chain of custody of the illicit drug purchased from accused-appellant. Notably, after the arrest of the accused-appellant, inventory and marking were made in the presence of the Barangay Captain and mediamen as evidenced by the Certificate of Inventory. Furthermore, P/Insps. Arceliano Bañares and Leoncio Demauro, and the accused-appellant himself, were together when the confiscated plastic bag were delivered x x x for investigation and laboratory examination.[6]

In the Decision dated February 28, 2012, the CA dismissed the appeal and affirmed the RTC decision.

The CA agreed with the trial court that all the elements of illegal sale of dangerous drugs were proved. The CA noted that P/Insp. Bañares, who acted as poseur-buyer, positively identified appellant as the person who sold marijuana to him. It added that the testimony of P/Insp. Bañares was corroborated by P/Insp. Demauro who testified that he witnessed the sale of illegal drugs, *i.e.,* the actual exchange of the marijuana and buy-bust money (consisting of the boodle money with the two (2) ₱100.00 bills with serial nos. DQ547867 and GM030950 placed on its top and bottom), because he was about 20 meters away from where the transaction took place. It also pointed out that the object of the sale, one plastic bag of dried marijuana with the weight of 2,722 grams, and the marked money, were presented and identified at the trial.

---

[6] *Id.* at 73.

The CA also rejected appellant's argument that the prosecution was unable to establish the chain of custody and the integrity of the drugs seized from appellant, as the testimonies of the prosecution witnesses failed to show who had custody of the seized marijuana from the crime scene to the police station, until it reached the crime laboratory for examination, and who made the marking thereon at the police station.

The CA held that there was substantial compliance with Section 21 of the Implementing Rules and Regulations of R.A. 9165 on the custody and disposition of the seized dangerous drugs, because (a) the inventory and the markings were made in the presence of the Barangay Captain and a mediaman; (b) thereafter, the seized item with marking "LQE" and the request for laboratory examination were submitted to the PNP Crime Laboratory Region 7; and (c) the tests yielded positive results.

The CA stressed that the testimonies of P/Insps. Bañares and Demauro sufficiently established that the integrity and evidentiary value of the confiscated illegal substance were properly preserved. It observed that no proof was adduced to support the claim that the integrity and evidentiary value of the seized drugs were compromised; hence, they are presumed to be preserved, there being no showing of bad faith, ill will or proof that the evidence was tampered with. It likewise gave weight to the presumption of regularity in the handling of exhibits by public officers in view of the presumption that they properly discharged their duties.

The CA further rejected appellant's defenses of denial and frame-up for being self-serving and uncorroborated, and for his failure to overcome the presumption that the police officers perfonned their duties in a regular and proper manner. As to the inconsistencies between the testimonies of P/Insp. Bañares and P/Insp. Demauro, it found that they relate only to minor matters which do not affect the credibility of said witnesses, since their testimonies clearly established the sale of marijuana.

Dissatisfied with the CA decision, appellant filed a Notice of Appeal. In his Supplemental Brief, appellant reiterated (a) that the testimonies of the prosecution witnesses are bereft of

anything to show who had custody of the allegedly seized marijuana from the scene of the incident to the police station until it reached the Crime Laboratory for examination, and (b) there is nothing to show who made the markings on the said items at the police station.[7] For its part, the OSG manifested and moved that it be excused from filing a supplemental brief, as its appellee's brief had extensively discussed all the matters and issues raised in the appellant's brief.[8]

The appeal is impressed with merit.

For a successful prosecution of offenses involving the illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165, all the following elements must be proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[9] The delivery of the illicit drug to the poseur-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti,* as evidence.[10]

Moreover, since the *corpus delicti* in dangerous drugs cases constitutes the dangerous drugs itself,[11] proof beyond reasonable doubt that the seized item is the very same object tested to be positive for dangerous drugs and presented in court as evidence is essential in every criminal prosecution under R.A. 9165. Because the existence of the dangerous drug is crucial to a judgment of conviction, it is indispensable that the identity of

---

[7] *Rollo,* p. 37.

[8] *Id.* at 27.

[9] *People of the Philippines v. Edwin Dalawis y Hidalgo,* G.R. No. 197925, November 9, 2015.

[10] *Id.* citing *People of the Philippines v. Eric Rosauro y Bongcawil,* G.R. No. 209588, February 18, 2015, and *People v. Torres,* G.R. No. 191730, June 5, 2013, 697 SCRA 452, 462-463.

[11] *People v. Quebral,* 621 Phil. 226, 233 (2009).

the prohibited drug be established with the same unwavering exactitude as that requisite to make a finding of guilt to ensure that unnecessary doubts concerning the identity of the evidence are removed.[12] To this end, the prosecution must establish the unbroken chain of custody of the seized item. As held in *People of the Philippines v. Edwin Dalawis y Hidalgo:*[13]

> The rule on chain of custody expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court. Moreover, as a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[14]

The links that must be established in the chain of custody in a buy-bust situation are as follows: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to

---

[12] *Sales v. People,* 602 Phil. 1047, 1056 (2009).

[13] *Supra* note 9.

[14] Citing *People of the Philippines v. Manuel Flores y Salazar@ Wella,* G.R. No. 201365, August 3, 2015 and *Valencia v. People,* G.R. No. 198804, January 22, 2014, 714 SCRA 492, 504.

the court.[15] Here, the prosecution failed to establish beyond reasonable doubt the first three links in the chain of custody.

As the first step in the chain of custody, "marking" means the placing by the apprehending officer or the police poseur-buyer of his/her initials and signature on the dangerous drug seized. It is meant to ensure that the objects seized are the same items that enter the chain and are eventually offered in evidence, as well as to protect innocent persons from dubious and concocted searches, and the apprehending officers from harassment suits based on planting of evidence.[16] While Section 21 of R.A. 9165 and its implementing rule do not expressly specify a time frame for marking or the place where said marking should be done, the chain of custody rule requires that the marking should be done (1) in the presence of the apprehended violator, and (2) immediately upon confiscation.[17] Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.[18] In this case, the prosecution evidence failed to convincingly show who between P/Insp. Bañares, as poseur-buyer, and P/Insp. Demauro, as back-up and arresting officer, marked the bag of marijuana seized from appellant with the initials "LQE" dated "08-14-2005" at the PDEA Office.

Despite a careful review of the sworn statements and testimonies of both P/Insps. Bañares and Demauro, the Court cannot determine who actually placed the markings "LQE" and "08-14-2005"on the drugs seized from appellant, and whether it was marked in the presence of the latter.

Notably absent in the Affidavit of the Arresting Officer dated August 16, 2005 of P/Insp. Demauro are the details as to who placed the said markings on the drugs seized from appellant,

---

[15] *People of the Philippines v. Abdul Mamad y Macdirol, Ladger Tampoy y Bagayad and Hata Sariol y Madas,* G.R. No. 198796, September 16, 2015.

[16] *People v. Sanchez,* 590 Phil. 214, 241 (2008).

[17] *Id.*

[18] *People v. Resurreccion,* 618 Phil. 520, 532 (2009).

and whether they were marked in the latter's presence. Pertinent portions of P/Insp. Demauro's affidavit read:

> That, after I saw PI ARCELIANO A. BAÑARES handled (sic) the money and at the same time receiving the plastic bag (as our pre-arranged signal) signifying that the transaction was already consummated. I drove the vehicle nearer blocking the road to enable the motorcycle to escape and get out of the vehicle and approached them introducing myself as PDEA Operative and arrested the suspect. Likewise, we also informed the suspect of the nature of his offense and constitutional rights as mandated by our constitution. Then and there I was able to recover from the possession and control of the suspect the buy-bust money, the two (2) pieces of one hundred peso bills with SN GM030950 and DQ547867 placed on top and bottom of wad of papers used as our boodle money;
>
> That, after the inventory of evidences in front of the barangay tanods, and the owner, we brought the suspect to PDEA Regional Office 7, Camp Gen. Arcadio E. Maxilom, Salinas Drive, Cebu City for proper disposition and made a Certificate of Inventory of the confiscated pieces of evidence in compliance to (sic) Sec. 21, Art II, RA 9165;
>
> That, we then make (sic) a request for Laboratory Examination on the seized dried Marijuana and submitted it to PNP Crime Laboratory Office 7 now described as One (1) pc. Black bag (east sport basic gear brand) containing suspected dried Marijuana wrapped by a newspaper and a clear plastic further placed in a colonnade plastic bag all marked "LQE" dated 08-14-2005 and further subjected the above named suspect for drug/urine test;
>
> That, the result of the Laboratory Examination when examined by Jude Daniel Mendoza, RMT, DIAP, Forensic Chemical Officer/ Medical Technologist, PNPCL07, yielded positive result for the presence of Marijuana, a dangerous drugs weighing 2,722 grams;[19]

There is likewise no indication in the Affidavit of the Poseur Buyer dated August 16, 2005 of P/Insp. Bañares as to who placed the said markings on the drugs seized from appellant and whether it was marked in the latter's presence. Relevant parts of P/Insp. Bañares' affidavit state:

---

[19] Records, p. 10.

That, after-which the suspect then showed to me the content of the black bag and open (sic) it and then there I saw the dried Marijuana placed inside a plastic bag. In return, the suspect asked for the money, I pulled out from my right pocket the two (2) pieces one hundred peso bills marked by money with SN GM030950 and DQ547867 placed on top and bottom of wad of papers used as the boodle money and handed it to the suspect. After handling the money, I pick-up the bag (as our pre-arranged signal) signifying that the transaction was already consummated and told the suspect to count the money later since their (sic) are people corning. At this juncture, I immediately introduce myself as PDEA Operative while PI LEONCIO G DEMAURO rushed up and arrested the suspect and informed him of the nature of his offense and his constitutional rights as mandated by law and likewise recovered the buy-bust money from the possession and control of the above named suspect;

That, subsequently we brought the suspect to PDEA Regional Office 7, Camp Gen. Arcadio E. Maxilom, Salinas Drive, Cebu City for proper disposition and made a Certificate of Inventory of the confiscated pieces of evidence in compliance to (sic) Sec. 21, Art II, RA 9165;

That, We then make (sic) a request for Laboratory Examination on the seized dried Marijuana and submitted it to PNP Crime Laboratory Office 7 now described as One (1) pc. Black bag (east sport basic gear brand) containing suspected dried Marijuana wrapped by a newspaper and a clear plastic further placed in a colonnade plastic bag all marked "LQE" dated 08-14-2005 and further subjected the above named suspect for drug/urine test;

That, the result of the Laboratory Examination when examined by Jude Daniel Mendoza, RMT, DIAP, Forensic Chemical Officer/ Medical Technologist, PNPCL07, yielded positive result for the presence of Marijuana, a dangerous drug weighing 2,722 grams;[20]

P/Insp. Demauro's direct examination also failed to reveal who marked the seized drugs and whether it was marked in the presence of appellant. Pertinent portions of his testimony read:

---

[20] *Id.* at 16.

[Prosecutor Jasmin N. Despi]

Q: After the pre-arranged signal immediately you rushed up the accused. You introduced yourselves after that what happened next?
A: Bañares opened the bag and telling him that I am also a police. We told him that he was under surveillance and then we brought him to the office.

Q: What was inside the black bag?
A: It contained dried marijuana leaves wrapped by a newspaper and plastic bag.

Q: How big is the bag?
A: Ten (10) inches by twelve (12) inches.

Q: After both of you and Bañares informed the accused Lee Q. Enad that you are police officers what did he do, if any?
A: He did not resist the arrest. We brought him to the nearby store and in the presence of those Barangay Tanods presenting them suspect (sic).

xxx xxx xxx

Q: What else did you do in the store where you brought the suspect, if any?
A: We told those Barangay Tanods that if we need their help we'll call them and we (Bañares and me) proceeded to the office.

Q: When you arrived in your office what did you do to Lee Enad?
A: We prepared a booking sheet and [arrest] report.

xxx xxx xxx

Q: After the booking of the arrest of the accused what happened next, if any?
A: We prepared the Certificate of Inventory of Evidence and the affidavit of Bañares and also my affidavit preparing for the filing of the case.

xxx xxx xxx

Q: You mentioned earlier that you go to your office for the purpose of booking the accused and the military (sic) men why is it that they were summoned to your office?

A: It is the requirements in the preparation of the Certificate of Inventory of the Evidence and preparing the case. It must be completed in the presence of barangay official and media men and the parties or suspect and the arresting personnel.

xxx xxx xxx

Q: What happened to the black bag and its content?
A: It is in the possession of the PNP Crime Laboratory, containing the dried marijuana leaves.

Q: If you can still recall, when was that submitted and its content at the PNP Crime Laboratory?
A: August 18, 2005 because it was not Monday. We filed that case on August 16, 2005.

xxx xxx xxx

Q: When you mentioned August 16, 2005 you are referring at the Fiscal's Office?
A: Yes, ma'am.

Q: If you know, after the submission of the black bag was the examination done to the content which you said earlier marijuana?
A: Yes, ma'am.

Q: How did you know it is marijuana?
A: We requested the crime laboratory to conduct tests on the marijuana whether it contained drugs or not.

xxx xxx xxx

Q: Also attached to the record is the Certificate of Inventory I would like you to look at it and tell the Honorable Court if you had prepared the said document?
A: Yes, ma'am, this is the one.

Q: Please tell us what is the significant (sic) of the Certificate of Inventory when you first file (sic) before the Fiscal's Office?
A: It is a mandatory requirement in filing the case.

Q: Tell us what are the contents of the Certificate of Inventory?
A: These are the items that contained in the Inventory the 2,722 grams of dried marijuana; black bag; the boodle money; two (2) pieces One Hundred Peso bills. I think that is all.

xxx xxx xxx

Q: You mentioned earlier of a request for laboratory examination in this case in the record there are two (2) request for laboratory examination there is a request for laboratory examination and there is a request for medical examination, tell us what these examinations are?
A: Laboratory examination [for] the marijuana and the other request for medical examination for the accused.

Q: Tell us why did you subject the accused for (sic) medical examination?
A: Because it is also one of the procedure an arrested person must undergo a medical examination before bringing him to the CPDRC.

Q: Take a look on both request and tell us if these are the same document which you submitted in compliance with the rules of RA 9165?
A: Yes, ma'am, these are the ones.

xxx xxx xxx

Q: Do you know where the accused now?
A: Yes, ma'am, inside the Courtroom.

Q: Please point him out?
A: Witness pointing to the accused Lee Enad.

PROS. DESPI:

That would be all for the witness, Your Honor.[21]

Similarly, P/Insp. Bañares' direct examination was unable to establish who marked the seized drugs and whether it was marked in the presence of appellant. Relevant parts of his testimony provide:

[Prosecutor Despi]

Q: Earlier you said that the accused told you that the marijuana cost you One Thousand Five Hundred (₱1,500.00) Pesos per kilo. Did he accept your two (2) one hundred peso bills for several kilos of marijuana?

---

[21] TSN, December 14, 2006, pp. 8-16.

A: Yes ma'am, because he saw the money at the bottom ofthe paper as our boodle money for buy-bust.

Q: You mean to say that you showed him the boodle of money but only two (2) are real and the others are faked money?
A: Yes, ma'am.

Q: After you showed him the boodle money, what happened next, if any?
A: He opened the bag and I saw the dried marijuana inside the plastic bag, then I pulled out money and he said, "ah, your money is too many, what will you do with this." Because marijuana is very cheap compared to shabu.

Q: After you took out the money and showed to the accused, what happened next?
A: I saw the marijuana inside the plastic bag and I picked up the bag and as our pre-arranged signal signifying that the transaction was already consummated. And since there are people coming so I immediately introduced myself that I am a PDEA operatives and P/Insp. Demauro rushed up and arrested the accused.

Q: You said that you took the marijuana from the accused. The money that you are holding, where did it go?
A: To the suspect.

Q: There was an actual exchange of money and marijuana?
A: Yes, ma'am.

Q: After P/Insp. Demauro rushed up and arrested the accused, what happened next?

A: Then I arrested the suspect and recovered the marked money for buy-bust operation, recovered from the [possession] and control of the suspect.

PROS. DESPI:

Your Honor please, I would like to ask a resetting of this case. I will ask the witness to identify the two (2) one hundred peso bills and the boodle money used in buying the marijuana.[22]

xxx xxx xxx

[22] TSN, May 31, 2007, pp. 10-11.

Q: During the last hearing you told the Honorable Court that you conducted a buy bust operation you used One Hundred Peso bill and boodle money. I am showing to you this (2) One Hundred Peso Bills please tell the Honorable Court if you recognize these items?
A: This is the buy bust-operation money.

Q: How do you know the two (2) ₱100 bills are the ones used in the buy bust operation?
A: The serial numbers of the money SN: DQ547867 and GM030950.

Q: Aside from taking notes of the serial numbers of the buy-bust money, do you have any other identification which confirm that indeed that these were the very items used?
A: No, sir.

Q: You can say the two ₱100.00 bills are marked money?
A: Yes, sir.

Q: Please explain to us how come that these two ₱100.00 bills are marked money when there are no markings?
A: It is our procedure of taking the serial numbers.

Q: As personnel of PDEA the use of money with no marking as marked money as (sic)
A: Yes, sir because the number is correct.

Q: Now, aside from the two ₱100.00 bills there are also pieces of paper same as the two (2) ₱100.00 bills, please what is the reference?
A: These pieces of papers are used as boodle money.

Q: You told us you utilized that you will give the impression that you have several bills for payment. Please demonstrate how did you hand it in a way the accused was not able to detect the alleged money below?
A: Like this. xxxx

PROS. DESPI:

That would be all, Your Honor. No more question.[23]

As can be gleaned from the testimonies of the arresting officers, P/Insps. Bañares and Demauro, the prosecution utterly failed

[23] TSN, August 9, 2007, pp. 2-4.

to prove the identity of the one who actually marked the drugs seized from appellant with the initials "LQE" and the date "08-14-2005," and whether it was marked in the latter's presence. Hence, the first link in the chain of custody of the drugs seized from appellant was broken.

Anent the second link in the chain of custody, there is no showing who between P/Insps. Bañares and Demauro turned over to the investigating officer the drugs seized from appellant. As can be gathered from their above-quoted testimonies and sworn statements, they also failed to disclose the identities of the desk officer and the investigator to whom custody of the same drugs was turned over.

In *People v. Capuno,*[24] the Court ruled that when the police officers who confiscated the dangerous drugs testified only that they brought the accused and the seized item to the police station without identifying the police officer to whose custody the seized item was actually given, the second link in the chain of custody is not established. This ruling holds true in this case because the prosecution's evidence failed to identify who between P/Insps. Bañares and Demauro was in custody of the bag of marijuana seized from appellant from the crime scene to the PDEA office.

With respect to the third link in the chain of custody, there is likewise no indication as to the identity of the investigating officer who then turned over the drugs to the forensic chemist for laboratory examination. While the Booking Sheet and Arrest Report[25] and the Request for Laboratory Examination[26] indicate that a certain PO2 Inocentes L. Amistad was the one who booked appellant's arrest and delivered the said request to the forensic chemist, there is no evidence on record that he was the investigating officer assigned to the case of appellant. No evidence was also proffered on how the bag of marijuana ended up in the possession of PO2 Amistad. Nowhere in the testimonies and affidavits of P/Insps. Bañares and Demauro was it stated

---

[24] 655 Phil. 226, 242 (2011).

[25] Records, p. 33.

[26] *Id.* at 27.

who between them turned over custody of the bag of marijuana to him. Thus, the prosecution's failure to explain how PO2 Amistad got hold of the marijuana casts doubt on the identity of the *corpus delicti.*

Moreover, the failure of the prosecution to establish an unbroken chain of custody was compounded by the police officers' non-compliance with the procedure for the custody and disposition of seized dangerous drugs as set forth in Section 21(1), Article II of R.A. No. 9165 provides:

> Sec. 21. *Custody and Disposition of Corifiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> > (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person!s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

Failure to strictly comply with the above provision will not render an accused's arrest illegal or the seized items inadmissible in evidence.[27] Under Section 21(a) of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165, substantial compliance is recognized, thus:

> (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

---

[27] *People v. Lazaro, Jr.,* 619 Phil. 235, 259 (2009).

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.

A reading of the *proviso* embodied in the above provision clearly states that non-compliance by the apprehending team with Section 21 of R.A. 9165 is not fatal as long as (1) there is justifiable ground therefor and (2) the integrity and evidentiary value of the confiscated/seized items are properly preserved by the apprehending officer/team.[28] In this case, although a physical inventory of the bag of marijuana seized from appellant was made in the presence of a representative from the media and an elective public official at the PDEA Office, the prosecution offered no justification why a DOJ representative was not present and why the same item was not photographed. Significantly, the integrity and evidentiary value of the drugs seized from appellant was not preserved by the apprehending team because the prosecution failed (a) to identify who actually placed the marking "LQE" thereon, (b) to show that it was marked in the presence of the appellant, and (c) to prove the chain of custody of the said item from the crime scene until it reached the crime laboratory.

Reliance on the legal presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved will be inadequate to uphold appellant's conviction. After all, the burden of proving the guilt of an accused rests on the prosecution which must rely on the strength of its own evidence and not on the weakness

---

[28] *People v. Sanchez, supra* note 16, at 234.

of the defense.[29] When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt becomes a matter of right, irrespective of the reputation of the accused who enjoys the right to be presumed innocent until the contrary is shown.[30]

All told, the Court finds that the prosecution failed (a) to establish an unbroken chain of custody of the bag of marijuana seized from appellant, (b) to prove that the specimen found to be positive for marijuana upon laboratory examination, was the same dangerous drugs seized from him, and (c) to proffer any justifiable ground for the non-compliance with Section 21 of R.A. 9165. These flaws cast serious doubt on whether the specimen found to be positive of marijuana upon laboratory examination was the same drugs seized from appellant and offered in evidence before the trial court. With the failure of the prosecution to prove with moral certainty the identity and the unbroken chain of custody of the dangerous drugs seized from him, appellant deserves exoneration from the crime charged.

In light of the foregoing discussion, the Court finds no necessity to delve into the other contentions raised by the parties.

WHEREFORE, the appeal is **GRANTED.** The Decision dated February 28, 2012 of the Court of Appeals in CA-G.R. CEB CR HC No. 01109, which affirmed the judgment of the Regional Trial Court of Toledo City, Cebu, Branch 29, in Criminal Case No. TCS-5357, is **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant Lee Quijano Enad is **ACQUITTED** on reasonable doubt.

The Director of the Bureau of Corrections is directed to cause the release of accused-appellant, unless he is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement, within five (5) days from notice.

---

[29] *People v. T/Sgt. Angus, Jr.,* 640 Phil. 552, 566 (2010).

[30] *Zafra, et al. v. People,* 686 Phil. 1095, 1109 (2012).

SO ORDERED.

Sereno,[*] *C.J., Velasco, Jr. (Chairperson), Perez,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 207355. February 3, 2016]

JENNIFER A. AGUSTIN-SE and ROHERMIA J. JAMSANI-RODRIGUEZ, *petitioners, vs.* **OFFICE OF THE PRESIDENT, represented by Executive Secretary PAQUITO N. OCHOA, JR., ORLANDO C. CASIMIRO, overall Deputy Ombudsman, Office of the Ombudsman, and JOHN I.C. TURALBA, Acting Deputy Special Prosecutor, Office of the Special Prosecutor,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RULE 45 PETITION; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— A question of law arises when there is a doubt as to what the law is on a certain state of facts, while there is a question of fact when doubt arises as to the truth or falsity of the alleged facts. For a question to be a question of law, it must not involve an examination of the probative value of the evidence presented by the litigants. The resolution of the issue must rest solely on what the law provides on the given set of facts and circumstances. Once it is clear that the issue invites a review of the evidence presented, the question is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate

---

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 1, 2014.

court can determine the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.

2. **ID.; ID.; ID.; QUESTIONS ON THE PROBATIVE VALUE OF THE EVIDENCE SUBMITTED ARE QUESTIONS OF FACT WHICH ARE NOT PROPER UNDER A RULE 45 PETITION.—** In this case, petitioners allege, among others, that (1) the Court of Appeals did not consider their evidence during the administrative adjudication; (2) the Court of Appeals gravely erred in ruling that there is no substantial evidence on record against Casimiro for the delay in the disposition and preliminary investigation, and against Casimiro and Turalba for violations of Office Order No. 05-18, Office Order No. 05-13, Section 35 of RA No. 6770 and Section 3(k) of RA No. 3019; (3) the Court of Appeals gravely erred in sustaining the finding of the OP that they were preventively suspended by reason of their delay in filing their Comment, (4) the Court of Appeals gravely erred in sustaining the dismissal of the Complaint by the OP which is not in accord with the evidence on record but contrary to established jurisprudence and its previous rulings; and (5) the Court of Appeals gravely erred in sustaining the OP without ruling on the finding of the OP that there was no evidence relative to the undue injury caused to the people and the petitioners. These issues all involve a review of the facts on record or the examination of the probative value of the evidence submitted. Applying the test of whether the question is one of law or of fact, the aforementioned are questions of fact because petitioners assail the appreciation of evidence by the Court of Appeals. We have previously held that questions on the probative value of the evidence, or those which relate to the analysis of the records by the lower courts are questions of fact which are not proper for review by this Court[.]

3. **POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; ESSENCE OF DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS; THE BARE ALLEGATION THAT PETITIONERS WERE DENIED DUE PROCESS CANNOT OVERCOME THE CLEAR FACT THAT THEY WERE GIVEN THE OPPORTUNITY TO ESTABLISH THEIR CLAIM.—** The essence of due process is an opportunity to be heard – as applied to administrative proceedings, it is an

opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. In this case, petitioners were given both opportunities – the opportunity to explain their side by filing their pleadings which contained all their allegations and evidence in support of their arguments, and the opportunity to seek a reconsideration of the ruling complained of, as shown by their motions for reconsideration and appeals. As long as parties are afforded these opportunities, the requirement of due process in administrative proceedings is sufficiently met. As evidenced by the pleadings filed during the administrative proceeding, and their subsequent appeal to the Court of Appeals and now to this Court, they have been afforded the fullest opportunity to establish their claims and to seek a reconsideration of the ruling complained of. Moreover, a reading of the decisions of the Court of Appeals and the OP shows that the evidence petitioners presented had been duly considered. Indeed, aside from their general allegation that the Court of Appeals did not consider their evidence, petitioners failed to identify any conclusion arrived at by the Court of Appeals or the OP that was not supported by the evidence on record. Moreover, both the Court of Appeals and the OP addressed the issues raised by the parties, and subsequently cited the proper evidence on record and quoted the applicable laws and jurisprudence to support their findings. The bare allegation that they were denied due process cannot overcome the clear fact that they were given every opportunity to establish their claims.

4. ID.; ADMINISTRATIVE LAW; OFFICE ORDER NO. 05-18, SERIES OF 2005 (RULES ON INTERNAL WHISTLEBLOWING AND REPORTING); PROTECTED DISCLOSURE AND WHISTLEBLOWER, DEFINED.— Protected disclosure is defined as "the deliberate and voluntary disclosure by an official or employee who has relevant information of an actual, suspected or anticipated wrongdoing by any official or employee, or by any OMB organizational unit." On the other hand, a whistleblower refers "to an official or employee who makes protected disclosure to his immediate supervisor, other superior officers, the Tanodbayan and/or his duly authorized/designated representative or the Internal Affairs Board (IAB)."

5. ID.; ID.; ID.; ID.; CONDITIONS FOR PROTECTED DISCLOSURE, NOT MET IN CASE AT BAR; THE SUBJECT MEMORANDUM DOES NOT QUALIFY AS A PROTECTED DISCLOSURE SINCE IT WAS NOT UNDER OATH AND THERE WAS NOTHING CONFIDENTIAL NOR DID IT CONTAIN ANY CLASSIFIED INFORMATION.— A reading of the Rules on Internal Whistleblowing and Reporting, however, will show that the conditions for "protected disclosure" have not been met in this case. Specifically, Section 7 provides: Section 7. Conditions for Protected Disclosure.— Whistleblowers shall be entitled to the benefits under these Rules, provided that all the following requisites concur: (a) The disclosure is made voluntarily, in writing and under oath; (b) The disclosure pertains to a matter not yet the subject of a complaint already filed with, or investigated by the IAB or by any other concerned office; unless, the disclosures are necessary for the effective and successful prosecutions, or essential for the acquisitions of material evidence not yet in its possession; (c) The whistleblower assists and participates in proceedings commenced in connection with the subject matter of the disclosure; and (d) The information given by the whistleblower contains sufficient particulars and, as much as possible, supported by other material evidence. The 5 January 2010 Memorandum does not meet the conditions set forth in Section 7; and thus, it does not qualify as a protected disclosure under the rules. The Memorandum fails to meet the first requirement as the disclosure, while made voluntarily and in writing, was not executed under oath. Contrary to the allegations of petitioners, there is also no indication that the document was to be treated as confidential. If indeed they had intended that the Memorandum be considered of a confidential nature, they should have indicated it clearly, such as by putting the word "confidential" on the face of the document. This they failed to do; and thus, the Memorandum was treated as a regular office memorandum. Moreover, as correctly pointed out by the Court of Appeals and OP, the allegations made by petitioners could all be easily verified through the records and thus do not fall under the ambit of protected information. There was nothing confidential about the Memorandum. Neither did it contain any classified information. Thus, there could have been no violation of Section 3(k) of RA No. 3019 or of Section 7(c) of RA No. 6713.

6. ID.; ID.; ID.; THE OMBUDSMAN ACT OF 1989 (RA 6770); MALICIOUS PROSECUTION, ELEMENTS OF; WANTING IN CASE AT BAR; DELIBERATE INITIATION OF AN ACTION WITH THE KNOWLEDGE THAT THE CHARGES WERE FALSE AND GROUNDLESS, NOT PRESENT.— [In *Magbanua v. Junsay*,] [t]his Court has drawn the four elements that must be shown to concur to recover damages for malicious prosecution. Therefore, for a malicious prosecution suit to prosper, the plaintiff must prove the following: (1) the prosecution did occur, and the defendant was himself the prosecutor or that he instigated its commencement; (2) the criminal action finally ended with an acquittal; (3) in bringing the action, the prosecutor acted without probable cause; and (4) the prosecution was impelled by legal malice — an improper or a sinister motive. The gravamen of malicious prosecution is not the filing of a complaint based on the wrong provision of law, but the deliberate initiation of an action with the knowledge that the charges were false and groundless. Based on the foregoing, we see that the elements of malicious prosecution are wanting in this case. Based on the Complaint filed by Casimiro before the IAB, there had been probable cause for him to initiate the charges against petitioners. It is of record that petitioners had indeed filed several motions for extension of time, and that instead of filing the necessary Comment, they had submitted the 5 January 2010 Memorandum. This could have constituted conduct prejudicial to the best interest of the service or gross neglect of duty. Moreover, when they were asked by Casimiro to explain their actions, they did not respond, but merely submitted another Memorandum, addressed to Villa-Ignacio, which were considered actions that evinced resistance to authority. In fact, the IAB found petitioners guilty of Simple Discourtesy in the Course of Official Duties and were reprimanded for their conduct. Thus, the gravamen of malicious prosecution – the deliberate initiation of an action with the knowledge that the charges were false and groundless – was absent on the part of Casimiro.

7. REMEDIAL LAW; JUDGMENTS; DOCTRINES OF *STARE DECISIS* AND *RES JUDICATA*, NOT APPLICABLE.— Petitioners, in essence, are arguing that the Court of Appeals should have applied the doctrine of *stare decisis*, which enjoins adherence to judicial precedence, such that lower courts are

> bound to follow the rule established in a decision of the Supreme Court, or the doctrine of *res judicata*, which provides that a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit. However, we note that the decision being relied on by petitioners was rendered merely by another division of the Court of Appeals, and not this Court. We have previously settled that the decision of a division of the Court of Appeals is not binding on a co-division. x x x Moreover, as correctly pointed out by the Court of Appeals, the subject matter in CA-G.R. No. 114210 is different from the issues involved in this case. While this petition involves the administrative complaint filed by petitioners against Casimiro in relation to the alleged failure of Casimiro to file the Informations against Acot, Dulinayan and several others, the petition involved in CA-G.R. No. 114210 is the administrative complaint filed by petitioners which relates to the delay incurred by petitioners in filing the necessary pleadings before the Sandiganbayan. Thus, the Court of Appeals did not err in not taking judicial notice of CA-G.R. No. 114210.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on certiorari[1] to set aside the 29 November 2012 Decision[2] and the 23 May 2013[3] Resolution of the Court of Appeals upholding the 14 June 2011[4] Decision of the Office of the President (OP) to dismiss the complaint

---

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 45-65. Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Andres B. Reyes, Jr. and Ramon M. Bato, Jr. concurring.

[3] *Id*. at 66-67. Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Andres B. Reyes, Jr. and Ramon M. Bato, Jr. concurring.

[4] *Id*. at 481-496. Signed by Executive Secretary Paquito N. Ochoa, Jr.

of Jennifer A. Agustin-Se and Rohermia J. Jamsani-Rodriguez (petitioners) against respondents Orlando C. Casimiro (Casimiro) and John I.C. Turalba (Turalba).

The Facts

Petitioners are Assistant Special Prosecutors III of the Office of the Ombudsman, who have been assigned to prosecute cases against Lt. Gen. (Ret.) Leopoldo S. Acot (Acot), Bgen. (Ret.) Ildelfonso N. Dulinayan (Dulinayan) and several others before the Sandiganbayan for alleged ghost deliveries of assorted supplies and materials to the Philippine Air Force amounting to about Eighty Nine Million Pesos (₱89,000,000.00).

Sometime in early 1995, the Judge Advocate General's Office of the Armed Forces of the Philippines filed a complaint before the Ombudsman against Acot, Dulinayan and several others which was eventually docketed as OMB-AFP-CRIM-94-0218. In a Resolution dated 12 April 1996,[5] Ombudsman Investigators Rainier C. Almazan (Almazan) and Rudifer G. Falcis II (Falcis) recommended the filing of Informations against Acot, Dulinayan, and several others for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019 [RA No. 3019]) and/or for Malversation through Falsification. Casimiro was then the Director of the Criminal and Administrative Investigation Division of the Office of the Ombudsman and the immediate supervisor of Almazan and Falcis. Casimiro concurred with and signed the 12 April 1996 Resolution and indorsed the same to Bgen. (Ret.) Manuel B. Casaclang, then Casimiro's immediate superior.

In a Memorandum dated 10 July 1996,[6] then Special Prosecution Officer III Reynaldo L. Mendoza recommended the modification of the 12 April 1996 Resolution to charge Acot, Dulinayan and several others only with the violation of Section 3(e) of RA No. 3019. In a Memorandum dated 12 January 1998,[7]

---

[5] *Id*. at 149-166.

[6] *Id*. at 67-169.

[7] *Id*. at 170-171.

Special Prosecutor Leonardo Tamayo (Tamayo) recommended that the charges against Acot and Dulinayan be dismissed for lack of evidence. Affirming the recommendation of Tamayo, on 2 March 1998, Ombudsman Aniano A. Desierto approved the 12 April 1996 Resolution with the modification to dismiss the charges against Acot and Dulinayan.

In a Memorandum dated 29 April 2005,[8] Nolasco B. Ducay and Melita A. Cuasay, record officers of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Officers (OMB-MOLEO), brought to the attention of Casimiro (who was then already the Deputy Ombudsman for MOLEO having been appointed on 16 December 1999) that the main folder containing the 12 April 1996 Resolution could not be located despite the records having been returned to the OMB-MOLEO on 6 March 1998. The discovery of the missing folder was made when Col. Proceso I. Sabado and Ltc. Jose R. Gadin, who were co-respondents of Acot and Dulinayan, applied for a clearance with the Office of the Ombudsman. Due to the delay in the action on the 12 April 1996 Resolution and inexplicable loss of the main folder, Almazan and Falcis, in a Memorandum dated 7 July 2005,[9] strongly recommended a thorough review of the case. Casimiro forwarded the 7 July 2005 Memorandum to Ombudsman Simeon V. Marcelo who directed the Office of Legal Affairs (OLA) to study the records and submit a recommendation.

In a Memorandum dated 25 June 2007,[10] the OLA noted that the 12 April 1996 Resolution had "no force and effect because it was never promulgated." The OLA recommended, among others, the filing of Informations against Acot, Dulinayan and several others. In a Memorandum dated 23 February 2009, Assistant Special Prosecutor II Terence S. Fernando of the Office of the Ombudsman Proper recommended the approval of the OLA's Memorandum. On 3 March 2009, acting pursuant

---

[8] *Id*. at 207-208.

[9] *Id*. at 178-179.

[10] *Id*. at 180-194.

to delegated authority, Casimiro approved both the 25 June 2007 and 23 February 2009 Memoranda. The Informations were thereafter filed against Acot, Dulinayan and several others with the Sandiganbayan.

Acot and Dulinayan filed their respective Motions to Quash/ Dismiss and to Defer Arraignment mainly on the grounds that: (1) the right of the State to prosecute had already prescribed; and (2) given the amount of time the case was filed after the preliminary investigation was started almost 15 years, their right to speedy disposition of case had been violated.[11] Dulinayan further alleged that a clearance had been issued by the Office of the Ombudsman stating that there were no pending cases against him. The Sandiganbayan required petitioners, the assigned prosecutors for this case, to comment on the motions filed by Acot and Dulinayan.

To determine the veracity of the statement of Dulinayan that he had been issued a clearance stating that there are no pending cases against him, petitioners confirmed with the Public Assistance Bureau of the Office of the Ombudsman whether such clearance had been issued.[12] Moreover, to determine the events that transpired after the modification of the 12 April 1996 Resolution, petitioners requested certified machine copies of the docket entries with the Records Division.[13] While the issuance of the clearance was timely confirmed, the certified machine copies of the docket entries were delayed; and thus, petitioners were constrained to file several Motions for Extension of Time to File Comment/Opposition to the Motions filed by Dulinayan and Acot.

Based on their evaluation of the records, petitioners found that there were procedural lapses in the handling of the cases, which they attributed to Casimiro. Thus, instead of filing the required Comment and/or Opposition with the Sandiganbayan,

---

[11] *Id*. at 128-142, 144-148.

[12] *Id*. at 195.

[13] *Id*. at 197-198.

petitioners submitted a Memorandum dated 5 January 2010,[14] which contained their findings against Casimiro. This Memorandum, while addressed to then Special Prosecutor Dennis M. Villa-Ignacio, was submitted to Turalba, who was the Officer-in-Charge, Director, Prosecution Bureau V. Turalba, however, merely attached the said Memorandum as part of the records and thereafter relieved petitioners from the cases, alluding that they were remiss in their duty to file the necessary Comment and/or Opposition with the Sandiganbayan.[15] Turalba filed his own Comment and/or Opposition which prompted petitioners to seek the approval of Villa-Ignacio of their version of the draft Comment and/or Opposition, which they eventually filed with the Sandiganbayan.[16] However, the Informations against Acot, Dulinayan and several others were subsequently dismissed by the Sandiganbayan for violation of the accused's right to speedy disposition of the case.

In the meantime, Turalba furnished Casimiro with the 5 January 2010 Memorandum of petitioners. Casimiro thereafter required petitioners to explain why they should not be held criminally and administratively liable for insubordination, gross neglect and conduct prejudicial to the best interest of the service.[17] Instead of responding to Casimiro, petitioners submitted a Memorandum dated 20 January 2010 to Villa-Ignacio explaining their actions.[18]

Thereafter, on 4 February 2010, Casimiro filed a Complaint[19] against petitioners with the Internal Affairs Board (IAB) of the Office of the Ombudsman for the crime of libel and Section 3(e) of RA No. 3019, and administratively, for grave misconduct, conduct prejudicial to the best interest of the service, gross

---

[14] *Id*. at 209-219.

[15] *Id*. at 220-222.

[16] *Id*. at 227-234.

[17] *Id*. at 242-244.

[18] *Id*. at 246-250.

[19] *Id*. at 257-264.

neglect of duty, and insubordination. Pending investigation, petitioners were placed under preventive suspension.

On 3 November 2010, petitioners filed their own Complaint[20] before the OP, alleging that Casimiro and Turalba committed the following administrative infractions: (1) grave misconduct, (2) gross negligence; (3) oppressions, (4) conduct grossly prejudicial to the best interest of the service; (5) violation of the rules on confidentiality; (6) violation of Office Order No. 05-18, and Office Order No. 05-13; and (7) violation of Section 35 of RA No. 6770,[21] amounting to dishonesty and gross misconduct.[22]

The Ruling of the Office of the President

In a Decision dated 14 June 2011,[23] the OP dismissed the complaint filed against Casimiro and Turalba. On the allegation that Casimiro caused the delay in the investigation of the cases against Acot, Dulinayan and several others, the OP ruled that:

> This Office finds that the delay in the preliminary investigation of OMB-AFP-CRM-94-0218 could not be validly attributed to respondent Casimiro, whose participation in the disposition of the case is his initial review as Director, submission of the Memorandum of 7 July 2005 and the Information in accordance with the Resolution dated 12 April 1996, as approved by Ombudsman Desierto, and his approval of the final resolution of the case by delegated authority and of the various Informations for violation of Section 3(e) of Republic Act No. 3019 against the accused, now docketed as SB-09-CRM-0184 to 0189 of the Sandiganbayan.
>
> This Office agrees with respondent Casimiro that as a mere Director of a Bureau of the Office of the Deputy Ombudsman for Military and other Law Enforcement Offices and who was thereafter appointed Deputy Ombudsman only on December 16, 1999, he had every right to presume regularity in the investigation of the case.

---

[20] *Id*. at 97-127.

[21] The Ombudsman Act of 1989.

[22] *Rollo*, pp. 97-127.

[23] *Id*. at 481-496.

In fact, no less than the Office of Legal Affairs of the Office of the Ombudsman, concluded that the Resolution dated 12 April 1996 had never become final.

xxx xxx xxx

No delay, therefore, may be attributed to respondent Casimiro who came across the records of the case nine (9) years after he signed the Resolution dated 12 April 1996 recommending the filing of informations to his superior, if the Office of the Ombudsman itself never considered that the Resolution dated 12 April 1996 as final and executory.[24]

On the issue of whether Casimiro and Turalba violated the rules on confidentiality, the OP stated:

The Memorandum dated January 5, 2010 is not confidential or classified information within the ambit of R.A. No. 6713 and R.A. No. 3019.

Therefore, Director Turalba could not be faulted for his act of furnishing a copy thereof to respondent Casimiro who was the subject of the investigation which the complainants sought to be conducted. On the other hand, respondent Casimiro cannot be blamed for issuing the Memorandum dated January 18, 2010 directing complainants to explain their action, in view of the latter's insinuation that it was by his fault that the preliminary investigation of OMB-AFP-CRM-94-0218 had been prolonged.[25]

On 2 November 2011, the OP denied the Motion for Reconsideration filed by petitioners.[26] On 28 November 2011, they filed a petition for review on certiorari under Rule 43 of the Rules of Court with the Court of Appeals to set aside the decision of the OP.

---

[24] *Id*. at 493-494.

[25] *Id*. at 495.

[26] *Id*. at 497-498.

The Ruling of the Court of Appeals

In a Decision dated 29 November 2012, the Court of Appeals affirmed the decision rendered by the OP. The Court of Appeals held:

> As correctly raised by respondent Casimiro, the delay, if any, was necessitated by the layers of preliminary investigation and multiple reviews conducted by the concerned authorities in the Office of the Ombudsman over a period of time under different leaderships starting from Ombudsman Desierto, to Ombudsman Marcelo and thereafter, to Ombudsman Gutierrez. **It must be emphasized that for his part, respondent Casimiro concurred with the findings of his subordinates, Almazan and Falcis, who conducted the preliminary investigation against Acot and company, and who issued the 12 April 1996 Resolution recommending the filing of appropriate criminal Informations against the latter**. This, in turn, was recommended for approval by Casaclang, respondent Casimiro's immediate superior, to Ombudsman Desierto.
>
> xxx xxx xxx
>
> From the foregoing factual antecedents, it becomes evident that upon review of the 12 April 1996 Resolution, the charges against Acot and Dulinayan were approved for dismissal by Ombudsman Desierto, and not for the filing of Information as recommended and concurred with by Almazan and Falcis, and respondent Casimiro, respectively. Thus, respondent Casimiro cannot be faulted in the delay, if any, in filing the appropriate criminal Informations against Acot and Dulinayan considering that Ombudsman Desierto overruled the recommendations and concurrence by the Investigators and Casimiro as to the finding of probable cause against the said military officials. **Simply put, there was nothing to be filed before the Sandiganbayan against Acot and Dulinayan after the approval and modification of the 12 April 1996 Resolution as the charges against them were approved for dismissal**.[27]

In a Resolution dated 23 May 2013,[28] the Court of Appeals denied the Motion for Reconsideration[29] filed by petitioners

---

[27] *Id*. at 58-59. Emphasis in the original.

[28] *Id*. at 66-67.

[29] *Id*. at 68-96.

on 21 December 2012. Thereafter, this petition for review on certiorari under Rule 45 of the Rules of Court was timely filed on 19 June 2013.

The Issues

In this petition, petitioners seek a reversal of the decision of the OP and the Court of Appeals, and raise the following issues for resolution:

A. WHETHER THE HONORABLE COURT OF APPEALS CORRECTLY RULED THAT PETITIONERS' RIGHT TO DUE PROCESS WAS NOT VIOLATED BY RESPONDENT OFFICE OF THE PRESIDENT, WHEN IT DID NOT CONSIDER THE EVIDENCE PRESENTED BY THE PETITIONERS DURING THE ADMINISTRATIVE ADJUDICATION;

B. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THERE ARE NO SUBSTANTIAL EVIDENCE ON RECORD AS AGAINST RESPONDENT CASIMIRO FOR THE DELAY IN THE DISPOSITION AND PRELIMINARY INVESTIGATION OF OMB-AFP-CRM-94-0218 (SB-09-CRM-0184-0189), AND AGAINST RESPONDENTS CASIMIRO AND TURALBA FOR VIOLATION OF OFFICE ORDER NO. 05-18, OFFICE ORDER NO. 05-13, VIOLATION OF SEC. 35 OF R.A. 6770 AND SEC. 3 (K) OF R.A. 3019;

C. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE DECISION OF THE RESPONDENT OFFICE OF THE PRESIDENT THAT THE PREVENTIVE SUSPENSION OF THE COMPLAINANT WAS BY REASON OF THE "DELAY" IN FILING THEIR COMMENT IN SB-09-CRM-0184-0189, TO THE MOTION TO QUASH SEPARATELY FILED BY ACCUSED ACOT AND DULINAYAN;

D. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE DECISION OF THE RESPONDENT OFFICE OF THE PRESIDENT IN DISMISSING THE COMPLAINT AGAINST RESPONDENTS, WHICH IS NOT IN ACCORD WITH THE EVIDENCE ON RECORD, BUT CONTRARY TO ESTABLISHED JURISPRUDENCE AND ITS PREVIOUS RULINGS;

E. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN APPLYING THE PROVISIONS OF EXECUTIVE ORDER NO. 13;

F. WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE RULING OF THE OFFICE OF THE PRESIDENT, WHEN IT FAILED TO RULE ON VARIOUS ISSUES RAISED BY THE PETITIONERS, SUCH AS:

1. WHEN IT FAILED TO CONSIDER THE FINDINGS OF THE COURT OF APPEALS IN C.A. G.R. 114210 ENTITLED JENNIFER AGUSTIN-SE ET AL. VS. INTERNAL AFFAIRS BOARD ET AL.;

2. TO RULE ON THE ISSUE THAT RESPONDENT [OFFICE OF THE PRESIDENT] ERRONEOUSLY CONCLUDED THAT THE PREVENTIVE SUSPENSION OF THE COMPLAINANT WAS JUSTIFIED BY REASON OF THE DELAY IN FILING THEIR COMMENT IN SB-09-CRM-0184-0189;

3. WHETHER OR NOT THE FINDING OF THE RESPONDENT [OFFICE OF THE PRESIDENT] IS CORRECT THAT THERE WAS NO EVIDENCE RELATIVE TO THE UNDUE INJURY CAUSE [SIC] TO THE PEOPLE AND TO PETITIONERS.[30]

The Ruling of the Court

The petition lacks merit.

Question of Law v. Question of Fact

At the outset, we note that questions of fact are raised in this petition which are not proper under Rule 45 of the Rules of Court.

A question of law arises when there is a doubt as to what the law is on a certain state of facts, while there is a question of fact when doubt arises as to the truth or falsity of the alleged facts.[31] For a question to be a question of law, it must not

---

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

[31] See *Heirs of Nicolas Cabigas v. Limbaco,* 670 Phil. 274 (2011).

involve an examination of the probative value of the evidence presented by the litigants. The resolution of the issue must rest solely on what the law provides on the given set of facts and circumstances. Once it is clear that the issue invites a review of the evidence presented, the question is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[32]

In this case, petitioners allege, among others, that (1) the Court of Appeals did not consider their evidence during the administrative adjudication; (2) the Court of Appeals gravely erred in ruling that there is no substantial evidence on record against Casimiro for the delay in the disposition and preliminary investigation, and against Casimiro and Turalba for violations of Office Order No. 05-18, Office Order No. 05-13, Section 35 of RA No. 6770 and Section 3(k) of RA No. 3019; (3) the Court of Appeals gravely erred in sustaining the finding of the OP that they were preventively suspended by reason of their delay in filing their Comment, (4) the Court of Appeals gravely erred in sustaining the dismissal of the Complaint by the OP which is not in accord with the evidence on record but contrary to established jurisprudence and its previous rulings; and (5) the Court of Appeals gravely erred in sustaining the OP without ruling on the finding of the OP that there was no evidence relative to the undue injury caused to the people and the petitioners.[33] These issues all involve a review of the facts on record or the examination of the probative value of the evidence submitted.

Applying the test of whether the question is one of law or of fact, the aforementioned are questions of fact because petitioners assail the appreciation of evidence by the Court of Appeals.[34] We have previously held that questions on the probative

---

[32] See *Republic of the Philippines v. Malabanan*, 646 Phil. 631 (2010).

[33] *Rollo*, pp. 12-13.

[34] See *Office of the Ombudsman v. De Villa*, G.R. No. 208341, 17 June 2015.

value of the evidence, or those which relate to the analysis of the records by the lower courts are questions of fact which are not proper for review by this Court:

> Whether certain items of evidence should be accorded probative value or weight, or should be rejected as feeble or spurious; or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue; whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight - all these are issues of fact. Questions like these are not reviewable by the Supreme Court whose review of cases decided by the CA is confined only to questions of law raised in the petition and therein distinctly set forth.[35]

Moreover, it is well-settled that as a general rule, this Court is not a trier of facts.[36] Thus, absent the recognized exceptions to this general rule, this Court will not review the findings of fact of the lower courts.[37] In this case, petitioners failed to show that the exceptions to justify a review of the appreciation of facts by the Court of Appeals are present.

---

[35] *Angeles v. Pascual*, 673 Phil. 499, 505 (2011).

[36] *Angeles v. Pascual*, 673 Phil. 499 (2011).

[37] In *Sampayan v. Court of Appeals*, 489 Phil. 200, 208 (2005), this Court, citing *Insular Life Assurance Company, Ltd. v. Court of Appeals*, recognized the following exceptions: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's

On the contrary, the findings of the Court of Appeals are all supported by the evidence on record and further, are in accordance with the findings of the OP. In fact, other than the bare and general allegation that the Court of Appeals did not consider the evidence presented, petitioners were not able to identify the Court of Appeals' alleged error in the appreciation of facts. A reading of the assailed decisions shows that both the OP and the Court of Appeals considered the pleadings and corresponding evidence submitted by both parties in arriving at their respective decisions. Thus, we find no error in the appreciation of facts by the Court of Appeals.

Due Process

Petitioners allege that their right to due process was violated when the OP (1) did not consider the evidence they have presented and (2) issued its decision without the recommendation of the Office of the Deputy Executive Secretary for Legal Affairs (ODESLA) as provided in Executive Order (EO) No. 13.

We find these contentions untenable.

Essence of Due Process in Administrative Cases

The essence of due process is an opportunity to be heard — as applied to administrative proceedings, it is an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[38] In this case, petitioners were given both opportunities — the opportunity to explain their side by filing their pleadings which contained all their allegations and evidence in support of their arguments, and the opportunity to seek a reconsideration of the ruling complained of, as shown by their motions for reconsideration and appeals. As long as parties are afforded these opportunities, the requirement

---

main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by parties, which, if properly considered, would justify a different conclusion.

[38] *Hon. Flores v. Atty. Montemayor*, 666 Phil. 393 (2011).

of due process in administrative proceedings is sufficiently met. As evidenced by the pleadings filed during the administrative proceeding, and their subsequent appeal to the Court of Appeals and now to this Court, they have been afforded the fullest opportunity to establish their claims and to seek a reconsideration of the ruling complained of.

Moreover, a reading of the decisions of the Court of Appeals and the OP shows that the evidence petitioners presented had been duly considered. Indeed, aside from their general allegation that the Court of Appeals did not consider their evidence, petitioners failed to identify any conclusion arrived at by the Court of Appeals or the OP that was not supported by the evidence on record. Moreover, both the Court of Appeals and the OP addressed the issues raised by the parties, and subsequently cited the proper evidence on record and quoted the applicable laws and jurisprudence to support their findings. The bare allegation that they were denied due process cannot overcome the clear fact that they were given every opportunity to establish their claims.

Recommendation of ODESLA

Petitioners further allege that the Court of Appeals gravely erred in applying the provisions of EO No. 13,[39] as the decision of the OP was approved only by the Executive Secretary without the recommendation of the ODESLA. They argue that their right to due process was violated as the decision was rendered by only one person rather than through the recommendation of a collegial body — namely the Investigative and the Adjudicatory Division of the ODESLA.

We find this argument patently baseless. As correctly pointed out by the Court of Appeals, there is nothing in EO No. 13 which states that findings on the complaints against a presidential appointee, such as a Deputy Ombudsman, must be issued by a collegial body. The ODESLA is merely a fact-finding and

[39] Series of 2010, "Abolishing the Presidential Anti-Graft Commission and Transferring its Investigative, Adjudicatory and Recommendatory Functions to the Office of the Deputy Executive Secretary."

recommendatory body to the President; and thus, it does not have the power to settle controversies and adjudicate cases. In *Pichay, Jr. v. ODESLA-IAD*,[40] the Court held:

> Under E.O. 12, the PAGC was given the authority to "investigate or hear administrative cases or complaints against all presidential appointees in the government" and to "submit its report and recommendations to the President." The IAD-ODESLA is a fact-finding and recommendatory body to the President, not having the power to settle controversies and adjudicate cases. As the Court ruled in *Cariño v. Commission on Human Rights*, and later reiterated in *Biraogo v. The Philippine Truth Commission*:
>
> > Fact-finding is not adjudication and it cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or office. The function of receiving evidence and ascertaining therefrom the facts of a controversy is not a judicial function. To be considered as such, the act of receiving evidence and arriving at factual conclusions in a controversy must be accompanied by the authority of applying the law to the factual conclusions to the end that the controversy may be decided or determined authoritatively, finally and definitively, subject to such appeals or modes of review as may be provided by law.
>
> xxx xxx xxx
>
> While the Ombudsman's function goes into the determination of the existence of probable cause and the adjudication of the merits of a criminal accusation, the investigative authority of the IAD-ODESLA is limited to that of a fact-finding investigator whose determinations and recommendations remain so until acted upon by the President. As such, it commits no usurpation of the Ombudsman's constitutional duties.[41]

Moreover, as the report of the ODESLA is merely recommendatory in nature, its absence does not negate the validity of the decision of the OP. There is nothing in EO No. 13 which states that the lack of recommendation of the ODESLA renders

---

[40] 691 Phil. 624 (2012).

[41] *Id*. at 639-642.

the OP's decision in an administrative case void. Thus, it cannot be said that petitioners were deprived of their right to due process.

Inordinate Delay

Petitioners posit that the delay in the filing of the Informations against Acot, Dulinayan and several others should be attributed to Casimiro. They further argue that this delay amounts to grave misconduct, conduct prejudicial to the interest of the service, and gross neglect of duty.

While it is unfortunate that the filing of the Informations has taken an inexplicable amount of delay from the preliminary investigation, this cannot be blamed solely on Casimiro. The records show that the initial delay was incurred because of the procedural layers of review done to the 12 April 1996 Resolution recommending the filing of Informations against Acot, Dulinayan and several others. Moreover, considering that the 12 April 1996 Resolution was modified to dismiss the charges against Acot and Dulinayan, Casimiro cannot be faulted for the delay in the filing of the Informations against them as there was nothing to be filed. Casimiro was appointed Deputy Ombudsman only on 16 December 1999 and thus, had every right to presume regularity in the investigation of the cases. The delay, therefore, cannot be attributed to Casimiro.

Petitioners also bewail the fact that there was no apparent movant in the case against Acot, Dulinayan and several others; and thus, Casimiro, by reviewing this case, showed unusual interest. However, the records show that the case was brought to the attention of the MOLEO when Col. Sabado and Ltc. Gadin, co-respondents of Acot and Dulinayan, requested for their Ombudsman Clearance. This was when the record officers found out that the first folder of the case was missing and that the action taken on the 12 April 1996 Resolution after its 2 March 1998 modification was unknown. As these facts were brought to the attention of Casimiro, it would have been highly irresponsible for him to turn a blind eye to the irregularities uncovered. To expect Casimiro, who was then the Deputy Ombudsman for the MOLEO, to turn a blind eye to this anomaly would have been more suspect and highly irregular.

Confidentiality of Memorandum

Petitioners allege that the Court of Appeals gravely erred when it affirmed the decision of the OP holding that Casimiro did not violate Section 3(k) of RA No. 3019, Office Order No. 05-13 and Office Order No. 05-18.

In particular, petitioners aver that Casimiro and Turalba, in conspiracy with each other, violated Section 3(k) of RA No. 3019, as well as Section 7, paragraph (c) of RA No. 6713,[42] when the latter furnished Casimiro with the 5 January 2010 Memorandum which they alleged was of a confidential nature. Petitioners further allege that they are considered "whistleblowers" under Office Order No. 05-18, Series of 2005 (Rules on Internal Whistleblowing and Reporting); and thus, they should be protected against any retaliatory action of Casimiro. This allegation is again based on the premise that their 5 January 2010 Memorandum calling for the investigation of Casimiro is a "protected disclosure" which should not have been disclosed by Turalba to Casimiro.

We find these contentions to be without merit.

Protected disclosure is defined as "the deliberate and voluntary disclosure by an official or employee who has relevant information of an actual, suspected or anticipated wrongdoing by any official or employee, or by any OMB organizational unit."[43] On the other hand, a whistleblower refers "to an official or employee who makes protected disclosure to his immediate supervisor, other superior officers, the Tanodbayan and/or his duly authorized/designated representative or the Internal Affairs Board (IAB)."[44] Petitioners insist that based on the foregoing definitions, the 5 January 2010 Memorandum is a protected disclosure; and thus, they are considered whistleblowers who should be protected from retaliatory action.[45]

---

[42] Code of Conduct and Ethical Standards for Public Officials and Employees.

[43] Section II (a), Office Order No. 05-18, 24 January 2005.

[44] Section II (b), Office Order No. 05-18, 24 January 2005.

[45] "Retaliatory Action" pertains to negative or obstructive responses or reactions to a disclosure of misconduct or wrongdoing taken against the

A reading of the Rules on Internal Whistleblowing and Reporting, however, will show that the conditions for "protected disclosure" have not been met in this case. Specifically, Section 7 provides:

Section 7. Conditions for Protected Disclosure. -

Whistleblowers shall be entitled to the benefits under these Rules, provided that all the following requisites concur:

(a) The disclosure is made voluntarily, in writing and under oath;

(b) The disclosure pertains to a matter not yet the subject of a complaint already filed with, or investigated by the IAB or by any other concerned office; unless, the disclosures are necessary for the effective and successful prosecutions, or essential for the acquisitions of material evidence not yet in its possession;

(c) The whistleblower assists and participates in proceedings commenced in connection with the subject matter of the disclosure; and

(d) The information given by the whistleblower contains sufficient particulars and, as much as possible, supported by other material evidence.

The 5 January 2010 Memorandum does not meet the conditions set forth in Section 7; and thus, it does not qualify as a protected disclosure under the rules. The Memorandum fails to meet the first requirement as the disclosure, while made voluntarily and in writing, was not executed under oath. Contrary to the allegations of petitioners, there is also no indication that the document was

---

whistleblower and/or those officials and employees supporting him, or any of the whistleblower's relatives within the fourth civil degree either by consanguinity or affinity. It includes, but is not limited to, civil, administrative or criminal proceedings commenced or pursued against the whistle blower and/or those officials and employees supporting him, or any of the whistleblower's relatives within the fourth civil degree either by consanguinity or affinity, such as forcing or attempting to force any of them to resign, to retire and/or transfer; negative performance appraisals; fault-finding; undue criticism; alientation; blacklisting; and such other similar acts.

to be treated as confidential. If indeed they had intended that the Memorandum be considered of a confidential nature, they should have indicated it clearly, such as by putting the word "confidential" on the face of the document. This they failed to do; and thus, the Memorandum was treated as a regular office memorandum.

Moreover, as correctly pointed out by the Court of Appeals and OP, the allegations made by petitioners could all be easily verified through the records and thus do not fall under the ambit of protected information. There was nothing confidential about the Memorandum. Neither did it contain any classified information. Thus, there could have been no violation of Section 3(k) of RA No. 3019[46] or of Section 7(c) of RA No. 6713.[47] Moreover, as there was no violation of Section 7(c) of RA No. 6713, there is also no violation of Office Order No. 05-13 which provides in part:

---

[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:

xxx xxx xxx

(k) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.

[47] Section 7**.** *Prohibited Acts and Transactions.* — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

xxx xxx xxx

(c) Disclosure and/or misuse of confidential information.— Public officials and employees shall not use or divulge, confidential or classified information officially known to them by reason of their office and not made available to the public, either:

(1) To further their private interests, or give undue advantage to anyone; or

(2) To prejudice the public interest.

> Section 1. OMB officials and employees shall not disclose any confidential information acquired by them in the course of their employment in the Office. Pursuant to Section 7(c) of Republic Act 6713 otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, they shall not use or divulge confidential or classified information officially known to them by reason of their office and not made available to the public either: (1) to further their private interest or give undue advantage to anyone; or (2) to prejudice the public interest. x x x.

To reiterate, the 5 January 2010 Memorandum was bereft of any confidential character— it was not a protected disclosure nor did it contain any confidential or classified information as provided under the law. As such, Turalba could not have violated any rules on confidentiality when he provided Casimiro with a copy of the said Memorandum.

Malicious Prosecution

As for the allegation that Casimiro was liable for malicious prosecution under Section 35 of RA No. 6770, we find that this argument must also fail.

Section 35 of RA No. 6770 provides:

> Section 35. Malicious Prosecution.— Any person who, actuated by malice or gross bad faith, files a completely unwarranted or false complaint against any government official or employee shall be subject to a penalty of one (1) month and one (1) day to six (6) months imprisonment and a fine not exceeding five thousand pesos (₱5,000.00).

In turn, malicious prosecution has been defined as follows:

> In this jurisdiction, the term malicious prosecution has been defined as an action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein. While generally associated with unfounded criminal actions, the term has been expanded to include unfounded civil suits instituted just to vex and humiliate the defendant despite the absence of a cause of action or probable cause.

xxx xxx xxx

This Court has drawn the four elements that must be shown to concur to recover damages for malicious prosecution. Therefore, for a malicious prosecution suit to prosper, the plaintiff must prove the following: (1) the prosecution did occur, and the defendant was himself the prosecutor or that he instigated its commencement; (2) the criminal action finally ended with an acquittal; (3) in bringing the action, the prosecutor acted without probable cause; and (4) the prosecution was impelled by legal malice — an improper or a sinister motive. The gravamen of malicious prosecution is not the filing of a complaint based on the wrong provision of law, but the deliberate initiation of an action with the knowledge that the charges were false and groundless.[48]

Based on the foregoing, we see that the elements of malicious prosecution are wanting in this case. Based on the Complaint filed by Casimiro before the IAB, there had been probable cause for him to initiate the charges against petitioners. It is of record that petitioners had indeed filed several motions for extension of time, and that instead of filing the necessary Comment, they had submitted the 5 January 2010 Memorandum. This could have constituted conduct prejudicial to the best interest of the service or gross neglect of duty. Moreover, when they were asked by Casimiro to explain their actions, they did not respond, but merely submitted another Memorandum, addressed to Villa-Ignacio, which were considered actions that evinced resistance to authority.[49] In fact, the IAB found petitioners guilty of Simple Discourtesy in the Course of Official Duties and were reprimanded for their conduct.[50] Thus, the gravamen of malicious prosecution — the deliberate initiation of an action with the knowledge that the charges were false and groundless — was absent on the part of Casimiro.

---

[48] *Magbanua v. Junsay*, 544 Phil. 349, 364-365 (2007).

[49] *Rollo*, p. 412.

[50] *Id*. at 413.

Stare Decisis and Res Judicata

Petitioners further allege that the Court of Appeals gravely erred when it failed to take judicial notice of CA-G.R. No. 114210, where the Twelfth Division of the Court of Appeals found that petitioners were not remiss in peforming their duties in relation to the criminal cases against Acot, Dulinayan and several others.

Again, we do not find any reversible error.

Petitioners, in essence, are arguing that the Court of Appeals should have applied the doctrine of *stare decisis*, which enjoins adherence to judicial precedence, such that lower courts are bound to follow the rule established in a decision of the Supreme Court,[51] or the doctrine of *res judicata*, which provides that a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit.[52]

However, we note that the decision being relied on by petitioners was rendered merely by another division of the Court of Appeals, and not this Court. We have previously settled that the decision of a division of the Court of Appeals is not binding on a co-division.[53] We held:

> In the case at bar, this Court holds that there was no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the Special Sixth Division of the Court of Appeals in not giving due deference to the decision of its co-division. **As correctly pointed out by the Special Sixth Division of the Court of Appeals, the decision of its co-division is not binding on its other division. Further, it must be stressed that judicial decisions that form part of our legal system are only the decisions of the Supreme Court.** Moreover, at the time petitioners made the aforesaid Manifestation, the Decision dated 14 December 2007 in CA- G.R. SP No. 96717 of the Special Tenth Division was still on appeal before this Court.

---

[51] *Ting v. Velez-Ting*, 601 Phil. 676 (2009).

[52] *Chu v. Spouses Cunanan*, 673 Phil. 12 (2011).

[53] *Quasha Ancheta Peña Nolasco Law Office v. CA*, 622 Phil. 738 (2009).

Therefore, the Special Sixth Division of the Court of Appeals cannot be faulted for not giving due deference to the said Decision of its co-division, and its actuation cannot be considered grave abuse of discretion amounting to lack or excess of its jurisdiction.[54] (Boldfacing and underscoring supplied)

Moreover, as correctly pointed out by the Court of Appeals, the subject matter in CA-G.R. No. 114210 is different from the issues involved in this case. While this petition involves the administrative complaint filed by petitioners against Casimiro in relation to the alleged failure of Casimiro to file the Informations against Acot, Dulinayan and several others, the petition involved in CA-G.R. No. 114210 is the administrative complaint filed by petitioners which relates to the delay incurred by petitioners in filing the necessary pleadings before the Sandiganbayan. Thus, the Court of Appeals did not err in not taking judicial notice of CA-G.R. No. 114210.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 29 November 2012 Decision and the 23 May 2013 Resolution of the Court of Appeals, which affirmed the 14 June 2011 Decision of the Office of the President.

SO ORDERED.

Brion, del Castillo, and *Mendoza, JJ.,* concur.

Leonen, J., on leave.

---

[54] *Id*. at 748-749.

SECOND DIVISION

[G.R. No. 208021. February 3, 2016]

OSCAR S. VILLARTA, *petitioner, vs.* **GAUDIOSO TALAVERA, JR.,** *respondent.*

SYLLABUS

CIVIL LAW; SALES; VALIDITY OF THE TWO DEEDS OF ABSOLUTE SALE, UPHELD; THE TRANSACTION BETWEEN THE PARTIES IN CASE AT BAR IS NOT AN EQUITABLE MORTGAGE BUT A *DACION EN PAGO*.— The trial court recognized that TCT No. T-130095 was covered by two Deeds of Absolute Sale. However, the trial court was unconvinced that the 2001 Deeds of Absolute Sale were intended merely to secure petitioner's loan obligations because both were executed when the loans were already overdue. The CA affirmed the findings of the trial court. The CA conceded that although "some of the circumstances mentioned under Art. 1602 are present in the case at bar, the totality of the evidence shows that the parties never intended to make TCT Nos. T-130095 and T-214950 as mere collateral for [petitioner's] loans. The twin deeds of sale speak for themselves." We agree with the lower courts' assessment of the facts. The conduct of the parties prior to, during, and after the execution of the deeds of sale adequately shows that petitioner sold to respondent the lots in question to satisfy his debts. Respondent was able to sufficiently explain why the presumption of an equitable mortgage does not apply in the present case. The inadequacy of the purchase price in the two deeds of sale dated 18 May 2001 was supported by an Affidavit of True Consideration of the Absolute Sale of the Property. Respondent did not tolerate petitioner's possession of the lots. Respondent caused the registration and subsequent transfer of TCT No. T-214950 to TCT No. T-333921 under his name, and paid taxes thereon. There were no extensions of time for the payment of petitioner's loans; rather, petitioner offered different modes of payment for his loans. It was only after three instances of bounced checks that petitioner offered TCT Nos. T-130095 and T-214950 as payment for his loans and executed deeds of sale in respondent's

favor. The transaction between petitioner and respondent is thus not an equitable mortgage, but is instead a *dacion en pago*. *Dacion en pago* is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of an existing obligation. **It is a special mode of payment where the debtor offers another thing to the creditor who accepts it as equivalent to the payment of an outstanding debt.** For *dacion en pago* to exist, the following elements must concur: (a) existence of a money obligation; (b) the alienation to the creditor of a property by the debtor with the consent of the former; and (c) satisfaction of the money obligation of the debtor.

APPEARANCES OF COUNSEL

The Law Firm of Villaluz Galapon Cadabuna & Associates for petitioner.

Randolph Joseph P. Arreola for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

G.R. No. 208021 is a petition for review[1] assailing the Decision[2] promulgated on 22 November 2012 as well as the Resolution[3] promulgated on 18 June 2013 by the Court of Appeals (CA) in CA-G.R. CV No. 96732. The CA affirmed the Decision dated 26 October 2010[4] and the Resolution dated 8 February

---

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 24-44. Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles concurring.

[3] *Id*. at 45. Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles concurring.

[4] *Id*. at 68-77. Penned by Judge Efren M. Cacatian.

2011[5] of Branch 35 of the Regional Trial Court of Santiago City (RTC) in Civil Case No. 35-3306.

In its 26 October 2010 Decision, the RTC rendered judgment in favor of respondent Gaudioso Talavera, Jr. (respondent) and against petitioner Oscar S. Villarta (petitioner). The RTC dismissed petitioner's action for reformation of two deeds of absolute sale to that of equitable mortgage due to want of evidence, and ordered petitioner and all other persons acting for and in his behalf to vacate the land subject of the complaint and peacefully surrender it to respondent. The 8 February 2011 Resolution denied petitioner's motion for reconsideration.

The Facts

The CA recited the facts as follows:

Appellant Oscar Villarta filed the complaint a quo for reformation of contracts, moral damages, and attorney's fees against appellee Gaudioso Talavera, Jr. He alleged: he owned four parcels of land, all situated in Santiago City viz: a) 1,243 square meters under TCT No. T-130095, b) 25,000 square meters under TCT No. T-12142, c) 296 square meters [under] TCT No. T-53252, and d) 1,475 square meters under TCT No. T-214950; sometime in 1993, he ventured into treasure hunting activites; in order to infuse his much needed capital, he obtained several loans from appellee who was a distant relative; as of 1996, his loan already reached ₱800,000.00, inclusive of 3% interest per month; he religiously paid the interest, but when the 1997 financial crisis struck, appellee raised the interest to a rate between 7% and 10%; in 1995, appellee employed insidious words and machinations in convincing him to execute a deed of absolute sale over TCT No. T-130095; however, the real agreement was that the lot would only serve as security for the several loans he obtained; in 1997, he was again convinced to execute two more deeds of conveyance over the two lots under TCTs T-12142 and T-53252, respectively; in 2001, he was informed that his loan had already reached ₱2,000,000.00 and since the 3 parcels of land were no longer sufficient to cover the loan, he was further convinced to mortgage to Maybank additional real properties, on top of the 3 parcels of land, to secure a ₱50 million loan; when appellee realized that his loan was going to be approved, the former demanded that he execute

[5] Records, p. 461.

a deed of absolute sale over the lot under TCT T-214950, yet, the real agreement was that the lot would only serve as collateral; TCT T-53252 and T-12142 were returned to him; when he requested appellee to remove the encumbrance on TCTs T-130095 and T-214950 so that the bank could process the loan, appellee suddenly demanded ₱5,000,000.00; when the bank learned of it, he was advised not to pursue the loan because he would no longer have the means to pay it; appellee took advantage of the situation and caused the cancellation of TCT T-214950, by utilizing the deed of absolute sale, contrary to their real agreement that the property should only serve as collateral; the Deeds of Absolute Sale dated March 1995 and May 18, 2001 were in reality an equitable mortgage; the ₱500,000.00 consideration for the Deed of Absolute Sale dated May 18, 2001 was grossly inadequate because the actual market value of the subject land was ₱5,900,000.00; despite the execution of the two deeds of absolute sale, he still had possession of the subject lots and and even leased them to Wellmade Manufacturing Corp.; because of appellee's fraudulent act of transferring titles of the two lots to his name, he suffered sleepless nights and serious anxiety; and, he also prayed for attorney's fees and costs of suit.

In his Answer dated April 15, 2005, appellee Gaudioso Talavera, Jr. averred: even before 1996, appellant had been obtaining loans from him; during their early transactions, appellant paid his obligations; sometime in 1996, appellant obtained a loan from him totaling ₱826,552.00, duly covered by two Metrobank Check Nos. 521917 (₱300,000.00) and 521916 (₱526,552.00) both dated February 3, 1997; the amount of ₱300,000.00 was subsequently secured by the lot covered by TCT T-130095, and, the amount of ₱526,552.00, by appellant's two lots covered by TCT T-12142 and TCT T-53252; when the two checks were presented for payment, they were dishonored due to account closed [sic]; despite repeated demands, appellant failed to settle his obligations and the agreed interest of 5% per month continued to run, which eventually amounted to ₱4,882,960.33 as of June 30, 2000; appellant asked that his obligation be pegged at ₱4,826,552.00 and tendered partial payment of ₱4,000,000.00 through RCBC Check No. 0001055; when the RCBC check was presented for payment, however, the same was dishonored due to account closed [sic]; he, once again, made demands for appellant to pay his loan, but, the latter asked for more time to produce the money; sometime in May 2001, appellant told him that he could no longer raise the sum to pay off his loans, and, instead offered his

properties, i.e., TCTs T-130095 and T-214950, to satisfy his obligation; appellant offered to transfer these titles to his name and proposed that the properties covered by TCTs T-53252 and T-12142 be returned to him; the properties covered by TCTs T-130095 and T-214950 were delivered to him via appellant's two deeds of absolute sale; the consideration for both lots was set at ₱500,000.00 each, on appellant's own request, in order to reduce his capital gains tax liability and other expenses; the true consideration for both lots was ₱4,826,552.00, the amount of appellant's total obligation; he had constantly demanded that appellant vacate the lots, but the latter refused; there could be no equitable mortgage over TCT T-214950 for the same was never made a collateral for the loan; there could also be no equitable mortgage over TCT T-130095 for though it was true that the same initially served as security, the arrangement was novated when appellant offered the lot as payment; appellant's complaint failed to state a cause of action; the transfer of the properties to him was by virtue of dacion en pago; he justly acted within his rights and in the performance of his duties, gave appellant his due, and observed honesty and good faith; appellant's claim for moral damages, attorney's fees, and litigation expenses had no legal or factual basis; and, as counterclaim, appellee claimed moral damages, exemplary damages and attorney's fees.[6]

The RTC's Ruling

The RTC rendered a Decision dated 26 October 2010 and ruled in favor of respondent. The RTC ruled:

It is the claim of the [petitioner] that the two (2) subject deeds of absolute sale both dated May 18, 2001 in favor of the [respondent] were intended to merely secure his loan obligation. But the Court is not convinced. It should be stressed that the subject deeds of absolute sale were executed by the [petitioner] when his loan obligation was already overdue. As a matter of fact, the two (2) checks he issued in 1997 were already dishonored [because the] account [was] closed, as well as the last check in the amount of ₱4 Million he issued as collateral on June 30, 2000 (Exhibit "4"), reason for which, and after almost a year from June 30, 2000 to May 18, 20001, his loan was overdue, thus [petitioner] had to offer [respondent] his two (2) properties covered by TCT No. T-21495 and TCT No. T-130095 as full payment of his overdue loan which already amounted to

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

Php 4,826,552.00; thus, by way of a contract of sale, his unpaid loan was the agreed sufficient price or consideration thereof, hence, the two (2) subject deeds of absolute sale. In other words, the subject deeds of absolute sale, being public documents, speak for themselves, res ipsa loquit[u]r, that [petitioner] sold the two (2) covered properties for and in consideration of his overdue loan account with [respondent], and this fact is unrefuted. On their faces, the Court finds no other intention, nor ambiguity in them, hence, no cogent reason to reform them nor to consider them as equitable mortgages, obviously, for want of evidence.

Considering the absolute ownership of [respondent] now over the properties covered by his new certificate of title and the other deed of absolute sale, [respondent] is entitled under the law to possess and occupy the premises, including the exercise by him of the other attributes of ownership to the exclusion of others, including the [petition]. Indeed, possession follows ownership.[7]

The dispositive portion of the RTC's decision reads:

WHEREFORE, in view of the foregoing considerations, the Court hereby renders judgment in favor of [respondent], DISMISSING the complaint for want of evidence, and ORDERING [petitioner] and all other persons acting for and in his behalf to vacate the subject premises and peacefully surrender the same to [respondent] and/or his duly authorized representatives.

No other pronouncements.

SO ORDERED.[8]

Petitioner filed a Motion for Reconsideration on 16 December 2010. The RTC denied petitioner's motion for reconsideration in its Resolution dated 8 February 2011.

Petitioner received the notice from the CA to file his Appellant's Brief by 24 October 2011. His motion for extension of time to file his brief was granted, and he was granted an extension until 22 January 2012.[9] Petitioner filed his Appellant's Brief on 24

---

[7] *Id*. at 76.

[8] *Id*. at 77.

[9] CA *rollo*, p. 24.

January 2012,[10] while respondent failed to file his Appellee's Brief. The CA considered the appeal submitted for decision without Appellee's Brief.[11]

The CA's Ruling

In its Decision promulgated on 22 November 2012, the CA dismissed petitioner's appeal and affirmed the RTC's 26 October 2010 Decision and 8 February 2011 Resolution. The CA rejected petitioner's argument that the real transaction is an equitable mortgage and consequently denied the request to recompute the obligation.

The CA found that there was nothing ambiguous in the language of the deeds of absolute sale dated March 1995 and 18 May 2001. The CA also found that the essential requisites of a contract were all present. Petitioner never argued that his consent was vitiated when he executed the deeds of sale. The objects of the contracts were also certain in referring to TCT Nos. T-130095 and T-214950. Both parties have also admitted that the cause of both contracts was to completely satisfy petitioner's loan obligations.

The CA also failed to find in the deeds of sale an intent to secure an existing debt by way of a mortgage. Respondent was able to prove, by preponderance of evidence, that the Metrobank checks originally used to secure petitioner's loans were dishonored, the RCBC check intended for payment was also dishonored, and the TCTs were subsequently offered as payment. Further, respondent did not tolerate petitioner's occupancy of the lots. Respondent sent petitioner a final demand letter to vacate, consolidated ownership over the lots, and paid the real estate taxes on the lots. The CA found that the records show that the parties entered into a series of arrangements and schemes where petitioner offered varying modes of payment for his loans. There were no extensions of the period to pay, but a series of modifications of the mode of payment. The totality of the evidence

---

[10] *Id*. at 42.

[11] *Id*. at 59.

shows that the parties never intended to make TCT Nos. T-130095 and T-214950 as mere collateral for petitioner's loans.

Petitioner filed a Motion for Reconsideration[12] dated 20 December 2012. The CA denied the motion in a Resolution[13] dated 18 June 2013.

The Issues

Petitioner enumerated the following grounds warranting allowance of his petition:

1. The Honorable Court of Appeals gravely erred and has in fact decided the instant case in a manner contrary to law and established jurisprudence when it held that while some of the circumstances mentioned under Article 1602 of the Civil Code are present in the case at bar, the totality of evidence shows that the parties never intended to make TCTs T-130095 and T-214950 as mere collateral for [petitioner's] loans; and
2. As a consequence, the Honorable Court of Appeals likewise erred in holding that the petitioner's request for recomputation to determine his correct obligation must fail in view of said Honorable Court's findings that there is no equitable mortgage despite the clear presence of the circumstances mentioned under Article 1602 of the Civil Code.[14]

The Court's Ruling

The petition has no merit. We affirm the decision of the Court of Appeals.

Not an Equitable Mortgage

The relevant provisions of the Civil Code read:

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

---

[12] *Id*. at 89-98.

[13] *Rollo*, p. 45.

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

1. When the price of a sale with a right to repurchase is unusually inadequate;

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

3. When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

4. When the purchaser retains for himself a part of the purchase price;

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

6. In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

In any of the foregoing cases, any money, fruits or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.

Art. 1604. The provisions of article 1602 shall also apply to a contract purporting to be an absolute sale.

A deed of absolute sale dated March 1995 and referred to TCT No. T-130095 was attached to the complaint. It reads:

DEED OF ABSOLUTE SALE

KNOW ALL MEN BY THESE PRESENTS:

I, OSCAR S. VILLARTA, Filipino, of legal age, married to Lucila J. Santiago, and a resident of Santiago, Isabela, am the registered owner of that certain parcel of land, particularly described as follows:

> ". . . A PARCEL OF LAND x x x containing an area of ONE THOUSAND TWO HUNDRED FORTY THREE (1,243) SQUARE METERS, more or less. It is covered by TRANSFER CERT. OF TITLE NO. T-130095, Isabela Registry."

That for and in consideration of the sum of THREE HUNDRED THOUSAND (₱300,000.00) PESOS, Philippine currency, to me in hand paid by GAUDIOSO TALAVERA, JR., of legal age, Filipino, married to Emilia Dy, and a resident of Cauayan, Isabela, I do hereby

SELL, TRANSFER and CONVEY, absolutely and unconditionally, unto the said GAUDIOSO TALAVERA, JR., his heirs and or assigns the above-described real property.

That I further declare that the above-described real property sold is free from liens and encumbrances; that it is a residential lot; that the provisions of Art. 1623 of the Civil Code had been complied with prior to the execution of this sale and that I agree to the registration of this deed in the Office of the Register of Deeds of Isabela.[15]

Respondent denied the existence of the March 1995 Deed of Sale. He alleged that he did not sign it, and that the March 1995 Deed of Sale was not notarized.[16] He instead stated that there were two deeds of absolute sale dated 18 May 2001. The first deed of absolute sale dated 18 May 2001 also referred to TCT No. T-130095, and reads:

DEED OF ABSOLUTE SALE

KNOW ALL MEN BY THESE PRESENTS:

That I, *OSCAR SANTOS VILLARTA*[,] of legal age, Filipino, married to Lucila Santiago and a resident of Dubinam West, City of Santiago, Philippines, for and in consideration of the sum of *FIVE HUNDRED THOUSAND PESOS (₱5OO,OOO.OO)*, Philippine Currency, to me in hand paid by *GAUDIOSO TAL[A]VERA, JR.*, likewise of legal age, married, Filipino and a resident of Cauayan, Isabela

Do:

hereby *SELL, TRANSFER and CONVEY* unto the said GAUDIOSO TALAVERA, JR., his heirs and or assigns *ONE THOUSAND TWO HUNDRED FORTY THREE (1,243) SQUARE METER[S]* of a parcel of land with its improvements with Transfer Certificate of Title No. T-130095 located at Municipality of Santiago, Isabela, Philippines now City of Santiago, Philippines belonging to me and more particularly described as follows:

xxx xxx xxx

---

[15] Records, p. 15.

[16] *Id*. at 70.

That I hereby warrant exclusive possession and ownership of the above described property including its improvements[.][17]

The second deed of absolute sale dated 18 May 2001 referred to TCT No. T-214950, and reads:

DEED OF ABSOLUTE SALE

KNOW ALL MEN BY THESE PRESENTS:

That I, *OSCAR SANTOS VILLARTA*[,] of legal age, Filipino, married to Lucila Santiago and a resident of Dubinam West, City of Santiago, Philippines, for and in consideration of the sum of *FIVE HUNDRED THOUSAND PESOS (₱500,000.00)*, Philippine Currency, to me in hand paid by *GAUDIOSO TAL[A]VERA, JR.*, likewise of legal age, married, Filipino and a resident of Cauayan, Isabela

Do:

hereby *SELL, TRANSFER and CONVEY* unto the said GAUDIOSO TALAVERA JR., his heirs and or assigns *ONE THOUSAND FOUR HUNDRED SEVENTY FIVE (1,475) SQUARE METER[S]* of a parcel of land with its improvements with Transfer Certificate of Title No. T-214950 located at Municipality of Santiago, Isabela, Philippines now City of Santiago, Philippines belonging to me and more particularly described as follows:

xxx xxx xxx

That I hereby warrant exclusive possession and ownership of the above described property including its improvements[.][18]

An affidavit of true consideration of the absolute sale of property, also dated 18 May 2001, reads:

AFFIDAVIT OF TRUE CONSIDERATION
OF THE ABSOLUTE SALE OF PROPERTY

I, *OSCAR SANTOS VILLARTA*[,] of legal age, married to Lucila J. Santiago, Filipino and a resident of Dubinam West, City of Santiago, Philippines after having been sworn to in accordance with law herebu [sic] depose and say:

---

[17] *Id*. at 409.

[18] *Id*. at 411.

1. That I am the same person executing this captioned affidavit;

2. That I am the true and registered owner of two (2) parcels of land located at City of Santiago, Philippines with *Transfer Certificate No. T-214950 and T-130095*;

3. That I sold the two (2) above described property to Gaudioso Talavera, Jr., for and in consideration of the amount of *FOUR MILLION EIGHT HUNDRED TWENTY SIX THOUSAND AND FIVE HUNDRED FIFTY TWO (₱4,826,552.00) PESOS* in Philippine Currency.

4. That I acknowledge to have received the said amount from Mr. Gaudioso Talavera, Jr. in its fullness;

5. That I am waiving any claim and whatsoever rights I have to the said property against the vendee Gaudioso Talavera Jr.[;]

6. That I am executing this affidavit to attest to the truth of the foregoing and that it is my true act and deed without any coercion and or intimidation on my person.[19]

The trial court recognized that TCT No. T-130095 was covered by two Deeds of Absolute Sale. However, the trial court was unconvinced that the 2001 Deeds of Absolute Sale were intended merely to secure petitioner's loan obligations because both were executed when the loans were already overdue. The CA affirmed the findings of the trial court. The CA conceded that although "some of the circumstances mentioned under Art. 1602 are present in the case at bar, the totality of the evidence shows that the parties never intended to make TCT Nos. T-130095 and T-214950 as mere collateral for [petitioner's] loans. The twin deeds of sale speak for themselves."

We agree with the lower courts' assessment of the facts. The conduct of the parties prior to, during, and after the execution of the deeds of sale adequately shows that petitioner sold to respondent the lots in question to satisfy his debts.

Respondent was able to sufficiently explain why the presumption of an equitable mortgage does not apply in the present case. The inadequacy of the purchase price in the two

[19] *Id*. at 413.

deeds of sale dated 18 May 2001 was supported by an Affidavit of True Consideration of the Absolute Sale of the Property. Respondent did not tolerate petitioner's possession of the lots. Respondent caused the registration and subsequent transfer of TCT No. T-214950 to TCT No. T-333921 under his name, and paid taxes thereon. There were no extensions of time for the payment of petitioner's loans; rather, petitioner offered different modes of payment for his loans. It was only after three instances of bounced checks that petitioner offered TCT Nos. T-130095 and T-214950 as payment for his loans and executed deeds of sale in respondent's favor.

The transaction between petitioner and respondent is thus not an equitable mortgage, but is instead a *dacion en pago*.

Dacion en pago is the delivery and transmission of ownership of a thing by the debtor to the creditor as an accepted equivalent of the performance of an existing obligation. **It is a special mode of payment where the debtor offers another thing to the creditor who accepts it as equivalent to the payment of an outstanding debt.** For *dacion en pago* to exist, the following elements must concur: (a) existence of a money obligation; (b) the alienation to the creditor of a property by the debtor with the consent of the former; and (c) satisfaction of the money obligation of the debtor.[20]

In view of the foregoing, we see no reason to depart from the findings of fact and conclusions of the lower courts.

WHEREFORE, we **DENY** the petition and **AFFIRM** the assailed Decision promulgated on 22 November 2012 as well as the Resolution promulgated on 18 June 2013 by the Court of Appeals in CA-G.R. CV No. 96732. Costs against petitioner.

SO ORDERED.

Brion, del Castillo, and *Mendoza, JJ.,* concur.

Leonen, J., on leave.

---

[20] *Rockville Excel Int'l. Exim Corp. v. Spouses Culla and Miranda*, 617 Phil. 328, 334 (2009). Emphasis in the original. Citations omitted.

FIRST DIVISION

[G.R. No. 208343. February 3, 2016]

SPOUSES CEFERINO C. LAUS and MONINA P. LAUS, and SPOUSES ANTONIO O. KOH and ELISA T. KOH, *petitioners, vs.* **OPTIMUM SECURITY SERVICES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; NATURE AND PURPOSE.— To be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown. A writ of preliminary injunction may be issued **only upon clear showing of an actual existing right to be protected during the pendency of the principal action.** When the complainant's right or title is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is not proper. x x x [A] writ of preliminary injunction is issued to **preserve the *status quo* or the last actual, peaceable, and uncontested situation which precedes a controversy.**

2. ID.; ID.; ID.; BEING A PRESERVATIVE REMEDY, PRELIMINARY INJUNCTION IS NOT THE PROPER REMEDY TO TAKE THE PROPERTY OUT OF THE POSSESSION AND CONTROL OF ONE PARTY AND TO DELIVER THE SAME TO THE OTHER PARTY WHERE SUCH RIGHT IS BEING DISPUTED.— As aptly pointed out by the CA, although petitioners appear to be the registered owners of the subject properties, they nonetheless failed to establish that they were in actual physical possession of the same at the time the incidents in August 2005 transpired. In fact, a cursory perusal of the complaint readily shows that petitioners never alleged that they were in prior possession of the subject properties. All that was stated therein is that respondent and the other defendants "[refuse] to recognize and respect [their] ownership and peaceful possession" of the subject properties. Meanwhile, respondent alleged in its Opposition and Answer that petitioners were not in possession

of the subject properties, and that the real owners thereof have been in possession of the subject properties since 1996 and 1997. x x x [P]reliminary injunction is not a proper remedy to take property out of the possession and control of one party and to deliver the same to the other party where such right is being disputed, as in this case. As earlier intimated, preliminary injunction is a preservative remedy. Therefore, it should not create new relations between the parties, but must only maintain the *status quo* until the merits of the case is fully heard.

3. ID.; ID.; ID.; AN INJUNCTION WILL NOT ISSUE TO RESTRAIN THE PERFORMANCE OF AN ACT ALREADY DONE.— [A]s the CA further observed, the WPI issued by the RTC no longer serves any purpose, considering that respondent already vacated the subject properties since the Security Service Contract with Mr. Arceo had already expired. Time and again, the Court has repeatedly held that when the act sought to be enjoined has become *fait accompli*, the prayer for preliminary injunction should be denied. Indeed, when the events sought to be prevented by injunction or prohibition had already happened, nothing more could be enjoined or prohibited. An injunction will not issue to restrain the performance of an act already done.

4. ID.; CIVIL PROCEDURE; PARTIES; WHILE REAL OWNERS OF THE SUBJECT PROPERTIES ARE REAL PARTIES IN INTEREST, THEY ARE NOT INDISPENSABLE PARTIES IN AN INJUNCTION SUIT.— In this case, while the alleged real owners of the subject properties may be considered as real parties in interest for the reason that their supposed rights over these properties stand to be prejudiced, they are not indispensable parties to the instant suit. Despite its denomination as an action for "damages" in the complaint's caption, the action, as may be gleaned from the pleading's allegations, is really one for injunction as it ultimately seeks to permanently enjoin respondent and the other defendants, from restricting petitioners' access to the subject properties. The crux of the main case, therefore, is whether or not respondent and said defendants were justified in preventing petitioners from conducting the relocation survey on the subject properties. Damages are also sought as ancillary relief for the acts complained of. These issues can be resolved independent

of the participation of the alleged real owners of the subject properties. Hence, they are not indispensable parties, without whom no final determination can be had. x x x In view of the nature of the case as above-explained, respondent and the other defendants are real parties in interest. Clearly, they stand to be directly injured by an adverse judgment. They are the parties against whom the prayed for injunction is directed and are also alleged to be liable for the resultant damage.

5. ID.; ID.; ID.; NON-JOINDER OF INDISPENSABLE PARTIES IS NOT A GROUND FOR DISMISSAL OF A SUIT; ONLY UPON REFUSAL OR NON-COMPLIANCE WITH THE ORDER TO IMPLEAD SUCH PARTIES, MAY THE COMPLAINT BE DISMISSED.— [I]n *Plasabas v. CA*, it was held that "**the non-rejoinder of indispensable parties is not a ground for the dismissal of an action.** The remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just. **If petitioner refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the plaintiff's/ petitioner's failure to comply therewith.**" x x x In any event, even on the assumption that they are indispendable parties, the non-joinder of indispensable parties is, as above-discussed, still not a ground for the dismissal of the suit. The proper course of action is for the court to order that they be impleaded. Only upon refusal of or non-compliance with such directive, may the complaint be dismissed.

APPEARANCES OF COUNSEL

Surla & Surla Law Office for petitioners.
Percival S. Ortega and *Geepee Aceron Gonzales* for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated March 25, 2013 and the Resolution[3] dated July 22, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 122258, which lifted the writ of preliminary injunction (WPI) issued by the Regional Trial Court of Angeles City, Branch 62 (RTC) in Civil Case No. 12307 in favor of petitioners Spouses Ceferino C. Laus and Monina P. Laus, and Spouses Antonio O. Koh and Elisa T. Koh (petitioners), and dismissed their complaint for damages against respondent Optimum Security Services, Inc. (respondent).

The Facts

On October 3, 2005, petitioners filed a complaint,[4] denominated as one for "Damages with Application for a Temporary Restraining Order [(TRO)] and [WPI]," docketed as Civil Case No. 12307, against respondent, several security guards employed by it, including Ronnie Marivalles (Marivalles) and Rodrigo Olivette, and TIPCO Estate Corporation (TIPCO; collectively, other defendants). Petitioners alleged that on three (3) separate occasions in August 2005, they were prevented by armed security guards working for respondent and TIPCO from entering the eight (8) parcels of land in Mabalacat, Pampanga belonging to them, covered by Transfer Certificates of Title (TCT) Nos. 576602-R,[5] 578037-R,[6] 578038-R,[7] 578039-R,[8]

---

[1] *Rollo,* pp. 10-42.

[2] *Id.* at 44-55. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Normandie B. Pizarro and Manuel M. Barrios concurring.

[3] *Id*. at 56-57.

[4] CA *rollo,* pp. 48-60.

[5] *Rollo,* p. 100, including dorsal portion.

[6] *Id*. at 101, including dorsal portion.

[7] *Id.* at 103, including dorsal portion.

[8] *Id*. at 102, including dorsal portion.

575138-R,[9] 575112-R,[10] 576601-R,[11] and 576603-R,[12] (subject properties).[13] Thus, petitioners prayed that: *(a)* moral, exemplary, and liquidated damages be awarded to them; *(b)* a TRO and WPI be issued directing the respondent and the other defendants to refrain from interfering with the exercise of their rights as owners of the subject properties; and (*c*) after trial, the injunction be made permanent.[14]

Opposing petitioners' application for TRO and WPI, respondent and Marivalles countered[15] that petitioners are not entitled to the TRO and WPI prayed for because they do not own the subject properties. They maintained that Margarita dela Rosa, Manuel dela Peña, Michael Pineda, Fermin Dizon, William Lee, and Odon Sibug are the real owners thereof, who authorized[16] Mr. Ranilo M. Arceo (Mr. Arceo) to enter into the Security Service Contract[17] with respondent to secure the subject properties.[18] Respondent and Marivalles further insisted that they acted in good faith in denying petitioners and their agents access to the subject properties as they were merely complying with a contractual obligation.[19] Moreover, they claimed that the signatures appearing on the Deeds of Sale, which were the source of petitioners' titles, were forged and, in fact, a petition for cancellation of petitioners' titles was filed by Jose Bermudo,

---

[9] *Id.* at 104, including dorsal portion.

[10] *Id*. at 105, including dorsal portion.

[11] *Id*. at 106, including dorsal portion.

[12] *Id*. at 107, including dorsal portion.

[13] See CA *rollo,* pp. 50-54.

[14] *Id*. at 56-57.

[15] See Opposition to the Application for a [TRO and WPI] dated November 21, 2015; *id*. at 66-77.

[16] By virtue of Special Power of Attorney. See *id*. at 100-l01.

[17] *Rollo,* pp. 120-123.

[18] CA *rollo,* pp. 69 and 82.

[19] *Id*. at 69-70 and 82-83.

one of the original holders of the emancipation patent over three (3) parcels of land in the subject properties, which was still pending before another court.[20]

Respondent and Marivalles subsequently filed their Answer[21] where they added that petitioners did not suffer any injury as no wrongful act was committed against them.[22] Accordingly, they prayed that the complaint be dismissed for lack of merit, and that damages and attorney's fees be awarded to them.[23]

On the other hand, TIPCO denied preventing petitioners from entering the subject properties. It pointed out that it did not claim ownership or possession thereof, and, as such, did not hire the armed security guards who prevented petitioners from entering the subject properties.[24]

The RTC Ruling

In an Order[25] dated October 6, 2010, the RTC granted the application for WPI based on its finding that petitioners had presented sufficient evidence to establish that they are the registered owners of the subject properties and thereby, have the right to possess the same. It found no merit in respondent's defense that petitioners were not the real owners of the said properties, observing that the former failed to present the alleged real owners of the subject properties to support its claim. Accordingly, it enjoined respondent and the other defendants from interfering with petitioners' exercise of acts of ownership over the same.[26]

---

[20] *Id*. at 69 and 82.

[21] Dated December 12, 2005. *Id*. at 78-94.

[22] *Id*. at 88.

[23] *Id*. at 93.

[24] *Rollo,* p. 225.

[25] *Id*. at 224-227. Penned by Judge Gerard Antonio P. Santos.

[26] *Id*. at 226.

Dissatisfied, respondent and TIPCO separately moved for reconsideration,[27] but were denied in an Order[28] dated August 31, 2011. Consequently, respondent elevated the case to the CA *via* a petition for *certiorari* and prohibition, docketed as CA-G.R. SP No. 122258.[29]

The CA Ruling

In a Decision[30] dated March 25, 2013, the CA reversed the RTC ruling and thereby, lifted the WPI and ordered the dismissal of petitioners' complaint.

In so ruling, the CA observed, *inter alia,* that the WPI was intended to oust respondent and the other defendants from the subject properties, which, under prevailing jurisprudence, is not allowed where the claimant's title has not been clearly established by law, as in this case where petitioners' titles are under contest and they have failed to establish their prior possession of the subject properties.[31] To this, it emphasized that the purpose of a WPI is to preserve the *status quo ante* or the last actual, peaceful, and uncontested status prior to the controversy; but in this case, the injunctive writ created another situation by transferring the possession of the subject properties to the petitioners.[32]

Further, the CA held that respondent was not a real party in interest as it was merely contracted to secure the subject properties under the Security Service Contract, which had since lapsed without being renewed.[33] In this relation, it opined that the alleged real owners of the subject properties are the real parties in interest,

---

[27] Not attached to the records of this case.

[28] *Rollo,* p. 228.

[29] Dated November 28, 2011. CA *rollo,* pp. 3-36.

[30] *Rollo,* pp. 44-55.

[31] *Id*. at 49-50.

[32] *Id*. at 52.

[33] *Id*. at 53.

without whom there can be no final determination of the issues involved.[34] Thus, the CA ordered the dismissal of petitioners' complaint.

Aggrieved, petitioners filed a motion for reconsideration,[35] which was, however, denied in a Resolution[36] dated July 22, 2013; hence, the present petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in lifting the WPI issued by the RTC and in dismissing petitioners' complaint.

The Court's Ruling

The petition is partly meritorious.

I.

To be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown. A writ of preliminary injunction may be issued **only upon clear showing of an actual existing right to be protected during the pendency of the principal action.** When the complainant's right or title is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is not proper.[37] Corollarily, **preliminary injunction is not a proper remedy to take property out of the possession and control of one party and to deliver the same to the other party where such right is being disputed.**[38] After all, a writ of preliminary injunction is

---

[34] *Id*.

[35] CA *rollo,* pp. 335-355.

[36] *Rollo,* pp. 56-57.

[37] *Sps. Plaza v. Lustiva,* G.R. No. 172909, March 5, 2014, 718 SCRA 19, 31.

[38] See *Almeida v. CA,* 489 Phil. 648, 672 (2005); *Raspado v. CA,* G.R. No. 104782, March 30, 1993, 220 SCRA 650, 653; and *Merville Park Homeowners Association, Inc. v. Velez,* 273 Phil. 406, 412 (1991).

issued to **preserve the *status quo* or the last actual, peaceable, and uncontested situation which precedes a controversy.**[39]

While it is a general rule that a trial court's discretion in issuing injunctive writs should not be interfered with,[40] the Court finds the CA's lifting of the WPI issued by the RTC in this case to be proper, considering that the foregoing parameters were not observed, thus, tainting the trial court's issuance with grave abuse of discretion amounting to lack or excess of jurisdiction.

As aptly pointed out by the CA, although petitioners appear to be the registered owners of the subject properties, they nonetheless failed to establish that they were in actual physical possession of the same at the time the incidents in August 2005 transpired. In fact, a cursory perusal of the complaint readily shows that petitioners never alleged that they were in prior possession of the subject properties. All that was stated therein is that respondent and the other defendants "[refuse] to recognize and respect [their] ownership and peaceful possession" of the subject properties.[41] Meanwhile, respondent alleged in its Opposition and Answer that petitioners were not in possession of the subject properties, and that the real owners thereof have been in possession of the subject properties since 1996 and 1997.[42] The dispute concerning the ownership of the subject properties was detailed by the CA as follows:

> As alleged by [respondent], these subject parcels of land were from four (4) original emancipation patent holders, namely: Marciano Lansangan, Vivencio Mercado, Crisencio Pineda[,] and Jose Bermudo. Said persons sold the same in 1996 and 1997 to certain individuals, namely: Margarita dela Rosa, Manuel dela Peña, Michael Pineda, Fermin Dizon, William Lee[,] and Odon Sibug, whom [respondent] pointed to as its principals. These aforementioned buyers were among

---

[39] *Cortez-Estrada v. Heirs of Samut,* 491 Phil. 458, 472 (2005).

[40] See *Nerwin Industries Corporation v. PNOC-Energy Development Corporation,* 685 Phil. 412, 427 (2012); and *Land Bank of the Phils. v. Continental Watchman Agency, Inc.,* 465 Phil. 607, 618 (2004).

[41] *Rollo,* p. 94.

[42] CA *rollo,* pp. 70 and 83.

those who authorized [Mr. Arceo] as their Attoney-in-[F]act to enter into a Security Service Contract with [respondent]. True to their claim of ownership over [the subject properties], Alexander Bermudo, one of the alleged patent holders, filed a Petition for Annulment of Title with Damages against [petitioners]. Likewise, Margarita dela Rosa[,] one of [respondent's] alleged principals, also filed a case against [petitioners] involving Lot 61 which is also claimed by them, and which case is still pending before the same lower court.[43]

To reiterate, preliminary injunction is not a proper remedy to take property out of the possession and control of one party and to deliver the same to the other party where such right is being disputed, as in this case. As earlier intimated, preliminary injunction is a preservative remedy. Therefore, it should not create new relations between the parties, but must only maintain the *status quo* until the merits of the case is fully heard.[44] Hence, for these reasons, the RTC gravely abused its discretion in issuing the WPI involved herein.

Besides, as the CA further observed, the WPI issued by the RTC no longer serves any purpose, considering that respondent already vacated the subject properties since the Security Service Contract with Mr. Arceo had already expired.[45] Time and again, the Court has repeatedly held that when the act sought to be enjoined has become *fait accompli,* the prayer for preliminary injunction should be denied.[46] Indeed, when the events sought to be prevented by injunction or prohibition had already happened, nothing more could be enjoined or prohibited.[47] An injunction will not issue to restrain the performance of an act already done.[48]

---

[43] *Rollo,* p. 50.

[44] See *Los Baños Rural Bank, Inc. v. Africa,* 433 Phil. 930, 945 (2002).

[45] See *rollo,* p. 53. See also CA *rollo,* pp. 26-27.

[46] See *Caneland Sugar Corporation v. Alon,* 559 Phil. 462, 471 (2007), citing *Philippine National Bank v. CA,* 353 Phil. 473, 479 (1998).

[47] *Go v. Looyuko,* 563 Phil. 36, 68 (2007).

[48] *Id*.

II.

While the CA was correct in lifting the WPI, it, however, ened in ordering the dismissal of the complaint. The error springs from the CA's misconception that the alleged real owners of the subject properties, while real parties in interest, are indispensable parties to the case. The distinction between the two and the operational parameters as to each are well-settled in jurisprudence.

As held in *Carandang v. Heirs of de Guzman,*[49] the Court clarified that:

A real party in interest is the party who stands to be benefited or injured by the judgment of the suit, or the party entitled to the avails of the suit. On the other hand, **an indispensable party is a party in interest without whom no final determination can be had of an action**, in contrast to a necessary party, which is one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject ofthe action.

x x x "**[I]f a suit is not brought in the name of or against the real party in interest, a motion to dismiss may be filed on the ground that the complaint states no cause of action.**" However, [the dismissal on this ground entails] an examination of whether the parties presently pleaded are interested in the outcome of the litigation, and not whether all persons interested in such outcome are actually pleaded. The latter query is relevant in discussions concerning indispensable and necessary parties, but not in discussions concerning real parties in interest. Both indispensable and necessary parties are considered as real parties in interest, since both classes of parties stand to be benefited or injured by the judgment of the suit.[50] (Emphases and underscoring supplied)

---

[49] 538 Phil. 319 (2006).

[50] *Id*. at 333-334.

Meanwhile, in *Plasabas v. CA*[51] it was held that **"the non-joinder of indispensable parties is not a ground for the dismissal of an action.** The remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just. **If petitioner refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the plaintiff's/petitioner's failure to comply therewith."**[52]

In this case, while the alleged real owners of the subject properties may be considered as real parties in interest for the reason that their supposed rights over these properties stand to be prejudiced, they are not indispensable parties to the instant suit. Despite its denomination as an action for "damages' in the complaint's caption,[53] the action, as may be gleaned from the pleading's allegations,[54] is really one for injunction as it ultimately seeks to permanently enjoin respondent and the other defendants, from restricting petitioners' access to the subject properties.[55] The crux of the main case, therefore, is whether or not respondent and said defendants were justified in preventing petitioners from conducting the relocation survey on the subject properties. Damages are also sought as ancillary relief for the acts complained of. These issues can be resolved independent of the participation of the alleged real owners of the subject properties. Hence, they are not indispensable parties, without whom no final determination can be had.

---

[51] 601 Phil. 669 (2009).

[52] *Id.* at 675-676; emphases and underscoring supplied.

[53] See *rollo,* p. 88.

[54] "[T]he cause of action in a Complaint is not determined by the designation given to it by the parties. The allegations in the body of the Complaint define or describe it. The designation or caption is not controlling more than the allegations in the Complaint. It is not even an indispensable part of the Complaint." *Aguilar v. O'Pallick,* G.R. No. 182280, July 29, 2013, 702 SCRA 455, 465.

[55] *Philippine Economic Zone Authority v. Carantes,* 635 Phil. 541, 548 (2010).

In any event, even on the assumption that they are indispensable parties, the non-joinder of indispensable parties is, as above-discussed, still not a ground for the dismissal of the suit. The proper course of action is for the court to order that they be impleaded. Only upon refusal of or non- compliance with such directive, may the complaint be dismissed.

In view of the nature of the case as above-explained, respondent and the other defendants are real parties in interest. Clearly, they stand to be directly injured by an adverse judgment. They are the parties against whom the prayed for injunction is directed and are also alleged to be liable for the resultant damage.

In fine, the petition is partially granted. While the CA's lifting of the WPI is affirmed, its order dismissing the complaint is reversed. As a consequence, the complaint should be reinstated and the main case should be remanded to the RTC for further proceedings. With this pronouncement, there is no need to delve on the ancillary issues raised herein.

WHEREFORE, the petition is **PARTIALLY GRANTED.** The Decision dated March25, 2013 and the Resolution dated July 22, 2013 of the Court of Appeals in CA-G.R. SP No. 122258 are hereby **AFFIRIMED** with **MODIFICATION** in that the complaint is **REINSTATED.** The main case is **REMANDED** to the Regional Trial Court of Angeles City, Branch 62 for further proceedings.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Bersamin, and *Jardeleza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 208451. February 3, 2016]

MANILA MEMORIAL PARK CEMETERY, INC., *petitioner, vs.* **EZARD D. LLUZ, NORMAN CORRAL, ERWIN FUGABAN, VALDIMAR BALISI, EMILIO FABON, JOHN MARK APLICADOR, MICHAEL CURIOSO, JUNLIN ESPARES, GAVINO FARINAS, and WARD TRADING AND SERVICES,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR-ONLY CONTRACTING; ELEMENTS FOR LABOR-ONLY CONTRACTING TO EXIST; PRESENT IN CASE AT BAR.— Labor-only contracting exists when the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal and any of the following elements are present: 1) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or 2) The contractor does not exercise the right to control the performance of the work of the contractual employee. x x x [A] closer look at the Contract of Services reveals that Ward Trading does not have substantial capital or investment in the form of tools, equipment, machinery, work premises and other materials since it is Manila Memorial which owns the equipment used in the performance of work needed for interment and exhumation services. x x x Further, the records show that Manila Memorial and Enrique B. Lagdameo admitted that respondents performed various interment services at its Sucat, Parañaque branch which were directly related to Manila Memorial's business of developing, selling and maintaining memorial parks and interment functions. Manila Memorial even retained the right to control the performance of the work of the employees concerned.

2. ID.; ID.; ID.; ID.; FAILURE TO ADDUCE EVIDENCE THAT THE CONTRACTOR HAD SUBSTANTIAL CAPITAL TO PERFORM THE WORK CONTRACTED FOR, THE PRESUMPTION THAT IT IS A LABOR-ONLY CONTRACTOR STANDS; EFFECT.— In this case, however, Manila Memorial failed to adduce evidence to prove that Ward Trading had any substantial capital, investment or assets to perform the work contracted for. Thus, the presumption that Ward Trading is a labor-only contractor stands. Consequently, Manila Memorial is deemed the employer of respondents. As regular employees of Manila Memorial, respondents are entitled to their claims for wages and other benefits as awarded by the NLRC and affirmed by the CA.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Amorito V. Cañete for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on certiorari[1] assailing the Decision[2] dated 21 January 2013 and the Resolution[3] dated 17 July 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 119237.

The Facts

On 23 February 2006, petitioner Manila Memorial Park Cemetery, Inc. (Manila Memorial) entered into a Contract of Services with respondent Ward Trading and Services (Ward Trading). The Contract of Services provided that Ward Trading,

---

[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 34-47. Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla concurring.

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

as an independent contractor, will render interment and exhumation services and other related work to Manila Memorial in order to supplement operations at Manila Memorial Park, Parañaque City.

Among those assigned by Ward Trading to perform services at the Manila Memorial Park were respondents Ezard Lluz, Norman Corral, Erwin Fugaban, Valdimar Balisi, Emilio Fabon, John Mark Aplicador, Michael Curioso, Junlin Espares, and Gavino Farinas (respondents). They worked six days a week for eight hours daily and were paid ₱250 per day.

On 26 June 2007, respondents filed a Complaint[4] for regularization and Collective Bargaining Agreement benefits against Manila Memorial; Enrique B. Lagdameo, Manila Memorial's Executive Vice-President and Director in Charge for Overall Operations, and Ward Trading. On 6 August 2007, respondents filed an amended complaint to include illegal dismissal, underpayment of 13th month pay, and payment of attorney's fees.

Respondents alleged that they asked Manila Memorial to consider them as regular workers within the appropriate bargaining unit established in the collective bargaining agreement by Manila Memorial and its union, the Manila Memorial Park Free Workers Union (MMP Union). Manila Memorial refused the request since respondents were employed by Ward Trading, an independent labor contractor. Thereafter, respondents joined the MMP Union. The MMP Union, on behalf of respondents, sought their regularization which Manila Memorial again declined. Respondents then filed the complaint. Subsequently, respondents were dismissed by Manila Memorial. Thus, respondents amended the complaint to include the prayer for their reinstatement and payment of back wages.

Meanwhile, Manila Memorial sought the dismissal of the complaint for lack of jurisdiction since there was no employer-employee relationship. Manila Memorial argued that respondents were the employees of Ward Trading.

---

[4] Docketed as NLRC OFW Case No. 06-06550-07.

In a Decision[5] dated 29 March 2010, the Labor Arbiter dismissed the complaint for failing to prove the existence of an employer-employee relationship. The dispositive portion of the Decision states:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the above-entitled case for complainants' lack of employer-employee relationship with respondent Manila Memorial Park Cemetery, Inc.
>
> SO ORDERED.[6]

Respondents appealed[7] to the NLRC. In a Decision[8] dated 30 September 2010, the NLRC reversed the Labor Arbiter's findings. The NLRC ruled that Ward Trading was a labor-only contractor and an agent of Manila Memorial. The dispositive portion of the Decision states:

> WHEREFORE, premises considered, complainants' appeal is GRANTED. The assailed Decision of Labor Arbiter Geobel A. Bartolabac dated March 29, 2010 is MODIFIED. It is hereby declared that complainants were regular employees of respondent Manila Memorial Park Cemetery, Inc. and entitled to the benefits provided for under the CBA between the latter and the Manila Memorial Park Free Workers Union.
>
> Respondent Manila Memorial Park Cemetery, Inc. is ordered to pay wage differentials to complainants as follows:
>
> | | |
> |---|---|
> | 1. Ezard D. Lluz - | ₱43,982.79 |
> | 2. Norman Corral - | ₱29,765.67 |
> | 3. Erwin Fugaban - | ₱28,634.67 |
> | 4. Valdimar Balisi - | ₱20,310.33 |
> | 5. Emilio Fabon - | ₱43,982.79 |
> | 6. John Mark Aplicador - | ₱43,982.79 |
> | 7. Michael Curioso - | ₱43,982.79 |

---

[5] *Rollo*, pp. 252-257.

[6] *Id*. at 257.

[7] Docketed as NLRC NCR Case No. 06-06550-07 and NLRC LAC No. 06-001267-10.

[8] *Rollo*, pp. 81-97.

8. Ju[n]lin Espares - ₱43,982.79
9. Gavino Farinas - ₱43,982.79

SO ORDERED.[9]

Manila Memorial filed a Motion for Reconsideration which was denied in a Resolution[10] dated 31 January 2011.

Thereafter, Manila Memorial filed an appeal with the CA. In a Decision dated 21 January 2013, the CA affirmed the ruling of the NLRC. The CA found the existence of an employer-employee relationship between Manila Memorial and respondents. The dispositive portion of the Decision states:

> WHEREFORE, in view of the foregoing, the instant Petition for Certiorari is DENIED. The Decision, dated September 30, 2010 and the Resolution, dated January 31, 2011, rendered by the National Labor Relations Commission (NLRC) in NLRC LAC No. 06-001267-10 are AFFIRMED.
>
> SO ORDERED.[11]

Manila Memorial then filed a Motion for Reconsideration which was denied by the CA in a Resolution dated 17 July 2013.

Hence, the instant petition.

The Issue

The main issue for our resolution is whether or not an employer-employee relationship exists between Manila Memorial and respondents for the latter to be entitled to their claim for wages and other benefits.

The Court's Ruling

The petition lacks merit.

---

[9] *Id*. at 96.

[10] *Id*. at 98-99.

[11] *Id*. at 46.

Manila Memorial contends that Ward Trading has total assets in excess of ₱1.4 million, according to Ward Trading's financial statements for the year 2006, proving that it has sufficient capitalization to qualify as a legitimate independent contractor. Manila Memorial insists that nowhere is it provided in the Contract of Services that Manila Memorial controls the manner and means by which respondents accomplish the results of their work. Manila Memorial states that the company only wants its contractors and the latter's employees to abide by company rules and regulations.

Respondents, on the other hand, assert that they are regular employees of Manila Memorial since Ward Trading cannot qualify as an independent contractor but should be treated as a mere labor-only contractor. Respondents state that (1) there is enough proof that Ward Trading does not have substantial capital, investment, tools and the like; (2) the workers recruited and placed by the alleged contractors performed activities that were related to Manila Memorial's business; and (3) Ward Trading does not exercise the right to control the performance of the work of the contractual employees.

As a general rule, factual findings of the CA are binding upon this Court. One exception to this rule is when the factual findings of the former are contrary to those of the trial court, or the lower administrative body, as the case may be. This Court is obliged to resolve an issue of fact due to the conflicting findings of the Labor Arbiter on one hand, and the NLRC and the CA on the other.

In order to determine whether there exists an employer-employee relationship between Manila Memorial and respondents, relevant provisions of the labor law and rules must first be reviewed. Article 106 of the Labor Code states:

> Art. 106. Contractor or subcontractor. Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
>
> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor

to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him. (Emphasis supplied)

Sections 3, 5 and 7 of Department Order No. 18-02[12] distinguish between legitimate and labor-only contracting and assume the existence of an employer-employee relationship if found to be engaged in labor-only contracting. The provisions state:

xxx xxx xxx

Section 3. *Trilateral Relationship in Contracting Arrangements*. In **legitimate contracting**, there exists a trilateral relationship under which there is a contract for a specific job, work or service between the principal and the contractor or subcontractor, and a contract of employment between the contractor or subcontractor and its workers. Hence, there are three parties involved in these arrangements, the principal which decides to farm out a job or service to a contractor or subcontractor, the contractor or subcontractor which has the capacity

[12] Rules Implementing Articles 106-109 of the Labor Code, as amended. Approved on 21 February 2002.

to independently undertake the performance of the job, work or service, and the contractual workers engaged by the contractor or subcontractor to accomplish the job, work or service.

xxx xxx xxx

Section 5. *Prohibition against labor-only contracting*. **Labor-only contracting** is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or

ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee.

The foregoing provisions shall be without prejudice to the application of Article 248 (c) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

xxx xxx xxx

Section 7. *Existence of an employer-employee relationship*. — The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarily liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following cases as declared by a competent authority:

(a) where there is labor-only contracting; or

(b) where the contracting arrangement falls within the prohibitions provided in Section 6 (Prohibitions) hereof. (Emphasis supplied)

It is clear from these provisions that contracting arrangements for the performance of specific jobs or services under the law and its implementing rules are allowed. However, contracting must be made to a legitimate and independent job contractor since labor rules expressly prohibit labor-only contracting.

Labor-only contracting exists when the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal and any of the following elements are present:

1) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or

2) The contractor does not exercise the right to control the performance of the work of the contractual employee.[13]

In the present case, Manila Memorial entered into a Contract of Services with Ward Trading, a single proprietorship owned by Emmanuel Mayor Ward with business address in Las Piñas City on 23 February 2006. In the Contract of Services, it was provided that Ward Trading, as the contractor, had adequate workers and substantial capital or investment in the form of tools, equipment, machinery, work premises and other materials which were necessary in the conduct of its business.

However, a closer look at the Contract of Services reveals that Ward Trading does not have substantial capital or investment

[13] *Aliviado v. Procter & Gamble Phils., Inc.*, 628 Phil. 469, 483 (2010).

in the form of tools, equipment, machinery, work premises and other materials since it is Manila Memorial which owns the equipment used in the performance of work needed for interment and exhumation services. The pertinent provision in the Contract of Services which shows that Manila Memorial owns the equipment states:

> The COMPANY shall [sell] to the contractor the COMPANY owned equipment in the amount of ONE MILLION FOUR HUNDRED THOUSAND PESOS ONLY (Php 1,400,000.00) payable in two (2) years or a monthly payment of FIFTY EIGHT THOUSAND THREE HUNDRED THIRTY FIVE PESOS ONLY (Php 58,335.00) to be deducted from the CONTRACTOR's billing.[14]

Just by looking at the provision, it seems that the sale was a regular business transaction between two parties. However, Manila Memorial did not present any evidence to show that the sale actually pushed through or that payments were made by Ward Trading to prove an ordinary arms length transaction. We agree with the NLRC in its findings:

> While the above-cited provision of the Contract of Service implies that respondent MMPCI would sell subject equipment to Ward at some future time, the former failed to present any contract of sale as proof that, indeed, it actually sold said equipment to Ward. Likewise, respondent MMPCI failed to present any "CONTRACTOR's billing" wherein the purported monthly installment of ₱58,335.00 had been deducted, to prove that Ward truly paid the same as they fell due. In a contract to sell, title is retained by the vendor until full payment of the price.
>
> Moreover, the Contract of Service provides that:
>
> "5. The COMPANY reserves the right to rent all or any of the CONTRACTOR's equipment in the event the COMPANY requires the use of said equipment. x x x."
>
> This provision is clear proof that Ward does not have an absolute right to use or enjoy subject equipment, considering that its right to do so is subject to respondent MMPCI's use thereof at any time the latter requires it. Such provision is contrary to Article

[14] *Rollo*, p. 128.

428 of the Civil Code, which provides that "The owner has the right to enjoy and dispose of a thing, without other limitation than those established by law." It is plain to see that Ward is not the owner of the equipment worth ₱1,400,000.00 that is being actually and directly used in the performance of the services contracted out.

Further, the Service Contract states that:

"For its part, the COMPANY agrees to provide the following:

a) Area to store CONTRACTOR's equipment and materials

b) Office space for CONTRACTOR's staff and personnel"

This provision is clear proof that even the work premises actually and directly used by Ward in the performance of the services contracted out is owned by respondent MMPCI.[15]

Also, the difference in the value of the equipment in the total amount of ₱1,400,000.00 can be glaringly seen in Ward Trading's financial statements for the year 2006 when compared to its 2005 financial statements. It is significant to note that these financial statements were submitted by Manila Memorial without any certification that these financial statements were actually audited by an independent certified public accountant. Ward Trading's Balance Sheet[16] as of 31 December 2005 showed that it had assets in the amount of ₱441,178.50 and property and equipment with a net book value of ₱86,026.50 totaling ₱534,705. A year later, Ward Trading's Balance Sheet[17] ending in 31 December 2006 showed that it had assets in the amount of ₱57,084.70 and property and equipment with a net book value of ₱1,426,468 totaling ₱1,491,052.70. Ward Trading, in its Income Statements[18] for the years 2005 and 2006, only earned a net income of ₱53,800 in the year ending 2005 and ₱68,141.50 in 2006. Obviously, Ward Trading could not have raised a substantial capital of ₱1,400,000.00 from its income

---

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

[16] *Id*. at 152.

[17] *Id*. at 146.

[18] *Id*. at 151 and 147, respectively.

alone without the inclusion of the equipment owned and allegedly sold by Manila Memorial to Ward Trading after they signed the Contract of Services on 23 February 2006.

Further, the records show that Manila Memorial and Enrique B. Lagdameo admitted that respondents performed various interment services at its Sucat, Parañaque branch which were directly related to Manila Memorial's business of developing, selling and maintaining memorial parks and interment functions. Manila Memorial even retained the right to control the performance of the work of the employees concerned. As correctly observed by the CA:

> A perusal of the Service Contract would reveal that respondent Ward is still subject to petitioner's control as it specifically provides that although Ward shall be in charge of the supervision over individual respondents, the exercise of its supervisory function is heavily dependent upon the needs of petitioner Memorial Park, particularly:
>
> "It is also agreed that:
>
> a) The CONTRACTOR's supervisor will conduct a regular inspection of grave sites/areas being dug to ensure compliance with the COMPANY's interment schedules and other related ceremonies.
>
> b) The CONTRACTOR will provide enough manpower during peak interment days including Sundays and Holidays.
>
> c) The CONTRACTOR shall schedule off-days for its workers in coordination with the COMPANY's schedule of interment operation.
>
> d) The CONTRACTOR shall be responsible for any damage done to lawn/s and/or structure/s resulting from its operation, which must be restored to its/their original condition without delay and at the expense of CONTRACTOR."

The contract further provides that petitioner has the option to take over the functions of Ward's personnel if it finds any part or aspect of the work or service provided to be unsatisfactory, thus:

> "6.1 It is hereby expressly agreed and understood that, at any time during the effectivity of this CONTRACT and its sole determination, the COMPANY may take over the performance of any of the functions mentioned in Paragraph I above, in any of the following cases:
>
> xxx xxx xxx
>
> c. If the COMPANY finds the performance of the CONTRACTOR in any part or aspect of the grave digging works or other services provided by it to be unsatisfactory."

It is obvious that the aforementioned provision leaves respondent Ward at the mercy of petitioner Memorial Park as the contract states that the latter may take over if it finds any part of the services to be below its expectations, including the manner of its performance. x x x.[19]

The NLRC also found that Ward Trading's business documents fell short of sound business practices. The relevant portion in the NLRC's Decision states:

> It is also worth noting that while Ward has a Certificate of Business Name Registration issued by the Department of Trade and Industry on October 24, 2003 and valid up to October 24, 2008, the same expressly states that it is not a license to engage in any kind of business, and that it is valid only at the place indicated therein, which is Las Piñas City. Hence, the same is not valid in Parañaque City, where Ward assigned complainants to perform interment services it contracted with respondent MMPCI. It is also noted that the Permit, which was issued to Ward by the Office of the Mayor of Las Piñas City on October 28, 2003, was valid only up to December 31, 2003. Likewise, the Sanitary Permit to Operate, which was issued to Ward by the Office of the City Health Officer of the Las Piñas City Health Office on October 28, 2003, expired on December 31, 2003. While respondents MMPCI and Lagdameo were able to present copies of the above-mentioned documents, they failed to present any proof that Ward is duly registered as [a] contractor with the Department of Labor and Employment.[20]

---

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

[20] *Id*. at 90-91.

Section 11 of Department Order No. 18-02, which mandates registration of contractors or subcontractors with the DOLE, states:

> Section 11. *Registration of Contractors or Subcontractors*.— Consistent with authority of the Secretary of Labor and Employment to restrict or prohibit the contracting out of labor through appropriate regulations, a registration system to govern contracting arrangements and to be implemented by the Regional Office is hereby established.
>
> The Registration of contractors and subcontractors shall be necessary for purposes of establishing an effective labor market information and monitoring.
>
> Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting.

For failing to register as a contractor, a presumption arises that one is engaged in labor-only contracting unless the contractor overcomes the burden of proving that it has substantial capital, investment, tools and the like.[21]

In this case, however, Manila Memorial failed to adduce evidence to prove that Ward Trading had any substantial capital, investment or assets to perform the work contracted for. Thus, the presumption that Ward Trading is a labor-only contractor stands. Consequently, Manila Memorial is deemed the employer of respondents. As regular employees of Manila Memorial, respondents are entitled to their claims for wages and other benefits as awarded by the NLRC and affirmed by the CA.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 21 January 2013 and the Resolution dated 17 July 2013 of the Court of Appeals in CA-G.R. SP No. 119237.

SO ORDERED.

Velasco, Jr.,[*] *del Castillo,* and *Mendoza, JJ.,* concur.

Leonen, J., on leave.

---

[21] *7K Corporation v. National Labor Relations Commission,* 537 Phil. 664 (2006).

[*] Designated additional member per Raffle dated 8 September 2014.

FIRST DIVISION

[G.R. No. 213910. February 3, 2016]

VINSON[*] D. YOUNG *a.k.a.* BENZON ONG and BENNY YOUNG *a.k.a.* BENNY ONG, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES, as represented by the OFFICE OF THE SOLICITOR GENERAL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; EXECUTIVE AND JUDICIAL DETERMINATION OF PROBABLE CAUSE, DISTINGUISHED.— Determination of probable cause is either executive or judicial in nature. The first pertains to the duty of the public prosecutor during preliminary investigation for the purpose of filing an information in court. At this juncture, the investigating prosecutor evaluates if the facts are sufficient to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof. On the other hand, judicial determination of probable cause refers to the prerogative of the judge to ascertain if a warrant of arrest should be issued against the accused. At this stage, the judge makes a preliminary examination of the evidence submitted, and on the strength thereof, and independent from the findings of the public prosecutor, determines the necessity of placing the accused under immediate custody in order not to frustrate the ends of justice. In *People v. Inting*, the stark distinctions between executive and judicial determination of probable cause were aptly explained, thus: Judges and Prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. **The determination of probable cause for the warrant of arrest is made by the Judge.** The preliminary investigation proper whether or not there is

[*] "Vinzon" in some parts of the *rollo.*

reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial is the function of the Prosecutor.

2. **ID.; ID.; ID.; DETERMINATION OF PROBABLE CAUSE; A JUDGE MAY DISMISS THE CASE FOR LACK OF PROBABLE CAUSE ONLY IN CLEAR-CUT CASES WHEN THE EVIDENCE ON RECORD PLAINLY FAILS TO ESTABLISH PROBABLE CAUSE.—** [T]he Court declared in *Santos-Dio v. CA* (*Santos-Dio*) that while a judge's determination of probable cause is generally confined to the limited purpose of issuing arrest warrants, he is nonetheless authorized under Section 5 (a), Rule 112 of the Revised Rules of Criminal Procedure to immediately dismiss the case if the evidence on record clearly fails to establish probable cause. x x x Accordingly, a judge may dismiss the case for lack of probable cause only in clear-cut cases when the evidence on record plainly fails to establish probable cause — that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged.

3. **ID.; ID.; ID.; ID.; ID.; WHEN THE EVIDENCE ON RECORD DOES NOT REVEAL THE UNMISTAKABLE AND CLEAR-CUT ABSENCE OF PROBABLE CAUSE, THE JUDGE'S DISMISSAL OF THE CASE CONSTITUTE GRAVE ABUSE OF DISCRETION.—** Applying the standard set forth in *Santos-Dio,* the evidence on record herein does **not** reveal the unmistakable and clear-cut absence of probable cause against petitioners. Instead, a punctilious examination thereof shows that the prosecution was able to establish a *prima facie* case against petitioners for violation of Sections 4 (a) and (e) in relation to Sections 6 (a) and (c) of RA 9208. As it appears from the records, petitioners recruited and hired the AAA Group and, consequently, maintained them under their employ in Jaguar for the purpose of engaging in prostitution. In view of this, probable cause exists to issue warrants for their arrest. Moreover, the Court notes that the defenses raised by petitioners, particularly their disclaimer that they are no longer the owners of the establishment where the sex workers were rescued, are evidentiary in nature – matters

which are best threshed out in a full-blown trial. Thus, the proper course of action on the part of the RTC was not to dismiss the case but to proceed to trial. Unfortunately, and as the CA aptly observed, the RTC arrogated upon itself the task of dwelling on factual and evidentiary matters upon which it eventually anchored the dismissal of the case. Consequently, grave abuse of discretion was correctly imputed by the CA against the RTC for its action.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FILING A MOTION FOR RECONSIDERATION IS A PREREQUISITE; EXCEPTIONS; APPLIED.— Anent the question of whether a motion for reconsideration is a prerequisite to the filing of *certiorari* petition, the Court finds the OSG's argument well-taken. In this regard, jurisprudence has carved out specific exceptions allowing direct resort to a *certiorari* petition, such as: *(a)* **where the order is a patent nullity, as where the court *a quo* has no jurisdiction;** *(b)* where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (*c*) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; *(d)* where, under the circumstances, a motion for reconsideration would be useless; (*e)* where petitioner was deprived of due process and there is extreme urgency for relief; *(f)* where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; *(g)* where the proceedings in the lower court are a nullity for lack of due process; *(h)* where the proceedings were *ex parte,* or in which the petitioner had no opportunity to object; and *(i)* where the issue raised is one purely of law or **where public interest is involved**. In this case, the assailed RTC Order was a patent nullity for being rendered with grave abuse of discretion amounting to lack or in excess of jurisdiction. Significantly, the present case involves public interest as it imputes violations of RA 9208, or the "Anti-Trafficking in Persons Act of 2003," a crime so abhorrent and reprehensible that is characterized by sexual violence and slavery. Accordingly, direct resort to a *certiorari* petition sans a motion for reconsideration is clearly sanctioned in this case.

APPEARANCES OF COUNSEL

Fortun and Santos Law Offices for petitioners.
The Solicitor General for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated September 10, 2013 and the Resolution[3] dated July 31, 2014 of the Court of Appeals (CA) in CA-G.R. SP. No. 07147, which reversed and set aside the Order[4] dated July 24, 2012 of the Regional Trial Court of Cebu City, Branch 22 (RTC) in Criminal Case No. CBU-96106, finding probable cause to indict petitioners Vinson D. Young *a.k.a.* Benzon Ong (Vinson) and Benny Young *a.k.a.* Benny Ong (Benny; collectively, petitioners) for violation of Sections 4 (a) and (e)[5] in relation

---

[1] *Rollo,* pp. 3-45.

[2] *Id*. at 47-59. Penned by Associate Justice Gabriel T. Ingles with Associate Justices Carmelita Salandanan-Manahan and Marilyn B. Lagura-Yap concurring.

[3] *Id*. at 61-62. Penned by Associate Justice Gabriel T. Ingles with Associate Justices Ramon Paul L. Hernando and Marilyn B. Lagura-Yap.

[4] *Id*. at 150-168. Penned by Presiding Judge Manuel D. Patalinghug.

[5] Sections 4 (a) and (e) of RA 9208 read:

> Section 4. *Acts of Trafficking in Persons.*— It shall be unlawful for any person, natural or juridical, to commit any of the following acts:
>
> (a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
>
> xxx xxx xxx
>
> (e) To maintain or hire a person to engage in prostitution or pornography[.]

to Sections 6 (a) and (c)[6] of Republic Act No. (RA) 9208,[7] otherwise known as the "Anti-Trafficking in Persons Act of 2003."

The Facts

On separate dates,[8] members of the Regional Anti-Human Trafficking Task Force (RAHTTF) of the Philippine National Police (PNP), namely, PO2 Lyman N. Arsua (PO2 Arsua) and PO2 Napoleon A. Talingting, Jr. (PO2 Talingting, Jr.), among others, conducted surveillance operations at Jaguar KTV Bar (Jaguar) in Cebu City, and observed that its customers paid ₱6,000.00 in exchange for sexual intercourse with guest relations officers (GROs), or ₱10,000.00 as "bar fine" if they were taken out of the establishment. In the course of their surveillance, they learned that: (*a*) petitioners were the owners of Jaguar; (*b*) a certain "Tico" acted as overall manager; and (*c*) a certain "Ann" welcomed customers and offered them GROs.[9]

On April 9, 2011, in the course of an entrapment operation, PO2 Arsua, PO2 Talingting, Jr., and PO1 Jef Nemenzo (PO1

---

[6] Sections 6 (a) and (c) of RA 9208 read:

> Section 6. *Qualified Trafficking in Persons.* The following are considered as qualified trafficking:
>
> (a) When the trafficked person is a child;
>
> xxx xxx xxx
>
> (c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group[.]

[7] Entitled "AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER PURPOSES," approved on May 26, 2003.

[8] These dates pertain to March 16, 18, 22, and 26, 2011; see *rollo,* p. 63.

[9] *Id*.

Nemenzo), acting as poseur customers, handed ₱15,000.00 worth of marked money to the *"mamasang"*/manager of Jaguar in exchange for sexual service. At the pre-arranged signal, the rest of the RAHTTF members raided Jaguar resulting to multiple arrests, seizure of sexual paraphernalia, recovery of the marked money from one Jocelyn Balili (Balili),[10] and the rescue of 146 women and minor children.[11] Later, six (6) of these women-who all worked at Jaguar as GROs, namely, AAA, BBB, CCC, DDD, EEE, and FFF[12] (AAA Group) – executed affidavits[13] identifying petitioners, Tico, and Ann as Jaguar's owners. Accordingly, a criminal complaint for violation of Sections 4 (a) and (e) in relation to Sections 6 (a) and (c) of RA 9208 was filed against them, before the Office of the City Prosecutor, Cebu City (OCP), docketed as NPS Docket No. VII-09-INV-IID00605.[14]

In defense, Vinson denied ownership of Jaguar and asserted that he had sold his rights and interests therein to one Charles Theodore Rivera pursuant to a Deed of Assignment[15] dated December 14, 2009 (December 14, 2009 Deed of Assignment). Not being the manager nor owner of Jaguar, therefore, he had no control and supervision over the AAA Group, with whom he denied acquaintance. Similarly, Benny claimed that he was

---

[10] *Id*. at 67.

[11] *Id*. at 63 and 65.

[12] The real names of these victims are withheld per RA 7610 entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE ND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992 and RA 9262 entitled "AN ACT DEFINING VIOLENCE' AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004. See *People v. Cabalquinto,* 533 Phil. 703 (2006). In addition, EEE and FFF are minors.

[13] *Rollo,* pp. 473-496.

[14] *Id*. at 65.

[15] *Id*. at 121-122.

neither the owner nor manager of Jaguar and was not even present during the raid. He raised "mistake in identity" as defense, stressing that he was not the same person identified by the AAA Group in their respective affidavits.[16]

During the pendency of the preliminary investigation, or on May 31, 2011, the AAA Group submitted affidavits[17] stating that their previous affidavits were vitiated and not of their own free will and voluntary deed,[18] effectively recanting the same.

The OCP Ruling

In a Resolution[19] dated October 27, 2011, the OCP found probable cause and ordered the indictment of petitioners, Tico, and Ann for violation of Sections 4 (a) and (e) in relation to Sections 6 (a) and (c) of RA 9208.

It found that the receipt and subsequent recovery of the marked money from Balili constituted *prima facie* evidence that there was a transaction to engage in sexual service for a fee.[20] It also held that the documentary evidence pertaining to Jaguar's business operations, as well as the positive identification made by the AAA Group, sufficiently established petitioners as its owners. Besides, it noted that Vinson's defense— *i.e.,* that he had divested his interests in Jaguar– was evidentiary in nature and hence, must be threshed out in a full-blown trial. Moreover, while the AAA Group had since retracted their initial statements, their retractions were found to hold no probative value. Finally, while the OCP ruled that the crime of human trafficking was qualified for being committed by a syndicate, or in large scale – carried out by three (3) or more persons – it, however, did not appreciate the minority of EEE and FFF as a qualifying

---

[16] *Id*. at 65-66.

[17] *Id*. at 501-520.

[18] See *id*. at 66.

[19] *Id*. at 63-72. Signed by Prosecutor II Gandhi B. Truya with the approval of City Prosecutor Nicolas C. Sellon.

[20] *Id*. at 67.

circumstance, not having been substantiated by sufficient and competent evidence.[21]

Separately, both parties moved for reconsideration.[22] In a Resolution[23] dated April 23, 2012, the OCP modified its previous ruling and considered the minority of EEE and FFF based on the certified true copies of their certificates of live birth[24] as additional qualifying circumstance. On May 29, 2012, the corresponding information[25] was filed before the RTC, docketed as Crim. Case No. CBU-96106.

On June 18, 2012, petitioners filed an omnibus motion[26] for a judicial determination of probable cause, praying that the issuance of the corresponding warrants of arrest be held in abeyance pending resolution thereof, and for the case against them to be dismissed for lack of probable cause.[27]

The RTC Ruling

In an Order[28] ated July 24, 2012, the RTC granted the omnibus motion and dismissed the case for lack of probable cause.[29] It ruled that the affidavits of the RAHTTF members and the AAA Group failed to show that petitioners had knowledge or participated in the recruitment of the 146 women and minors who were rescued at Jaguar as sex workers. It also found that the recantations of the AAA Group were fatal to the prosecution's

---

[21] See *id*. at 68-71.

[22] See petitioners' motion for reconsideration dated January 26, 2012; *id*. at 73-80 and respondent's partial motion for reconsideration dated February 21, 2012; *id*. at 89-91.

[23] *Id*. at 98-102. Penned by Assistant State Prosecutor Gilmarie Fe S. Pacamarra.

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

[25] *Id*. at 103-104. Issued by Prosecutor II Gandhi B. Truya.

[26] *Id*. at 105-116.

[27] *Id*. at 116.

[28] *Id*. at 150-168. Penned by Presiding Judge Manuel D. Patalinghug.

[29] *Id*. at 167-168.

case, since it effectively cleared petitioners of any knowledge in Jaguar's operations. It further reasoned that the December 14, 2009 Deed of Assignment –the authenticity, due execution, and validity of which were not impugned by the prosecution — showed that Vinson had already ceded his rights and interests in Jaguar.[30]

Dispensing with the filing of a motion for reconsideration, respondent People of the Philippines, through the Office of the Solicitor General (OSG), filed a petition for *certiorari* [31] before theCA, docketed as CA G.R. SP. No. 07147, imputing grave abuse of discretion on the part of the RTC in dismissing the case for lack of probable cause. In their Comment,[32] petitioners maintained that the RTC properly dismissed the case. Procedurally, they also pointed out that the correct remedy on the part of the OSG was to file an appeal, not a petition for *certiorari.* Even assuming that a *certiorari* petition wa the proper mode of review, the OSG's failure to file a prior motion for reeonsideration was a fatal infirmity warranting the petition's outright dismissal.[33]

The CA Ruling

In a Decision[34] dated September 10, 2013, the CA found that the RTC committed grave ab se of discretion in dismissing the case for lack of probable cause. Consequently, it ordered the reinstatement of the information and remanded the case to the RTC for further proceedings.[35] The CA primarily reasoned out that the court *a quo* failed to consider the other evidence proffered by the prosecution to support its finding of probable cause, and that it delved on evidentiary issues in evaluating the affidavits submitted by the prosecution which are matters better ventilated

---

[30] See *id*. at 156-163.

[31] Dated September 28, 2012. *Id*. at 169-241.

[32] Dated December 4, 2012. *Id*. at 409-420.

[33] *Id*. at 410-415.

[34] *Id*. at 47-59.

[35] *Id*. at 59.

during the trial proper: than at the preliminary investigation level.[36]

The CA, however, did not touch on the issue of the propriety of the *certiorari* petition filed by the OSG.

Aggrieved, petitioners moved for reconsideration[37] which was, however, denied in a Resolution[38] dated July 31, 2014; hence, the instant petition.

The Issues Before the Court

The essential issues for the Court's resolution are: *(a)* whether or not the CA erred in finding grave abuse of discretion on the part of the RTC in dismissing the criminal case against petitioners for lack of probable cause; and *(b)* whether or not a motion for reconsideration is a prerequisite to filing a *certiorari* petition.

The Court's Ruling

The petition is bereft of merit.

Determination of probable cause is either executive or judicial nature.

The first pertains to the duty of the public prosecutor during preliminary investigation for the purpose of filing an information in court. At this juncture, the investigating prosecutor evaluates if the facts are sufficient to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof.[39]

On the other hand, judicial determination of probable cause refers to the prerogative of the judge to ascertain if a warrant of arrest should be issued against the accused. At this stage, the judge makes a preliminary examination of the evidence submitted, and on the strength thereof, and independent from

---

[36] See *id*. at 57-58.

[37] See motion for reconsideration dated October 7, 2013; *id*. at 430-445.

[38] *Id*. at 61-62.

[39] See *People v. Castillo,* 607 Phil. 754, 764-767 (2009).

the findings of the public prosecutor, determines the necessity of placing the accused under immediate custody in order not to frustrate the ends of justice.[40]

In *People v. Inting,*[41] the stark distinctions between executive and judicial determination of probable cause were aptly explained, thus:

> Judges and Prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. **The determination of probable cause for the warrant of arrest is made by the Judge**. The preliminary investigation proper whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial is the function of the Prosecutor.[42] (Emphasis supplied)

Pertinently, the Court declared in *Santos-Dio v. CA*[43] *(Santos-Dio)* that while a judge's determination of probable cause is generally confined to the limited purpose of issuing arrest warrants, he is nonetheless authorized under Section 5 (a),[44]

---

[40] *Id*. at 765.

[41] 265 Phil. 817 (1990).

[42] *Id*. at 821-822.

[43] G.R. Nos. 178947 and 179079, June 26, 2013, 699 SCRA 614.

[44] Section 5 (a), Rule 112 of the Revised Rules of Criminal Procedure provides:

> Section 5. *When warrant of arrest may issue.*— (a) *By the Regional Trial Court.* – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. **He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause**. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested, pursuant to a warrant issued by the judge who conducted preliminary investigation or when the

Rule 112 of the Revised Rules of Criminal Procedure to immediately dismiss the case if the evidence on record clearly fails to establish probable cause. Thus:

> In this regard, so as not to transgress the public prosecutor's authority, **it must be stressed that the judge's dismissal of a case must be done only in clear-cut cases when the evidence on record plainly fails to establish probable cause – that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged. On the contrary, if the evidence on record shows that, more likely than not, the crime charged has been committed and that respondent is probably guilty of the same, the judge should not dismiss the case and thereon, order the parties to proceed to trial**. In doubtful cases, however, the appropriate course of action would be to order the presentation of additional evidence.[45] (Emphasis supplied)

Accordingly, a judge may dismiss the case for lack of probable cause only in clear-cut cases when the evidence on record plainly fails to establish probable cause – that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged.[46]

Applying the standard set forth in *Santos-Dio,* the evidence on record herein does **not** reveal the unmistakable and clear-cut absence of probable cause against petitioners. Instead, a punctilious examination thereof shows that the prosecution was able to establish a *prima facie* case against petitioners for violation of Sections 4 (a) and (e) in relation to Sections 6 (a) and (c) of RA 9208. As it appears from the records, petitioners recruited

---

> complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information. (Emphasis supplied)

[45] *Santos-Dio, supra* note 43, at 635.

[46] *Id.*

and hired the AAA Group and, consequently, maintained them under their employ in Jaguar for the purpose of engaging in prostitution. In view of this, probable cause exists to issue warrants for their arrest.

Moreover, the Court notes that the defenses raised by petitioners, particularly their disclaimer that they are no longer the owners of the establishment where the sex workers were rescued, are evidentiary in nature— matters which are best threshed out in a full-blown trial. Thus, the proper course of action on the part of the RTC was not to dismiss the case but to proceed to trial. Unfortunately, and as the CA aptly observed, the RTC arrogated upon itself the task of dwelling on factual and evidentiary matters upon which it eventually anchored the dismissal of the case. Consequently, grave abuse of discretion was correctly imputed by the CA against the RTC for its action.

Anent the question of whether a motion for reconsideration is a prerequisite to the filing of a *certiorari* petition, the Court finds the OSG's argument well-taken. In this regard, jurisprudence has carved out specific exceptions allowing direct resort to a *certiorari* petition, such as: *(a)* **where the order is a patent nullity, as where the court *a quo* has no jurisdiction;** *(b)* where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (*c*) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action :is perishable; *(d)* where, under the circumstances, a motion for reconsideration would be useless; *(e)* where petitioner was deprived of due process and there is extreme urgency for relief; *(f)* where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (*g*) where the proceedings in the lower court are a nullity for lack of due process; *(h)* where the proceedings were *ex parte,* or in which the petitioner had no

opportunity to object; and *(i)* where the issue raised is one purely of law or **where public interest is involved**.[47]

In this case, the assailed RTC Order was a patent nullity for being rendered with grave abuse of discretion amounting to lack or in excess of jurisdiction.[48] Significantly, the present case involves public interest as it imputes violations of RA 9208, or the "Anti-Trafficking in Persons Act of 2003," a crime so abhorrent and reprehensible that is characterized by sexual violence and slavery.[49] Accordingly, direct resort to a *certiorari* petition sans a motion for reconsideration is clearly sanctioned in this case.

WHEREFORE, the petition is **DENIED.** The Decision dated September 10, 2013 and the Resolution dated July 31, 2014 of the Court of Appeals in CA-G.R. SP. No. 07147 are hereby **AFFIRMED.**

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, and *Bersamin, JJ.,* concur.

Jardeleza, J., no part, prior OSG action.

---

[47] *Republic v. Bayao,* G.R. No. 179492, June 5, 2013, 697 SCRA 313, 323; *Republic v. Pantranco North Express, Inc.,* 682 Phil. 186, 194 (2012); and *Siok Ping Tan v. Subic Bay Distribution, Inc.,* 653 Phil. 124, 136-137 (2010), emphases supplied.

[48] See *People v. CA,* G.R. No. 183652, February 25, 2015; and *Republic v. Lazo,* G.R. No. 195594, September 29, 2014, 737SCRA 1, 19.

[49] "Trafficking in human beings, if only to emphasize the gravity of its hideousness, is tantamount to modern-day slavery at work. It is a manifestation of one of the most flagrant forms of violence against human beings. Its victims suffer the brunt of this insidious form of violence. It is exploitation, coercion, deception, abduction, rape, physical, mental and other forms of abuse, prostitution, forced labor, and indentured servitude." (See *People v. Casio,* G.R. No. 211465, December 3, 2014, citing the Sponsorship Speech of Senator Luisa Ejercito Estrada, Record of the Senate, Volume II, No. 42, Twelfth Congress Second Regular Session, October 15-December 18, 2002, pp. 614-616.)

EN BANC

[A.C. No. 5325. February 9, 2016]

NEMESIO FLORAN and CARIDAD FLORAN, *complainants, vs.* **ATTY. ROY PRULE EDIZA,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; DISBARMENT; REPEATED AND BLATANT DEFIANCE WITH THE ORDERS OF THE COURT CONSTITUTE GRAVE MISCONDUCT AND GROSS OR WILLFUL INSUBORDINATION WHICH WARRANT THE PENALTY OF DISBARNMENT.— The intentional delay and utter refusal to abide with the Court's orders is a great disrespect to the Court which cannot be tolerated. Atty. Ediza willfully left unheeded all the warnings imposed upon him, despite the earlier six-month suspension that was meted out to him for his administrative liability. In *Tugot v. Judge Coliflores,* the Court held that its resolutions should not be construed as mere requests from the Court. They should be complied with promptly and completely. The failure of Atty. Ediza to comply betrays not only a recalcitrant streak in his character, but also disrespect for the Court's lawful orders and directives. As a member of the legal profession, Atty. Ediza has the duty to obey the orders and processes of this Court without delay and resistance. x x x Atty. Ediza had previously been found guilty of violating the Code of Professional Responsibility and was suspended from the practice of law for six months. Despite the suspension, Atty. Ediza is once again demonstrating to this Court that not only is he unfit to stay in the legal profession for failing to protect the interests of his clients but is also remiss in following the dictates of the Court, which has administrative supervision over him. In *Martinez v. Zoleta,* we held that the Court should not and will not tolerate future indifference to administrative complaints and to resolutions requiring comment on such administrative complaints. It bears stressing that a disregard of Court directives constitutes grave or serious misconduct and gross or willful insubordination which warrant disciplinary sanction by this Court. x x x In imposing the penalty of disbarment upon Atty. Ediza, we are aware

that the power to disbar is one to be exercised with great caution and only in clear cases of misconduct that seriously affect the standing and character of the lawyer as a legal professional and as an officer of the Court. However, Atty. Ediza's stubborn attitude and unwillingness to comply with the Court's directives, which we deem to be an affront to the Court's authority over members of the Bar, warrant an utmost disciplinary sanction from this Court.

APPEARANCES OF COUNSEL

Basilio B. Pooten for complainants.
Romeo B. Fortea for respondent.

D E C I S I O N

***PER CURIAM*:**

In a Decision dated 19 October 2011, the Court found respondent Atty. Roy Prule Ediza (Atty. Ediza) administratively liable for violating Rule 1.01 of Canon 1, Canon 15, and Rule 18.03 of Canon 18 of the Code of Professional Responsibility. The Court upheld the findings of the Integrated Bar of the Philippines (IBP) and suspended Atty. Ediza from the practice of law for six months.

Atty. Ediza's liability stemmed from a Complaint/Affidavit[1] dated 8 September 2000 filed by the spouses Nemesio and Caridad Floran (complainants). The subject of the complaint was a 3.5525 hectare parcel of unregistered land located in San Martin, Villanueva, Misamis Oriental, which was covered by a tax declaration in the name of Sartiga Epal, a relative, who gave the property to complainants.

From the records, the Court found that Atty. Ediza deceived complainants when he asked them to unknowingly sign a deed of sale transferring a portion of their land to him. When the sale of complainants' land pushed through, Atty. Ediza received

[1] *Rollo,* pp. 2-5.

half of the amount of the proceeds given by the buyer and falsely misled complainants into thinking that he would register, using the same proceeds, the remaining portion of their land. These actions, which deprived complainants of their property, showed Atty. Ediza's behavior as unbecoming a member of the legal profession.

The Court, in its Decision dated 19 October 2011, (1) suspended Atty. Ediza from the practice of law for six months, effective upon receipt of the Decision; (2) directed him to return to complainants the two sets of documents that he misled them and Sartiga Epal into signing; and (3) ordered Atty. Ediza to pay complainants the amount of ₱125,463.38, representing the amount he deceived them into paying him, with legal interest from 8 September 2000 until fully paid. The Court further warned Atty. Ediza that a repetition of the same or similar acts in the future shall be dealt with more severely.

Thereafter, Atty. Ediza filed a Motion for Reconsideration[2] dated 18 November 2011 which was denied by the Court in a Resolution[3] dated 8 February 2012 for lack of substantial merit.

Atty. Ediza then filed a Manifestation of Compliance (On the Order of Suspension)[4] dated 29 May 2012 through the Office of the Bar Confidant. He also attached a sworn statement[5] attesting that he desisted from the practice of law for six months from receipt of the decision on 18 November 2011 until 29 May 2012.

In a Resolution[6] dated 3 September 2012, the Court deferred action on the Manifestation of Compliance and adopted the recommendations of the Office of the Bar Confidant that Atty. Ediza be required to (1) submit certifications from the IBP Local Chapter where he is a member and the Office of the Executive

---

[2] *Id.* at 318-337.

[3] *Id.* at 340.

[4] *Id.* at 353-354.

[5] *Id.* at 355.

[6] *Id.* at 365-366.

Judge where he practices his profession, both stating that he had desisted from the practice of law from 18 November 2011 to 29 May 2012; and (2) show proof of payment to complainants of ₱125,463.38 plus legal interest, and the return of the two sets of documents that Atty. Ediza misled complainants and Sartiga Epal to sign. The Court also required complainants to manifest whether Atty. Ediza had already paid the said amount and returned the said documents.

In an undated letter written in the vernacular, complainants wrote the Court that Atty. Ediza had yet to comply with the Court's Decision and asked the Court's assistance in implementing the same. Later, in a Verified Compliance with Manifestation executed with the assistance of the Public Attorney's Office, complainants informed the Court that as of 17 October 2012, Atty. Ediza had not paid any single centavo and neither had he returned the required documents.

In a Resolution[7] dated 25 February 2013, the Court noted the manifestations and further ordered Atty. Ediza to show cause why he should not be disciplinarily dealt with or be held in contempt and to comply with the Decision.

In a Manifestation Showing Cause[8] dated 22 April 2013, Atty. Ediza claimed that he had no intention to defy the Court's authority or challenge its orders and that he had served his suspension, but asked the Court to consider that the two sets of documents were merely fictional. He also claimed that he was at a loss as to which 'documents' the Decision was referring to because the same were supposedly not alleged with particularity and he had been barred by the Rules of Procedure of the IBP Committee on Bar Discipline from requesting a bill of particulars. Atty. Ediza alleged that due to the ambiguity about the 'documents,' the judgment was incomplete and unenforceable. Moreover, Atty. Ediza claimed that the alleged lack of due process in the administrative case rendered the entire proceedings

[7] *Id*. at 380-381.

[8] *Id*. at 383-386.

void; and consequently, even the order to pay the sum should be stricken off.

The Court, in its 15 July 2013 Resolution,[9] found this last explanation unsatisfactory and further required Atty. Ediza to comply with the 19 October 2011 Decision within ten days from notice, warning him of a more severe penalty in the event of his continued failure to do so.

On 22 November 2013, the Office of the Chief Justice received a handwritten letter, in the vernacular, from complainants requesting information on the status of the administrative case. Again, complainants wrote the Court two letters in February 2014, one dated 5 February and another an undated letter received by the Court on 18 February, requesting for the immediate resolution and information on the status of the administrative case.

The Court, in its 4 June 2014 Resolution,[10] noted this last letter from complainants and required Atty. Ediza to show cause why he should not be disciplinarily dealt with or be held in contempt for failure to comply with the 19 October 2011 Decision, and again ordered him to conform to the same.

Meanwhile, on 13 July 2014, complainants again wrote the Office of the Chief Justice reiterating Atty. Ediza's failure to comply with the Court's directives, and noted that it had been 17 years since the dispute with Atty. Ediza began.

Atty. Ediza then filed a Compliance with a Motion to Reopen/ Reinvestigate the Case dated 2 August 2014, claiming that he had discovered new evidence which would prove that complainants had been engaging in fraudulent schemes that resulted in him being victimized. Briefly, Atty. Ediza claimed that complainants never had ownership over the subject property, and that when they initially sought his services in preparing the document that would effect the sale and conveyance of the land in their favor, they employed the aid of a poseur to misrepresent the real Sartiga

---

[9] *Id*. at 389-390.

[10] *Id*. at 396.

Epal, the supposed transferor of the property. Atty. Ediza attached the affidavits of allegedly the surviving spouse and sons of Sartiga Epal to substantiate said averments.

In its 12 November 2014 Resolution, the Court denied the motion to reopen/reinvestigate the case for lack of merit and again required Atty. Ediza to comply with the 19 October 2011 Decision within five days from notice.

On 5 January 2015, the Office of the Chief Justice received another letter from complainants, requesting the issuance of a writ of execution. In the meantime, Atty. Ediza filed on 7 February 2015 a Manifestation and Motion, asking the Court to stay the execution of the 19 October 2011 Decision insofar as it required the return of money and documents to complainants, and to note his service of the suspension and lift the same.

More than four years since the Court promulgated its Decision dated 19 October 2011, Atty. Ediza has yet to comply with the Court's directives to (1) submit certifications from the IBP Local Chapter where he is a member and the Office of the Executive Judge where he practices his profession both stating that he has desisted from the practice of law from 18 November 2011 to 29 May 2012; (2) pay complainants the amount of ₱125,463.38 plus legal interest; and (3) return the two sets of documents that Atty. Ediza misled complainants and Sartiga Epal to sign.

The Court issued numerous Resolutions dated 3 September 2012, 25 February 2013, 15 July 2013, 4 June 2014, and 12 November 2014, requiring Atty. Ediza to comply with the 19 October 2011 Decision and show cause why he should not be disciplinarily dealt with or be held in contempt for his failure to abide by the Court's orders. However, Atty. Ediza repeatedly and blatantly disregarded and obstinately defied these orders from the Court. Instead, Atty. Ediza responded by (1) claiming ignorance over the documents stated in the Decision, and worse, adjudged that the documents were fictional; (2) alleging newly discovered evidence; (3) demanding to stay the execution of the Decision; and (4) reporting that he has complied with the order of suspension without submitting any required certifications from the IBP and the Office of the Executive Judge.

The intentional delay and utter refusal to abide with the Court's orders is a great disrespect to the Court which cannot be tolerated. Atty. Ediza willfully left unheeded all the warnings imposed upon him, despite the earlier six-month suspension that was meted out to him for his administrative liability. In *Tugot v. Judge Coliflores,*[11] the Court held that its resolutions should not be construed as mere requests from the Court. They should be complied with promptly and completely. The failure of Atty. Ediza to comply betrays not only a recalcitrant streak in his character, but also disrespect for the Court's lawful orders and directives.

As a member of the legal profession, Atty. Ediza has the duty to obey the orders and processes of this Court without delay and resistance. Rule 12.04 of Canon 12 of the Code of Professional Responsibility states:

CANON 12

A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

xxx xxx xxx

Rule 12.04 — A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

In the present case, Atty. Ediza had previously been found guilty of violating the Code of Professional Responsibility and was suspended from the practice of law for six months. Despite the suspension, Atty. Ediza is once again demonstrating to this Court that not only is he unfit to stay in the legal profession for failing to protect the interests of his clients but is also remiss in following the dictates of the Court, which has administrative supervision over him. In *Martinez v. Zoleta,*[12] we held that the Court should not and will not tolerate future indifference to administrative complaints and to resolutions requiring comment

[11] 467 Phil. 391, 402 (2004).

[12] 374 Phil. 35, 47 (1999).

on such administrative complaints. It bears stressing that a disregard of Court directives constitutes grave or serious misconduct[13] and gross or willful insubordination[14] which warrant disciplinary sanction by this Court.[15]

Section 5(5), Article VIII of the Constitution recognizes the disciplinary authority of the Court over members of the Bar. Reinforcing the execution of this constitutional authority is Section 27, Rule 138 of the Rules of Court which gives this Court the power to remove or suspend a lawyer from the practice of law. The provision states:

> Section 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or **for a willful disobedience of any lawful order of a superior court**, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis supplied)

In imposing the penalty of disbarment upon Atty. Ediza, we are aware that the power to disbar is one to be exercised with great caution and only in clear cases of misconduct that seriously affect the standing and character of the lawyer as a legal professional and as an officer of the Court.[16] However, Atty. Ediza's stubborn attitude and unwillingness to comply with the Court's directives, which we deem to be an affront to the Court's authority over members of the Bar, warrant an utmost disciplinary sanction from this Court.

---

[13] *Supra* note 11, at 402.

[14] *Judge Necesario v. Dinglasa,* 556 Phil. 47, 51 (2007).

[15] See also *Palon, Jr. v. Judge Vallarta,* 546 Phil. 453 (2007).

[16] *Tapucar v. Tapucar,* 355 Phil. 66, 74 (1998).

The practice of law is not a vested right but a privilege, a privilege clothed with public interest because a lawyer owes substantial duties not only to his client, but also to his brethren in the profession, to the courts, and to the nation, and takes part in one of the most important functions of the State — the administration of justice — as an officer of the court.[17] To enjoy the privileges of practicing law, lawyers must adhere to the rigid standards of mental fitness, maintain the highest degree of morality, and faithfully comply with the rules of the legal profession.[18] Clearly, Atty. Ediza's conduct has made him unfit to remain in the legal profession.

WHEREFORE, respondent Atty. Roy Prule Ediza, having violated the Code of Professional Responsibility by committing grave misconduct and willful insubordination, is **DISBARRED** and his name ordered STRICKEN OFF the Roll of Attorneys effective immediately.

Let a copy of this Decision be entered in the records of respondent. Further, let other copies be served on the Integrated Bar of the Philippines and on the Office of the Court Administrator, which is directed to circulate them to all the courts in the country for their information and guidance.

This Decision is immediately executory.

SO ORDERED.

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

Brion, J., on leave.

Caguioa, J., on official leave.

---

[17] *In the Matter of the IBP Membership Dues Delinquency of Atty. Marcial A. Edillon,* 174 Phil. 55, 62 (1978).

[18] *Foronda v. Atty. Guerrero,* 516 Phil. 1, 3 (2006).

EN BANC

[A.C. No. 7594. February 9, 2016]

ADELPHA E. MALABED, *complainant, vs.* **ATTY. MELJOHN B. DE LA PEÑA,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; GROSS MISCONDUCT; MISREPRESENTATION, USING IMPROPER LANGUAGE IN PLEADINGS AND WILLFUL DEFIANCE WITH THE COURT'S PROHIBITION ON REEMPLOYMENT IN ANY GOVERNMENT OFFICE AS AN ACCESSORY PENALTY FOR DISMISSAL AS A JUDGE COLLECTIVELY AMOUNT TO GROSS MISCONDUCT; PENALTY IS SUPENSION FROM THE PRACTICE OF LAW FOR TWO (2) YEARS.— In sum, respondent committed gross misconduct for (l) misrepresenting that he submitted a certificate to file action issued by the Lupon Tagapamayapa when in fact there was none prior to the institution of the civil action of his client, Fortunato Jadulco, in Civil Case No. B-1118; (2) using improper language in his pleadings; and (3) defying willfully the Court's prohibition on reemployment in any government office as accessory penalty of his dismissal as a judge. Gross misconduct is defined as "improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not a mere error in judgment." x x x In view of respondent's repeated gross misconduct, we increase the IBP's recommended penalty to suspension from the practice of law for two (2) years.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is an administrative complaint filed by Adelpha E. Malabed (complainant) against Atty. Meljohn B. De la Peña (respondent) for dishonesty and grave misconduct.

The Facts

In her Complaint[1] dated 7 August 2007, complainant charged respondent with dishonesty for "deliberately and repeatedly making falsehood" that "misled the Court." First, complainant claimed that the Certificate to File Action in the complaint filed by respondent refers to a different complaint, that is the complaint filed by complainant's brother against Fortunato Jadulco. In effect, there was no Certificate to File Action, which is required for the filing of a civil action, in the complaint filed by respondent on behalf of his client Fortunato Jadulco.

Second, complainant alleged that respondent did not furnish her counsel with a copy of the free patent covered by Original Certificate of Title (OCT) No. 1730, but respondent forwarded a copy to the Court of Appeals. Complainant claimed that she could not properly defend herself without a copy of the title. She further claimed that the title presented by respondent was fabricated. To support such claim, complainant presented Certifications from the Department of Environment and Natural Resources (DENR) and the Registry of Deeds in Naval, Biliran, allegedly confirming that there is no file in their offices of OCT No. 1730.

Complainant also alleged that respondent was guilty of conflict of interest when he represented the occupants of the lot owned by complainant's family, who previously donated a parcel of land to the Roman Catholic Church, which deed of donation respondent notarized.

Complainant further accused respondent of conniving with Regional Trial Court (RTC), Naval, Biliran, Branch 16 Judge Enrique C. Asis, who was his former client in an administrative case, to rule in his clients' favor. Complainant narrated the outcomes in the "cases of Estrellers which were filed in the [Municipal Circuit Trial Court (MCTC)] and reversed by the RTC, in the exercise of its appellate jurisdiction to favor respondent x x x and his client[s] x x x."

---

[1] *Rollo,* pp. 2-7.

Complainant charged respondent with grave misconduct when he defied the accessory penalty of his dismissal as a judge. Respondent worked as Associate Dean and Professor of the Naval Institute of Technology (NIT) – University of Eastern Philippines College of Law, which is a government institution, and received salaries therefor, in violation of the accessory penalty of dismissal which is his perpetual disqualification from reemployment in any government office.

In his Comment[2] dated 16 December 2007, respondent basically denied the charges against him. Respondent alleged that "the [Certificate to File Action] he used when he filed Civil Case No. [B-] 1118 for quieting of title before the Regional Trial Court, Branch 16, Naval, Biliran was the certification of Lupon Chairman, the late Rodulfo Catigbe, issued on May 9, 2001."[3]

Respondent also claimed that the free patent title was attached to the folio of the records in Civil Case No. B-1118 and he furnished a copy of the same to complainant's counsel. Assuming opposing counsel was not furnished, respondent wondered why he raised this matter only upon filing of the instant complaint.

Respondent argued that notarization of the deed of donation had no relation to the case filed against the occupants of the lot. Respondent likewise stressed that the matter regarding Judge Asis's rulings favorable to his clients should be addressed to Judge Asis himself.

As regards the charge of grave misconduct for defying the accessory penalty of dismissal from the service, respondent admitted that he accepted the positions of Associate Dean and Professor of the NIT – University of Eastern Philippines College of Law, which is a government institution. However, respondent countered that he was no longer connected with the NIT College of Law; and thus, this issue had become moot. Respondent further claimed that his designation as Assistant Dean was only temporary, and he had not received any salary

---

[2] *Id*. at 171-184.

[3] *Id*. at 176.

except honorarium. Respondent stated that he even furnished the Office of the Bar Confidant (OBC) and the MCLE Office a copy of his designation as Associate Dean, and since there were no objections, he proceeded to perform the functions appurtenant thereto. He likewise submitted an affidavit from Edgardo Garcia, complainant in the administrative case against him, who interposed no objection to his petition for judicial clemency filed before this Court.

Complainant filed a Reply-Affidavit[4] on 22 January 2008. Respondent filed a Rejoinder to Reply[5] on 20 February 2008. Complainant filed a Sur- rejoinder to the Rejoinder to Reply[6] on 20 February 2008. All these submissions basically reiterated the respective arguments of the parties and denied each other's allegations.

The Ruling of the IBP

In his Report and Recommendation,[7] Integrated Bar of the Philippines (IBP) Commissioner Norberto B. Ruiz noted the foul language used by respondent in his pleadings submitted before the IBP. Respondent described complainant's counsel as "silahis" and accused complainant of "cohabiting with a married man x x x before the wife of that married man died." According to the IBP Commissioner, such offensive language "[is a] clear manifestation[] of respondent's gross misconduct that seriously affect his standing and character as an officer of the court."

With respect to the charges of dishonesty and grave misconduct, the IBP Commissioner found that respondent is guilty of the same "as evidenced by the numerous documents attached by complainant in all the pleadings she has submitted." Respondent committed acts of dishonesty and grave misconduct (1) for using a Certificate to File Action which was used

---

[4] *Id*. at 245-248.

[5] *Id*. at 266-272.

[6] *Id*. at 283-287.

[7] *Id*. at 583-591.

in a complaint filed by complainant's brother Conrado Estreller against Fortunato Jadulco, who is respondent's client; (2) for not furnishing complainant's counsel with a copy of the free patent covered by OCT No. 1730 which was attached to the Comment respondent filed with the Court of Appeals; and (3) for accepting the positions of Associate Dean and Professor of the NIT – University of Eastern Philippines College of Law and receiving salaries therefor, in violation of the accessory penalty of prohibition on reemployment in any government office as a result of his dismissal as a judge.

The IBP Commissioner recommended that respondent be suspended from the practice of law for one year.[8]

On 28 October 2011, the IBP Board of Governors issued a Resolution adopting the IBP Commissioner's recommendation. The Resolution reads:

> RESOLUTION NO. XX-2011-137
> Adm. Case No. 7594
> Adelpha E. Malabed vs.
> Atty. Meljohn De La Peña
>
> RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner in 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 finding Respondent guilty of dishonesty and grave misconduct, Atty. Meljohn B. De La Peña is hereby SUSPENDED from the practice of law for one (1) year.[9]

The Issue

The sole issue in this case is whether respondent is guilty of dishonesty and grave misconduct.

The Ruling of the Court

Respondent is guilty of gross misconduct.

---

[8] *Id.* at 591.

[9] *Id.* at 582.

Using foul language in pleadings

In his Comment, respondent called complainant's counsel "silahis by nature and complexion"[10] and accused complainant of "cohabiting with a married man x x x before the wife of that married man died."[11] In his Rejoinder, respondent maintained that such language is not foul, but a "dissertation of truth designed to debunk complainant's and her counsel's credibility in filing the administrative case."[12]

We are not convinced. Aside from such language being inappropriate, it is irrelevant to the resolution of this case. While respondent is entitled and very much expected to defend himself with vigor, he must refrain from using improper language in his pleadings. In *Saberon v. Larong,*[13] we stated:

> x x x [W]hile a lawyer is entitled to present his case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language. Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, illuminating but not offensive.
>
> On many occasions, the Court has reminded members of the Bar to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged. In keeping with the dignity of the legal profession, a lawyers language even in his pleadings must be dignified.

For using improper language in his pleadings, respondent violated Rule 8.01 of Canon 8 of the Code of Professional Responsibility which states:

> Rule 8.01 - A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

---

[10] *Id*. at 174.

[11] *Id*. at 176.

[12] *Id*. at 267.

[13] 574 Phil. 510, 517 (2008). Citations omitted.

Non-submission of certificate to file action

The submission of the certificate to file action, which evidences the non-conciliation between the parties in the barangay, is a pre-condition for the filing of a complaint in court.[14] Complainant claims that there is no such certificate in the complaint filed by respondent on behalf of Fortunato Jadulco, et al. Instead, what respondent submitted was the certificate to file action in the complaint filed by complainant's brother, Conrado Estreller, against Fortunato Jadulco.[15]

Respondent counters that what he used "when he filed Civil Case No. [B-] 1118 for Quieting of Title, etc. x x x was the certification x x x issued on May 9, 2001, x x x."

Based on the records, the complaint for quieting of title in Civil Case No. B-1118 was filed with the RTC on 18 October 2000. The Certificate of Endorsement, which respondent claimed was the certificate to file action he used in Civil Case No. B-1118, was issued on 9 May 2001, or after the filing of the complaint on 18 October 2000. It is apparent that the Certificate of Endorsement did not exist yet when the complaint in Civil Case No. B-1118 was filed. In other words, there is no truth to respondent's allegation that the subject matter of Civil Case No. B-1118 was brought before the Lupon Tagapamayapa and that a certificate to file action was issued prior to the filing of the complaint. Clearly, respondent misrepresented that he filed a certificate to file action when there was none, which act violated Canon 10, Rule 10.01, and Rule 10.02 of the Code of Professional Responsibility, to wit:

CANON 10. A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01 - A lawyer shall not do any falsehood; nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice.

---

[14] Section 412, Republic Act No. 7160 or the Local Government Code of 1991.

[15] *Rollo,* p. 22.

Rule 10.02 - A lawyer shall not knowingly misquote or misrepresent the contents of a paper, x x x.

Failure to furnish opposing counsel with copy of title

With regard to respondent's alleged act of not furnishing complainant's counsel with a copy of the free patent title, we find that it does not constitute dishonesty.

Admittedly, the Court of Appeals was furnished a copy of OCT No. 1730, which means that a copy of the title exists. There is no showing that respondent deliberately did not furnish complainant's counsel with a copy of the title. The remedy of complainant should have been to file with the Court of Appeals a motion to furnish complainant or counsel with a copy of the title so she and her counsel could examine the same.

Moreover, whether OCT No. 1730 is fabricated, as complainant alleges, is a question of fact demanding an examination of the parties' respective evidence. Obviously, this matter falls outside the scope of this administrative case, absent any clear and convincing proof that respondent himself orchestrated such fabrication. The DENR and Registry of Deeds certifications do not prove that respondent manufactured OCT No. 1730. Such documents merely confirm that OCT No. 1730 does not exist in their official records.

Conflict of interest

Complainant accuses respondent of conflict of interest when the latter allegedly notarized a deed of donation of a parcel of land executed by complainant's family in favor of the Roman Catholic Church. Eventually, respondent allegedly sought to litigate as counsel for the opposing parties who are occupants in the lot owned by complainant's family.

Suffice to state that notarization is different from representation. A notary public simply performs the notarial acts authorized by the Rules on Notarial Practice, namely, acknowledgments, oaths and affirmations, jurats, signature witnessings, and copy certifications. Legal representation, on the other hand, refers to the act of assisting a party as counsel in a court action.

As regards complainant's serious accusations against respondent of conniving with Judge Asis and conspiring with the latter to render judgments favorable to respondent's clients, such are bare allegations, without any proof. Complainant simply narrated the outcomes of the proceedings in Civil Case Nos. 1017, 860 and 973, which were filed by the Estrellers in the MCTC and reversed by the RTC. Complainant conveniently failed to present any concrete evidence proving her grave accusation of conspiracy between respondent and Judge Asis. Moreover, charges of bias and partiality on the part of the presiding judge should be filed against the judge, and not against the counsel allegedly favored by the judge.

Violation of prohibition on reemployment in government office

In our 9 February 1994 Resolution,[16] we dismissed respondent as Acting Judge of Municipal Trial Court of Naval, Leyte and Presiding Judge of the Municipal Circuit Trial Court of Caibiran-Culaba, Leyte for partiality, with prejudice to reappointment to any public office, including government-owned or controlled corporations.

There is no dispute that respondent knows full well the consequences of his dismissal as a judge, one of which is the accessory penalty of perpetual disqualification from reemployment in any government office, including government-owned or controlled corporations. Despite being disqualified, respondent accepted the positions of Associate Dean and Professor of NIT-College of Law, a government institution, and received compensation therefor.

Respondent alleges that his designation was only temporary, and "no fixed salary was attached to his designation except for honorarium." Respondent also claims that he furnished a copy of his designation to the OBC and MCLE office as a "gesture of x x x respect, courtesy and approval from the Supreme Court." He further avers that complainant in the administrative case against him (as a judge) posed no objection to his petition for clemency.

---

[16] A.M. No. MTJ-92-687, 9 February 1994, 229 SCRA 766.

Respondent's contentions are untenable. The prohibition on reemployment does not distinguish between permanent and temporary appointments. Hence, that his designation was only temporary does not absolve him from liability. Further, furnishing a copy of his designation to the OBC and MCLE office does not in any way extinguish his permanent disqualification from reemployment in a government office. Neither does the fact that complainant in his previous administrative case did not object to his petition for clemency.

In view of his disqualification from reemployment in any government office, respondent should have declined from accepting the designation and desisted from performing the functions of such positions.[17] Clearly, respondent knowingly defied the prohibition on reemployment in a public office imposed upon him by the Court.

In *Santeco v. Avance,*[18] where respondent lawyer "willfully disobeyed this Court when she continued her law practice despite the five-year suspension order," the Court held that failure to comply with Court directives constitutes gross misconduct, insubordination or disrespect which merits a lawyer's suspension or even disbarment.

Gross Misconduct

In sum, respondent committed gross misconduct for (l) misrepresenting that he submitted a certificate to file action issued by the Lupon Tagapamayapa when in fact there was none prior to the institution of the civil action of his client, Fortunato Jadulco, in Civil Case No. B-1118; (2) using improper language in his pleadings; and (3) defying willfully the Court's prohibition on reemployment in any government office as accessory penalty of his dismissal as a judge. Gross misconduct is defined as "improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden

---

[17] See *Lingan v. Calubaquib,* A.C. No. 5377, 30 June 2014,727 SCRA 341.

[18] 659 Phil. 48 (2011).

act, a dereliction of duty, willful in character, and implies a wrongful intent and not a mere error in judgment."[19]

Under Section 27, Rule 138 of the Rules of Court, gross misconduct is a ground for disbarment or suspension from the practice of law.

> SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

In view of respondent's repeated gross misconduct, we increase the IBP's recommended penalty to suspension from the practice of law for two (2) years.

WHEREFORE, we find respondent Atty. Meljohn B. De la Peña **GUILTY** of gross misconduct and accordingly **SUSPEND** him from the practice of law for two (2) years with a WARNING that the commission of the same or similar act or acts shall be dealt with more severely.

Let copies of this Decision be furnished the Integrated Bar of the Philippines, the Office of the Bar Confidant, and all courts in the Philippines for their information and guidance.

SO ORDERED.

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

---

[19] *Sosa v. Mendoza,* A.C. No. 8776, 22 March 2015, citing *Santos, Sr. v. Atty. Beltran,* 463 Phil. 372 (2003), further citing *Spouses Whitson v. Atienza,* 457 Phil. 11 (2003).

Brion, J., on leave.

Caguioa, J., on official leave.

FIRST DIVISION

[A.M. No. P-15-3300. February 10, 2016]
(Formerly OCA I.P.I. No.12-4011-P)

JOSEPHINE E. LAM, *complainant, vs.* **NILA M. GARCIA, JUNIOR PROCESS SERVER, MUNICIPAL TRIAL COURT, SIATON, NEGROS ORIENTAL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SIMPLE DISCOURTESY AND CONDUCT UNBECOMING A COURT EMPLOYEE, COMMITTED; QUARRELING WITH A CO-EMPLOYEE BEFORE THE PUBLIC OR WITHIN THE PREMISES AND DURING OFFICE HOURS IS PREJUDICIAL TO PUBLIC SERVICE.— Court employees are supposed to be well-mannered, civil, and considerate in their actuations, both in their relations with co-workers and the transacting public. Boorishness, foul language and any misbehavior in court premises diminishes its sanctity and dignity. Any fighting or misunderstanding between and among court personnel becomes a disgraceful sight reflecting adversely on the good image of the judiciary. Professionalism, respect for the rights of others, good manners, and right conduct are expected of all judicial officers and employees. Quarreling with a co-employee, especially when done before the public or within the premises and during office hours, is prejudicial to public service. An employee of the judiciary is expected to accord respect for the person and rights of others at all times, and that his every act

and word should be characterized by prudence, restraint, courtesy and dignity. Government service is people oriented where high strung and belligerent behavior cannot be allowed. No matter the court employee's motives may be, as a public officer, courtesy should be his policy. A court employee is expected to do no more than what duty demands and no less than what privilege permits. Garcia evidently failed to act in accordance with the strict and high standards for court employees. Garcia should have observed courtesy, civility, and self-restraint in her dealings with Lam, who was not only her co-employee, but as Clerk of Court II, was Garcia's superior. Given the circumstances, Garcia could have simply approached Lam and calmly and politely asked for the reason as to why her DTR entries were modified; there was utterly no need for Garcia to raise her voice and use insulting and offensive words against Lam.

2. ID.; ID.; ID.; ID.; PENALTY; THE COURT DEEMS IT SUFFICIENT TO REPRIMAND RESPONDENT.— Under Rule 10, Section 46(F)(1) of the Revised Rules on Administrative Cases in the Civil Service, simple discourtesy in the course of official duties is a light offense punishable with reprimand for the first offense, and suspension of one (1) day to thirty (30) days for the second offense. Taking into account that Garcia had rendered 48 years of continuous service to the Government, that she already compulsorily retired on September 19, 2014, and that as a retiree, she would be mostly relying financially on her retirement benefits, the Court agrees with OCA that it is already sufficient penalty to reprimand Garcia for her administrative infraction.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

The instant administrative matter arose from an Amended Letter- Complaint[1] dated October 12, 2012 of Josephine E. Lam (Lam), Clerk of Court II of the Municipal Trial Court (MTC) of Siaton, Negros Oriental, charging Nila M. Garcia (Garcia), Process Server of the same court, with insubordination and conduct unbecoming a court employee.

[1] *Rollo,* p. 2.

Lam alleged in her Letter that on October 2, 2012, at around 2:20 in the afternoon, Garcia was scanning the Office Logbook so that she could copy the entries to her Daily Time Record (DTR), when she said out aloud to Lam, *"Pin! Buang Ka! Yawa Ka! Nganong imo kong gibotangan ug absent? Gasunod sunod pa gud. Paghulat ug akoy mabotang!* Disabled!" ("Pin, you are stupid/foolish! You devil! Why did you mark me absent for consecutive days? Wait until I would be the one to write! Disabled!") Lam replied, *"Ngano mang dili tikaw botangan ug absent diha nga wala man ka nitungha?"*("Why should I not mark you absent when in fact you were not around?") Garcia then continued to hurl abusive words against Lam, loud enough for their co-employees to hear. Lam ended up just entering the Judge's chambers, crying. Garcia had similar outbursts in the past, but Lam let them pass in the hope that Garcia would eventually realize her mistakes.

Attached to Lam's Letter was a Joint Affidavit[2] dated October 18, 2012 executed by Merla M. Kitane and Bernadine B. Ragay (Ragay), Interpreter I and Utility Worker I, respectively, of MTC, Siaton, Negros Oriental, essentially recounting the same incident.

In her Comment and Answer,[3] Garcia denied Lam's charges against her and insisted that what happened between her and Lam was a mere misunderstanding. According to Garcia, she merely called Lam's attention as Lam maliciously modified Garcia's DTR without notice. Garcia recalled that upon checking her DTR, she noticed that Lam erased some entries in said DTR and superimposed on said entries the word "ABSENT." Garcia explained that she felt insulted and humiliated by what Lam had done, not only because the DTRs were the employees' personal property, but also because it had always been a practice in their office that only the employees themselves are allowed to fill out or make changes to their respective DTRs. Garcia further admitted that upon her discovery of the modifications in her DTR, she confronted and raised her voice at Lam, but denied demeaning or insulting Lam.

---

[2] *Id*. at 6.

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

On November 7, 2014, the Office of the Court Administrator (OCA) submitted its Report with the following recommendations:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

1. The instant administrative complaint against respondent Nila M. Garcia, Junior Process Server, Municipal Trial Court, Siaton, Negros Oriental, be RE-DOCKETED as a regular administrative matter; and

2. Respondent Garcia be found GUILTY of simple discourtesy and conduct unbecoming a court employee; and

3. Respondent Garcia be REPRIMANDED, with a STERN WARNING that the commission of the same in the future shall be dealt with more severely.[4]

In compliance with the Resolution[5] issued by the Court on February 11, 2015, the parties submitted their respective Manifestations[6] stating that that they were already submitting the case for resolution based on the pleadings filed.

The Court adopts the findings and recommendations of the OCA.

Lam charges Garcia with insubordination. "Insubordination" refers to willful or intentional disregard of some lawful and reasonable instructions of the employer.[7] The Court, though, does not perceive "insubordination" as the proper charge against Garcia. There is no showing that any of Garcia's superiors instructed her to make specific entries in her DTR, which she willfully or intentionally refused to follow.

---

[4] *Id*. at 16-17.

[5] *Id*. at 18.

[6] *Id*. at 24, 26.

[7] *Re: Request of Mr. Melito E. Cuadra, Process Server, RTC, Branch 100, Quezon City to the RTC, Branch 18, Tagaytay City,* 499 Phil. 109, 114 (2005).

From the records, it appears that Garcia, upon discovering that the entries in her DTR were modified by Lam, complained loudly against Lam, using insulting and offensive words. For this, Garcia must be administratively sanctioned for simple discourtesy and conduct unbecoming a court employee.

Time and again, the Court has stressed that the conduct and behavior of employees in the judiciary, particularly those in the first and second level courts, are circumscribed by the rules on proper and ethical standards. The nature and responsibilities of men and women in the judiciary, as defined in different canons of conduct, are neither mere jargons nor idealistic sentiments, but working standards and attainable goals that should be matched with actual deeds. No less than self-restraint and civility are at all times expected from court employees. Their conduct, particularly when they are within court premises, must always be characterized by propriety and decorum. Stated a bit differently, they should avoid any act or behavior that would diminish public trust and confidence in the courts. Court employees are supposed to be well-mannered, civil, and considerate in their actuations, both in their relations with co-workers and the transacting public. Boorishness, foul language and any misbehavior in court premises diminishes its sanctity and dignity.[8]

Any fighting or misunderstanding between and among court personnel becomes a disgraceful sight reflecting adversely on the good image of the judiciary. Professionalism, respect for the rights of others, good manners, and right conduct are expected of all judicial officers and employees.[9]

Quarreling with a co-employee, especially when done before the public or within the premises and during office hours, is prejudicial to public service. An employee of the judiciary is expected to accord respect for the person and rights of others at all times, and that his every act and word should be characterized by prudence, restraint, courtesy and dignity.

---

[8] *De Vera, Jr. v. Rimando,* 551 Phil. 471, 477-478 (2007).

[9] *Office of the Court Administrator v. Caya,* 635 Phil. 211, 219 (2010).

Government service is people oriented where high strung and belligerent behavior cannot be allowed. No matter the court employee's motives may be, as a public officer, courtesy should be his policy. A court employee is expected to do no more than what duty demands and no less than what privilege permits.[10]

Garcia evidently failed to act in accordance with the strict and high standards for court employees. Garcia should have observed courtesy, civility, and self-restraint in her dealings with Lam, who was not only her co-employee, but as Clerk of Court II, was Garcia's superior. Given the circumstances, Garcia could have simply approached Lam and calmly and politely asked for the reason as to why her DTR entries were modified; there was utterly no need for Garcia to raise her voice and use insulting and offensive words against Lam.

Under Rule 10, Section 46(F)(1) of the Revised Rules on Administrative Cases in the Civil Service, simple discourtesy in the course of official duties is a light offense punishable with reprimand for the first offense, and suspension of one (1) day to thirty (30) days for the second offense. Taking into account that Garcia had rendered 48 years of continuous service to the Government, that she already compulsorily retired on September 19, 2014, and that as a retiree, she would be mostly relying financially on her retirement benefits, the Court agrees with OCA that it is already sufficient penalty to reprimand Garcia for her administrative infraction.

WHEREFORE, respondent Nila M. Garcia is hereby **REPRIMANDED** for simple discourtesy and conduct unbecoming a court employee. Let the balance of respondent's retirement benefits be forthwith released to her unless there are other pending administrative cases against her.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Perlas-Bernabe, and *Jardeleza, JJ.,* concur.

---

[10] *Macalua v. Tiu, Jr.,* 341 Phil. 317, 323 (1997).

THIRD DIVISION

[OCA IPI No. 13-4148-P. February 10, 2016]

SPS. JOSE AND MELINDA CAILIPAN, *complainants, vs.* **LORENZO O. CASTAÑEDA, Sheriff IV, Regional Trial Court, Branch 96, Quezon City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; NOT AUTHORIZED TO RECEIVE DIRECT PAYMENTS FROM A WINNING PARTY; APPROPRIATING FOR HIMSELF THE MONEY RECEIVED FROM THE PARTIES CONSTITUTES MISCONDUCT.— It is clear from the enumeration that sheriffs are not authorized to receive direct payments from a winning party. Any amount to be paid for the execution of the writ should be deposited with the Clerk of Court and it would be the latter who shall release the amount to the executing sheriff. The amount deposited should be spent entirely for the execution only and any remainder of the amount should be returned. It is evident that respondent sheriff is guilty of misconduct when he appropriated for himself the money he received from complainants, purportedly as "full payment" for the enforcement of the writ of execution. He never denied the authenticity of his handwritten acknowledgement receipt showing that he received from complainants the amount of ₱70,000.00. He simply argued that he was "hoodwinked" by complainants to acknowledge the amount supposedly for liquidation purposes. Other than his vague explanation, there was no accounting of the amount he admitted to have received. In fact, there was also no showing that a liquidation was prepared and submitted to the court as required under the rules. Even if complainants were amenable to the amount requested or that the money was given voluntarily, such would not absolve respondent sheriff from liability because of his failure to secure the court's prior approval. We held in *Bernabe v. Eguia* that acceptance of any other amount is improper, even if it were to be applied for lawful purposes. Good faith on the part of the sheriff, or lack of it, in proceeding to properly

execute its mandate would be of no moment, for he is chargeable with the knowledge that being the officer of the court tasked therefore, it behooves him to make due compliances. In the implementation of the writ of execution, only the payment of sheriff's fees may be received by sheriffs. They are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service because even assuming *arguendo* that such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. In fact, even "reasonableness" of the amounts charged, collected and received by the sheriff is not a defense where the procedure laid down in Section 10, Rule 141 of the Rules of Court has been clearly ignored. The rules on sheriff's expenses are clear-cut and do not provide procedural shortcuts. A sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps, otherwise, it would amount to dishonesty and extortion. And any amount received in violation of Section 10, Rule 141 constitutes unauthorized fees.

2. ID.; ID.; ID.; ID.; IT IS MINISTERIAL DUTY OF THE SHERIFF TO IMMEDIATELY IMPLEMENT THE WRIT UNLESS RESTRAINED BY A COURT ORDER; FAILURE OF THE SHERIFF TO FOLLOW THE RULES IN THE IMPLEMENTATION OF THE COURT ORDERS AND WRITS, TO PROMPTLY EXECUTE THE JUDGMENTS AND TO ACCOMPLISH THE REQUIRED REPORTS AMOUNT TO GROSS NEGLECT AND GROSS INEFFICIENCY IN THE PERFORMANCE OF OFFICIAL DUTIES.— Respondent sheriff is likewise accused of delaying the implementation of the writ of execution. In the implementation of writs, sheriffs are mandated to follow the procedure under Section 14, Rule 39 of the Rules x x x Respondent sheriff did not provide any explanation why it took him more or less six (6) months to implement the writ. Such leads us to conclude that he was waiting for money from the complainants. His act of stalling the implementation of the writ of execution unless and until complainants give him money unfairly portrayed court personnel as languorous workers driven to act only when money is handed over, like

token-operated machines. We held in *Mendoza v. Tuquero* that sheriffs have no discretion on whether or not to implement a writ. There is no need for the litigants to "follow-up" its implementation. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgments is not unduly delayed. Respondent sheriff's failure to immediately implement the writ gives rise to the presumption that he was waiting for financial considerations from the winning party. We have previously ruled that failure of the sheriff to carry out what is a purely ministerial duty, to follow well-established rules in the implementation of court orders and writs, to promptly undertake the execution of judgments, and to accomplish the required periodic reports, constitutes gross neglect and gross inefficiency in the performance of official duties.

3. ID.; ID.; ID.; ID.; PENALTY FOR GROSS MISCONDUCT IS DISMISSAL FROM THE SERVICE WITH PREJUDICE TO REEMPLOYMENT IN ANY GOVERNMENT AGENCY.— Having tarnished the good image of the judiciary, we would not have allowed him to stay a minute longer in the service. But as fate would have it, respondent sheriff was earlier dismissed from the service in A.M. No. P-11-3017 dated 16 June 2015. He, together with his co-respondent, were found and declared by this Court guilty of gross misconduct. They were dismissed from the service, with prejudice to re-employment in any government agency, including government-owned or government-controlled corporations, and with forfeiture of all retirement benefits, except accrued leave credits.

D E C I S I O N

PEREZ, *J.*:

For this Court's resolution is the letter-complaint[1] dated 8 August 2013 filed by Spouses Jose N. Cailipan and Melinda M. Cailipan (complainants) charging Lorenzo O. Castañeda

---

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

(respondent sheriff), Sheriff IV, Regional Trial Court (RTC), Branch 96, Quezon City with neglect of duty, abuse of authority, and violation of Republic Act (R.A.) No. 3019 in connection with his alleged anomalous implementation of the Writ of Execution issued in Civil Case No. 40187 for unlawful detainer.

Complainants are the plaintiffs in the unlawful detainer case filed before the Metropolitan Trial Court (MeTC), Quezon City. The case was docketed as Civil Case No. 40187. The case involves a parcel of land owned by complainants located at Matimtiman Street, Pinyahan, Quezon City. Erected on the property is a 3-unit residential apartment. The defendants are occupying one (1) of the units while the two (2) other units have long been vacant and locked.

On 2 June 2011,[2] the MeTC rendered a decision in favor of complainants, ordering the defendants and all persons claiming rights under their name to, among others, vacate the property subject matter of the case.

On appeal, the Regional Trial Court (RTC), Branch 96, Quezon City in a decision dated 9 December 2011 affirmed *in toto* the decision of the MeTC. On 4 December 2012, complainants' motion for issuance of writ of execution was granted. Consequently, on 31 January 2013, Branch Clerk of Court Atty. Rosemary B. Dela Cruz-Honrado issued a Writ of Execution[3] commanding respondent sheriff to cause the execution of the judgment.

In their complaint, the spouses alleged that despite their continuous request for respondent sheriff to act on the matter, the implementation of the writ of execution was delayed for six (6) months. It allegedly proceeded only when they gave respondent sheriff ₱70,000.00, as evidenced by a handwritten receipt[4] the latter issued, supposedly as expenses in the hiring of policemen who would assist him in the execution.

---

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

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

[4] *Id*. at 11.

According to complainants, their long-waited implementation of the writ of execution, however, turned out to be a farce, since respondent sheriff merely transferred the defendants and their relatives to the two (2) other vacant apartment units. Complainants allegedly learned also that not a single policeman assisted respondent sheriff during the implementation of the writ of execution. When they confronted respondent sheriff regarding the turn of events, the latter allegedly retorted, *"[B]asta ang tungkulin ko ay paalisin sita sa apartment unit* '*C*'." Complainants allegedly answered back, *"[D]apat pinalabas mo ang mga defendants sa bakuran ng aming apartment, at hindi mo dapat pinalipat sa aming 2 apartment units na nakakandado at bakante. Ang sama mong tao!"* [5]

The incident prompted complainants to file the instant administrative case against respondent sheriff praying that he be removed from the service and that he be compelled to return the embezzled ₱70,000.00, plus interest.

In its 1st Indorsement[6] dated 2 September 2013, the Office of the Court Administrator (OCA) referred the letter-complaint to respondent sheriff Castañeda for comment.

In his Explanation,[7] respondent sheriff denied the allegation that he instigated the defendants to transfer to the other units of the apartment. He insisted that the two (2) other units of the apartment were not vacant at the time he executed the writ. Further, he explained that the two (2) other units (Units 33-A and 33-B) were not included in the writ of execution as the writ merely stated "33-C Matimtiman St., Pinyahan, Quezon City." He admitted though that he belatedly obtained a copy of the Order dated 16 August 2013 (which directed Sheriff Pedro L. Borja to oust the defendants, et al., from the two remaining units of the apartment). He likewise denied the allegation that no policemen assisted him during the execution, saying that "a

---

[5] *Id*. at 2.

[6] *Id*. at 23.

[7] *Id*. at 24-25.

sheriff on his own volition can discreetly deploy policemen on standby for any untoward incident that may arise."

As to the money he received from complainants, respondent sheriff explained: "I was hoodwinked by Sps. Cailipan to acknowledge the amount because of their claim that this is for liquidation purposes for their office and will not be used in any other way; I am a trusting person not prone to persons with selfish motive." He further asserted that the complainants were hell-bent to discredit and harass him so he would succumb to their whims. He reported that the complainants also filed a criminal case against him before the Quezon City Prosecution Office.

In its report[8] dated 4 November 2014, the OCA found respondent sheriff liable for grave misconduct and for soliciting, accepting directly/indirectly any gift, gratuity, or anything of value in the course of official duty. It recommended that respondent sheriff be dismissed from the 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.

We agree with the findings of the OCA that respondent sheriff is administratively liable.

The duties of sheriffs in the implementation of writs are explicitly laid down in Section 10, Rule 141[9] of the Rules of Court, as amended, which reads:

> Sec. 10. Sheriffs, process servers and other persons serving processes.— x x x
>
> xxx xxx xxx
>
> With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, **the interested party**

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

[9] A.M. No. 04-2-04-SC dated 20 July 2004.

shall pay said expenses in an amount estimated by the sheriff, subject to approval of the court. Upon approval of said estimated expenses, the interested party shall deposit such amount with the clerk of court and ex-officio sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, the sheriff's expenses shall be taxed as cost against the judgment debtor. (Emphasis supplied)

The aforesaid rule enumerated the steps to be followed in the payment and disbursement of fees for the execution of a writ, to wit: (1) the sheriff must prepare and submit to the court an estimate of the expenses he would incur; (2) the estimated expenses shall be subject to court approval; (3) the approved estimated expenses shall be deposited by the interested party with the Clerk of Court, who is also the *ex-officio* sheriff; (4) the Clerk of Court shall disburse the amount to the executing sheriff; (5) the executing sheriff shall thereafter liquidate his expenses within the same period for rendering a return on the writ; and (6) any amount unspent shall be returned to the person who made the deposit.

It is clear from the enumeration that sheriffs are not authorized to receive direct payments from a winning party. Any amount to be paid for the execution of the writ should be deposited with the Clerk of Court and it would be the latter who shall release the amount to the executing sheriff. The amount deposited should be spent entirely for the execution only and any remainder of the amount should be returned.

It is evident that respondent sheriff is guilty of misconduct when he appropriated for himself the money he received from complainants, purportedly as "full payment" for the enforcement of the writ of execution. He never denied the authenticity of his handwritten acknowledgement receipt showing that he received from complainants the amount of ₱70,000.00. He simply argued that he was "hoodwinked" by complainants to acknowledge the

amount supposedly for liquidation purposes. Other than his vague explanation, there was no accounting of the amount he admitted to have received. In fact, there was also no showing that a liquidation was prepared and submitted to the court as required under the rules.

Even if complainants were amenable to the amount requested or that the money was given voluntarily, such would not absolve respondent sheriff from liability because of his failure to secure the court's prior approval. We held in *Bernabe v. Eguia*[10] that acceptance of any other amount is improper, even if it were to be applied for lawful purposes. Good faith on the part of the sheriff, or lack of it, in proceeding to properly execute its mandate would be of no moment, for he is chargeable with the knowledge that being the officer of the court tasked therefore, it behooves him to make due compliances. In the implementation of the writ of execution, only the payment of sheriff's fees may be received by sheriffs. They are not allowed to receive any voluntary payments from parties in the course of the performance of their duties. To do so would be inimical to the best interests of the service because even assuming *arguendo* that such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. In fact, even "reasonableness" of the amounts charged, collected and received by the sheriff is not a defense where the procedure laid down in Section 10,[11] Rule 141 of the Rules of Court has been clearly ignored.

The rules on sheriff's expenses are clear-cut and do not provide procedural shortcuts. A sheriff cannot just unilaterally demand sums of money from a party-litigant without observing the proper procedural steps, otherwise, it would amount to dishonesty and extortion.[12] And any amount received in violation of Section 10, Rule 141 constitutes unauthorized fees.

---

[10] 459 Phil. 97, 105 (2003).

[11] A.M. No. 04-2-04-SC.

[12] *Hofer v. Tan,* 555 Phil. 168, 180 citing *Tan v. Paredes,* 502 Phil. 305, 313 (2005).

In addition, respondent sheriff's receipt of ₱70,000.00 from complainants is a prohibited act under Section 2(b), Canon III of A.M. No. 03-06-13-SC (Code of Conduct for Court Personnel) which forbids court employees from receiving tips or other remuneration for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the judiciary. Although the Code is silent with respect to the penalties regarding the violation of its canons, the act of soliciting, accepting directly/indirectly any gift, gratuity, or anything of value in the course of official duty is considered as a grave offense under Section 46 (A)(10), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, punishable with outright dismissal even for the first offense.

Respondent sheriff is likewise accused of delaying the implementation of the writ of execution. In the implementation of writs, sheriffs are mandated to follow the procedure under Section 14, Rule 39 of the Rules, which reads:

SEC. 14. *Return of writ of execution.* The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

Respondent sheriff did not provide any explanation why it took him more or less six (6) months to implement the writ. Such leads us to conclude that he was waiting for money from the complainants. His act of stalling the implementation of the writ of execution unless and until complainants give him money unfairly portrayed court personnel as languorous workers driven to act only when money is handed over, like token-operated

machines. We held in *Mendoza v. Tuquero*[13] that sheriffs have no discretion on whether or not to implement a writ. There is no need for the litigants to "follow-up" its implementation. When writs are placed in their hands, it is their ministerial duty to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. Unless restrained by a court order, they should see to it that the execution of judgments is not unduly delayed.[14] Respondent sheriff's failure to immediately implement the writ gives rise to the presumption that he was waiting for financial considerations from the winning party. We have previously ruled that failure of the sheriff to carry out what is a purely ministerial duty, to follow well-established rules in the implementation of court orders and writs, to promptly undertake the execution of judgments, and to accomplish the required periodic reports, constitutes gross neglect and gross inefficiency in the performance of official duties.[15]

As a final note, it cannot be over-emphasized that sheriffs are ranking officers of the court. They play an important part in the administration of justice— execution being the fruit and end of the suit, and the life of the law. In view of their exalted position as keepers of the faith, their conduct should be geared towards maintaining the prestige and integrity of the court.[16] Respondent sheriff failed to live up to this standard.

Having tarnished the good image of the judiciary, we would not have allowed him to stay a minute longer in the service. But as fate would have it, respondent sheriff was earlier dismissed from the service in A.M. No. P-11-3017 dated 16 June 2015.[17] He, together with his co-respondent, were found

---

[13] 412 Phil. 435, 441 (2001).

[14] *Lacambra, Jr. v. Perez,* 580 Phil. 33, 39 (2008).

[15] *Anico v. Pilipiña,* 670 Phil. 460, 470 (2011).

[16] *Escobar vda. de Lopez v. Luna,* 517 Phil. 467, 477 (2006).

[17] *Anonymous Letter Against Aurora C. Castaneda, Clerk III, RTC, Branch 224, Quezon City, and Lorenzo Castañeda, Sheriff IV, RTC, Branch 96, Quezon City.*

and declared by this Court guilty of gross misconduct. They were dismissed from the service, with prejudice to re-employment in any government agency, including government-owned or government-controlled corporations, and with forfeiture of all retirement benefits, except accrued leave credits.

As regards the request for the return of the amount given by complainants to respondent sheriff plus its interest, the amount should be returned under pain of contempt.

WHEREFORE, in the light of the foregoing, the instant administrative complaint against Lorenzo O. Castañeda, Sheriff IV, Regional Trial Court (RTC), Branch 96, Quezon City, having been mooted by the earlier dismissal of respondent in A.M. No. P-11-3017 dated 16 June 2015, is hereby considered **CLOSED** and **TERMINATED.** Let a copy of this decision be attached to his records.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Reyes,* and *Jardeleza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 170192. February 10, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiffs-appellees, vs.* **MARISSA BAYKER,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; MIGRANT WORKERS' ACT (R.A. 8042); ILLEGAL RECRUITMENT COMMITTED IN LARGE

SCALE; ELEMENTS, PRESENT.— Illegal recruitment is committed by a person who: (a) undertakes any recruitment activity defined under Article 13 (b) or any prohibited practice enumerated under Article 34 and Article 38 of the *Labor Code*; and (b) does not have a license or authority to lawfully engage in the recruitment and placement of workers. It is committed in large scale when it is committed against three or more persons individually or as a group. The CA properly affirmed the conviction of the accused-appellant by the RTC for illegal recruitment committed in large scale because she had committed acts of recruitment against at least three persons (namely: Canizares, Dahab, and Miparanum) despite her not having been duly licensed or authorized by the Philippine Overseas Employment Administration (POEA) for that purpose.

2. ID.; ID.; ID.; VERY LIMITED PARTICIPATION OF THE ACCUSED IN THE RECRUITMENT PROCESS CANNOT ABSOLVE HER FROM CRIMINAL LIABILITY.— The accused-appellant's insistence on her very limited participation in the recruitment of the complainants did not advance or help her cause any because the State established her having personally promised foreign employment either as hotel porters or seafarers to the complainants despite her having no license or authority to recruit from the POEA. The records made it clear enough that her participation was anything but limited, for she herself had accompanied them to their respective medical examinations at their own expense. In addition, she herself brought them to GNB Marketing and introduced them to her co-accused. x x x The accused-appellant's denial of her participation in the illegal recruitment activities of Bermudez and Langreo did not gain traction from her charging her co-accused with the sole responsibility for the illegal recruitment of the complainants. Based on the testimonial narration of the complainants regarding their recruitment, she was unqualifiedly depicted as having the primary and instrumental role in recruiting them for overseas placement from the inception. Also, her claim of having been only casually associated with GNB Marketing did not preclude her criminal liability for the crimes charged and proved. Even the mere employee of a company or corporation engaged in illegal recruitment could be held liable, along with the employer, as a principal in illegal recruitment once it was shown that he had actively and consciously participated in illegal recruitment.

This is because recruitment and placement include any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, as well as referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not.

3. ID.; ID.; ID.; PROPER PENALTY IS LIFE IMPRISONMENT AND FINE OF ₱500,000.— The penalty for illegal recruitment committed in large scale, pursuant to Section 7(b) of Republic Act No. 8042 (*Migrant Workers' Act*), is life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00. In light of the provision of the law, the CA patently erred in reducing the fine to ₱100,000.00. Hence, we hereby increase the fine to ₱500,000.00.

4. REMEDIAL LAW; EVIDENCE; RECANTATION; WITNESS' SUPPOSED RECANTATION AFTER HE LODGED HIS COMPLAINT AGAINST THE ACCUSED AND AFTER TESTIFYING AGAINST HER IN COURT RENDERED IT IMMEDIATELY A SUSPECT; RECANTATION DID NOT CANCEL THE WITNESS' FIRST TESTIMONY.— Dahab's supposed recantation to the effect that he had only sought the assistance of the accused-appellant for his medical examination by no means weakened or diminished the Prosecution's case against her. Its being made after he had lodged his complaint against her with the PNP-CIDG (in which he supplied the details of his transactions with her) and after he had testified against her in court directly incriminating her rendered it immediately suspect. It should not be more weighty than his first testimony against her which that was replete with details. Its being the later testimony of Dahab did not necessarily cancel his first testimony on account of the possibility of its being obtained by coercion, intimidation, fraud, or other means to distort or bend the truth.

5. ID.; ID.; ID.; RECANTATION IS NOT WELL REGARDED BY THE COURTS DUE TO ITS NATURE AS THE MERE AFTERTHOUGHT OF THE WITNESS.— Recantation by a witness is nothing new, for it is a frequent occurrence in criminal proceedings. As a general rule, it is not well regarded by the courts due to its nature as the mere afterthought of the witness. To be given any value or weight, it should still be subjected to the same tests for credibility in addition to its

being subject of the rule that it be received with caution. The criminal proceedings in which sworn testimony has been given by the recanting witness would be rendered a mockery, and put at the mercy of the unscrupulous witness if such testimony could be easily negated by the witness's subsequent inconsistent declaration. The result is to leave without value not only the sanctity of the oath taken but also the solemn rituals and safeguards of the judicial trial. If only for emphasis, we reiterate that it is "a dangerous rule to reject the testimony taken before the court of justice simply because the witness who has given it later on changed his mind for one reason or another, for such a rule will make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses."

6. CRIMINAL LAW; REVISED PENAL CODE; *ESTAFA*; ELEMENTS THEREOF ARE DIFFERENT FROM ILLEGAL RECRUITMENT COMMITTED IN LARGE SCALE, HENCE, PROSECUTING AND CONVICTING THE ACCUSED FOR BOTH CRIMES WOULD NOT RESULT IN DOUBLE JEOPARDY; ELEMENTS OF *ESTAFA* ALSO PRESENT IN CASE AT BAR.— The conviction of the accused-appellant for illegal recruitment committed in large scale did not preclude her personal liability for *estafa* under Article 315(2)(a) of the *Revised Penal Code* on the ground of subjecting her to double jeopardy. The elements of *estafa* as charged are, namely: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party, or a third party suffered damage or prejudice capable of pecuniary estimation. In contrast, the crime of illegal recruitment committed in large scale, as indicated earlier, requires different elements. Double jeopardy could not result from prosecuting and convicting the accused-appellant for both crimes considering that they were entirely distinct from each other not only from their being punished under different statutes but also from their elements being different. The active representation by the accused-appellant of having the capacity to deploy Miparanum abroad despite not having the authority or license to do so from the POEA constituted deceit as the first element of *estafa*. Her representation induced the victim to part with his money, resulting in damage that is the second element of the *estafa*. Considering that the damage resulted from the deceit, the CA's affirmance of her guilt for *estafa* as charged was in order.

7. ID.; ID.; ID.; PROPER PENALTY FOR *ESTAFA* WHEN THE AMOUNT INVOLVED IS ₱54,700.— The amount of ₱54,700.00 is the determinant of the penalty to be imposed. Pursuant to Article 315 of the *Revised Penal Code*, the penalty prescribed for *estafa* in which the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00 is *prision correccional* in its maximum period to *prision mayor* in its minimum period (*i.e.*, four years, two months and one day to eight years); if the amount of the fraud exceeds ₱22,000.00, the penalty thus prescribed shall be imposed *in its maximum period*, and one year shall be added for each additional ₱10,000.00 provided the total penalty imposed shall not exceed 20 years. Considering that the penalty does not consist of three periods, the prescribed penalty is divided into three equal portions, and each portion shall form a period, with the maximum period being then imposed. However, the floor of the maximum period – **six years, eight months and 21 days** – is fixed in the absence of any aggravating circumstance, or any showing of the greater extent of the evil produced by the crime, to which is then added the incremental penalty of one year for every ₱10,000.00 in excess of ₱22,000.00, or three years in all. The resulting total penalty is nine years, eight months and 21 days of *prision mayor*, which shall be the maximum of the indeterminate sentence. The minimum of the indeterminate sentence is taken from *prision correccional* in its minimum period to *prision correccional* in its medium period (*i.e.*, six months and one day to four years and two months), the penalty next lower to that prescribed by Article 315 of the *Revised Penal Code.* We note that the CA correctly fixed the minimum of the indeterminate sentence at four years and two months of *prision correccional.* In view of the foregoing, the indeterminate sentence for the accused-appellant is from four years and two months of *prision correccional*, as the mimimum, to nine years, eight months and 21 days of *prision mayor*.

8. ID.; ILLEGAL RECRUITMENT IN LARGE SCALE AND *ESTAFA*; CIVIL LIABILITIES.— The civil liabilities as decreed by the RTC and upheld by the CA are also corrected to reflect the actual aggregate amount to be restituted to Miparanum at ₱54,700.00. In addition, the accused-appellant shall be obliged to pay interest of 6% *per annum* on the respective sums due to each of the complainants, to be reckoned from

the finality of this decision until full payment considering that the amount to be restituted became determinate only through this adjudication.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiffs-appellees.
Public Attorney's Office for accused-appellant.

D E C I S I O N

BERSAMIN, *J.*:

An illegal recruiter can be liable for the crimes of illegal recruitment committed in large scale and *estafa* without risk of being put in double jeopardy, provided that the accused has been so charged under separate informations.

The Case

The accused-appellant assails the decision promulgated on July 28, 2005,[1] whereby the Court of Appeals (CA) affirmed her conviction for illegal recruitment and *estafa,* as follows:

WHEREFORE, for lack of merit, the petition is **DISMISSED** and the Joint Decision dated August 27, 2002 of the Regional Trial Court, Branch 138 of Makati City is **AFFIRMED** with **MODIFICATIONS.** In Criminal Case No. 01-1780 for Illegal Recruitment, the fine imposed is hereby **REDUCED** to ₱100,000.00 and in Criminal Case No. 01-1781 for Estafa, appellant is sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum to nine (9) years of *prision mayor* as maximum.

SO ORDERED.[2]

---

[1] *Rollo,* pp. 3-23; penned by Associate Justice Portia Aliño-Hormachuelos, and concurred in by Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Vicente Q. Roxas.

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

Antecedents

The Office of the City Prosecutor of Makati filed in the Regional Trial Court (RTC) in Makati the following amended informations against the accused-appellant and her two co-accused, namely: Nida Bermudez and Lorenz Langreo, alleging thusly:

Criminal Case No. 01-1780
Illegal Recruitment

That in or about during the month of January, 2001 up to the 23rd day of July, 2001, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, and who have no authority to recruit workers for overseas employment, did then and there willfully, unlawfully and feloniously promise and recruit complainants, Basilio T. Miparanum, Virgilio T. Caniazares and Reynaldo E. Dahab, overseas job abroad and in consideration of said promise, said complainants paid and delivered to accused the amount of ₱52,000.00, ₱l 0,000.00 and ₱5,000.00, respectively as processing fees of their papers, but on the promise[d] dates of departure, accused failed to send the complainants abroad and despite demands to reimburse or return the amount of ₱52,000.00, ₱10,000.00 and ₱5,000.00 which complainants paid as processing fees, accused did then and there refuse and fail to reimburse or return to complainants the aforesaid amounts of ₱52,000.00, ₱l0,000.00 and ₱5,000.00.

CONTRARY TO LAW.[3]

Criminal Case No. 01-1781
Estafa

That on or about the 9th day of April 2001 up to July 23, 2001, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, by means of false pretense and fraudulent misrepresentations, defrauded Basilio T. Miparanum by previous of [sic] simultaneous act, that is; By pretending to possess power, influence, qualification

[3] Records, p. 79.

authority, transactions or capacity to recruit and deploy said Basilio T. Miparanum for overseas job, which representations or manifestations the accused knew to be false and fraudulent as they have no authorities to recruit from the POEA and they have no principal employer and was merely intended to convince Basilio T. Miparanum to part his money in the amount of ₱52,000.00, in consideration thereof, as in fact complainant Basilio T. Miparanum paid the said amount to the accused relying on such false manifestation and/or representations to the damage and prejudice of complainant Basilio T. Miparanum in the aforesaid amount of ₱52,000.00.

CONTRARY TO LAW.[4]

Only the accused-appellant and Langreo were arrested because Bermudez, who eluded arrest, continues to remain at large. However, the trial proceeded only against the accused-appellant because of the lack of notification of subsequent proceedings to Langreo.[5]

The State presented four witnesses, namely: Virgilio Caniazares, Reynaldo Dahab, Basilio Miparanum and PO3 Raul Bolido.

Caniazares testified that he and Dahab had met the accused-appellant at the house of a friend in Makati City in January 2001, and she had then represented herself to be recruiting workers for overseas employment, probably as hotel porters in Canada;[6] that on January 27, 2001, he had gone to her residence in Pembo, Makati City to pay ₱4,000.00 for his medical examination, and she had then accompanied him to the Medical Center in Ermita, Manila for that purpose;[7] that on March 30, 2001, she had gone to his house to inform him that he would be deployed as a seaman instead but that he had to pay ₱6,000.00 more; that he had paid the ₱6,000.00 to her, for which she had issued a receipt; that two weeks thereafter, she had called him about his deployment on April 21, 2001; that on the promised date, he had gone to her office at GNB Marketing in Makati but no one was around;

---

[4] *Id*. at 83.

[5] *Id*. at 385.

[6] TSN dated October 15, 2001, pp. 4-7.

[7] *Id*. at 8-10.

that he had then proceeded to her house, and she had then told him that his seaman's application would not push through; that the two of them had then proceeded to her office bringing all his certificates of employment, and that it was there that she had introduced him to her manager, the accused Bermudez, who promised his deployment in Hongkong within two weeks; that because he had not been deployed as promised, he had gone to the Philippine Overseas Employment Administration (POEA), where he had learned that the accused, Bermudez and Langreo, had not been issued the license to recruit and place people overseas; and that he had then decided to charge them all with illegal recruitment and *estafa* in the Philippine National Police Crime Investigation and Detection Group (PNP-CIDG) in Camp Crame, Quezon City.[8]

Dahab declared that on January 27, 2001, he had met the accused-appellant at the Guadalupe Branch of Jollibee to pay ₱2,500.00 for his medical examination; that a week later, he had undergone the three-day training in Mandaluyong City, for which he paid ₱2,500.00; that she had then demanded from him the placement fee of ₱25,000.00; and that after he had not been able to raise the amount, he never saw her again; and that Caniazares soon called him to urge that he should complain against the accused in the PNP-CIDG.[9]

According to Miparanum, he met the accused-appellant through Caniazares, who was his cousin. Caniazares arrived at his house with her in tow in order to borrow money for his placement fee. On that occasion, she told Miparanum that she could help him find work abroad and even leave ahead of Caniazares if he had the money. Convinced, Miparanum went to her residence on April 11, 2001 to apply as a seaman. On April 17, 2001, he delivered to her ₱6,000.00 for his seaman's book. She again asked an additional ₱6,000.00 for the seaman's book, and ₱40,000.00 as the placement fee. On April 20, 2001, Miparanum went to her office where he met Bermudez. There,

[8] *Id*. at 12-21.

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

he handed the ₱46,000.00 to the accused-appellant but it was Bermudez who issued the corresponding receipt. The accused-appellant and Bermudez told him to wait for his deployment to Hongkong as an ordinary seaman within two weeks. Miparanum followed up on his application after two weeks, but was instead made to undergo training, and he paid ₱2,700.00 for his certificate. Sensing that he was being defrauded, Miparanum later proceeded to file his complaint at the PNP-CIDG.[10]

PO3 Raul Bolido of the PNP-CIDG recalled that in July, 2001, the complainants went to Camp Crame to file their complaints against the accused-appellant, Bermudez and Langreo. PO3 Bolido, along with SPO4 Pedro Velasco and Team Leader Police Inspector Romualdo Iringan, conducted an entrapment operation against the accused. They prepared 10 marked ₱100 bills dusted with ultraviolet powder and gave the same to Miparanum. On July 23, 2001, the entrapment team proceeded with Miparanum to Jollibee-Guadalupe where Miparanum was to meet the accused-appellant. The team immediately arrested her upon her receiving the marked bills. The PNP Crime Laboratory conducted its examination for traces of ultraviolet powder on her person, and the results of the examination were positive for the presence of ultraviolet powder.[11]

In contrast, the accused-appellant pointed to Langreo and Bermudez who had operated GNB Marketing Agency. She claimed to have met Miparanum at Jollibee-Guadalupe only for the purpose of bringing him to Bermudez. She refused to receive the money being handed to her by Miparanum because she did not demand for it, but the four policemen suddenly arrested her, and one of them rubbed his arm against her forearm.[12]

The accused-appellant presented two witnesses, namely: Adelaida Castel and Edith dela Cruz. Castel testified that she had known the accused-appellant for almost five years; that

---

[10] TSN dated November 5, 2001, pp. 4-23.

[11] TSN dated November 19, 200l, pp. 5-15.

[12] *Rollo,* p. 11.

being then present during the meeting between the accused-appellant and Caniazares she did not hear the accused- appellant representing herself as a legitimate recruiter to the latter; that she had been present when Miparanum delivered the ₱40,000.00 to Bermudez; and that prior to the entrapment of the accused-appellant, Caniazares had called their house three times to ask the accused-appellant to accompany him to the house of Bermudez.[13] On her part, dela Cruz attested that she had known the accused-appellant since March, 2001 because they had worked together in a handicraft factory; that she did not know if the accused-appellant had been a recruiter; that it was Langreo who had been the recruiter because he had recruited her own daughter; and that she did not know anything about the transactions between the accused-appellant and the complaining witnesses.[14]

Subsequently, Dahab recanted his testimony, and stated that he had only requested assistance from the accused-appellant regarding his medical examination. He insisted that he had voluntarily paid ₱5,000.00 to her, and she had then paid the amount to the Medical Center for his medical examination.[15]

Ruling of the RTC

On August 27, 2002, the RTC rendered its ruling, disposing:

WHEREFORE, judgment is rendered as follows—

a) In Criminal Case No. 01-1780 the Court finds the evidence of the Prosecution sufficient to establish the guilt of Marissa Bayker beyond reasonable doubt for having violated Section 6(m) of Republic Act No. 8042 (The Migrant Workers and Overseas Filipino Act of 1995) and applying Section 7 of the same Act, which directs imposition of the maximum penalty if the offender is a non-licensee or non-holder of authority, she is sentenced to suffer the penalty of life imprisonment and to pay a fine of One Million Pesos. She is further ordered to indemnify Virgilio Caniazares of ₱6,000.00, Reynaldo Dahab ₱2,500.00 and Basilio Miparanum of ₱12,000.00.

---

[13] TSN dated March 11, 2002, pp. 3-16.

[14] TSN dated April 29, 2002, pp. 243-246.

[15] TSN dated January 22, 2002, pp. 3-7.

b) In Criminal Case No. 01-1781, the Court finds the evidence of the Prosecution sufficient to establish the guilt of Marissa Bayker beyond reasonable doubt for the crime of estafa defined and penalized under Article 315 2(a) of the Revised Penal Code and she is sentenced to suffer the penalty of imprisonment for FOUR (4) YEARS, NINE (9) MONTHS and ELEVEN (11) DAYS of prision correccional to NINE (9)YEARS of prison mayor. She is further ordered to pay Basilio Miparanum ₱40,000.00.

No pronouncement as to costs.

xxx xxx xxx

SO ORDERED.[16]

Judgment of the CA

On July 28, 2005, the CA affirmed the convictions of the accused-appellant by the RTC,[17] *viz*.:

WHEREFORE, for lack of merit, the petition is **DISMISSED** and the Joint decision dated august 27, 2002 of the Regional Trial Court, Branch 138 of Makati City is **AFFIRMED** with **MODIFICATIONS.** In Criminal Case No. 01-1780 for Illegal Recruitment, the fine imposed is hereby **REDUCED** to ₱100,000.00 and in Criminal Case No. 01-1781 for Estafa, appellant is sentenced to suffer the indeterminate penalty of four (*4)* years and two (2) months of *prision correccional* as minimum to nine (9) years of *prision mayor* as maximum.

SO ORDERED.

The CA opined that the Prosecution had established the elements of illegal recruitment in large scale by proving that the accused-appellant lacked the authority or license to engage in recruitment and placement,[18] and had promised the complainants employment abroad and had then received money from them;[19] and that the Prosecution had also established the *estafa* by showing that she had misrepresented to Miparanum

---

[16] CA *rollo,* pp. 27-28.

[17] *Supra* note l, at 22-23.

[18] *Rollo,* p. 15.

[19] *Id*. at 15-19.

about her power and authority to deploy him for overseas employment, thereby inducing him to part with his money.

Hence, this appeal.

Issues

The accused-appellant assigns the following errors to the CA, to wit:

I

THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED DESPITE THE PATENT WEAKNESS OF THE PROSECUTION'S DEFENSE

II

THE LOWER COURT ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT

III

THE LOWER COURT ERRED IN NOT GIVING WEIGHT AND CREDENCE TO THE RETRACTIONS MADE BY COMPLAINANT REYNALDO DAHAB[20]

The accused-appellant insists on her innocence, and points to Langreo and Bermudez as the persons who had directly engaged in illegal recruitment. She argues that her participation had been limited to signing the receipts as a witness, and to receiving payments for the medical examinations;[21] that the CA and the RTC had disregarded the recantation by Dahab; and that had the evidence been limited to the testimonies of Caniazares and Miparanum, she would have only been liable for simple illegal recruitment.[22]

Did the CA correctly affirm the conviction of the accused-appellant for the crimes of illegal recruitment in large scale and *estafa?*

---

[20] CA *rollo,* p. 48.

[21] *Id*. at 57-58.

[22] *Id*. at 59.

Ruling of the Court

We affirm the assailed judgment of the CA.

I

Illegal Recruitment Committed in Large Scale

Illegal recruitment is committed by a person who: (a) undertakes any recruitment activity defined under Article 13(b) or any prohibited practice enumerated under Article 34 and Article 38 of the *Labor Code;* and (b) does not have a license or authority to lawfully engage in the recruitment and placement of workers.[23] It is committed in large scale when it is committed against three or more persons individually or as a group.[24]

The CA properly affirmed the conviction of the accused-appellant by the RTC for illegal recruitment committed in large scale because she had committed acts of recruitment against at least three persons (namely: Canizares, Dahab, and Miparanum) despite her not having been duly licensed or authorized by the Philippine Overseas Employment Administration (POEA) for that purpose.

The accused-appellant's insistence on her very limited participation in the recruitment of the complainants did not advance or help her cause any because the State established her having personally promised foreign employment either as hotel porters or seafarers to the complainants despite her having

---

[23] *Nasi-Villar v. People,* G.R. No. 176169, November 14, 2008, 571 SCRA 202, 208; *People v. Ortiz- Miyake,* G.R. Nos. 115338-39, September 16, 1997, 279 SCRA 180, 193.

[24] Under Section 6 (m) (Definitions) of Republic Act No. 8042, illegal recruitment "when committed by a syndicate or in large scale shall be considered as offense involving economic sabotage;" and illegal recruitment "is deemed committed by a syndicate carried out by a group of three (3) or more persons conspiring or confederating with one another. **It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.**" See *People v. Fernandez,* G.R. No. 199211, June 4, 2014, 725 SCRA 152, 156-157.

no license or authority to recruit from the POEA. The records made it clear enough that her participation was anything but limited, for she herself had accompanied them to their respective medical examinations at their own expense. In addition, she herself brought them to GNB Marketing and introduced them to her co-accused. In this regard, the CA pointedly observed:

> The evidence established that without any license or authority to do so, appellant promised private complainants overseas employment in regard to which she required them to undergo medical examination and training and collected fees or payments from them, while repeatedly assuring that they would be deployed abroad. On appellant's contention that it was Nida Bermudez and Lorenz Langreo who received money from the complainants, even assuming arguendo that appellant never received any payment from the complainants, actual receipt of a fee is not an essential element of the crime of Illegal Recruitment, but is only one of the modes for the commission thereof. Besides, all the private complainants positively identified appellant as the person who recruited them and exacted money from them. Appellant's bare denials and self-serving assertions cannot prevail over the positive testimonies of the complainants who had no ill motive to testify falsely against her.[25]

The accused-appellant's denial of her participation in the illegal recruitment activities of Bermudez and Langreo did not gain traction from her charging her co-accused with the sole responsibility for the illegal recruitment of the complainants. Based on the testimonial narration of the complainants regarding their recruitment, she was unqualifiedly depicted as having the primary and instrumental role in recruiting them for overseas placement from the inception. Also, her claim of having been only casually associated with GNB Marketing did not preclude her criminal liability for the crimes charged and proved. Even the mere employee of a company or corporation engaged in illegal recruitment could be held liable, along with the employer, as a principal in illegal recruitment once it was shown that he had actively and consciously participated in illegal recruitment.[26]

---

[25] *Rollo,* pp. 19-20.

[26] *People v. Cabais,* G.R. No. 129070, March 16, 2001, 354 SCRA 553, 561.

This is because recruitment and placement include any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, as well as referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not.

The accused-appellant protests that the RTC and the CA unreasonably disregarded Dahab's recantation; and that the recantation would render her liable only for simple illegal recruitment instead of illegal recruitment committed in large scale.

The protest of the accused-appellant is untenable.

Dahab's supposed recantation to the effect that he had only sought the assistance of the accused-appellant for his medical examination by no means weakened or diminished the Prosecution's case against her. Its being made after he had lodged his complaint against her with the PNP-CIDG (in which he supplied the details of his transactions with her) and after he had testified against her in court directly incriminating her rendered it immediately suspect. It should not be more weighty than his first testimony against her which that was replete with details. Its being the later testimony of the Dahab did not necessarily cancel his first testimony on account of the possibility of its being obtained by coercion, intimidation, fraud, or other means to distort or bend the truth.

Recantation by a witness is nothing new, for it is a frequent occurrence in criminal proceedings. As a general rule, it is not well regarded by the courts due to its nature as the mere afterthought of the witness. To be given any value or weight, it should still be subjected to the same tests for credibility in addition to its being subject of the rule that it be received with caution.[27] The criminal proceedings in which sworn testimony has been given by the recanting witness would be rendered a

---

[27] *People v. Domingo,* G.R. No. 181475, April 7, 2009, 584 SCRA 669, 678; *Francisco v. National Labor Relations Commissions,* G.R. No. 170087, August 31, 2006, 500 SCRA 690, 701-702.

mockery, and put at the mercy of the unscrupulous witness if such testimony could be easily negated by the witness's subsequent inconsistent declaration. The result is to leave without value not only the sanctity of the oath taken but also the solemn rituals and safeguards of the judicial trial. If only for emphasis, we reiterate that it is "a dangerous rule to reject the testimony taken before the court of justice simply because the witness who has given it later on changed his mind for one reason or another, for such a rule will make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses."[28]

II
Estafa

The conviction of the accused-appellant for illegal recruitment committed in large scale did not preclude her personal liability for *estafa* under Article 315(2)(a) of the *Revised Penal Code* on the ground of subjecting her to double jeopardy. The elements of *estafa* as charged are, namely: (1) the accused defrauded another by abuse of confidence or by means of deceit; and (2) the offended party, or a third party suffered damage or prejudice capable of pecuniary estimation.[29] In contrast, the crime of illegal recruitment committed in large scale, as indicated earlier, requires different elements. Double jeopardy could not result from prosecuting and convicting the accused-appellant for both crimes considering that they were entirely distinct from each other not only from their being punished under different statutes but also from their elements being different.

The active representation by the accused-appellant of having the capacity to deploy Miparanum abroad despite not having the authority or license to do so from the POEA constituted deceit as the first element of *estafa.* Her representation induced the victim to part with his money, resulting in damage that is the second element of the *estafa*. Considering that the damage

---

[28] *Flores v. People,* G.R. Nos. 93411-12, July 20, 1992, 211 SCRA 622, 630.

[29] *People v. Tolentino,* G.R. No. 208686, July 1, 2015.

resulted from the deceit, the CA's affirmance of her guilt for *estafa* as charged was in order.

III

Penalties

The penalty for illegal recruitment committed in large scale, pursuant to Section 7(b)[30] of Republic Act No. 8042 *(Migrant Workers' Act),* is life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00. In light of the provision of the law, the CA patently erred in reducing the fine to ₱100,000.00. Hence, we hereby increase the fine to ₱500,000.00.

Article 315 of the *Revised Penal Code* provides:

> Article 315 Swindling *(estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
>
> 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such case, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal,* as the case may be.
>
> xxx xxx xxx

Inasmuch as the prescribed penalty is *prision correccional* in its maximum period to *prision mayor* in its minimum period,

---

[30] Section 7. PENALTIES.— x x x

xxx xxx xxx

(b) The penalty of life imprisonment and a fine of not less than five hundred thousand pesos (₱500,000.00) nor more than one million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

xxx xxx xxx

plus one year for each additional ₱10,000.00 over ₱22,000.00, provided that the total penalty shall not exceed 20 years, the penalty to be imposed on the accused- appellant should depend on the amount defrauded. We note that the RTC took into consideration only the sum of ₱40,000.00, and the CA concurred with the RTC thereon. Yet, the records reveal that Miparanum paid to the accused-appellant and her co-accused not only ₱40,000.00 but the aggregate sum of ₱54,700.00 *(i.e.,* the ₱6,000.00 for the seaman's book, the additional ₱6,000.00 for the seaman's book, the ₱40,000.00 for placement fee, and ₱2,700 for his training certificate). The amount of ₱54,700.00 is the determinant of the penalty to be imposed.

Pursuant to Article 315 of the *Revised Penal Code,* the penalty prescribed for *estafa* in which the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00 is *prision correccional* in its maximum period to *prision mayor* in its minimum period *(i.e.,* four years, two months and one day to eight years); if the amount of the fraud exceeds ₱22,000.00, the penalty thus prescribed shall be imposed *in its maximum period,* and one year shall be added for each additional ₱10,000.00 provided the total penalty imposed shall not exceed 20 years. Considering that the penalty does not consist of three periods, the prescribed penalty is divided into three equal portions, and each portion shall form a period,[31] with the maximum period being then imposed.[32] However, the floor of the maximum period— **six years, eight months and 21 days**— is fixed in the absence of any aggravating circumstance, or of any showing of the greater extent of the evil produced by the crime,[33] to which is then added the incremental penalty

---

[31] Article 65 of the *Revised Penal Code.*

[32] Accordingly, the three periods of the prescribed penalty is four years, two months and one day to five years, five months and 10 days for the **minimum period**; five years, five months and 11 days to six years, eight months and 20 days for the medium period; and six years, eight months and 21 days to eight years for the **maximum period**.

[33] Rule No.7 of Article 64 of the *Revised Penal Code* states: "Within the limits of each period, the courts shall determine the extent of the penalty

of one year for every ₱10,000.00 in excess of ₱22,000.00, or three years in all.[34] The resulting total penalty is nine years, eight months and 21 days of *prision mayor,* which shall be the maximum of the indeterminate sentence.

The minimum of the indeterminate sentence is taken from *prision correccional* in its minimum period to *prision correccional* in its medium period *(i.e.,* six months and one day to four years and two months), the penalty next lower to that prescribed by Article 315 of the *Revised Penal Code.* We note that the CA correctly fixed the minimum of the indeterminate sentence at four years and two months of *prision correccional.*

In view of the foregoing, the indeterminate sentence for the accused-appellant is from four years and two months of *prision correccional,* as the minimum, to nine years, eight months and 21 days of *prision mayor.*

IV
Civil Liabilities

The civil liabilities as decreed by the RTC and upheld by the CA are also corrected to reflect the actual aggregate amount to be restituted to Miparanum at ₱54,700.00. In addition, the accused-appellant shall be obliged to pay interest of 6% *per annum* on the respective sums due to each of the complainants, to be reckoned from the finality of this decision until full payment considering that the amount to be restituted became determinate only through this adjudication.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on July 28, 2005 subject to the following **MODIFICATIONS,** to wit:

---

according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime."

[34] See *People v. Ocden,* G.R. No. 173198, June 1, 2011, 650 SCRA 124, 150-151.

1. In Criminal Case No. 01-1780, for illegal recruitment committed in large scale, the penalty of life imprisonment and fine of ₱500,000.00 is imposed on the accused-appellant;
2. In Criminal Case No. 01-1781, for *estafa,* the accused-appellant is sentenced to suffer the indeterminate penalty of four years and two months of *prision correccional,* as the minimum, to nine years, eight months and 21 days of *prision mayor,* as the maximum;
3. The accused-appellant shall indemnify complainants Virigilio Caniazares, Reynaldo Dahab and Basilio Miparanum in the respective amounts of ₱6,000.00, ₱2,500.00, and ₱54,700.00 plus interest of 6% *per annum* from the finality of this decision until full payment; and
4. The accused-appellant shall pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Perlas-Bernabe, and *Jardeleza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 170631. February 10, 2016]

CARAVAN TRAVEL AND TOURS INTERNATIONAL, INC., *petitioner, vs.* **ERMILINDA R. ABEJAR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; A PERSON WHO EXERCISED SUBSTITUTE PARENTAL

AUTHORITY OVER A VICTIM OF A VEHICULAR ACCIDENT IS A REAL PARTY IN INTEREST IN AN ACTION FOR DAMAGES BASED ON QUASI-DELICT.— Having exercised substitute parental authority, respondent suffered actual loss and is, thus, a real party in interest in this case. x x x "To qualify a person to be a real party in interest in whose name an action must be prosecuted, he [or she] must appear to be the present real owner of the right sought to be enforced." Respondent's capacity to file a complaint against petitioner stems from her having exercised substitute parental authority over Reyes. x x x Article 233 of the Family Code provides for the extent of authority of persons exercising substitute parental authority, that is, the same as those of actual parents x x x Both of Reyes' parents are already deceased. Reyes' paternal grandparents are also both deceased. The whereabouts of Reyes' maternal grandparents are unknown. There is also no record that Reyes has brothers or sisters. It was under these circumstances that respondent took custody of Reyes when she was a child, assumed the role of Reyes' parents, and thus, exercised substitute parental authority over her. As Reyes' custodian, respondent exercised the full extent of the statutorily recognized rights and duties of a parent. Consistent with Article 220 of the Family Code, respondent supported Reyes' education and provided for her personal needs. To echo respondent's words in her Complaint, she treated Reyes as if she was her own daughter. Respondent's right to proceed against petitioner, therefore, is based on two grounds. First, respondent suffered actual personal loss. With her affinity for Reyes, it stands to reason that when Reyes died, respondent suffered the same anguish that a natural parent would have felt upon the loss of one's child. It is for this injury—as authentic and personal as that of a natural parent—that respondent seeks to be indemnified. Second, respondent is capacitated to do what Reyes' actual parents would have been capacitated to do.

2. ID.; ID.; ID.; ID.; TERMINATION OF PARENTAL AUTHORITY IS NOT A BAR THAT PRECLUDES FILING OF THE COMPLAINT; ARTICLE 2176 OF THE CIVIL CODE IS BROAD ENOUGH TO INCLUDE EVEN PLAINTIFFS WHO ARE NOT RELATIVES OF THE DECEASED.— We note that Reyes was already 18 years old

when she died. Having reached the age of majority, she was already emancipated upon her death. While parental authority is terminated upon emancipation, respondent continued to support and care for Reyes even after she turned 18. Except for the legal technicality of Reyes' emancipation, her relationship with respondent remained the same. The anguish and damage caused to respondent by Reyes' death was no different because of Reyes' emancipation. In any case, the termination of respondent's parental authority is not an insurmountable legal bar that precludes the filing of her Complaint. In interpreting Article 1902 of the old Civil Code, which is substantially similar to the first sentence of Article 2176 of the Civil Code, this court in *The Receiver For North Negros Sugar Company, Inc. v. Ybañez, et al.* ruled that brothers and sisters may recover damages, except moral damages, for the death of their sibling. This court declared that Article 1902 of the old Civil Code (now Article 2176) is broad enough to accommodate even plaintiffs who are not relatives of the deceased[.]

3. **CIVIL LAW; QUASI-DELICT; EMPLOYER'S LIABILITY UNDER ARTICLE 2180 IN RELATION TO ARTICLE 2176 OF THE CIVIL CODE; IT IS IMPERATIVE TO APPLY THE REGISTERED-OWNER RULE IN A MANNER THAT HARMONIZES IT WITH ARTICLES 2176 AND 2180 OF THE CIVIL CODE; EXPLAINED.—** The resolution of this case must consider two (2) rules. First, Article 2180's specification that "[e]mployers shall be liable for the damages caused by their employees … *acting within the scope of their assigned tasks*[.]" Second, the operation of the registered-owner rule that registered owners are liable for death or injuries caused by the operation of their vehicles. These rules appear to be in conflict when it comes to cases in which the employer is also the registered owner of a vehicle. Article 2180 requires proof of two things: first, an employment relationship between the driver and the owner; and second, that the driver acted within the scope of his or her assigned tasks. On the other hand, applying the registered-owner rule only requires the plaintiff to prove that the defendant-employer is the registered owner of the vehicle. The registered-owner rule was articulated as early as 1957 in *Erezo, et al. v. Jepte,* where this court explained that the registration of motor vehicles, as required by Section 5(a) of Republic Act No. 4136, the Land Transportation and

Traffic Code, was necessary "not to make said registration the operative act by which ownership in vehicles is transferred, … but to permit the use and operation of the vehicle upon any public highway[.]" Its main aim … is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual, the registered owner. x x x As acknowledged in *Filcar*, there is no categorical statutory pronouncement in the Land Transportation and Traffic Code stipulating the liability of a registered owner. The source of a registered owner's liability is not a distinct statutory provision, but remains to be Articles 2176 and 2180 of the Civil Code: While Republic Act No. 4136 or the Land Transportation and Traffic Code does not contain any provision on the liability of registered owners in case of motor vehicle mishaps, Article 2176, in relation with Article 2180, of the Civil Code imposes an obligation upon Filcar, as registered owner, to answer for the damages caused to Espinas' car. Thus, it is imperative to apply the registered-owner rule in a manner that harmonizes it with Articles 2176 and 2180 of the Civil Code. Rules must be construed in a manner that will harmonize them with other rules so as to form a uniform and consistent system of jurisprudence. In light of this, the words used in *Del Carmen* are particularly notable. There, this court stated that Article 2180 "should defer to" the registered-owner rule. It never stated that Article 2180 should be totally abandoned. Therefore, the appropriate approach is that in cases where both the registered-owner rule and Article 2180 apply, the plaintiff must first establish that the employer is the registered owner of the vehicle in question. Once the plaintiff successfully proves ownership, there arises a disputable presumption that the requirements of Article 2180 have been proven. As a consequence, the burden of proof shifts to the defendant to show that no liability under Article 2180 has arisen. This disputable presumption, insofar as the registered owner of the vehicle in relation to the actual driver is concerned, recognizes that between the owner and the victim, it is the former that should carry the costs of moving forward with the evidence. The victim is, in many cases, a hapless pedestrian or motorist with hardly any means to uncover the employment relationship of the owner and the driver, or any act that the owner may

have done in relation to that employment. The registration of the vehicle, on the other hand, is accessible to the public.

4. ID.; ID.; ID.; ID.; FAILURE TO OVERTURN THE PRESUMPTION THAT THE REQUIREMENTS OF ARTICLE 2180 HAVE BEEN SATISFIED, EMPLOYER IS LIABLE.— [R]espondent presented a copy of the Certificate of Registration of the van that hit Reyes. The Certificate attests to petitioner's ownership of the van. Petitioner itself did not dispute its ownership of the van. Consistent with the rule we have just stated, a presumption that the requirements of Article 2180 have been satisfied arises. It is now up to petitioner to establish that it incurred no liability under Article 2180. This it can do by presenting proof of any of the following: first, that it had no employment relationship with Bautista; second, that Bautista acted outside the scope of his assigned tasks; or third, that it exercised the diligence of a good father of a family in the selection and supervision of Bautista. On the first, petitioner admitted that Bautista was its employee at the time of the accident. On the second, petitioner was unable to prove that Bautista was not acting within the scope of his assigned tasks at the time of the accident. x x x On the third, petitioner likewise failed to prove that it exercised the requisite diligence in the selection and supervision of Bautista. x x x [P]etitioner did not only fail to exercise due diligence when it selected Bautista as service driver; it also committed an actual violation of law. To prove that it exercised the required diligence in supervising Bautista, petitioner presented copies of several memoranda and company rules. These, however, are insufficient because petitioner failed to prove actual compliance. x x x For failing to overturn the presumption that the requirements of Article 2180 have been satisfied, petitioner must be held liable.

5. ID.; ID.; ID.; THE LIABILITY IMPOSED ON THE REGISTERED OWNER IS DIRECT AND PRIMARY; NON-INCLUSION OF THE NEGLIGENT DRIVER IN THE ACTION CANNOT HAMPER A JUDICIOUS RESOLUTION OF THE CASE SINCE THE DETERMINATION OF THE LIABILITY AS OWNER CAN PROCEED INDEPENDENTLY OF A CONSIDERATION OF HOW THE DRIVER CONDUCTED HIMSELF.— Petitioner's

argument that it should be excused from liability because Bautista was already dropped as a party is equally unmeritorious. The liability imposed on the registered owner is direct and primary. It does not depend on the inclusion of the negligent driver in the action. Agreeing to petitioner's assertion would render impotent the rationale of the motor registration law in fixing liability on a definite person. Bautista, the driver, was not an indispensable party under Rule 3, Section 7 of the 1997 Rules of Civil Procedure. Rather, he was a necessary party under Rule 3, Section 8. Instead of insisting that Bautista—who was nothing more than a necessary party—should not have been dropped as a defendant, or that petitioner, along with Bautista, should have been dropped, petitioner (as a co-defendant insisting that the action must proceed with Bautista as party) could have opted to file a cross-claim against Bautista as its remedy. x x x Petitioner's interest and liability is distinct from that of its driver. Regardless of petitioner's employer-employee relationship with Bautista, liability attaches to petitioner on account of its being the registered owner of a vehicle that figures in a mishap. This alone suffices. A determination of its liability as owner can proceed independently of a consideration of how Bautista conducted himself as a driver. While certainly it is desirable that a determination of Bautista's liability be made alongside that of the owner of the van he was driving, his non-inclusion in these proceedings does not absolutely hamper a judicious resolution of respondent's plea for relief.

6. ID.; ID.; DAMAGES; AWARD OF ACTUAL DAMAGES, UPHELD; THE CERTIFICATE WHICH SOUGHT TO ESTABLISH THE FUNERAL EXPENSES IS NOT HEARSAY.— The Court of Appeals committed no reversible error when it awarded actual damages to respondent. Respondent's claim for actual damages was based on the Certificate issued and signed by a certain Peñaloza showing that respondent paid Peñaloza ₱35,000.00 for funeral expenses. Contrary to petitioner's claim, this Certificate is not hearsay. Evidence is hearsay when its probative value is based on the personal knowledge of a person other than the person actually testifying. Here, the Certificate sought to establish that respondent herself paid Peñaloza ₱35,000.00 as funeral expenses for Reyes' death[.] x x x Respondent had personal knowledge

of the facts sought to be proved by the Certificate, i.e. that she spent ₱35,000.00 for the funeral expenses of Reyes. Thus, the Certificate that she identified and testified to is not hearsay. It was not an error to admit this Certificate as evidence and basis for awarding ₱35,000.00 as actual damages to respondent.

7. ID.; ID.; ID.; AWARD OF CIVIL INDEMNITY AND EXEMPLARY DAMAGES, JUSTIFIED.— The Court of Appeals likewise did not err in awarding civil indemnity and exemplary damages. x x x Both the Court of Appeals and the Regional Trial Court found Bautista grossly negligent in driving the van and concluded that Bautista's gross negligence was the proximate cause of Reyes' death. Negligence and causation are factual issues. Findings of fact, when established by the trial court and affirmed by the Court of Appeals, are binding on this court unless they are patently unsupported by evidence or unless the judgment is grounded on a misapprehension of facts. Considering that petitioner has not presented any evidence disputing the findings of the lower courts regarding Bautista's negligence, these findings cannot be disturbed in this appeal. The evidentiary bases for the award of civil indemnity and exemplary damages stand. As such, petitioner must pay the exemplary damages arising from the negligence of its driver. For the same reasons, the award of ₱50,000.00 by way of civil indemnity is justified.

8. ID.; ID.; ID.; THE AWARD OF MORAL DAMAGES IS PROPER; A PERSON EXERCISING SUBSTITUTE PARENTAL AUTHORITY IS RIGHTLY CONSIDERED AS ASCENDANT OF THE DECEASED FOR PURPOSES OF AWARDING MORAL DAMAGES.— For deaths caused by quasi-delict, the recovery of moral damages is *limited* to the spouse, legitimate and illegitimate descendants, and ascendants of the deceased. Persons exercising substitute parental authority are to be considered ascendants for the purpose of awarding moral damages. Persons exercising substitute parental authority are intended to stand in place of a child's parents in order to ensure the well-being and welfare of a child. Like natural parents, persons exercising substitute parental authority are required to, among others, keep their wards in their company, provide for their upbringing, show them love and affection, give them advice and counsel, and provide them with companionship and understanding. For their part, wards

shall always observe respect and obedience towards the person exercising parental authority. The law forges a relationship between the ward and the person exercising substitute parental authority such that the death or injury of one results in the damage or prejudice of the other. Moral damages are awarded to compensate the claimant for his or her actual injury, and not to penalize the wrongdoer. Moral damages enable he injured party to alleviate the moral suffering resulting from the defendant's actions. It aims to restore—to the extent possible—"the spiritual status quo ante[.]" Given the policy underlying Articles 216 and 220 of the Family Code as well as the purposes for awarding moral damages, a person exercising substitute parental authority is rightly considered an ascendant of the deceased, within the meaning of Article 2206(3) of the Civil Code. Hence, respondent is entitled to moral damages.

BRION, *J., separate concurring opinion*:

1. **REMEDIAL LAW; PARTIES; REAL PARTY IN INTEREST; PARENTAL AUTHORITY IS IMMATERIAL IN ONE'S STATUS AS A REAL PARTY IN INTEREST IN A *QUASI-DELICT* CASE.—** Parental authority has no bearing on one's status as a real party in interest in a *quasi-delict* case. Parental authority refers to the rights and obligations which parents have over their children's person and property until their majority age. This authority is granted to parents to facilitate the performance of their duties to their children. If a child has no parents, grandparents, or siblings, the child's actual custodian shall exercise substitute parental authority over him or her. Moreover, the child's emancipation terminates parental authority.

2. **ID.; ID.; ID.; RESPONDENT IS A REAL PARTY IN INTEREST NOT BECAUSE SHE EXERCISED SUBSTITUTE PARENTAL AUTHORITY OVER THE DECEASED BUT BECAUSE SHE INCURRED ACTUAL DAMAGES WHEN SHE PAID THE LATTER'S FUNERAL EXPENSES.—** [R]eal party in interest refers to the person who is entitled to the avails of the suit. He or she stands to be benefited or injured by the judgment. The interest involved must be personal and not based on another person's rights. The fact that Abejar exercised substitute parental authority over Reyes does not

translate to Abejar's legal interest to recover damages for Reyes' death. Furthermore, Abejar's parental authority over Reyes ceased when the latter turned eighteen. Thus, at the time of her death, Reyes was no longer under Abejar's parental authority. Nevertheless, I agree that Abejar is a real party in interest, because she incurred actual damages when she paid for Reyes' funeral expenses. Courts may also impose exemplary damages, in addition to compensatory damages, if the defendant acted with gross negligence. In the present case, Bautista's act of leaving Reyes rather than bringing her to a hospital amounts to gross negligence. Thus, Abejar may recover these damages from Caravan.

APPEARANCES OF COUNSEL

Lawyers Advocates Circle for petitioner.
YFLim & Associates Law Offices for respondent.

D E C I S I O N

LEONEN, *J.*:

The plaintiff may first prove the employer's ownership of the vehicle involved in a mishap by presenting the vehicle's registration in evidence. Thereafter, a disputable presumption that the requirements for an employer's liability under Article 2180[1] of the Civil Code have been satisfied will arise. The burden of evidence then shifts to the defendant to show that no liability

---

[1] CIVIL CODE, Art. 2180 provides:

ARTICLE 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

. . . . . .

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

. . . . . .

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

under Article 2180 has ensued. This case, thus, harmonizes the requirements of Article 2180, in relation to Article 2176[2] of the Civil Code, and the so-called registered-owner rule as established in this court's rulings in *Aguilar, Sr. v. Commercial Savings Bank,*[3] *Del Carmen, Jr. v. Bacoy,*[4] *Filcar Transport Services v. Espinas,*[5] and *Mendoza v. Spouses Gomez.*[6]

Through this Petition for Review on Certiorari,[7] Caravel Travel and Tours International, Inc. (Caravan) prays that the Decision[8] dated October 3, 2005 and the Resolution[9] dated November 29, 2005 of the Court of Appeals Twelfth Division be reversed and set aside.[10]

On July 13, 2000, Jesmariane R. Reyes (Reyes) was walking along the west-bound lane of Sampaguita Street, United Parañaque

---

[2] CIVIL CODE, Art. 2176 provides:

ARTICLE 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

[3] 412 Phil. 834, 839-841 (2001) [Per *J*. Quisumbing, Second Division].

[4] 686 Phil. 799, 817 (2012) [Per *J*. Del Castillo, First Division].

[5] 688 Phil. 430, 436-442 (2012) [Per *J*. Brion, Second Division].

[6] G.R. No. 160110, June 18, 2014, 726 SCRA 505, 518-521 [Per *J*. Perez, Second Division].

[7] *Rollo,* pp. 91-131. The Petition was filed pursuant to Rule 45 of the 1997 Rules of Civil Procedure.

[8] *Id*. at 133-165. The Decision was penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Renato C. Dacudao (Chair) and Lucas P. Bersamin (now Associate Justice of this court) of the Twelfth Division.

[9] *Id*. at 166-167. The Resolution was penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Renato C. Dacudao (Chair) and Lucas P. Bersamin (now Associate Justice of this court) of the Twelfth Division.

[10] *Id*. at 129, Petition for Review on *Certiorari*.

Subdivision IV, Parañaque City.[11] A Mitsubishi L-300 van with plate number PKM 195[12] was travelling along the east-bound lane, opposite Reyes.[13] To avoid an incoming vehicle, the van swerved to its left and hit Reyes.[14] Alex Espinosa (Espinosa), a witness to the accident, went to her aid and loaded her in the back of the van.[15] Espinosa told the driver of the van, Jimmy Bautista (Bautista), to bring Reyes to the hospital.[16] Instead of doing so, Bautista appeared to have left the van parked inside a nearby subdivision with Reyes still in the van.[17] Fortunately for Reyes, an unidentified civilian came to help and drove Reyes to the hospital.[18]

Upon investigation, it was found that the registered owner of the van was Caravan.[19] Caravan is a corporation engaged in the business of organizing travels and tours.[20] Bautista was Caravan's employee assigned to drive the van as its service driver.[21]

Caravan shouldered the hospitalization expenses of Reyes.[22] Despite medical attendance, Reyes died two (2) days after the accident.[23]

---

[11] *Id.* at 134, Court of Appeals Decision.

[12] *Id.*

[13] TSN, May 31, 2002, p. 948.

[14] RTC records, p. 445, Regional Trial Court Decision.

[15] *Id.*

[16] CA *rollo,* p. 31, Regional Trial Court Decision.

[17] *Id.*

[18] *Id*.

[19] *Rollo,* p. 134, Court of Appeals Decision.

[20] RTC records, pp. 2, Complaint; and 47, Answer with Counterclaim.

[21] *Rollo,* p. 134, Court of Appeals Decision.

[22] *Id.* at 139.

[23] *Id.* at 134.

Respondent Ermilinda R. Abejar (Abejar), Reyes' paternal aunt and the person who raised her since she was nine (9) years old,[24] filed before the Regional Trial Court of Parañaque a Complaint[25] for damages against Bautista and Caravan. In her Complaint, Abejar alleged that Bautista was an employee of Caravan and that Caravan is the registered owner of the van that hit Reyes.[26]

Summons could not be served on Bautista.[27] Thus, Abejar moved to drop Bautista as a defendant.[28] The Regional Trial Court granted her Motion.[29]

After trial, the Regional Trial Court found that Bautista was grossly negligent in driving the vehicle.[30] It awarded damages in favor of Abejar, as follows:

> WHEREFORE, considering that the [respondent] was able to provide by preponderance of evidence her cause of action against the defendants, judgment is hereby rendered ordering defendants JIMMY BAUTISTA and CARAVAN TRAVEL and TOURS[,] INC., to jointly and solidarily pay the plaintiff, the following, to wit:
>
> 1. The amount of ₱35,000.00 representing actual damages;
> 2. The amount of ₱300,000.00 as moral damages;
> 3. The amount of ₱30,000.00 as exemplary damages;
> 4. The amount of ₱50,000.00 as and by way of attorney's fees; and
> 5. The cost of suit.

---

[24] *Id.* at 138.

[25] RTC records, pp. 1-5.

[26] *Id.* at 2.

[27] CA *rollo,* p. 48, Caravan's Reply Brief.

[28] *Rollo,* p. 138, Court of Appeals Decision.

[29] *Rollo,* p. 138, Court of Appeals Decision.

[30] RTC records, p. 447, Regional Trial Court Decision. The trial court included Bautista in the Decision even though it already granted Abejar's motion to drop him as a defendant.

SO ORDERED.[31]

Caravan's Motion for Reconsideration[32] was denied through the October 20, 2003 Order[33] of the Regional Trial Court.

The Court of Appeals affirmed with modification the Regional Trial Court's July 31, 2003 Decision and October 20, 2003 Order, as follows:

WHEREFORE, premises considered, the instant appeal is **DENIED** for lack of merit. The assailed Decision dated 31 July 2003 and Order dated 20 October 2003 of the Regional Trial Court, City of Parañaque, Branch 258, in Civil Case No. 00-0447 are **AFFIRMED** with the following **MODIFICATIONS:**

1. Moral Damages is **REDUCED** to Php 200,000.00;
2. Death Indemnity of Php 50,000.00 is awarded;
3. The Php 35,000.00 actual damages, Php 200,000.00 moral damages, Php 30,000.00 exemplary damages and Php 50,000.00 attorney's fees shall earn interest at the rate of 6% *per annum* computed from 31 July 2003, the date of the [Regional Trial Court's] decision; and upon finality of this Decision, all the amounts due shall earn interest at the rate of 12% *per annum,* in lieu of 6% *per annum,* until full payment; and,
4. The Php 50,000.00 death indemnity shall earn interest at the rate of 6% *per annum* computed from the date of promulgation of this Decision; and upon finality of this Decision, the amount due shall earn interest at the rate of 12% *per annum,* in lieu of 6% *per annum,* until full payment.

Costs against [Caravan].

SO ORDERED. [34]

---

[31] *Id.* at 449. The case was docketed as Civil Case No. 00-0447. The Decision, promulgated on July 31, 2003, was penned by Judge Raul E. De Leon of Branch 258.

[32] *Id.* at 450-462.

[33] *Id.* at 513.

[34] *Rollo,* p. 162, Court of Appeals Decision. The case was docketed as CA-G.R. CV No. 81694.

Caravan filed a Motion for Reconsideration, but it was denied in the Court of Appeals' assailed November 29, 2005 Resolution.[35]

Hence, this Petition was filed.

Caravan argues that Abejar has no personality to bring this suit because she is not a real party in interest. According to Caravan, Abejar does not exercise legal or substitute parental authority. She is also not the judicially appointed guardian or the only living relative of the deceased.[36] She is also not "the executor or administrator of the estate of the deceased."[37] According to Caravan, only the victim herself or her heirs can enforce an action based on *culpa aquiliana* such as Abejar's action for damages.[38]

Caravan adds that Abejar offered no documentary or testimonial evidence to prove that Bautista, the driver, acted "within the scope of his assigned tasks"[39] when the accident occurred.[40] According to Caravan, Bautista's tasks only pertained to the transport of company personnel or products, and when the accident occurred, he had not been transporting personnel or delivering products of and for the company.[41]

Caravan also argues that "it exercised the diligence of a good father of a family in the selection and supervision of its employees."[42]

Caravan further claims that Abejar should not have been awarded moral damages, actual damages, death indemnity, exemplary damages, and attorney's fees.[43] It questions the

---

[35] *Id.* at 166-167, Court of Appeals Resolution.

[36] *Id.* at 231, Caravan's Memorandum.

[37] *Id.*

[38] *Id.* at 232.

[39] *Id.* at 42, Petition for Review on *Certiorari*.

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

[41] *Id.* at 42.

[42] *Id.* at 31.

[43] *Id.* at 43.

Certificate provided by Abejar as proof of expenses since its signatory, a certain Julian Peñaloza (Peñaloza), was not presented in court, and Caravan was denied the right to cross-examine him.[44] Caravan argues that the statements in the Certification constitute hearsay.[45] It also contends that based on Article 2206(3)[46] of the Civil Code, Abejar is not entitled to moral damages.[47] It insists that moral and exemplary damages should not have been awarded to Abejar because Caravan acted in good faith.[48] Considering that moral and exemplary damages are unwarranted, Caravan claims that the award of attorney's fees should have also been removed.[49]

Lastly, Caravan argues that it should not be held solidarily liable with Bautista since Bautista was already dropped as a party.[50]

Abejar counters that Caravan failed to provide proof that it exercised the requisite diligence in the selection and supervision of Bautista.[51] She adds that the Court of Appeals' ruling that Caravan is solidarily liable with Bautista for moral damages, exemplary damages, civil indemnity *ex delicto,* and attorney's fees should be upheld.[52] Abejar argues that since Caravan is

---

[44] *Id.* at 44.

[45] *Id.* at 233, Caravan's Memorandum.

[46] CIVIL CODE, Art. 2206(3) provides:

> ARTICLE 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:
>
> . . . .
>
> (3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

[47] *Rollo,* pp. 45-46, Petition for Review on *Certiorari*.

[48] *Id.* at 50.

[49] *Id.* at 50-51.

[50] *Id.* at 43.

[51] *Id.* at 203, Abejar's Memorandum.

[52] *Id.* at 206.

the registered owner of the van, it is directly, primarily, and solidarily liable for the tortious acts of its driver.[53]

For resolution are the following issues:

First, whether respondent Ermilinda R. Abejar is a real party in interest who may bring an action for damages against petitioner Caravan Travel and Tours International, Inc. on account of Jesmariane R. Reyes' death; and

Second, whether petitioner should be held liable as an employer, pursuant to Article 2180 of the Civil Code.

We deny the Petition.

I

Having exercised substitute parental authority, respondent suffered actual loss and is, thus, a real party in interest in this case.

In her Complaint, respondent made allegations that would sustain her action for damages: that she exercised substitute parental authority over Reyes; that Reyes' death was caused by the negligence of petitioner and its driver; and that Reyes' death caused her damage.[54] Respondent properly filed an action based on quasi-delict. She is a real party in interest.

Rule 3, Section 2 of the 1997 Rules of Civil Procedure defines a real party in interest:

> RULE 3. Parties to Civil Actions
>
> . . . .
>
> SECTION 2. Parties in Interest. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

---

[53] *Id.* at 207.

[54] RTC records, pp. 1-3, Complaint.

"To qualify a person to be a real party in interest in whose name an action must be prosecuted, he [or she] must appear to be the present real owner of the right sought to be enforced."[55] Respondent's capacity to file a complaint against petitioner stems from her having exercised substitute parental authority over Reyes.

Article 216 of the Family Code identifies the persons who exercise substitute parental authority:

> Art. 216. In default of parents or a judicially appointed guardian, the following persons shall exercise substitute parental authority over the child in the order indicated:
>
> (1) The surviving grandparent, as provided in Art. 214;[56]
>
> (2) The oldest brother or sister, over twenty-one years of age, unless unfit or disqualified; and
>
> (3) *The child's actual custodian, over twenty-one years of age, unless unfit or disqualified.*
>
> Whenever the appointment or a judicial guardian over the property of the child becomes necessary, the same order of preference shall be observed. (Emphasis supplied)

Article 233 of the Family Code provides for the extent of authority of persons exercising substitute parental authority, that is, the same as those of actual parents:

> Art. 233. The person exercising substitute parental authority shall have the *same* authority over the person of the child as the parents. (Emphasis supplied)

---

[55] *National Housing Authority v. Magat,* 611 Phil. 742, 747 (2009) [Per *J.* Carpio, First Division], citing *Shipside, Inc. v. Court of Appeals,* 404 Phil. 981, 998 (2001) [Per *J.* Melo, Third Division].

[56] FAMILY CODE, Art. 214 provides:

> Art. 214. In case of death, absence or unsuitability of the parents, substitute parental authority shall be exercised by the surviving grandparent. In case several survive, the one designated by the court, taking into account the same consideration mentioned in the preceding article, shall exercise the authority.

Both of Reyes' parents are already deceased.[57] Reyes' paternal grandparents are also both deceased.[58] The whereabouts of Reyes' maternal grandparents are unknown.[59] There is also no record that Reyes has brothers or sisters. It was under these circumstances that respondent took custody of Reyes when she was a child, assumed the role of Reyes' parents, and thus, exercised substitute parental authority over her.[60] As Reyes' custodian, respondent exercised the full extent of the statutorily recognized rights and duties of a parent. Consistent with Article 220[61] of the Family

---

[57] RTC records, pp. 179, Abejar's Formal Offer of Documentary Exhibits; 187, Death Certificate of Edwin Cortez issued by the Municipal Civil Registrar of Calamba, Laguna; 188, Death Certificate of Leonora R. Landicho issued by the Municipal Civil Registrar of Candelaria, Quezon; and 189, Certificate of Death of Leonora R. Landicho issued by the Parish of San Pedro Bautista, Candelaria, Quezon.

[58] *Id.* at 179, Abejar's Formal Offer of Documentary Exhibits; 190, Death Certificate of Leticia Cortez Reyes issued by the Municipal Civil Registrar of Tiaong, Quezon; and 191, Certificate of Death of Domingo Estiva Reyes issued by the City Civil Registrar of Manila.

[59] TSN, April 10, 2002, p. 760.

[60] TSN, June 22, 2001, p. 605.

[61] FAMILY CODE, Art. 220 provides:

> Art. 220. The parents and those exercising parental authority shall have with the respect to their unemancipated children on wards the following rights and duties:
>
> (1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;
>
> (2) To give them love and affection, advice and counsel, companionship and understanding;
>
> (3) To provide them with moral and spiritual guidance, inculcate in them honesty, integrity, self- discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;
>
> (4) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals;
>
> (5) To represent them in all matters affecting their interests;

Code, respondent supported Reyes' education[62] and provided for her personal needs.[63] To echo respondent's words in her Complaint, she treated Reyes as if she were her own daughter.[64]

Respondent's right to proceed against petitioner, therefore, is based on two grounds.

First, respondent suffered actual personal loss. With her affinity for Reyes, it stands to reason that when Reyes died, respondent suffered the same anguish that a natural parent would have felt upon the loss of one's child. It is for this injury—as authentic and personal as that of a natural parent—that respondent seeks to be indemnified.

Second, respondent is capacitated to do what Reyes' actual parents would have been capacitated to do.

In *Metro Manila Transit Corporation v. Court of Appeals,*[65] *Tapdasan, Jr. v. People,*[66] and *Aguilar, Sr. v. Commercial Savings Bank,*[67] this court allowed natural parents of victims to recover damages for the death of their children. Inasmuch as persons exercising substitute parental authority have the full range of competencies of a child's actual parents, nothing prevents persons exercising substitute parental authority from similarly possessing the right to be indemnified for their ward's death.

We note that Reyes was already 18 years old when she died. Having reached the age of majority, she was already emancipated

---

(6) To demand from them respect and obedience;
(7) To impose discipline on them as may be required under the circumstances; and
(8) To perform such other duties as are imposed by law upon parents and guardians.

[62] TSN, June 22, 2001, p. 607.

[63] *Id.*

[64] RTC records, p. 2, Complaint.

[65] 359 Phil. 18, 26-27 (1998) [Per *J.* Mendoza, Second Division].

[66] 440 Phil. 864, 880 (2002) [Per *J.* Callejo, Sr., Second Division].

[67] 412 Phil. 834, 835 (2001) [Per *J.* Quisumbing, Second Division].

upon her death. While parental authority is terminated upon emancipation,[68] respondent continued to support and care for Reyes even after she turned 18.[69] Except for the legal technicality of Reyes' emancipation, her relationship with respondent remained the same. The anguish and damage caused to respondent by Reyes' death was no different because of Reyes' emancipation.

In any case, the termination of respondent's parental authority is not an insurmountable legal bar that precludes the filing of her Complaint. In interpreting Article 1902[70] of the old Civil Code, which is substantially similar to the first sentence of Article 2176[71] of the Civil Code, this court in *The Receiver For North Negros Sugar Company, Inc. v. Ybanez, et al.*[72] ruled that brothers and sisters may recover damages, except moral damages, for the death of their sibling.[73] This court declared that Article 1902 of the old Civil Code (now Article 2176) is broad enough to accommodate even plaintiffs who are not relatives of the deceased, thus:[74]

---

[68] FAMILY CODE, Art. 236.

[69] *Rollo,* p. 138, Court of Appeals Decision.

[70] CIVIL CODE (1889), Art. 1902 provides:

ARTICLE 1902. Any person who by an act or omission causes damage to another by his fault or negligence shall be liable for the damage so done.

[71] CIVIL CODE, Art. 2176, first sentence, provides:

ARTICLE 2176: Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done.

[72] 133 Phil. 825 (1968) [Per *J.* Zaldivar, *En Banc*].

[73] *Id.* at 832-833.

[74] *Id.* at 831. This court ruled that while Article 1902 of the old Civil Code (now Article 2176) does not require any relation between the plaintiff and the victim of the quasi-delict, Article 2206(3) of the Civil Code does. Hence, the recovery of *moral damages* requires that the plaintiff is the victim's spouse, legitimate or illegitimate descendant or ascendant (*Id*. at 833).

This Court said: "Article 1902 of the Civil Code declares that any person who by an act or omission, characterized by fault or negligence, causes damage to another shall be liable for the damage done . . . a person is liable for damage done to another by any culpable act; and by any culpable act is meant any act which is blameworthy when judged by accepted legal standards. The idea thus expressed is undoubtedly broad enough to include any rational conception of liability for the tortious acts likely to be developed in any society." The word "damage" in said article, comprehending as it does all that are embraced in its meaning, includes any and all damages that a human being may suffer in any and all the manifestations of his life: physical or material, moral or psychological, mental or spiritual, financial, economic, social, political, and religious.

It is particularly noticeable that Article 1902 stresses the passive subject of the obligation to pay damages caused by his fault or negligence. *The article does not limit or specify the active subjects, much less the relation that must exist between the victim of the culpa aquiliana and the person who may recover damages, thus warranting the inference that, in principle, anybody who suffers any damage from culpa aquiliana,* **whether a relative or not of the victim***, may recover damages from the person responsible therefor[.]*[75] (Emphasis supplied, citations omitted)

II

Respondent's Complaint is anchored on an employer's liability for quasi-delict provided in Article 2180, in relation to Article 2176 of the Civil Code. Articles 2176 and 2180 read:

ARTICLE 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

. . . . . .

ARTICLE 2180. The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

---

[75] *Id*. at 831.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though theformer are not engaged in any business or industry.

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage. (Emphasis supplied)

Contrary to petitioner's position, it was not fatal to respondent's cause that she herself did not adduce proof that Bautista acted within the scope of his authority. It was sufficient that Abejar proved that petitioner was the registered owner of the van that hit Reyes.

The resolution of this case must consider two (2) rules. First, Article 2180's specification that "[e]mployers shall be liable for the damages caused by their employees ... *acting within the scope of their assigned tasks[.]"* Second, the operation of the registered-owner rule that registered owners are liable for death or injuries caused by the operation of their vehicles.[76]

---

[76] See *Filcar Transport Services v. Espinas,* 688 Phil. 430, 435 (2012) [Per *J.* Brion, Second Division].

These rules appear to be in conflict when it comes to cases in which the employer is also the registered owner of a vehicle. Article 2180 requires proof of two things: first, an employment relationship between the driver and the owner; and second, that the driver acted within the scope of his or her assigned tasks. On the other hand, applying the registered-owner rule only requires the plaintiff to prove that the defendant-employer is the registered owner of the vehicle.

The registered-owner rule was articulated as early as 1957 in *Erezo, et al. v. Jepte,*[77] where this court explained that the registration of motor vehicles, as required by Section 5(a)[78] of Republic Act No. 4136, the Land Transportation and Traffic Code, was necessary "not to make said registration the operative act by which ownership in vehicles is transferred, . . . but to permit the use and operation of the vehicle upon any public highway[.]"[79] Its "main aim . . . is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual, the registered owner."[80]

Erezo notwithstanding, *Castilex Industrial Corporation v. Vasquez, Jr.*[81] relied on Article 2180 of the Civil Code even though the employer was also the registered owner of the vehicle.[82] The registered-owner rule was not mentioned.

---

[77] 102 Phil. 103 (1957) [Per *J.* Labrador, *En Banc*].

[78] TRANSP. & TRAFFIC CODE, Sec. 5 provides:

SECTION 5. Compulsory Registration of Motor Vehicles. – (a) All motor vehicles and trailer of any type used or operated on or upon any highway of the Philippines must be registered with the Bureau of Land Transportation for the current year in accordance with the provisions of this Act.

[79] *Erezo, et al. v. Jepte,* 102 Phil. 103, 108 (1957) [Per *J.* Labrador, *En Banc*].

[80] *Id.*

[81] 378 Phil. 1009 (1999) [Per *C.J.* Davide, Jr., First Division].

[82] *Id.* at 1016-1018.

In *Castilex,* Benjamin Abad (Abad) was a manager of Castilex Industrial Corporation (Castilex). Castilex was also the registered owner of a Toyota Hi-Lux pick-up truck. While Abad was driving the pick-up truck, it collided with a motorcycle driven by Romeo Vasquez (Vasquez). Vasquez died a few days after. Vasquez's parents filed a case for damages against Abad and Castilex.[83] Castilex denied liability, arguing that Abad was acting in his private capacity at the time of the accident.[84]

This court absolved Castilex of liability, reasoning that *it was incumbent upon the plaintiff to prove that the negligent employee was acting within the scope of his assigned tasks.*[85] Vasquez's parents failed to prove this.[86] This court outlined the process necessary for an employer to be held liable for the acts of its employees and applied the process to the case:

> Under the fifth paragraph of Article 2180, whether or not engaged in any business or industry, an employer is liable for the torts committed by employees within the scope of his assigned tasks. But it is necessary to establish the employer-employee relationship; *once this is done, the plaintiff must show, to hold the employer liable, that the employee was acting within the scope of his assigned task when the tort complained of was committed.* It is only then that the employer may fmd it necessary to interpose the defense of due diligence in the selection and supervision of the employee.
>
> . . . . . .
>
> Since *there is paucity of evidence that ABAD was acting within the scope of the functions entrusted to him,* petitioner CASTILEX had no duty to show that it exercised the diligence of a good father of a family in providing ABAD with a service vehicle. Thus, justice and equity require that petitioner be relieved of vicarious liability for the consequences of the negligence of ABAD in driving its vehicle. (Emphasis supplied, citations omitted)[87]

---

[83] *Id.* at 1012-1013.

[84] *Id.* at 1018.

[85] *Id.* at 1022-1023.

[86] *Id.* at 1018.

[87] *Id.* at 1017-1022.

Aguilar, Sr. v. Commercial Savings Bank recognized the seeming conflict between Article 2180 and the registered-owner rule and applied the latter.[88]

In *Aguilar, Sr.,* a Mitsubishi Lancer, registered in the name of Commercial Savings Bank and driven by the bank's assistant vice-president Ferdinand Borja, hit Conrado Aguilar, Jr. The impact killed Conrado Aguilar, Jr. His father, Conrado Aguilar, Sr. filed a case for damages against Ferdinand Borja and Commercial Savings Bank. The Regional Trial Court found Commercial Savings Bank solidarily liable with Ferdinand Borja.[89] However, the Court of Appeals disagreed with the trial court's Decision and dismissed the complaint against the bank. *The Court of Appeals reasoned that Article 2180 requires the plaintiff to prove that at the time of the accident, the employee was acting within the scope of his or her assigned tasks.* The Court of Appeals found no evidence that Ferdinand Borja was acting as the bank's assistant vice-president at the time of the accident.[90]

The Court of Appeals ruling was reversed by this court.[91] *Aguilar, Sr.* reiterated the following pronouncements made in *Erezo* in ruling that the bank, *as the registered owner of the vehicle,* was primarily liable to the plaintiff:[92]

> The main aim of motor vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual, the registered owner. . . .
>
> . . . . . .

---

[88] *Aguilar, Sr. v. Commercial Savings Bank,* 412 Phil. 834, 839-841 (2001) [Per *J.* Quisumbing, Second Division].

[89] *Id*. at 835-837.

[90] *Id.* at 837.

[91] *Id.* at 841.

[92] *Aguilar, Sr. v. Commercial Savings Bank,* 412 Phil. 834, 839-841 (2001) [Per *J.* Quisumbing, Second Division].

. . . . A victim of recklessness on the public highways is usually without means to discover or identify the person actually causing the injury or damage. He has no means other than by a recourse to the registration in the Motor Vehicles Office to determine who is the owner. The protection that the law aims to extend to him would become illusory were the registered owner given the opportunity to escape liability by disproving his ownership.[93]

Thus, *Aguilar, Sr.* concluded:

In our view, respondent bank, as the registered owner of the vehicle, is primarily liable for Aguilar, Jr.'s death. *The Court of Appeals erred when it concluded that the bank was not liable simply because (a) petitioner did not prove that Borja was acting as the bank's vice president at the time of the accident;* and (b) Borja had, according to respondent bank, already bought the car at the time of the mishap. *For as long as the respondent bank remained the registered owner of the car involved in the vehicular accident, it could not escape primary liability for the death of petitioner's son.*[94] (Emphasis supplied)

Preference for the registered-owner rule became more pronounced in *Del Carmen, Jr. v. Bacoy*:[95]

Without disputing the factual finding of the [Court of Appeals] that Allan was still his employee at the time of the accident, a finding which we see no reason to disturb, Oscar Jr. contends that *Allan drove the jeep in his private capacity and thus, an employer's vicarious liability for the employee's fault under Article 2180 of the Civil Code cannot apply to him.*

The contention is no longer novel. In *Aguilar Sr. v. Commercial Savings Bank,* the car of therein respondent bank caused the death of Conrado Aguilar, Jr. while being driven by its assistant vice president. *Despite Article 2180, we still held the bank liable for damages for the accident as* ***said provision should defer to the settled doctrine concerning accidents involving registered motor vehicles***, *i.e.,* that the registered owner of any vehicle, even if not

---

[93] *Id.* at 839-840.

[94] *Id.* at 841.

[95] 686 Phil. 799 (2012) [Per *J.* Del Castillo, First Division].

used for public service, would primarily be responsible to the public or to third persons for injuries caused the latter while the vehicle was being driven on the highways or streets. We have already ratiocinated that:

> The main aim of motor vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual, the registered owner. Instances are numerous where vehicles running on public highways caused accidents or injuries to pedestrians or other vehicles without positive identification of the owner or drivers, or with very scant means of identification. It is to forestall these circumstances, so inconvenient or prejudicial to the public, that the motor vehicle registration is primarily ordained, in the interest of the determination of persons responsible for damages or injuries caused on public highways.[96]
> (Emphasis supplied, citations omitted)

Filcar Transport Services v. Espinas[97] stated that the registered owner of a vehicle can no longer use the defenses found in Article 2180:[98]

> Neither can Filcar use the defenses available under Article 2180 of the Civil Code — that the employee acts beyond the scope of his assigned task or that it exercised the due diligence of a good father of a family to prevent damage — because the motor vehicle registration law, to a certain extent, modified Article 2180 of the Civil Code by making these defenses unavailable to the registered owner of the motor vehicle. Thus, for as long as Filcar is the registered owner of the car involved in the vehicular accident, it could not escape primary liability for the damages caused to Espinas.[99]

Mendoza v. Spouses Gomez[100] reiterated this doctrine.

---

[96] *Id*. at 817.

[97] 688 Phil. 430 (2012) [Per *J*. Brion, Second Division].

[98] *Id*. at 441.

[99] *Id*.

[100] G.R. No. 160110, June 18, 2014, 726 SCRA505, 518-521 [Per *J*. Perez, Second Division].

However, *Aguilar, Sr., Del Carmen, Filcar,* and *Mendoza* should not be taken to mean that Article 2180 of the Civil Code should be completely discarded in cases where the registered-owner rule finds application.

As acknowledged in *Filcar,* there is no categorical statutory pronouncement in the Land Transportation and Traffic Code stipulating the liability of a registered owner.[101] The source of a registered owner's liability is not a distinct statutory provision, but remains to be Articles 2176 and 2180 of the Civil Code:

> While Republic Act No. 4136 or the Land Transportation and Traffic Code does not contain any provision on the liability of registered owners in case of motor vehicle mishaps, Article 2176, in relation with Article 2180, of the Civil Code imposes an obligation upon Filcar, as registered owner, to answer for the damages caused to Espinas' car.[102]

Thus, it is imperative to apply the registered-owner rule in a manner that harmonizes it with Articles 2176 and 2180 of the Civil Code. Rules must be construed in a manner that will harmonize them with other rules so as to form a uniform and consistent system of jurisprudence.[103] In light of this, the words used in *Del Carmen* are particularly notable. There, this court stated that Article 2180 "should defer to"[104] the registered-owner rule. It never stated that Article 2180 should be totally abandoned.

Therefore, the appropriate approach is that in cases where both the registered-owner rule and Article 2180 apply, the plaintiff must first establish that the employer is the registered owner of the vehicle in question. Once the plaintiff successfully proves ownership, there arises a disputable presumption that the

---

[101] *Filcar Transport Services v. Espinas,* 688 Phil. 430, 441 (2012) [Per *J.* Brion, Second Division].

[102] *Id.* at 441-442.

[103] *Spouses Algura v. The Local Government Unit of the City of Naga,* 536 Phil. 819, 835 (2006) [Per *J.* Velasco, Jr., Third Division].

[104] *Del Carmen, Jr. v. Bacoy,* 686 Phil. 799, 817 (2012) [Per *J.* Del Castillo, First Division].

requirements of Article 2180 have been proven. As a consequence, the burden of proof shifts to the defendant to show that no liability under Article 2180 has arisen.

This disputable presumption, insofar as the registered owner of the vehicle in relation to the actual driver is concerned, recognizes that between the owner and the victim, it is the former that should carry the costs of moving forward with the evidence. The victim is, in many cases, a hapless pedestrian or motorist with hardly any means to uncover the employment relationship of the owner and the driver, or any act that the owner may have done in relation to that employment.

The registration of the vehicle, on the other hand, is accessible to the public.

Here, respondent presented a copy of the Certificate of Registration[105] of the van that hit Reyes.[106] The Certificate attests to petitioner's ownership of the van. Petitioner itself did not dispute its ownership of the van. Consistent with the rule we have just stated, a presumption that the requirements of Article 2180 have been satisfied arises. It is now up to petitioner to establish that it incurred no liability under Article 2180. This it can do by presenting proof of any of the following: first, that it had no employment relationship with Bautista; second, that Bautista acted outside the scope of his assigned tasks; or third, that it exercised the diligence of a good father of a family in the selection and supervision of Bautista.[107]

---

[105] RTC records, p. 182.

[106] *Id*. at 177, Abejar's Formal Offer of Documentary Evidence.

[107] A reading of Article 2180 reveals that in order for an employer to be liable for the acts of its employee, it is required that the employment relationship is established, that the employee acted within the scope of his or her assigned tasks, and that the employer failed to exercise the diligence of a good father of a family in the selection and supervision of the employee. See *Castilex Industrial Corp. v. Vasquez, Jr.,* 378 Phil. 1009, 1017 (1999) [Per *C.J.* Davide, Jr., First Division] and *Metro Manila Transit Corporation v. Court of Appeals,* G.R. No. 104408, June 21, 1993, 223 SCRA 521, 539 [Per *J.* Regalado, Second Division].

On the first, petitioner admitted that Bautista was its employee at the time ofthe accident.[108]

On the second, petitioner was unable to prove that Bautista was not acting within the scope of his assigned tasks at the time of the accident. When asked by the court why Bautista was at the place of the accident when it occurred, Sally Bellido, petitioner's accountant and supervisor,[109] testified that she did not "have the personal capacity to answer [the question]"[110] and that she had no knowledge to answer it:

COURT	:	Madam Witness, do you know the reason why your driver, Jimmy Bautista, at around 10:00 o'clock in the morning of July 13, 2000 was in the vicinity of Barangay Marcelo Green, United Parañaque Subdivision 4?
WITNESS	:	*I don't have the personal capacity to answer that, Sir.*
Q	:	So you don't have any knowledge why he was there?
A	:	Yes, Sir.[111] (Emphasis supplied)

Sally Bellido's testimony does not affect the presumption that Article 2180's requirements have been satisfied. Mere disavowals are not proof that suffice to overturn a presumption. To this end, evidence must be adduced. However, petitioner presented no positive evidence to show that Bautista was acting in his private capacity at the time of the incident.

On the third, petitioner likewise failed to prove that it exercised the requisite diligence in the selection and supervision of Bautista.

---

[108] RTC records, pp. 2, Complaint; and 47, Answer with Counterclaim.

[109] TSN, September 25, 2002, pp. 1247-1248.

[110] *Id*. at 1284.

[111] *Id*. at 1284-1285.

In its selection of Bautista as a service driver, petitioner contented itself with Bautista's submission of a *non-professional* driver's license.[112] Hence, in Sally Balledo's cross-examination:

Q	:	. . . when he was promoted as service driver, of course, there were certain requirements and among other else, you made mention about a driver's license.
A	:	Yes, Sir.
Q	:	Would you be able to show to this Honorable Court whether indeed this person did submit a driver's license to your company?
A	:	Yes, Sir.
	. . .	. . . . .
Q	:	Do you recall what kind of driver's license is this?
A	:	The Land Transportation Office.
Q	:	Is it a professional driver's license or non-proffesional [sic] driver's license?
A	:	*Non-professional.*
Q	:	You are not sure?
COURT	:	Non professional, professional?
A	:	*It's a non-professional.*[113] (Emphasis supplied)

Employing a person holding a non-professional driver's license to operate another's motor vehicle violates Section 24 of the Land Transportation and Traffic Code, which provides:

SEC. 24. Use of driver's license and badge.— . . .

. . . . . .

No owner of a motor vehicle shall engage, employ, or hire any person to operate such motor vehicle, unless the person sought to be employed is a duly licensed professional driver.

---

[112] *Id*. at 1274-1275.

[113] *Id*. at 1273-1275.

Evidently, petitioner did not only fail to exercise due diligence when it selected Bautista as service driver; it also committed an actual violation of law.

To prove that it exercised the required diligence in supervising Bautista, petitioner presented copies of several memoranda and company rules.[114] These, however, are insufficient because petitioner failed to prove actual compliance. *Metro Manila Transit Corporation v. Court of Appeals*[115] emphasized that to establish diligence in the supervision of employees, the issuance of company policies must be coupled with proof of compliance:

> *Due diligence in the supervision of employees, on the other hand, includes the formulation of suitable rules and regulations for the guidance of employees and the issuance of proper instructions intended for the protection of the public* and persons with whom the employer has relations through his or its employees and the imposition of necessary disciplinary measures upon employees in case of breach or as may be warranted to ensure the performance of acts indispensable to the business of and beneficial to their employer. To this, we add that *actual implementation* and monitoring of *consistent compliance* with said rules should be the constant concern of the employer, acting through dependable supervisors who should regularly report on their supervisory functions.
>
> In order that the defense of due diligence in the selection and supervision of employees may be deemed sufficient and plausible, ***it is not enough to emptily invoke the existence of said company guidelines and policies on hiring and supervision***. As the negligence of the employee gives rise to the presumption of negligence on the part of the employer, the latter has the burden of proving that it has been diligent not only in the selection of employees but also in the actual supervision of their work. *The mere allegation of the existence of hiring procedures and supervisory policies, without anything more, is decidedly not sufficient to overcome presumption.*

We emphatically reiterate our holding, as a warning to all employers, that "(t)he mere formulation of various company policies

---

[114] RTC records, pp. 227-229, Caravan's Formal Offer of Evidence.

[115] G.R. No. 104408, June 21, 1993, 223 SCRA 521 [Per *J.* Regalado, Second Division].

on safety ***without showing that they were being complied with*** is not sufficient to exempt petitioner from liability arising from negligence of its employees. It is incumbent upon petitioner to show that in recruiting and employing the erring driver the recruitment procedures and company policies on efficiency and safety were followed."Paying lip-service to these injunctions or merely going through the motions of compliance therewith will warrant stem sanctions from the Court.[116] (Emphasis supplied, citations omitted)

For failing to overturn the presumption that the requirements of Article 2180 have been satisfied, petitioner must be held liable.

III

Petitioner's argument that it should be excused from liability because Bautista was already dropped as a party is equally unmeritorious. The liability imposed on the registered owner is direct and primary.[117] It does not depend on the inclusion of the negligent driver in the action. Agreeing to petitioner's assertion would render impotent the rationale of the motor registration law in fixing liability on a definite person.

Bautista, the driver, was not an indispensable party under Rule 3, Section 7[118] of the 1997 Rules of Civil Procedure. Rather, he was a necessary party under Rule 3, Section 8.[119] Instead of

---

[116] *Id*. at 540-541.

[117] *Filcar Transport Services v. Espinas,* 688 Phil. 430, 439 (2012) [Per *J*. Brion, Second Division]; *Aguilar, Sr. v. Commercial Savings Bank,* 412 Phil. 834, 839-841 (2001) [Per *J*. Quisumbing, Second Division].

[118] 1997 RULES OF CIV. PROC., Rule 3, Sec. 7 provides:

RULE 3. Parties to Civil Actions

. . . . . .

SECTION 7. Compulsory Joinder of Indispensable Parties.—Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

[119] 1997 RULES OF CIV. PROC., Rule 3, Sec. 8 provides:

RULE 3. Parties to Civil Actions

. . . . . .

insisting that Bautista—who was nothing more than a necessary party—should not have been dropped as a defendant, or that petitioner, along with Bautista, should have been dropped, petitioner (as a co-defendant insisting that the action must proceed with Bautista as party) could have opted to file a cross-claim against Bautista as its remedy.

The 1997 Rules of Civil Procedure spell out the rules on joinder of indispensable and necessary parties. These are intended to afford "a complete determination of all possible issues, not only between the parties themselves but also as regards to other persons who may be affected by the judgment."[120]

However, while an exhaustive resolution of disputes is desired in every case, the distinction between indispensable parties and necessary parties delineates a court's capacity to render effective judgment. As defined by Rule 3, Section 7, indispensable parties are "[p]arties in interest without whom no final determination can be had of an action[.]" Thus, their non-inclusion is debilitating: "the presence of indispensable parties is a condition for the exercise of juridical power and when an indispensable party is not before the court, the action should be dismissed."[121]

In contrast, a necessary party's presence is not imperative, and his or her absence is not debilitating. Nevertheless, it is preferred that they be included in order that relief may be complete.

The concept of indispensable parties, as against parties whose inclusion only allows complete relief, was explained in *Arcelona v. Court of Appeals*:[122]

> SECTION 8. Necessary Party. — A necessary party is one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action.

[120] *Director of Lands v. Court of Appeals,* 181 Phil. 432, 440-441 (1979) [Per *J.* Guerrero, First Division].

[121] *Lucman v. Malawi,* 540 Phil. 289, 302 (2006) [Per *J.* Tinga, Third Division].

[122] 345 Phil. 250 (1997) [Per *J.* Panganiban, Third Division].

An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.

A person is not an indispensable party, however, if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him and those already parties to the action, or if he has no interest in the subject matter of the action. It is not a sufficient reason to declare a person to be an indispensable party that his presence will avoid multiple litigation.[123]

Petitioner's interest and liability is distinct from that of its driver. Regardless of petitioner's employer-employee relationship with Bautista, liability attaches to petitioner on account of its being the registered owner of a vehicle that figures in a mishap. This alone suffices. A determination of its liability as owner can proceed independently of a consideration of how Bautista conducted himself as a driver. While certainly it is desirable that a determination of Bautista's liability be made alongside that of the owner of the van he was driving, his non-inclusion in these proceedings does not absolutely hamper a judicious resolution of respondent's plea for relief.

---

[123] *Id*. at 269-270.

IV

The Court of Appeals committed no reversible error when it awarded actual damages to respondent. Respondent's claim for actual damages was based on the Certificate[124] issued and signed by a certain Peñaloza showing that respondent paid Peñaloza ₱35,000.00 for funeral expenses.

Contrary to petitioner's claim, this Certificate is not hearsay. Evidence is hearsay when its probative value is based on the personal knowledge of a person other than the person actually testifying.[125] Here, the Certificate sought to establish that respondent herself paid Peñaloza ₱35,000.00 as funeral expenses for Reyes' death:[126]

> 3. Na ang aking kontrata ay nagkakahalaga ng *₱35,000.00* [sic] sa lahat ng nagamit na materiales at labor nito kasama ang lote *na ibinayad sa akin ni Gng. ERMILINDA REYES ABEJAR* na siyang aking kakontrata sa pagsasagawa ng naturang paglilibingan.[127] (Emphasis supplied)

It was respondent herself who identified the Certificate. She testified that she incurred funeral expenses amounting to ₱35,000.00, that she paid this amount to Peñaloza, and that she was present when Peñaloza signed the Certificate:

[ATTY. LIM]	:	Did you incur any expenses?
A	:	*Meron po.*
Q	:	How much did you spend for the death of Jesmarian [sic] Reyes?
A	:	'Yun pong *₱35,000.00 na pagpapalibing at saka ...*

---

[124] RTC records, p. 186.

[125] *Valencia v. Atty. Cabanting,* 273 Phil. 534, 545 (1991) [*Per Curiam, En Banc*].

[126] RTC records, pp. 178-179, Abejar's Formal Offer of Documentary Exhibits.

[127] *Id*. at 186, Certificate issued by Julian Peñaloza.

Q	:	You said that you spent ₱35,000.00. Do you have any evidence or proof that you spent that amount?
A	:	Meron po.
Q	:	Showing to you this sort of certification. What relation has this...
A	:	'Yan po 'yung contractor na gumawa.
Q	:	Contractor of what?
A	:	*'Yan po 'yung mismong binilhan ko ng lupa at nitso.*
. . .		. . . . .
ATTY. LIM	:	There is a signature at the top of the printed name Julian Peñalosa [sic]. Whose signature is this?
A	:	'Yan po 'yung mismong contractor.
. . .		. . . . .
Q	:	Did you see him sign this?
A	:	*Opo*.[128] (Emphasis supplied)

Respondent had personal knowledge of the facts sought to be proved by the Certificate, i.e. that she spent ₱35,000.00 for the funeral expenses of Reyes. Thus, the Certificate that she identified and testified to is not hearsay. It was not an error to admit this Certificate as evidence and basis for awarding ₱35,000.00 as actual damages to respondent.

The Court of Appeals likewise did not err in awarding civil indemnity and exemplary damages.

Article 2206 of the Civil Code provides:

ARTICLE 2206. The amount of damages for death caused by a crime or *quasi-delict* shall be at least three thousand pesos, even though there may have been mitigating circumstances[.]

---

[128] TSN, June 22, 2001, pp. 615-616.

Further, Article 2231 of the Civil Code provides:

ARTICLE 2231. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.

Both the Court of Appeals and the Regional Trial Court found Bautista grossly negligent in driving the van and concluded that Bautista's gross negligence was the proximate cause of Reyes' death. Negligence and causation are factual issues.[129] Findings of fact, when established by the trial court and affirmed by the Court of Appeals, are binding on this court unless they are patently unsupported by evidence or unless the judgment is grounded on a misapprehension of facts.[130] Considering that petitioner has not presented any evidence disputing the findings of the lower courts regarding Bautista's negligence, these findings cannot be disturbed in this appeal. The evidentiary bases for the award of civil indemnity and exemplary damages stand. As such, petitioner must pay the exemplary damages arising from the negligence of its driver.[131] For the same reasons, the award of ₱50,000.00 by way of civil indemnity is justified.[132]

The award of moral damages is likewise proper.

Article 2206(3) of the Civil Code provides:

ARTICLE 2206. The amount of damages for *death* caused by a crime or *quasi-delict* shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

---

[129] *Kierulf v. Court of Appeals,* 336 Phil. 414, 423 (1997) [Per *J.* Panganiban, Third Division].

[130] *Pangonorom v. People,* 495 Phil. 195, 204 (2005) [Per *J.* Carpio, First Division], citing *China Airlines, Ltd. v. Court of Appeals,* 453 Phil. 959, 978 (2003) [Per *J.* Carpio, First Division]; *Romago Electric Co., Inc. v. Court of Appeals,* 388 Phil. 964, 974-975 (2000) [Per *J.* Gonzaga-Reyes, Third Division]; *Austria v. Court of Appeals,* 384 Phil. 408, 415 (2000) [Per *J.* Quisumbing, Second Division]; and *Halili v. Court of Appeals,* 350 Phil. 906, 912 (1998) [Per *J.* Panganiban, First Division].

[131] See *Del Carmen, Jr. v. Bacoy,* 686 Phil. 799 (2012) [Per *J.* Del Castillo, First Division].

[132] *Mendoza v. Casumpang, et al.,* 684 Phil. 459, 462 (2012) [Per *J.* Abad, Third Division].

. . . . . .

(3) The *spouse, legitimate and illegitimate descendants and ascendants of the deceased* may demand moral damages for mental anguish by reason of the death of the deceased. (Emphasis supplied)

For deaths caused by quasi-delict, the recovery of moral damages is *limited* to the spouse, legitimate and illegitimate descendants, and ascendants of the deceased.[133]

Persons exercising substitute parental authority are to be considered ascendants for the purpose of awarding moral damages. Persons exercising substitute parental authority are intended to stand in place of a child's parents in order to ensure the well-being and welfare of a child.[134] Like natural parents, persons exercising substitute parental authority are required to, among others, keep their wards in their company,[135] provide for their upbringing,[136] show them love and affection,[137] give them advice and counsel,[138] and provide them with companionship and understanding.[139] For their part, wards shall always observe respect and obedience towards the person exercising parental authority.[140] The law forges a relationship between the ward and the person exercising substitute parental authority such that the death or injury of one results in the damage or prejudice of the other.

---

[133] *The Receiver For North Negros Sugar Company, Inc. v. Ybañez, et al.,* 133 Phil. 825, 833 (1968) [Per *J.* Zaldivar, *En Banc*].

[134] See *Murdock, Sr. and Murdock v. Chuidian,* 99 Phil. 821, 824 (1956) [Per *J.* Padilla, *En Banc*].

[135] FAMILY CODE, Art. 220(1).

[136] FAMILY CODE, Art. 220(1).

[137] FAMILY CODE, Art. 220(2).

[138] FAMILY CODE, Art 220(2).

[139] FAMILY CODE, Art. 220(2).

[140] FAMILY CODE, Art. 220(7).

Moral damages are awarded to compensate the claimant for his or her actual injury, and not to penalize the wrongdoer.[141] Moral damages enable the injured party to alleviate the moral suffering resulting from the defendant's actions.[142] It aims to restore—to the extent possible "the spiritual status quo ante[.]"[143]

Given the policy underlying Articles 216 and 220 of the Family Code as well as the purposes for awarding moral damages, a person exercising substitute parental authority is rightly considered an ascendant of the deceased, within the meaning of Article 2206(3) of the Civil Code. Hence, respondent is entitled to moral damages.

As exemplary damages have been awarded and as respondent was compelled to litigate in order to protect her interests, she is rightly entitled to attorney's fees.[144]

However, the award of interest should be modified. This modification must be consistent with *Nacar v. Gallery Frames,*[145] in which we ruled:

> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of *6% per annum.* No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, *where the demand is established with reasonable certainty,* the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained).

---

[141] *Kierulf v. Court of Appeals,* 336 Phil. 414, 432 (1997) [Per *J.* Panganiban, Third Division].

[142] *Id.*

[143] *Id.*

[144] CIVIL CODE, Art. 2208 (1) and (2).

[145] G.R. No. 189871, August 13, 2013, 703 SCRA439 [Per *J.* Peralta, *En Banc*].

The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be *6% per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. [146] (Emphasis supplied)

WHEREFORE, the Decision of the Court of Appeals dated October 3, 2005 is **AFFIRMED with** the following **MODIFICATIONS:** (a) actual damages in the amount of ₱35,000.00 shall earn interest at the rate of 6% per annum from the time it was judicially or extrajudicially demanded from petitioner Caravan Travel and Tours International, Inc. until full satisfaction; (b) moral damages, exemplary damages, and attorney's fees shall earn interest at the rate of 6% per annum from the date of the Regional Trial Court Decision until full satisfaction; and (c) civil indemnity shall earn interest at the rate of 6% per annum from the date of the Court of Appeals Decision until full satisfaction.

SO ORDERED.

Carpio (*Chairperson*), *del Castillo,* and *Mendoza, JJ.,* concur.

Brion, J., see separate concurring opinion.

SEPARATE CONCURRING OPINION

BRION, *J.*:

I **concur** with the *ponencia's* **conclusions** that, *first,* Ermilinda Abejar *(Abejar)* is a real party in interest and, *second,* Caravan Travel and Tours International, Inc. *(Caravan)* is vicariously liable for damages as Jimmy Bautista *(Bautista)*'s employer.

---

[146] *Id*. at 458.

I write this Opinion (1) to express my reservation on the reasoning employed in resolving the first issue, and (2) to reflect my view on the interplay between Articles 2176 and 2180 of the Civil Code and the registered owner rule.

In resolving the first issue, the *ponencia* reasoned out that Abejar is a real party in interest because she exercised substitute parental authority over the victim, Jesmariane Reyes *(Reyes)*.[1] Having acted as a parent to Reyes, Abejar suffered actual and personal loss due to her death.[2] Furthermore, Abejar was capacitated to do what Reyes' actual parents would have been capacitated to do.[3] In a number of cases, the Court allowed natural parents to recover damages for the death of their children.[4]

I disagree with the *ponencia'* s reasoning. In my view, Abejar is a **real party in interest,** not because she exercised substitute parental authority over Reyes, but because she has an interest in claiming actual and exemplary damages from Caravan.

Parental authority has no bearing on one's status as a real party in interest in a *quasi-delict* case. Parental authority refers to the rights and obligations which parents have over their children's person and property until their majority age.[5] This authority is granted to parents to facilitate the performance of their duties to their children.[6] If a child has no parents, grandparents, or siblings, the child's actual custodian shall exercise substitute parental authority over him or her.[7] Moreover, the child's emancipation terminates parental authority.[8]

---

[1] Reyes' parents and paternal grandparents are dead. The whereabouts of her maternal grandparents are unknown. There is no record that she has brothers or sisters. Abejar supported Reyes' education, provided her personal needs, and treated her as her own daughter. *Rollo,* pp. 719, 187-191, 605, 760.

[2] *Ponencia,* p. 7.

[3] *Ibid.*

[4] *Id.* at 7-9.

[5] Arturo Tolentino, Civil Code of the Philippines, Vol. 1, p. 603 (1990).

[6] *Ibid.*

[7] FAMILY CODE, Article 216 (3).

[8] *Id.,* Article 228 (3).

On the other hand, real party in interest refers to the person who is entitled to the avails of the suit.[9] He or she stands to be benefited or injured by the judgment.[10] The interest involved must be personal and not based on another person's rights.[11]

The fact that Abejar exercised substitute parental authority over Reyes does not translate to Abejar's legal interest to recover damages for Reyes' death. Furthermore, Abejar's parental authority over Reyes ceased when the latter turned eighteen. Thus, at the time of her death, Reyes was no longer under Abejar's parental authority.

Nevertheless, I agree that Abejar is a real party in interest, because she incurred actual damages when she paid for Reyes' funeral expenses. Courts may also impose exemplary damages, in addition to compensatory damages, if the defendant acted with gross negligence.[12] In the present case, Bautista's act of leaving Reyes rather than bringing her to a hospital amounts to gross negligence.[13] Thus, Abejar may recover these damages from Caravan.

On the second point, I discuss the registered owner rule in relation to Articles 2180 and 2176 of the Civil Code. To stress, I agree that Caravan is directly and primarily liable for damages as Bautista's employer and as the van's registered owner.

As early as 1957, this Court held in *Erezo v. Jepte*[14] that a vehicle's **registered owner is primarily responsible** for the damage caused to another person. The Revised Motor Vehicle Law[15] requires vehicles to be registered before they may be used in any public highway. The Court stressed that the main

---

[9] Oscar M. Herrera, *Remedial Law*, Vol. I, p. 515 (2007).

[10] *Ibid.*

[11] *Ibid.*

[12] CIVIL CODE, Articles 2229 and 2231.

[13] *Rollo,* pp. 31 and 953.

[14] 102 Phil. 103, 107 (1957).

[15] Act No. 3992, as amended, Chapter II, Art. I, Sec. 5(a).

purpose of the registration is to identify the owner so that if any accident happens or damage is caused on the public highways, responsibility can be fixed on a definite individual – the regestered owner.[16]

In *Filcar Transport Services v. Espinas,*[17] the Court had the opportunity to discuss the interplay between Articles 2176 and 2180 of the Civil Code and the registered owner rule. The Court ruled that the registered owner of a vehicle is deemed the employer of the vehicle's driver.[18] Thus, the vehicle's registered owner is vicariously liable for the driver's negligent acts pursuant to Articles 2176 and Article 2180 of the Civil Code.[19] The vicarious liability remains with the registered owner even when the vehicle had been sold to another person before the accident but the registration has not yet been transferred.[20] The Court emphasized in *R. Transport Corporation v. Yu*[21] that the employer's liability for the negligent acts of its subordinate is direct and primary.

Based on the foregoing, I concur with the *ponencia's* results.

---

[16] *Erezo v Jepte, supra* note 14, at 108.

[17] G.R. No. 174156, June 20, 2012, 674 SCRA 117.

[18] *Id.* at 128-129.

[19] *Ibid.*

[20] *Mendoza v. Gomez,* G.R. No. 160110, June 18, 2014, 726 SCRA 505, 519-521.

[21] G.R. No. 174161, February 18, 2015.

SECOND DIVISION

[G.R. No. 171041. February 10, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MOLDEX REALTY, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; RESPONDENT'S WITHDRAWAL OF ITS APPLICATION FOR REGISTRATION HAS RENDERED THIS CASE MOOT AND ACADEMIC.— A case becomes moot and academic when, by virtue of supervening events, the conflicting issue that may be resolved by the court ceases to exist. There is no longer any justiciable controversy that may be resolved by the court. This court refuses to render advisory opinions and resolve issues that would provide no practical use or value. Thus, courts generally "decline jurisdiction over such case or dismiss it on ground of mootness." Respondent's Manifestation stating its withdrawal of its application for registration has erased the conflicting interests that used to be present in this case. Respondent's Manifestation was an expression of its intent not to act on whatever claim or right it has to the property involved. Thus, the controversy ended when respondent filed that Manifestation. A ruling on the issue of respondent's right to registration would be nothing but an advisory opinion. [T]he power of judicial review does not repose upon the courts a "self-starting capacity." This court cannot, through affirmation or denial, rule on the issue of respondent's right to registration because respondent no longer asserts this right.

2. CIVIL LAW; LAW REGISTRATION; WITHDRAWAL OF APPLICATION FOR REGISTRATION DOES NOT MEAN A WAIVER OF RIGHT OR ABANDONMENT OF PROPERTY CLAIMS; IT HAS THE EFFECT OF A WAIVER OF THE DECISIONS OF THE TRIAL COURT AND OF THE COURT OF APPEALS IN ITS FAVOR AND IS NOT A MEANS TO RENDER FINAL AND EXECUTORY THESE DECISIONS.— [R]espondent's Manifestation should not be considered a waiver of its rights over the property. There

is nothing in the Manifestation that speaks of respondent's abandonment of its property claims. Nor does the Manifestation have the effect of proving that the property belongs to the public domain and the state. Respondent's Manifestation has the effect of a waiver of the Decisions of the trial court and of the Court of Appeals in favor of respondent. Respondent's withdrawal of its application for registration, pending resolution of petitioner's Petition for Review before this court and with full knowledge of the Court of Appeals' and the trial court's Decisions in its favor, is not a means to render final and executory these Decisions. However, dismissing this case and setting aside the Decisions of the trial court and of the Court of Appeals in favor of respondent would not render a conclusive judgment on this issue. Respondent, or any interested applicant, is not precluded from filing another application for registration involving the property.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Mamaril Arca Sevilla & Associates Law Firm for respondent.

D E C I S I O N

LEONEN, *J.*:

This is a Petition for Review on Certiorari[1] of the Court of Appeals' January 6, 2006 Decision.[2] The Court of Appeals affirmed the Regional Trial Court's February 19, 2002 Decision[3] granting respondent Moldex Realty, Inc.'s application for

---

[1] *Rollo,* pp. 19-48, Petition. The Petition was filed under Rule 45 of the Rules of Court.

[2] *Id*. at 10-16. The Decision, docketed as CA-G.R. CV No. 79964, was penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Marina L. Buzon and Aurora Santiago-Lagman of the Special Sixth Division, Court of Appeals Manila.

[3] *Id*. at 79-87. The Decision, docketed as LRC Case No. NC-2000-1127, was penned by Judge Napoleon V. Dilag of Branch XV, Regional Trial Court of Naic, Cavite.

registration of title to Lot Nos. 9715-B and 9715-C in Alulod, Indang, Cavite.

On January 25, 2000, Luis Erce, Rosa Cinense, and Maria Clara Erce Landicho applied for the registration of parcels of land in Alulod, Indang, Cavite, designated as Lot Nos. 9715-A (40,565 square meters), 9715-B (20,000 square meters), and 9715-C (20,000 square meters) before the Regional Trial Court of Naic, Cavite.[4] The properties had a total area of 80,565 square meters.[5]

Eventually, applicants sold Lot Nos. 9715-B and 9715-C, with a total land area of 40,000 square meters, to Moldex Realty, Inc.[6] Applicants were later substituted by Moldex Realty, Inc. in the application for registration pending before the Regional Trial Court.[7] Lot No. 9715-A was dropped from the application for registration.[8]

To prove its title, Moldex Realty, Inc. presented the testimonies of Engineer John Arvin Manaloto (Manaloto) and Pio Atis.[9]

Manaloto was Moldex Realty, Inc's Assistant Manager for its Technical Services Department.[10] He testified that Moldex Realty, Inc. purchased the properties from the heirs of Ana Erce and Pedro Erce.[11] The sale was evidenced by two (2) separate deeds of sale executed in 1997.[12]

---

[4] *Id*. at 11, Court of Appeals Decision.

[5] *Id*.

[6] *Id*. at 70-78, Motion for Substitution of Parties and for Dropping of Lot # 9715-A.

[7] *Id*. at 11.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id*. at 11, Court of Appeals Decision, and 73-78, Deed of Absolute Sale.

According to Manaloto, the technical descriptions and the subdivision plan covering the properties were approved by the Bureau of Lands.[13] Tax declarations from the Offices of the Municipal Assessor of Indang, Cavite and of the Provincial Assessor of Trece Martires City indicated that from 1948 to 2001, the properties had been owned by Olimpio Erce, Pedro Erce, Ana Erce, Heirs of Ana Erce, and Moldex Realty, Inc.[14]

Manaloto further testified that he secured from the Forest Management Sector of Community Environment and Natural Resources Office of Trece Martires City a certification that the properties were declared alienable and disposable land of the public domain on March 15, 1982.[15]

Pio Atis, a 77-year-old farmer and resident of Alulod, Indang, Cavite, testified that he knew the owners of the properties before Moldex Realty, Inc.[16] He had been residing in the area since his birth. He was a tenant of the properties.[17] He was also an owner of a lot adjoining the properties.[18] He testified that he had personal knowledge that the Erces possessed the properties before the war.[19]

On February 19, 2002, the Regional Trial Court rendered the Decision granting the application, thus:

> WHEREFORE, in view of the foregoing, this Court confirming its previous Order of general default hereby decrees and adjudges the two (2) parcels of land known as Lot No. 9715-B and Lot No. 9715-C, Cad-459-D, Indang Cadastre, each consisting [of] an area of 20,000 square meters, both situated in Alulod, Indang, Cavite pursuant to the provisions of Act 496 as amended by PD 1529 in

---

[13] *Id*. at 12, 73-78.

[14] *Id*. at 12.

[15] *Id*. at 182, Petitioner's Memorandum.

[16] *Id*. at 13.

[17] *Id*. at 13 and 86, Regional Trial Court Decision.

[18] *Id*. at 86.

[19] *Id*. at 14 and 86.

the name of MOLDEX REALTY, INC., a corporation organized and existing under Philippine laws, with office address at No. 3 West 6th St. corner Times St., Quezon City, Philippines.

Once this decision becomes final, let the corresponding decree of registration be issued.

SO ORDERED.[20]

The Office of the Solicitor General, representing the Republic of the Philippines, appealed the Regional Trial Court's February 19, 2002 Decision before the Court of Appeals. It argued that Moldex Realty, Inc. failed to prove its open, continuous, exclusive, and notorious possession of the property since June 12, 1945, or for more than 30 years?[21] The possession of Moldex Realty, Inc.'s predecessors-in-interest cannot result in adverse possession against the Republic since it was only in 1982 when the properties had been classified as alienable and disposable.[22]

On January 6, 2006, the Court of Appeals rendered the Decision affirming the approval of Moldex Realty, Inc.'s application for registration, thus:

WHEREFORE, premises considered, the appeal is **DENIED.** The decision of Br. XV, RTC, Naic, Cavite in LRC Case No. NC-2000-1127, LRA Record No. N-72489 is **AFFIRMED *in toto.***

SO ORDERED.[23]

The Court of Appeals ruled that based on *Republic v. Naguit,*[24] an application for registration satisfies the requirement that the property is classified as alienable and disposable if the land has been alienable and disposable at the time of the application for registration.[25]

---

[20] *Id*. at 87.

[21] *Id*. at 14.

[22] *Id*.

[23] *Id*. at 15.

[24] 489 Phil. 405 (2005) [Per *J*. Tinga, Second Division].

[25] *Rollo,* p. 15.

On March 2, 2006, the Office of the Solicitor General filed a Petition for Review under Rule 45 of the Rules of Court assailing the Court of Appeals' January 6, 2006 Decision.[26]

The Office of the Solicitor General argued that Moldex Realty, Inc. failed to prove that it or its predecessors-in-interests had been in open, continuous, exclusive, and notorious possession of the property in the concept of an owner from June 12, 1945[27] or for at least 30 years.[28] It also argued that in affirming the Regional Trial Court Decision,[29] the Court of Appeals erroneously relied on *Naguit* instead of *Republic v. Herbieto*.[30]

On the other hand, Moldex Realty, Inc. argued that for purposes of registration, land needs only to have been declared alienable and disposable at the time of the filing of an application for registration.[31] It also argued that unless a public land is clearly being reserved for public or common use, it should be considered patrimonial property.[32]

On March 14, 2012, this court received a Manifestation and Motion from Moldex Realty, Inc. stating that although it had already been issued a favorable decision by the Regional Trial Court and the Court of Appeals, it opted to withdraw its application for registration of the properties in its name.[33] Hence, the case had become moot and academic.[34] Respondent prayed:

WHEREFORE, for all the foregoing, it is most respectfully prayed of this Honorable Court that this Manifestation be noted and this

---

[26] *Id*. at 19.

[27] *Id.* at 14.

[28] *Id.* at 14 and 30.

[29] *Id.* at 185-190, Petitioner's Memorandum.

[30] 498 Phil. 227 (2005) [Per *J*. Chico-Nazario, Second Division].

[31] *Id.* at 123, Comment.

[32] *Id.* at 159-161, Respondent's Memorandum.

[33] *Id.* at 196, Respondent's Manifestation and Motion.

[34] *Id.*

Motion be granted and that the Appeal in the above case be considered withdrawn and/or dismissed for having become moot and academic.[35]

Petitioner filed its Comment on Moldex Realty, Inc.'s Manifestation and Motion. Moldex Realty, Inc. pointed out that since the trial court and the Court of Appeals had already issued a decision in its favor, this court should not just dismiss petitioner's appeal. Instead, it should reverse and set aside the Decisions of the trial court and of the Court of Appeals in favor of Moldex Realty, Inc.[36]

The issues in this case are:

First, whether respondent Moldex Realty, Inc.'s withdrawal of its application for land registration has rendered this case moot and academic;

Second, whether respondent was able to prove the required length of possession for purposes of land registration; and

Lastly, whether *Naguit* was erroneously applied by the Court of Appeals.

The Petition has no merit.

Respondent's withdrawal of its application for registration has rendered this case moot and academic.

This court's power of judicial review is limited to actual cases and controversies.[37] Article VIII, Section 1 of the Constitution provides:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable

---

[35] *Id.* at 197.

[36] *Id*. at 212, Petitioner's Comment on Respondent's Manifestation and Motion.

[37] CONST., Art. VIII, Sec. 1.

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.

There is an actual case or controversy when the case presents conflicting or opposite legal rights that may be resolved by the court in a judicial proceeding. In *David v. Macapagal-Arroyo:*[38]

> An actual case or controversy involves a conflict of legal right, an opposite legal claims susceptible of judicial resolution. It is "definite and concrete, touching the legal relations of parties having adverse legal interest"; a real and substantial controversy admitting of specific relief.[39]

A case becomes moot and academic when, by virtue of supervening events, the conflicting issue that may be resolved by the court ceases to exist.[40] There is no longer any justiciable controversy that may be resolved by the court.[41] This court refuses to render advisory opinions and resolve issues that would provide no practical use or value.[42] Thus, courts generally "decline jurisdiction over such case or dismiss it on ground of mootness."[43]

Respondent's Manifestation stating its withdrawal of its application for registration has erased the conflicting interests that used to be present in this case. Respondent's Manifestation was an expression of its intent not to act on whatever claim or right it has to the property involved. Thus, the controversy ended when respondent filed that Manifestation.

---

[38] 522 Phil. 705 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*].

[39] *Id*. at 753, *citing* ISAGANI A. CRUZ, *PHILIPPINE POLITICAL LAW* 259 (2002 ed.).

[40] *Id*. See also *Province of Batangas v. Romulo,* 473 Phil. 806 (2004) [Per *J.* Callejo, Sr., *En Banc*]; *Sanlakas v. Executive Secretary,* 466 Phil. 482 (2004) [Per *J.* Tinga, *En Banc*].

[41] *Id*. at 754.

[42] *Lu v. Lu Ym,* 585 Phil. 251 (2008) [Per *J.* Nachura, Third Division].

[43] *David v. Macapagal-Arroyo,* 522 Phil. 705, 754 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*].

A ruling on the issue of respondent's right to registration would be nothing but an advisory opinion. [T]he power of judicial review does not repose upon the courts a "self-starting capacity."[44] This court cannot, through affirmation or denial, rule on the issue of respondent's right to registration because respondent no longer asserts this right.

It is true that this court does not always refuse to assume jurisdiction over a case that has been rendered moot and academic by supervening events. Courts assume jurisdiction over cases otherwise rendered moot and academic when any of the following instances are present:

(1) Grave constitutional violations;[45]

(2) Exceptional character of the case;[46]

(3) Paramount public interest;[47]

(4) The case presents an opportunity to guide the bench, the bar, and the public;[48] or

(5) The case is capable of repetition yet evading review.[49]

---

[44] *Id*. at 753, *citing* MARTIN SHAPIRO & ROCCO TRESOLINI, *AMERICAN CONSTITUTIONAL LAW* 79 (6th ed, 1983).

[45] *Province of Batangas v. Romulo,* 473 Phil. 806 (2004) [Per *J*. Callejo, Sr., *En Banc*]; *Lu v. Lu Ym,* 585 Phil. 251 (2008) [Per *J*. Nachura, Third Division].

[46] *David v. Macapagal-Arroyo,* 522 Phil. 705, 754 (2006) [Per *J*. Sandoval-Gutierrez, *En Banc*]; *Lu v. Lu Ym,* 585 Phil. 251 (2008) [Per *J*. Nachura, Third Division].

[47] *Id.*

[48] *Province of Batangas v. Romulo,* 473 Phil. 806 (2004) [Per *J*. Callejo, Sr., *En Banc*]; *Lu v. Lu Ym,* 585 Phil. 251 (2008) [Per *J*. Nachura, Third Division].

[49] *David v. Macapagal-Arroyo,* 522 Phil. 705, 754 (2006) [Per *J*. Sandoval-Gutierrez, *En Banc*]; *Province of Batangas v. Romulo,* 473 Phil. 806 (2004) [Per *J*. Callejo, Sr., *En Banc*]; *Sanlakas v. Executive Secretary,* 466 Phil. 482 (2004) [Per *J*. Tinga, *En Banc*]; and *Alunan v. Mirasol,* 342 Phil. 467 (1997) [Per *J*. Mendoza, *En Banc*].

None of these circumstances are present in this case. Thus, there is no more reason to go into its substantive issues.

Nevertheless, respondent's Manifestation should not be considered a waiver of its rights over the property. There is nothing in the Manifestation that speaks of respondent's abandonment of its property claims. Nor does the Manifestation have the effect of proving that the property belongs to the public domain and the state.

Respondent's Manifestation has the effect of a waiver of the Decisions of the trial court and of the Court of Appeals in favor of respondent. Respondent's withdrawal of its application for registration, pending resolution of petitioner's Petition for Review before this court and with full knowledge of the Court of Appeals' and the trial court's Decisions in its favor, is not a means to render final and executory these Decisions.

However, dismissing this case and setting aside the Decisions of the trial court and of the Court of Appeals in favor of respondent would not render a conclusive judgment on this issue. Respondent, or any interested applicant, is not precluded from filing another application for registration involving the property.

WHEREFORE, the Petition for Review is **DENIED.** The Decisions of the Court of Appeals dated January 6, 2006 and of the Regional Trial Court dated February 19, 2002 are **SET ASIDE,** without prejudice to the filing of a new application for registration by interested parties.

SO ORDERED.

Carpio (Chairperson), *Brion, del Castillo,* and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 174462. February 10, 2016]

PHILIPPINE OVERSEAS TELECOMMUNICATIONS CORPORATION (POTC), PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION (PHILCOMSAT), *petitioners, vs.* **SANDIGANBAYAN (3rd Division), REPUBLIC OF THE PHILIPPINES represented by PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG),** *respondents.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; TRANSITORY PROVISIONS; WRIT OF SEQUESTRATION; SHALL AUTOMATICALLY BE LIFTED IF NO JUDICIAL ACTION IS FILED WITHIN SIX MONTHS AFTER THE RATIFICATION OF THE 1987 CONSTITUTION.— Section 26, Article XVIII of the Constitution mandates that if no judicial action has been filed within six (6) months after the ratification of the 1987 Constitution, the writ of sequestration shall automatically be lifted. In the case at bar, there was no judicial action filed against POTC and PHILCOMSAT. There has never been any appropriate judicial action for reconveyance or recovery ever instituted by the Republic against POTC and PHILCOMSAT. x x x [A]s POTC and PHILCOMSAT were not impleaded, there is no longer any existing sequestration on POTC and PHILCOMSAT. The sequestration order over POTC and PHILCOMSAT was automatically lifted six (6) months after the ratification of the 1987 Constitution on 2 February 1987 for failure to implead POTC and PHILCOMSAT in Civil Case No. 0009 before the Sandiganbayan or before any court for that matter. To recite Section 26, Article XVIII of the Constitution, if no judicial action has been filed within six (6) months after the ratification of the 1987 Constitution, the writ of sequestration shall automatically be lifted. Note must be made of the fact that we do not here touch our previous holding that Civil Case No. 0009 was filed within the 6-month period. We now say that such notwithstanding, and as shown by the facts on record,

the POTC and PHILCOMSAT were not impleaded in the Civil Case.

2. MERCANTILE LAW; CORPORATION CODE; PRIVATE CORPORATIONS; A CORPORATION HAS A LEGAL PERSONALITY DISTINCT AND SEPARATE FROM ITS STOCKHOLDERS, SUCH THAT THE FILING OF A COMPLAINT AGAINST A STOCKHOLDER IS NOT *IPSO FACTO* A COMPLAINT AGAINST THE CORPORATION.— [I]n the case at bar, the Complaint was filed only against POTC and PHILCOMSAT's stockholders, who are private individuals. x x x POTC and PHILCOMSAT were x x x merely annexed to the list of corporations and were not properly impleaded in the case. The suit was against its individual shareholders, herein respondents, Jose L. Africa, Manuel H. Nieto, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Roberto S. Benedicto, Juan Ponce Enrile, and Potenciano Ilusorio. Failure to implead POTC and PHILCOMSAT is a violation of the fundamental principle that a corporation has a legal personality distinct and separate from its stockholders; that, the filing of a complaint against a stockholder is not *ipso facto* a complaint against the corporation. x x x The basic tenets of fair play and principles of justice dictate that a corporation, as a legal entity distinct and separate from its stockholders, must be impleaded as defendants, giving it the opportunity to be heard. The failure to properly implead POTC and PHILCOMSAT not only violates the latters' legal personality, but is repugnant on POTC's and PHILCOMSAT's right to due process. "[F]ailure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would in effect be disregarding their distinct and separate personality without a hearing." As already settled, a suit against individual stockholders is not a suit against the corporation.

3. POLITICAL LAW; EXECUTIVE ORDER NOS. 1 AND 2; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT; SEQUESTRATION; MERELY PROVISIONAL IN NATURE AND IS AKIN TO THE PROVISIONAL REMEDY OF PRELIMINARY ATTACHMENT OR RECEIVERSHIP.— Sequestration is the means to place or cause to be placed under the PCGG's possession or control properties, building or office,

including business enterprises and entities, for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving the same until it can be determined through appropriate judicial proceedings, whether the property was in truth "ill-gotten." However, the power of the PCGG to sequester is merely provisional. None other than Executive Order No. 1, Section 3(c) expressly provides for the provisional nature of sequestration x x x. Sequestration is akin to the provisional remedy of preliminary attachment, or receivership. Similarly, in attachment, the property of the defendant is seized as a security for the satisfaction of any judgment that may be obtained, and not disposed of, or dissipated, or lost intentionally or otherwise, pending litigation. In a receivership, the property is placed in the possession and control of a receiver appointed by the court, who shall conserve the property pending final determination of ownership or right of possession of the parties. In sequestration, the same principle holds true. The sequestered properties are placed under the control of the PCGG, subject to the final determination of whether the property was in truth ill-gotten.

4. ID.; ID.; ID.; ID.; A CONSERVATORY WRIT INTENDED TO PRESERVE PROPERTIES IN *CUSTODIA LEGIS*.— Sequestration is a conservatory writ, which purpose is to preserve properties in *custodia legis,* lest the dissipation and concealment of the "ill-gotten" wealth the former President Marcos and his allies may resort to, pending the final disposition of the properties. It is to prevent the disappearance or dissipation pending adjudgment of whether the acquisition thereof by the apparent owner was attended by some vitiating anomaly or attended by some illegal means. Thus by no means is it permanent in character. Upon the final disposition of the sequestered properties, the sequestration is rendered *functus officio*.

5. ID.; ID.; ID.; ID.; THE PURPOSE OF SEQUESTRATION IS TO TAKE CONTROL UNTIL THE PROPERTY IS FINALLY DISPOSED OF BY THE PROPER AUTHORITIES.— As sequestration is a provisional remedy, a transitional state of affairs, in order to prevent the disappearance or dissipation of the property pending the final disposition of the property, the ultimate purpose of sequestration

is to bring an intended permanent effect while the PCGG investigates in pursuit of a judicial proceeding – to dispose of the sequestered properties. Tersely put, the ultimate purpose of sequestration is to recover the sequestered properties in favor of the government in case they turn out to be ill-gotten. This function to dispose of the property is reserved to the Sandiganbayan. Until the Sandiganbayan determines whether the property was in truth and in fact "ill-gotten", the sequestration shall subsist. In case of a finding that the sequestered properties are ill-gotten, the property shall be returned to the lawful owner, to the people, through the government; otherwise, the sequestered property shall be returned to the previous owner. Clearly, the purpose of sequestration is to take control until the property is finally disposed of by the proper authorities.

6. ID.; ID.; ID.; ID.; RENDERED *FUNCTUS OFFICIO* AND MUST BE LIFTED WHEN THE SEQUESTERED PROPERTY HAS ALREADY BEEN DISPOSED OR REVERTED BACK TO THE GOVERNMENT.— In the case at bar, the 34.9% ownership of the sequestered property has been finally adjudged; the ultimate purpose of sequestration was already accomplished when the ownership thereof was adjudged to the government by this Court in *Republic of the Phils. v. Sandiganbayan.* Moreover, the said shares in the ownership of the sequestered properties have reverted to the Government. The government now owns 4,727 shares or 34.9% of the sequestered corporations. As the sequestered property has already been disposed, the ultimate purpose of sequestration has already been attained; the evil sought to be prevented is no longer present. Evidently, the sequestered property which was already returned to the government cannot anymore be dissipated or concealed. Otherwise stated, the sequestered properties need no longer be subject of reversion proceedings because they have already reverted back to the government. Thus, as the sequestration is rendered *functus officio,* it is merely ministerial upon the Sandiganbayan to lift the same. x x x [W]hile sequestration is the means to revert the amassed ill-gotten wealth back to the coffers of our government, we must still safeguard the protection of property rights from overzealousness. Sequestration as statutorily and constitutionally recognized is not permanent. It must be lifted when the law

and proven facts warrant, or when the purpose has been accomplished.

APPEARANCES OF COUNSEL

Dennis R. Manzanal for petitioners.
Office of the Solicitor General for public respondents.

D E C I S I O N

PEREZ, *J.*:

Before this Court is a Petition for *Certiorari* filed under Rule 65 of the Rules of Court, seeking to nullify the Resolution[1] of public respondent Sandiganbayan dated 20 October 2005 in Civil Case No. 0009, entitled *"Republic of the Philippines v. Jose L. Africa, Manuel H. Nieto, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Roberto* S. *Benedicto, Juan Ponce Enrile, Potenciano Ilusorio."* The assailed Resolution denied petitioners' Omnibus Motion, which sought the lifting of the sequestration order issued by the Presidential Commission on Good Government (PCGG) on Philippine Overseas Telecommunications Corporation (POTC) and Philippine Communications Satellite Corporation (PHILCOMSAT).

The antecedent facts are as follows:

However whoever reads recent Philippine history, the EDSA People Power Revolution in February 1986 is a singular political phenomenon. Unprecedented, unique, unnatural even, the revolution was unarmed. But it succeeded. The unnatural means yielded results natural to a revolution. The vanquished and its acts had to yield to the victors and its reactions. The new President

[1] *Rollo,* pp. 41-54; penned by Associate Justice Norberto Y. Geraldez with Associate Justices Godofredo L. Legaspi and Efren N. De La Cruz, concurring.

Corazon Cojuangco Aquino, exercising revolutionary government powers issued Executive Order Nos. 1 and 2, creating the PCGG to recover properties amassed by the unseated President Ferdinand Edralin Marcos, Sr., his immediate family, relatives, and cronies, "by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship,"[2] and to sequester and take over such properties. The present litigation is one of the many offsprings of the revolutionary orders.

Pursuant to Executive Order Nos. 1 and 2, on 14 March 1986, then PCGG Commissioner Ramon A. Diaz issued a letter[3] directing Officer-In-Charge Carlos M. Ferrales to:

a. Sequester and immediately take over POTC and PHILCOMSAT among others, and

b. To freeze all withdrawals, transfers and/or remittances under any type of deposit accounts, trust accounts or placements.

POTC is a private corporation, which is a main stockholder of PHILCOMSAT, a government-owned and controlled corporation, which was established in 1966 and was granted a legislative telecommunications franchise by virtue of Republic Act No. 5514, as amended by Republic Act No. 7949, to establish and operate international satellite communication in the Philippines.

On 22 July 1987, the Office of the Solicitor General (OSG), on behalf of the Republic of the Philippines, filed a Complaint for Reconveyance, Reversion, Accounting and Restitution, and Damages, docketed as Civil Case No. 0009, against Jose L. Africa, Manuel H. Nieto, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Roberto S. Benedicto, Juan Ponce Enrile, and Potenciano Ilusorio (collectively hereinafter referred to as "defendants"). The Complaint averred the following:

---

[2] Executive Order No. 1, Sec. 2(a) (1986).

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

(a) xxx through manipulations and dubious arrangements with officers and members of the Board of the National Development Corporation (NDC), xxx purchased NDC's shareholdings in the Philippine Communications Satellite Corporation (PHILCOMSAT), xxx under highly unconscionable terms and conditions manifestly disadvantageous to Plaintiff and the Filipino people[;]

(b) x x x

(c) illegally manipulated, under the guise of expanding the operations of PHILCOMSAT, the purchase of major shareholdings of Cable and Wireless Limited, a London-based telecommunication company, in Eastern Telecommunications Philippines, Incorporated (ETPI), which shareholdings Defendants Roberto S. Benedicto, Jose L. Africa and Manuel H. Nieto, Jr., by themselves and through corporations namely Polygon Investors and Managers, Inc., Aeroco[m] Investors and Managers Inc. and Universal Molasses Corporation organized by them, were beneficially held for themselves and for Defendants Ferdinand E. Marcos and Imelda R. Marcos;

(d) illegally effected, xxx contracts involving corporations which they owned and/or controlled, such as: The contract between ETPI and Polygon Investors and Managers, Inc., thereby ensuring effective control of ETPI and advancing Defendants' scheme to monopolize the telecommunications industry;

(e) acted in collaboration with each other as dummies, nominees and/or agents of Defendants Ferdinand E. Marcos, Imelda R. Marcos and Ferdinand R. Marcos, Jr. in several corporations, such as, the Mid-Pasig Land Development Corporation and Independent Realty Corporation which, through manipulations by said Defendants, appropriated a substantial portion of the shareholdings in POTC-PHILCOMSAT held by the late Honorio Poblador, Jr., Jose Valdez and Francisco Reyes, thereby further advancing Defendants' scheme to monopolize the telecommunications industry;

(f) received improper payments such as bribes, kickbacks or commissions from an overprice in the purchase of equipment for DOMSAT[:][4]

As alleged in the Complaint, through clever schemes, the wealth that should go to the coffers of the government, which should be deemed acquired for the benefit of the Republic, went to the defendants in their own individual accounts—some, however, through conduits or corporations. The property supposedly acquired illegally was specifically set out in a list appended to the Complaint as Annex A. For instance, Jose L. Africa, one of the defendants, allegedly channelled the ill-gotten wealth in shares of stock in twenty (20) corporations, to wit:

1. Security Bank and Trust Company
2. SBTC Trust, Class A, Account No. 2016
3. SBTC Trust, Class A, Account No. 2017
4. SBTC Trust, Class A, Account No. 2018
5. Oceanic Wireless Network, Inc.
6. Bukidnon Sugar [Milling] Co., Inc.
7. Domestic Satellite Phils., Inc.
8. Northern Lines, Inc.
9. **Philippine Communications Satellite Corp.**
10. Far East Managers and Investors, Inc.
11. Traders Royal Bank
12. **Philippine Overseas Telecommunications Corp.**
13. Eastern Telecommunications Philippines, Inc.
14. Polygon Investors & Managers, Inc.
15. Universal Molasses Corp.
16. Silangan Investors and Managers, Inc.
17. Masters Assets Corp., Class B
18. Gainful Assets Corp. , Class B
19. Aerocom Investors and Managers, Inc.
20. Luzon Stevedoring Corp.
21. Amalgamated Motors (Philippines), Inc.
22. Philippine National Construction Corp.
23. Consolidated Tobacco Industries of the Philippines.[5]

---

[4] *Id*. at 76-78; Complaint, pp. 14-16.

[5] *Id*. at 89-90. (Emphasis supplied).

Another defendant, Manuel H. Nieto, Jr., allegedly channelled ill-gotten wealth into shares of stock in fifteen (15) corporations, namely:

1. Ozamis Agricultural Development, Inc.
2. Eastern Telecommunications Philippines, Inc.
3. Rang'ay Farms
4. Hacienda San Martin, Inc.
5. Domestic Satellite
6. Bukidnon Sugar Milling Co., Inc.
7. Sunnyday Farms Company Inc.
8. Silangan Investors & Managers, Inc.
9. **Phil. Communications Satellite Corp.**
10. Oceanic Wireless Network, Inc.
11. Integral Factors Corp.
12. **Phil. Overseas Telecommunication[s] Corp.**
13. Aerocom Investors and Managers, Inc.
14. Del Carmen Investments, Inc.
15. Polygon Ventures & Land Development Corp.[6]

As borne by the records,[7] the following are the stockholdings in POTC of the defendants in Civil Case No. 0009:

1. (Estate of) Jose L. Africa	1
2. Manuel H. Nieto, Jr.	107
3. Ferdinand and Imelda Marcos	0[8]
4. Ferdinand Marcos, Jr.	0[9]
5. (Estate of) Roberto Benedicto	464 (reverted to the Republic)
6. Juan Ponce Enrile	0[10]
7. (Estate of) Potenciano Ilusorio	16 (reverted to the Republic)

---

[6] *Id*. at 88. (Emphasis supplied).

[7] *Id*. at 263-268; General Information Sheet submitted on 21 October 2005.

[8] Based on the General Information Sheet submitted on 21 October 2005, Ferdinand and Imelda Marcos are not stockholders.

[9] *Id*., Ferdinand Marcos, Jr. is not a stockholder.

[10] *Id*., Juan Ponce Enrile is not a stockholder.

Pursuant to its power to sequester and to avoid further dissipation of the sequestered properties, the PCGG appointed a comptroller, who controlled the disbursement of funds of POTC and PHILCOMSAT. At the same time, in a Memorandum[11] by the PCGG dated 24 October 2000 to the Bangko Sentral ng Pilipinas (BSP), the PCGG informed the BSP that in all cash withdrawals, transfer of funds, money market placements and disbursements of POTC and PHILCOMSAT, the approval of the PCGG appointed comptroller is required. The Memorandum was to be disseminated to all commercial banks and other non-bank financial institutions performing quasi-banking functions.

From Civil Case No. 0009 sprung other cases: (1) Injunction; (2) Mandamus; and (3) Approval of the Compromise Agreement.

On 1 March 1991, POTC and PHILCOMSAT filed separate complaints for Injunction with the Sandiganbayan against the Republic to nullify and lift the sequestration order issued against them for failure to file the necessary judicial action against them within the period prescribed by the Constitution and to enjoin the PCGG from interfering with their management and operation, which the Sandiganbayan granted on 4 December 1991 through a Resolution.[12]

On 23 January 1995, however, this Court, in *Republic v. Sandiganbayan (First Division),* G.R. No. 96073, 240 SCRA 376, January 23, 1995, reversed the Sandiganbayan Resolution and ruled that the filing of Complaint for Reconveyance, Reversion, Accounting and Restitution, and Damages, docketed as Civil Case No. 0009, was filed within the required 6- month period.

Besides the complaint for Injunction, POTC also filed a complaint for Mandamus against the Republic before the Sandiganbayan to compel the PCGG to return POTC's Stock and Transfer Book and Stock Certificate Booklets. The case was docketed as Civil Case No. 0148.

---

[11] *Rollo,* pp. 93-96.

[12] *Id*. at 97-112.

On 13 May 1993, the Sandiganbayan granted the Mandamus, and the Decision became final and executory.

On 28 June 1996, Atty. Potenciano Ilusorio (Ilusorio), one of the defendants in the Civil Case No. 0009, entered into a Compromise Agreement with the Republic. Out of 5,400 or 40% of the shares of stock of POTC in the names of Mid-Pasig Land Development Corporation (MLDC) and Independent Realty Corporation (IRC), the government recovered 4,727 shares or 34.9% of the shares of stock. Ilusorio, on the other hand, retained 673 shares or 5% of the shares of stock.

The Compromise Agreement was approved by the Sandiganbayan in an Order[13] dated 8 June 1998.

In opposition to the Compromise Agreement, MLDC and IRC filed a Motion to Vacate the Compromise Agreement on 16 August and 2 October 1998, respectively, which was denied by the Sandiganbayan in a Resolution[14] dated 20 December 1999. In the same Resolution, the Sandiganbayan directed the Corporate Secretary of POTC to issue within ten (10) days from receipt thereof, the corresponding Stock Certificate of the government. Pursuant to the Order, 4,727 or 34.9% shares of stock of POTC were transferred in the name of the Republic of the Philippines.

Aggrieved, the PCGG, MLDC, and IRC filed separate petitions before this Court to nullify the Order of the Sandiganbayan approving the Compromise Agreement, which this Court, on 15 June 2005, declared valid in *Republic of the Phils. v. Sandiganbayan,* G.R. No. 141796 and 141804. The Decision of the Court has long become final and executory. The dispositive portion of the Decision reads:

> Having been sealed with court approval, the Compromise Agreement has the force of *res judicata* between the parties and should be complied with in accordance with its terms. Pursuant thereto, Victoria C. de los Reyes, Corporate Secretary of the POTC,

---

[13] *Id*. at 113-117.

[14] *Id*. at 118-143.

transmitted to Mr. Magdangal B. Elma, then Chief Presidential Legal Counsel and Chairman of PCGG, Stock Certificate No. 131 dated January 10, 2000, issued in the name of the Republic of the Philippines, for 4,727 POTC shares. Thus, the Compromise Agreement was partly implemented.

WHEREFORE, the instant petitions are hereby *DISMISSED.*

SO ORDERED.[15] (Citations omitted)

By virtue of the aforesaid Decision in *Republic of the Phils. v. Sandiganbayan,* POTC and PHILCOMSAT filed an Omnibus Motion[16] dated 28 February 2005, which sought to nullify and/or discharge the continued sequestration of POTC and PHILCOMSAT and to declare null and void the PCGG Memorandum to the BSP dated 24 October 2000.

On 20 October 2005, the Sandiganbayan denied POTC and PHILCOMSAT's Omnibus Motion in the assailed Resolution.[17] The Motion for Reconsideration was likewise denied in a Resolution[18] dated 2 August 2006.

Hence, the present Petition, which raises the following assignment of errors.

ASSIGNMENT OF ERRORS

(A)

The public respondent Sandiganbayan erred, and in fact, gravely abused its discretion amounting to lack or excess of jurisdiction, when it ruled that the sequestration of POTC and PHILCOMSAT is still necessary under the present circumstances.

(B)

The public respondent Sandiganbayan erred, and in fact, gravely abused its discretion amounting to lack or excess of jurisdiction,

---

[15] *Republic of the Phils. v. Sandiganbayan,* 499 Phil. 138, 160 (2005).

[16] *Rollo,* pp. 177-199.

[17] *Supra* note 1.

[18] *Rollo,* pp. 55-60.

when it ruled that the appointment of a PCGG fiscal agent in POTC and PHILCOMSAT is justified under the present circumstances.

(C)

The public respondent Sandiganbayan erred, and in fact, [gravely] abused its discretion amounting to lack or excess of jurisdiction, when it ruled that the sequestration order against the petitioners is valid despite clear fatal legal infirmities thereto.[19]

Arguments of POTC and PHILCOMSAT

POTC and PHILCOMSAT aver that the Sandiganbayan committed grave abuse of discretion amounting to lack or in excess of jurisdiction by affirming the continued sequestration of the shares, disregarding the final and executory Decision and Resolution of the Sandiganbayan dated 15 June 2005 and 7 September 2005 in *Republic of the Phils. v. Sandiganbayan,* which already ruled on the ownership of the subject shares. In the aforesaid case, the Court upheld the Compromise Agreement between the government and Ilusorio. As a consequence, the government is now the undisputed owner of 34.9% of the shares of stock of the sequestered corporations. Pursuant to the final and executory Decision of the Court, there is no longer need for the continued sequestration of POTC and PHILCOMSAT. POTC and PHILCOMSAT cited the pronouncement of this Court in Bataan Shipyard and Engineering Co., Inc. *(BASECO) v. PCGG,* which held that, as the writ of sequestration is merely a conservatory measure, thus, provisional and temporary in character, the final adjudication of the Court, which finally disposed the sequestered shares, rendered the writ unnecessary.

The POTC and PHILCOMSAT aver that while the PCGG has the power to sequester, such power is merely provisional. The POTC and PHILCOMSAT cite Executive Order No. 1, Section 3, which grants the PCGG the power to take over sequestered properties provisionally, such that, after the sequestered properties have been finally disposed of by the proper authorities, the writ shall be lifted.

---

[19] *Id*. at 12; Petition for *Certiorari,* p. 10. (Capitalized in the original).

Ruling of the Sandiganbayan

On the other hand, as it held, the Sandiganbayan posits that the sequestration of POTC and PHILCOMSAT should not be lifted. The Sandiganbayan ruled in this wise:

> Executive Order No. 1 declares that the sequestration of property the acquisition if which is suspect shall last **until the transactions leading to such acquisition can be disposed of by the appropriate authorities.**
>
> xxx xxx xxx.
>
> Also, this Court had already ruled in the Resolution dated April 1 2003 that there was *prima facie* evidence that the herein defendants have ill-gotten wealth consisting of funds and properties and that POTC and PHILCOMSAT, among others, were used in acquiring and concealing their ill-gotten wealth.[20] (Emphasis supplied)

Hence, the main issue of whether or not the continued sequestration is necessary.

Our Ruling

We rule in favor of POTC and PHILCOMSAT.

I

First, the threshold issue of whether or not the failure to properly implead POTC and PHILCOMSAT as defendants in Civil Case No. 0009 is a fatal jurisdictional error.

Section 26, Article XVIII of the Constitution mandates that if no judicial action has been filed within six (6) months after the ratification of the 1987 Constitution,[21] the writ of sequestration shall automatically be lifted. In the case at bar, there was no judicial action filed against POTC and PHILCOMSAT. There has never been any appropriate judicial action for reconveyance or recovery ever instituted by the Republic against POTC and PHILCOMSAT.

---

[20] *Id*. at 51.

[21] CONSTITUTION, (1987), Art. XVIII, Sec. 26.

A perusal of the instant Complaint, docketed as Civil Case No. 0009 dated 22 July 1987, reveals that it was filed against private individuals, namely, Jose L. Africa, Manuel H. Nieto, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Roberto S. Benedicto, Juan Ponce Enrile, Potenciano Ilusorio.[22] Nowhere was POTC and PHILCOMSAT impleaded in the Complaint.

The facts surrounding the present case square with those in *PCGG v. Sandiganbayan (PCGG)*.[23] In *PCGG,* the complaint was filed against private individuals, Nieto and Africa, who are shareholders in Aerocom. The Court ruled that the failure to implead Aerocom, the corporation, violated the fundamental principle that a corporation's legal personality is distinct and separate from its stockholders, and that mere annexation to the list of corporations does not suffice. In the same manner as *PCGG,* in the case at bar, the Complaint was filed only against POTC and PHILCOMSAT's stockholders, who are private individuals. Similarly, POTC and PHILCOMSAT were also merely annexed to the list of corporations and were not properly impleaded in the case. The suit was against its individual shareholders, herein respondents, Jose L. Africa, Manuel H. Nieto, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Roberto S. Benedicto, Juan Ponce Enrile, and Potenciano Ilusorio.

Failure to implead POTC and PHILCOMSAT is a violation of the fundamental principle that a corporation has a legal personality distinct and separate from its stockholders;[24] that, the filing of a complaint against a stockholder is not *ipso facto* a complaint against the corporation. Our pronouncement in *Aerocom* is apt:

> There is no existing sequestration to talk about in this case, as the writ issued against Aerocom, to repeat, is invalid for reasons hereinbefore stated. **Ergo, the suit in Civil Case No. 0009 against**

---

[22] *Rollo,* p. 63.

[23] 353 Phil. 80 (1998).

[24] *Id*. at 91.

Mr. Nieto and Mr. Africa as shareholders in Aerocom is not and cannot *ipso facto* be a suit against the unimpleaded Aerocom itself without violating the fundamental principle that a corporation has a legal personality distinct and separate from its stockholders. Such is the ruling laid down in *PCGG v. Interco* reiterated anew in a case of more recent vintage - *Republic v. Sandiganbayan, Sipalay Trading Corp. and Allied Banking Corp.* where this Court, speaking through Mr. Justice Ricardo J. Francisco, hewed to the lone dissent of Mr. Justice Teodoro R. Padilla in the very same Republic v. Sandiganbayan case herein invoked by the PCGG, to wit:

xxx xxx xxx. (Emphasis supplied, citations omitted)

The basic tenets of fair play and principles of justice dictate that a corporation, as a legal entity distinct and separate from its stockholders, must be impleaded as defendants, giving it the opportunity to be heard. The failure to properly implead POTC and PHILCOMSAT not only violates the latters' legal personality, but is repugnant on POTC's and PHILCOMSAT's right to due process. "[F]ailure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would in effect be disregarding their distinct and separate personality without a hearing."[25] As already settled, a suit against individual stockholders is not a suit against the corporation.

Proceeding from the foregoing, as POTC and PHILCOMSAT were not impleaded, there is no longer any existing sequestration on POTC and PHILCOMSAT.[26] The sequestration order over POTC and PHILCOMSAT was automatically lifted six (6) months after the ratification of the 1987 Constitution on 2 February 1987 for failure to implead POTC and PHILCOMSAT in Civil Case No. 0009 before the Sandiganbayan or before any court for that matter.[27] To recite Section 26, Article XVIII

---

[25] *Id*. at 92 citing *Republic v. Sandiganbayan,* G.R. Nos. 112708-09, 255 SCRA 438, 494, March 29, 1996.

[26] *Id*.

[27] *Id*.

of the Constitution, if no judicial action has been filed within six (6) months after the ratification of the 1987 Constitution, the writ of sequestration shall automatically be lifted. Note must be made of the fact that we do not here touch our previous holding that Civil Case No. 0009 was filed within the 6-month period. We now say that such notwithstanding, and as shown by the facts on record, the POTC and PHILCOMSAT were not impleaded in the Civil Case.

II

For one more reason should this Petition be granted. This concerns the shares in petitioner corporations of Potenciano Ilusorio covered by the Compromise Agreement entered into between Ilusorio and PCGG, which was upheld by the Court in *Republic of the Phils. v. Sandiganbayan,* the decision in which is now final and executory.

a. Sequestration is merely provisional

To effectively recover all ill-gotten wealth amassed by former President Marcos and his cronies, the President granted the PCGG, among others, power and authority to sequester, provisionally take over or freeze suspected ill-gotten wealth. The subject of the present case is the extent of PCGG's power to sequester.

Sequestration is the means to place or cause to be placed under the PCGG's possession or control properties, building or office, including business enterprises and entities, for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving the same until it can be determined through appropriate judicial proceedings, whether the property was in truth "ill-gotten."[28]

However, the power of the PCGG to sequester is merely provisional.[29] None other than Executive Order No. 1, Section 3(c) expressly provides for the provisional nature of sequestration, to wit:

---

[28] *Bataan Shipyard & Engineering Co., Inc. (BASECO) v. PCGG,* 234 Phil. 180, 207 (1987).

[29] *Id*.

c) To **provisionally** take over in the public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities.[30] (Emphasis supplied).

In the notable case of *Bataan Shipyard & Engineering Co., Inc. (BASECO) v. PCGG*[31] the Court clearly pronounced that sequestration is provisional, that such sequestration shall last "until the transactions leading to such acquisition xxx can be disposed of by the appropriate authorities."[32]

Sequestration is akin to the provisional remedy of preliminary attachment, or receivership.[33] Similarly, in attachment, the property of the defendant is seized as a security for the satisfaction of any judgment that may be obtained, and not disposed of, or dissipated, or lost intentionally or otherwise, pending litigation.[34] In a receivership, the property is placed in the possession and control of a receiver appointed by the court, who shall conserve the property pending final determination of ownership or right of possession of the parties.[35] In sequestration, the same principle holds true. The sequestered properties are placed under the control of the PCGG, subject to the final determination of whether the property was in truth ill-gotten. We reiterate the disquisition of this Court in *BASECO*:

By the clear terms of the law, the power of the PCGG to *sequester property* claimed to be "ill-gotten" means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including "business enterprises and entities,"

---

[30] Executive Order No. 1, Section 3(c) (1986).

[31] *Supra* note 28.

[32] *Supra* note 30.

[33] *Supra* note 28 at 211.

[34] *Id*., citing Rule 57, Rules of Court.

[35] *Id*., citing Rule 59, Rules of Court.

for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same — **until it can be determined, through appropriate judicial proceedings, whether the property was in truth "ill-gotten,"** *i.e.,* acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. xxx.[36] (Emphasis supplied, citations omitted)

Sequestration is a conservatory writ,[37] which purpose is to preserve properties in *custodia legis,* lest the dissipation and concealment of the "ill-gotten" wealth the former President Marcos and his allies may resort to, pending the final disposition of the properties.[38] It is to prevent the disappearance or dissipation pending adjudgment of whether the acquisition thereof by the apparent owner was attended by some vitiating anomaly or attended by some illegal means.[39] Thus by no means is it permanent in character. Upon the final disposition of the sequestered properties, the sequestration is rendered *functus officio.*

b. Ownership of the sequestered properties have already been finally adjudged

As sequestration is a provisional remedy, a transitional state of affairs, in order to prevent the disappearance or dissipation of the property pending the final disposition of the property, the ultimate purpose of sequestration is to bring an intended permanent effect while the PCGG investigates in pursuit of a judicial proceeding— to dispose of the sequestered properties. Tersely put, the ultimate purpose of sequestration is to recover

---

[36] *Id.* at 207.

[37] *Id.*

[38] *Id.* at 208.

[39] *Id.* at 209.

the sequestered properties in favor of the government in case they turn out to be ill-gotten. This function to dispose of the property is reserved to the Sandiganbayan. Until the Sandiganbayan determines whether the property was in truth and in fact "ill- gotten", the sequestration shall subsist. In case of a finding that the sequestered properties are ill-gotten, the property shall be returned to the lawful owner, to the people, through the government; otherwise, the sequestered property shall be returned to the previous owner.

Clearly, the purpose of sequestration is to take control until the property is finally disposed of by the proper authorities. However, when such property has already been disposed of, such that the owner has already been adjudged by the Court, must the sequestration still subsist?

In the case at bar, the 34.9% ownership of the sequestered property has been finally adjudged; the ultimate purpose of sequestration was already accomplished when the ownership thereof was adjudged to the government by this Court in *Republic of the Phils. v. Sandiganbayan.* Moreover, the said shares in the ownership of the sequestered properties have reverted to the Government. The government now owns 4,727 shares or 34.9% of the sequestered corporations.

As the sequestered property has already been disposed, the ultimate purpose of sequestration has already been attained; the evil sought to be prevented is no longer present. Evidently, the sequestered property which was already returned to the government cannot anymore be dissipated or concealed. Otherwise stated, the sequestered properties need no longer be subject of reversion proceedings because they have already reverted back to the government. Thus, as the sequestration is rendered *functus officio,* it is merely ministerial upon the Sandiganbayan to lift the same.

In fact, on 4 November 2010, the Department of Justice (DOJ), which has supervision over the PCGG, acknowledged the need to lift the writ of sequestration in the DOJ Memorandum LML-

M-4Kl 0-368.[40] The pertinent portion of the DOJ Memorandum reads:

> It bears stressing that the PCGG, which is now under the administrative supervision of this Department pursuant to Executive Order No. 643 s. 2007, has lost "authority" over the shares of the Republic in POTC. This is due to the fact that in PCGG Resolution No. 2007-024 dated 4 September 2007, it was resolved that the 4,727 shares of stock of POTC, which is under the name of the Republic of the Philippines, be now transferred to the Department of Finance (DOF) for disposition. xxx. (Boldface omitted)
>
> xxx xxx xxx
>
> In view of the foregoing, you are hereby directed to immediately implement PCGG Resolution No. 2007-024 by immediately transferring to the DOF, for its proper disposition, POTC Stock Certificate No. 131. **Corollary to this is the lifting of the sequestration orders, if any, that covers the 4,727 shares of stock of the Republic in POTC**. xxx.[41] (Emphasis supplied)

Quite telling is this Court's unequivocal pronouncement in a rather recent case of *Palm Avenue Holding Co., Inc. v. Sandiganbayan,*[42] which involved very similar factual antecedents to those pertaining to petitioners POTC and PHILCOMSAT.

> "Section 26, Article XVIII of the 1987 Constitution provides:
>
> xxx xxx xxx
>
> A sequestration or freeze order shall be issued only upon showing of a *prima facie* case. The order and the list of the sequestered of frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

---

[40] *Rollo,* pp. 865-866.

[41] *Id*.

[42] G.R. No. 173082, 6 August 2014, 732 SCRA 156; penned by Associate Justice Diosdado M. Peralta.

> The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.

The aforesaid provision mandates the Republic to file the corresponding judicial action or proceedings within a six-month period (from its ratification on February 2, 1987) in order to maintain sequestration, non-compliance with which would result in the automatic lifting of the sequestration order. The Court's ruling in *Presidential Commission on Good Government v. Sandiganbayan,* which remains good law, reiterates the necessity of the Republic to actually implead corporations as defendants in the complaint, out of recognition for their distinct and separate personalities, failure to do so would necessarily be denying such entities their right to due process. Here, the writ of sequestration issued against the assets of the Palm Companies is not valid because the suit in Civil Case No. 0035 against Benjamin Romualdez as shareholder in the Palm Companies is not a suit against the latter. The Court has held, contrary to the assailed *Sandiganbayan* Resolution in G.R. No. 173082, that failure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would be, in effect, disregarding their distinct and separate personality without a hearing. Here, the Palm Companies were merely mentioned as Item Nos. 47 and 48, Annex A of the Complaint, as among the corporations where defendant Romualdez owns shares of stocks. Furthermore, while the writ of sequestration was issued on October 27, 1986, the Palm Companies were impleaded in the case only in 1997, or already a decade from the ratification of the Constitution in 1987, way beyond the prescribed period.

The argument that the beneficial owner of these corporations was, anyway, impleaded as party-defendant can only be interpreted as a tacit admission of the failure to file the corresponding judicial action against said corporations pursuant to the constitutional mandate. Whether or not the impleaded defendant in Civil Case No. 0035 is indeed the beneficial owner of the Palm Companies is a matter which the PCGG merely assumes and still has to prove in said case.

The sequestration order issued against the Palm Companies is therefore deemed automatically lifted due to the failure of the Republic to commence the proper judicial action or to implead them therein within the period under the Constitution. However,

the lifting of the writ of sequestration will not necessarily be fatal to the main case since the same does not *ipso facto* mean that the sequestered properties are, in fact, not illgotten. The effect of the lifting of the sequestration will merely be the termination of the government's role as conservator. In other words, the PCGG may no longer exercise administrative or housekeeping powers, and its nominees may no longer vote the sequestered shares to enable them to sit in the corporate board of the subject company.[43] (Emphasis supplied, citations omitted)

The glaring similarity in the circumstances attendant in the case involving Palm Companies with the situation of petitioners POTC and PHILCOMSAT compels us to rule in this case as we did in *Palm* case.

On a final note, while sequestration is the means to revert the amassed ill-gotten wealth back to the coffers of our government, we must still safeguard the protection of property rights from overzealousness. Sequestration as statutorily and constitutionally recognized is not permanent. It must be lifted when the law and proven facts warrant, or when the purpose has been accomplished.

WHEREFORE, the Petition is **GRANTED.** The assailed Resolution issued by the Sandiganbayan dated 20 October 2005 and 2 August 2006 are **REVERSED.** The writ of sequestration issued against petitioner POTC and PHILCOMSAT is hereby declared **LIFTED** six (6) months after the ratification of the 1987 Constitution on 2 February 1987.

SO ORDERED.

Carpio,[*] *Velasco, Jr.* (*Chairperson*), *Brion,*[**] and *Reyes, JJ.,* concur.

---

[43] *Id*. at 163-165.

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta per raffle dated February 1, 2016.

[**] Designated as additional member in lieu of Associate Justice Francis H. Jardeleza per raffle dated February 10, 2016.

SECOND DIVISION

[G.R. No. 174481. February 10, 2016]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CRISTY DIMAANO *y* TIPDAS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); TRANSPORTATION OF DANGEROUS DRUGS; FOR AN ACCUSED TO BE CONVICTED OF THIS CRIME, THE PROSECUTION MUST PROVE ITS ESSENTIAL ELEMENT WHICH IS THE MOVEMENT OF THE DANGEROUS DRUG FROM ONE PLACE TO ANOTHER.— Section 5 of the Comprehensive Dangerous Drugs Act of 2002 punishes the transportation of dangerous drugs. x x x The attempt to transport dangerous drugs is punished by the same penalty prescribed for its commission x x x. To transport a dangerous drug is to "carry or convey [it] from one place to another." For an accused to be convicted of this crime, the prosecution must prove its essential element: the movement of the dangerous drug from one place to another.

2. ID.; ID.; CHAIN OF CUSTODY; TESTIMONY AS TO THE CHAIN OF CUSTODY MUST BE PRESENTED TO SHOW THAT THE DRUGS EXAMINED AND PRESENTED IN COURT WERE THE VERY ONES SEIZED FROM THE ACCUSED.— In cases involving violations of the Comprehensive Dangerous Drugs Act of 2002, the prosecution must prove "the existence of the prohibited drug[.]" "[T]he prosecution must show that the integrity of the corpus delicti has been preserved," because "the evidence involved—the seized chemical—is not readily identifiable by sight or touch and can easily be tampered with or substituted." To show that "the drugs examined and presented in court were the very ones seized [from the accused]," testimony as to the "chain of custody" of the seized drugs must be presented. Chain of custody is x x x governed by Section 21 of the Comprehensive Dangerous Drugs Act of 2002. x x x The purpose of Section 21 is "to

[protect] the accused from malicious imputations of guilt by abusive police officers[.]" Nevertheless, Section 21 cannot be used to "thwart the legitimate efforts of law enforcement agents." "Slight infractions or nominal deviations by the police from the prescribed method of handling the corpus delicti [as provided in Section 21] should not exculpate an otherwise guilty defendant." Thus, "substantial adherence" to Section 21 will suffice x x x.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MAY NOT BE AFFECTED BY A DISCREPANCY IN THE TESTIMONIES, FOR WITNESSES ARE NOT EXPECTED TO REMEMBER EVERY SINGLE DETAIL OF AN INCIDENT WITH PERFECT OR TOTAL RECALL.—** Despite the discrepancy in the testimonies as to the number of sachets obtained from accused-appellant, there is evidence that NUP Bilugot marked *two* plastic sachets. Police Inspector Tecson, the Forensic Chemist who subjected the specimen to chemical analysis, reported that he received two plastic sachets marked with "FSB," "RDR," and "RSA." "FSB" are the initials of NUP Bilugot. Having marked two plastic sachets, NUP Bilugot confirmed that she obtained those two sachets from accused-appellant. This corroborates SPO2 Ragadio's testimony that he received two sachets from NUP Bilugot, which were further placed inside a plastic x x x. NUP Bilugot may not have remembered the contents of the sachet she seized from accused-appellant. Still, "witnesses are not expected to remember every single detail of an incident with perfect or total recall." That NUP Bilugot candidly stated in open court that she could not remember the contents of the sachet suggests that she was telling the truth and was not rehearsed.

4. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY; UNBROKEN CHAIN OF CUSTODY, DULY ESTABLISHED IN CASE AT BAR.—** [T]he seven smaller sachets inside the two plastic sachets were not initialled. Nevertheless, the marking of the corpus delicti as a means to preserve its identity should be done only "as far as practicable." In this case, only the two outer sachets could be marked because the two sachets were *heat-sealed*. The two outer sachets would have to be opened for the seven smaller

sachets to be marked. This would have contaminated the specimen. Thus, the prosecution successfully established the identity of the corpus delicti. In addition, the chain of custody was unbroken. Both NUP Bilugot and SPO2 Ragadio testified that after NUP Bilugot seized the specimen, she immediately endorsed it to SPO2 Ragadio. SPO2 Ragadio then turned over the two plastic sachets to investigators detailed at the Philippine Center for Aviation and Security. x x x Investigators from the Philippine Drug Enforcement Agency then collected the specimen and finally turned it over to the Philippine National Police Crime Laboratory for testing.

BRION, *J., dissenting opinion*:

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; REQUIRES THAT THE ADMISSION OF THE EXHIBIT BE PRECEDED BY EVIDENCE SUFFICIENT TO SUPPORT A FINDING THAT THE MATTER IN QUESTION IS WHAT THE PROPONENT CLAIMS IT WOULD BE.— It is basic in criminal prosecution that an accused is presumed innocent of a charge unless his guilt is proven beyond reasonable doubt. In cases involving dangerous drugs, proof beyond reasonable doubt demands that **unwavering exactitude is observed in establishing the *corpus delicti* —** the body of the crime whose core is the confiscated illicit drug. In meeting this quantum of proof, the chain of custody requirement under Section 21 of R.A. No. 9165 ensures that doubts concerning the identity of the drug are removed. As a method of authenticating evidence, the chain of custody rule requires that the admission of the exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it would be. It would thus include a testimony about every link in the chain from the moment the item was seized to the time it was offered in court as evidence – such that every person who handled the same would admit as to how and from whom it was received; where it was and what happened to it while in the witness' possession; the condition in which it was received; and the condition in which it was delivered to the next link in the chain. **The same witnesses would then describe the**

precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. It is from the testimony of every witness who handled the evidence where a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.

2. ID.; ID.; ID.; LINKS THAT MUST BE ESTABLISHED TO ENSURE THE PRESERVATION OF THE IDENTITY AND INTEGRITY OF THE CONFISCATED DRUG.— Over the years, we have recognized the following links that must be established to ensure the preservation of the identity and integrity of the confiscated drug: ***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.

3. ID.; ID.; ID.; SUBSTANTIAL INCONSISTENCY CASTS SERIOUS DOUBT AS TO THE IDENTITY OF THE DRUGS PRESENTED IN COURT; MINOR INCONSISTENCY AND SUBSTANTIAL INCONSISTENCY, DISTINGUISHED.— [T]he prosecution miserably failed to prove the crucial first link in the chain of custody because it failed to logically reconcile the discrepancy on **how many sachets were really confiscated from Cristy** and how many sachets were actually turned over to SPO2 Ragadio. x x x [T]he inconsistency as to how many plastic sachets were really recovered from Cristy and eventually turned over to SPO2 Ragadio, and the incomplete testimony of NUP Bilugot cast serious doubt as to the identity of the drugs presented in court. Minor inconsistencies pertain only to a collateral matter, which does not have anything to do with the essential elements of the offense with which an accused is charged. On the other hand, contradictions and inconsistencies, which are irreconcilable and pertain to substantial matters, cast doubt over the veracity of the charge against the accused. Testimonial inconsistencies are substantial where they have something to do with the essential elements of the crime involving dangerous drugs. In the present case, the difference

between the quantity of *shabu* confiscated from Cristy and turned over to SPO2 Ragadio is a substantial inconsistency because it goes into establishing the *corpus delicti* of the crime.

4. ID.; ID.; ID.; MARKING, DEFINED; THE MARKING OF THE SEIZED DRUGS OR OTHER RELATED ITEMS IS CRUCIAL IN PROVING THE UNBROKEN CHAIN OF CUSTODY BECAUSE FAILURE TO DO SO CASTS REASONABLE DOUBT ON THE AUTHENTICITY OF THE *CORPUS DELICTI*.— Marking means the placing by the apprehending officer or the poseur- buyer of his/her initials and signature on the item/s seized. Crucial in proving the unbroken chain of custody is the marking of the seized drugs or other related items because failure to do so casts reasonable doubt on the authenticity of the *corpus delicti*. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus preventing switching, "planting," or contamination of evidence. Here, what was marked were only the two (2) plastic sachets containing the seven (7) smaller sachets – not the latter, which would be more appropriate given the number of sachets supposedly recovered from Cristy. We cannot accept the *ponencia*'s explanation that the marking of the seven sachets could contaminate them since it would have required the opening of the two heat-sealed sachets that contained these seven sachets. We point out that the 7 smaller sachets were also heat-sealed. The marking procedure would have only required the placing of the initials on these 7 plastic sachets; it would not involve opening of these sachets. To my mind (and contrary to the *ponencia*'s position), the marking of the other sachets would ensure all the more the preservation of the integrity and evidentiary value of the seized specimen. x x x I reiterate that marking is the starting point in the custodial link, thus it is vital that this procedure be properly done because succeeding handlers of the specimens will use the markings as reference. Therefore, any deviation from this vital process requires a justification from the apprehending team for their noncompliance.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONEN, *J.*:

Human memory is not infallible. Inconsistencies in the testimonies of prosecution witnesses in cases involving violations of the Comprehensive Dangerous Drugs Act may be excused so long as the identity of the dangerous drugs is proved beyond reasonable doubt and the chain of custody is established with moral certainty.

This is an appeal[1] of the Court of Appeals Decision[2] dated May 30, 2006 affirming the conviction of accused-appellant Cristy Dimaano y Tipdas (Dimaano) of the crime of attempted transportation of dangerous drugs punished under the Comprehensive Dangerous Drugs Act of 2002.[3] Dimaano was sentenced to suffer the penalty of life imprisonment and was ordered to pay a fine of ₱500,000.00.

---

[1] RULES OF COURT, Rule 122, Sec. 3(c) provides:

SEC. 3. How appeal taken. –

. . . . . .

(c) The appeal in cases where the penalty imposed by the Regional Trial Court is *reclusion perpetua* or life imprisonment, or where a lesser penalty is imposed but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed, shall be by notice of appeal to the Court of Appeals in accordance with paragraph (a) of this Rule.

[2] The Decision was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Hakim S. Abdulwahid and Vicente Q. Roxas of the Special Eleventh Division.

[3] Rep. Act No. 9165 (2002).

In the Information[4] dated November 14, 2002, the Office of the City Prosecutor of Pasay City charged Dimaano with violating Section 5[5] in relation to Section 26[6] of the Comprehensive Dangerous Drugs Act of 2002. The accusatory portion of the Information reads:

> That on or about the 13th day of November, 2002 at the Manila Domestic Airport Terminal 1, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable court, the above-named accused, being then a departing passenger for Cebu, without authority of law, did then and there wilfully, unlawfully and feloniously have in her possession and attempt to transport 13.96 grams of Methyllamphetamine [sic] Hydrochloride (shabu), a dangerous drug.
>
> Contrary to law.[7]

Dimaano was arraigned on November 25, 2002, pleading not guilty to the charge.[8] Trial then ensued.

---

[4] CA *rollo*, p. 9.

[5] Rep. Act No. 9165 (2002), Sec. 5 partly provides:

> Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals* . — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions[.]

[6] Rep. Act No. 9165 (2002), Sec. 26(b) provides:

> Section 26. *Attempt or Conspiracy.*– Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act;
>
> . . . . . .
>
> (b) Sale, trading, and administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical[.]

[7] CA *rollo*, p. 9.

[8] *Id*. at 14.

On November 13, 2002, Non-Uniformed Personnel Florence S. Bilugot (NUP Bilugot) was detailed as frisker at the initial check-in departure area of the Manila Domestic Airport Terminal 1.[9] At around 3:45 a.m., a woman arrived, placed her luggage at the x-ray machine, and passed through the walk-through metal detector.[10] The woman was then frisked by NUP Bilugot.[11]

NUP Bilugot felt a hard object bulging near the woman's buttocks.[12] Asked what the object was, the woman replied that it was a sanitary napkin, explaining that she was having her monthly period.[13] Suspicious, NUP Bilugot requested the woman to accompany her to the ladies' room.[14] NUP Bilugot informed Senior Police Officer 2 Reynato Ragadio (SPO2 Ragadio), who was likewise detailed at the initial check-in area, of the hard object she felt on the woman's body.[15] SPO2 Ragadio then accompanied the woman and NUP Bilugot.[16] The woman and NUP Bilugot proceeded to the ladies' restroom while SPO2 Ragadio waited outside.[17]

NUP Bilugot then asked the woman to remove her panties.[18] On the panties' crotch was a panty shield on top of a sanitary napkin, but under all of these was a plastic sachet.[19] Seeing a white crystalline substance similar to "tawas," NUP Bilugot

---

[9] *Id*. at 14-15.

[10] *Id*. at 15.

[11] *Id*.

[12] *Id.*

[13] *Id*.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.* at 16.

[19] *Id.*

asked the woman what the plastic sachet contained.[20] The woman allegedly replied that it was "shabu."[21] NUP Bilugot asked the woman further as to who owned the shabu, but the woman answered that she was just asked to bring it.[22] NUP Bilugot then seized the plastic sachet and, together with the woman, went out of the ladies' room.[23] NUP Bilugot turned over the plastic sachet to SPO2 Ragadio.[24]

SPO2 Ragadio recalled receiving from NUP Bilugot two (2) transparent plastic sachets, which NUP Bilugot placed inside a plastic bag.[25] He then requested the woman for her airline ticket, revealing the woman's name to be "Cristy Dimaano."[26] Together with NUP Bilugot, SPO2 Ragadio brought Dimaano to the Intelligence and Investigation Office of the Philippine Center for Aviation and Security, 2nd Regional Aviation Security Office.[27] According to SPO2 Ragadio, he and NUP Bilugot wrote their respective initials, "RBR" and "FSB," on the two sachets.[28] NUP Bilugot then returned to her post at the initial check-in area.[29]

Investigators detailed at the Philippine Center for Aviation and Security examined the contents of the two (2) plastic sachets.[30] One sachet contained three (3) smaller sachets while the other contained four (4).[31] Thirty minutes later, three investigators

---

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id*.

[29] *Id*.

[30] *Id*. at 17.

[31] *Id*.

from the Philippine Drug Enforcement Agency arrived to collect the specimen and placed their initials on the two plastic sachets.[32] They then brought Dimaano to the Philippine Drug Enforcement Agency office at the Ninoy Aquino International Airport.[33]

At around 2:30 p.m., SPO2 Ragadio received a phone call from the PDEA investigators, requesting him to go to the Philippine Drug Enforcement Agency office.[34] There, he and NUP Bilugot were informed that the specimen obtained from Dimaano tested positive for methamphetamine hydrochloride, or shabu.[35] He then executed his affidavit while NUP Bilugot executed an affidavit of arrest.[36]

That the sachets contained methamphetamine hydrochloride was corroborated by Police Inspector Abraham B. Tecson (Police Inspector Tecson), a Forensic Chemist at the Philippine National Police Crime Laboratory at Camp Crame, Quezon City.[37] In his Physical Science Report, Police Inspector Tecson stated that he was the officer on duty at the chemistry department of the Philippine National Police Crime Laboratory when he received a request for examination at around 2:20 p.m. of November 13, 2002.[38] He received from Police Chief Inspector Roseller Fabian two plastic sachets marked with "FSB," "RDR," and "RSA."[39]

Police Inspector Tecson reported that one of the sachets contained three (3) heat-sealed plastic sachets, while the other contained four (4).[40] After subjecting the contents of the sachets

---

[32] *Id*.

[33] *Id*.

[34] *Id*.

[35] *Id*.

[36] *Id*.

[37] *Id*.

[38] *Id*.

[39] *Id*. at 18.

[40] *Id*.

to chemical analysis, Police Inspector Tecson confirmed that the sachets contained a total of 13.96 grams[41] of methamphetamine hydrochloride.[42]

Waiving her right to testify in court, Dimaano instead filed a memorandum and argued that the prosecution failed to establish her guilt beyond reasonable doubt.[43] She specifically alluded to the conflicting testimonies of NUP Bilugot and SPO2 Ragadio as to the number of sachets allegedly obtained from her person.

NUP Bilugot testified in court that she obtained from Dimaano only one (1) plastic sachet. On the other hand, SPO2 Ragadio recalled receiving two (2) plastic sachets from NUP Bilugot. This discrepancy, according to Dimaano, casts doubt as to the identity of the specimen allegedly obtained from her. There was a break in the chain of custody of the seized drugs, which warranted her acquittal.[44]

In addition, Dimaano assailed the prosecution's failure to present in court the airline ticket bearing her name. She argued that this failure disproved the factual allegation that on November 13, 2000, she was supposed to board an airplane to transport methamphetamine hydrochloride.[45]

Branch 119 of the Regional Trial Court, Pasay City found that the prosecution proved beyond reasonable doubt that Dimaano attempted to transport methamphetamine hydrochloride, a dangerous drug.[46] According to the trial court, Dimaano, a departing airline passenger, had in her person 13.96 grams of methamphetamine hydrochloride distributed in seven (7) small sachets, three of which were placed in a bigger sachet and the remaining four in another bigger sachet.[47]

---

[41] *Id*. at 14.
[42] *Id*. at 18.
[43] *Id*.
[44] *Id*. at 18-21.
[45] *Id*. at 21.
[46] *Id*.
[47] *Id*. at 21-22.

On the discrepancy in NUP Bilugot's and SPO2 Ragadio's testimonies as to the number of sachets obtained from Dimaano, the trial court explained that "the chain of [custody] [nevertheless] remained unbroken because immediately after NUP Bilugot seized the 'shabu' from [Dimaano], [NUP Bilugot] immediately turned over the same to SPO2 Ragadio who was just outside the door of the ladies[']comfort room."[48] The trial court added that SPO2 Ragadio's testimony that he received from NUP Bilugot two (2) plastic sachets that were further placed inside a bigger plastic sachet explained NUP Bilugot's testimony that she obtained only one plastic sachet from Dimaano.[49]

Considering that Dimaano was apprehended prior to her departure at the Manila International Airport, the trial court ruled that she was properly charged with attempt to transport dangerous drugs punished under Section 5 in relation to Section 26 of the Comprehensive Dangerous Drugs Act of 2002.[50] The presentation of the airline ticket, therefore, was unnecessary.

Thus, in the Decision[51] dated March 5, 2005, the trial court convicted Dimaano as charged. The dispositive portion of the Decision reads:

> WHEREFORE, this Court finds accused Cristy Dimaano y Tipdas guilty beyond reasonable doubt of violation of Section 5, in relation to Section 26 of Republic Act 9165, she is hereby sentenced to Life Imprisonment and a fine of five Hundred Thousand Pesos (₱500,000.00).
>
> The methamphetamine hydrochloride recovered from the accused is considered confiscated in favor of the government and to be turned-over to the Philippine Drug Enforcement Agency.
>
> SO ORDERED.[52]

---

[48] *Id*. at 28-29.

[49] *Id*.

[50] *Id*. at 37.

[51] The Decision was penned by Presiding Judge Pedro De Leon Gutierrez.

[52] CA *rollo,* pp. 37-38, Decision dated March 5, 2005.

Dimaano appealed[53] before the Court of Appeals, maintaining that there was a break in the chain of custody of the methamphetamine hydrochloride allegedly seized from her person. Because the testimonies of NUP Bilugot and SPO2 Ragadio differed as to the number of sachets allegedly obtained from her, "the identity of the illegal drugs recovered from her was not established."[54]

The Court of Appeals, however, was not convinced of Dimaano's argument. It stated that "[a]side from [Dimaano's] . . . allegations, [Dimaano] did not present evidence to support her claim. [Worse,] she never bothered to testify in court to refute the evidence of the prosecution."[55]

Relying on the general rule that "the lower court's assessment of the credibility of the witnesses is accorded great respect,"[56] the Court of Appeals found NUP Bilugot and SPO2 Ragadio to be credible witnesses. That their testimonies differed as to the number of sachets obtained from Dimaano did not destroy NUP Bilugot's and SPO2 Ragadio's credibility because "the chain of events as to the custody of the recovered shabu was never broken."[57] Moreover, the Court of Appeals affirmed the trial court's finding that the two sachets SPO2 Ragadio obtained from NUP Bilugot were placed inside one bigger plastic sachet.[58] According to the Court of Appeals, this explained why NUP Bilugot recalled obtaining only a single plastic sachet from Dimaano.

With respect to the airline ticket, the Court of Appeals agreed with the trial court that it need not be presented in court to prove that Dimaano attempted to transport methamphetamine

---

[53] *Id.* at 40, Notice of Appeal.

[54] *Rollo*, p. 9, Decision dated May 30, 2006.

[55] *Id.*

[56] *Id.*

[57] *Id.* at 10.

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

hydrochloride. According to the Court of Appeals, the "indorsement letter"[59] of Police Chief Inspector Roseller N. Fabian to the City Prosecutor of Pasay, which stated that Dimaano was apprehended at the initial check-in departure area of the Manila International Airport, proved that Dimaano was bound for Cebu to transport dangerous drugs.[60]

In the Decision dated May 30, 2006, the Court of Appeals affirmed the trial court's Decision dated March 5, 2005.[61]

The case was brought on appeal before this court through a notice of appeal,[62] the penalty imposed on Dimaano being life imprisonment.[63] In the Resolution[64] dated December 4, 2006, this court directed the parties to file their respective supplemental briefs if they so desired.

In their respective manifestations, the Office of the Solicitor General, representing the People of the Philippines,[65] and accused-appellant Dimaano[66] requested this court to treat the appeal briefs they filed before the Court of Appeals as their supplemental

---

[59] *Id*. at 14.

[60] *Id*.

[61] *Id*. at 17.

[62] CA *rollo*, pp. 154-155.

[63] RULES OF COURT, Rule 122, Sec. 3(c) provides:

SEC. 3. *How appeal taken*. –

. . . . . .

(c)The appeal in cases where the penalty imposed by the Regional Trial Court is *reclusion perpetua* or life imprisonment, or where a lesser penalty is imposed but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed, shall be by notice of appeal to the Court of Appeals in accordance with paragraph (a) of this Rule.

[64] *Rollo,* p. 18.

[65] *Id*. at 20-22, Manifestation dated February 6, 2007.

[66] *Id*. at 23-24, Manifestation (In Lieu of Supplemental Brief) dated February 12, 2007.

briefs. This court noted the parties' manifestations in the Resolution[67] dated March 19, 2007.

In her Accused-Appellant's Brief,[68] Dimaano maintains that the prosecution failed to establish the identity of the illegal drugs allegedly seized from her. With the inconsistent testimonies of NUP Bilugot and SPO2 Ragadio as to the number of sachets allegedly obtained from her, Dimaano argues that the prosecution "failed to prove the crucial first link in the chain of custody"[69] required under Section 21 of the Comprehensive Dangerous Drugs Act of 2002.[70]

---

[67] *Id*. at 25.

[68] CA *rollo,* pp. 51-65.

[69] *Id*. at 62.

[70] Rep. Act No. 9165 (2002), Sec. 21 partly provides:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory

Dimaano adds that NUP Bilugot and SPO2 Ragadio only marked the two sachets that contained seven smaller sachets of methamphetamine hydrochloride allegedly obtained from her. They did not write their initials on the seven sachets. Dimaano, thus, argues that "there is no certainty that the seven (7) smaller plastic sachets of shabu presented in court by the prosecution were the very same ones recovered from [her]."[71]

Lastly, with the prosecution's failure to present in court the airline ticket that would prove that she intended to board a plane bound for Cebu, Dimaano argues that the prosecution failed to establish her alleged attempt to transport illegal drugs.[72] She thus prays that this court set aside the trial court's Decision and that a new decision be rendered acquitting her of the crime charged.[73]

In its Brief for Plaintiff-Appellee,[74] the Office of the Solicitor General cites portions of NUP Bilugot's and SPO2 Ragadio's respective testimonies, maintaining that the two prosecution witnesses credibly related in court how Dimaano attempted to transport illegal drugs. Contrary to Dimaano's claim, the Office of the Solicitor General argues that there were no inconsistencies in NUP Bilugot's and SPO2 Ragadio's testimonies and cites SPO2 Ragadio's testimony that he received from NUP Bilugot

---

> examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.]

[71] CA *rollo,* p. 62, Accused-Appellant's Brief.

[72] *Id*. at 63.

[73] *Id*. at 64.

[74] *Id*. at 96-129.

two plastic sachets that were further placed inside a bigger plastic.[75]

As to why the seven (7) smaller sachets were not marked, the Office of the Solicitor General counters that this "relate[s] only to [a] minor, trivial, peripheral and inconsequential [matter] that [does] not detract from the weight of the testimonies of the prosecution witnesses in their entirety as to material and important facts."[76]

With respect to the prosecution's failure to present the airline ticket bearing Dimaano's name, the Office of the Solicitor General argues that NUP Bilugot's and SPO2 Ragadio's testimonies sufficiently proved that Dimaano was bound for Cebu to transport methamphetamine hydrochloride.[77] The Office of the Solicitor General thus prays that the Decision convicting Dimaano be affirmed in toto.[78]

The principal issue for this court's resolution is whether accused-appellant Cristy Dimaano y Tipdas is guilty beyond reasonable doubt of attempting to transport dangerous drugs punished under Section 5 in relation to Section 26 of the Comprehensive Dangerous Drugs Act of 2002. Subsumed in this issue is whether the prosecution established the unbroken chain of custody of the methamphetamine hydrochloride allegedly seized from accused-appellant.

This appeal must be dismissed.

Section 5 of the Comprehensive Dangerous Drugs Act of 2002 punishes the transportation of dangerous drugs. The provision states, in part:

> Sec. 5. *Sale, Trading, Administration, Dispensation, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. – The penalty of life imprisonment to

---

[75] *Id*. at 104-115.

[76] *Id*. at 119.

[77] *Id*. at 124-127.

[78] *Id*. at 127.

death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any such transactions.

The attempt to transport dangerous drugs is punished by the same penalty prescribed for its commission:

SEC. 26. *Attempt or Conspiracy*. – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

. . . . . .

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical[.]

To transport a dangerous drug is to "carry or convey [it] from one place to another."[79] For an accused to be convicted of this crime, the prosecution must prove its essential element: the movement of the dangerous drug from one place to another.[80]

In cases involving violations of the Comprehensive Dangerous Drugs Act of 2002, the prosecution must prove "the existence of the prohibited drug[.]"[81] "[T]he prosecution must show that the integrity of the corpus delicti has been preserved,"[82] because "the evidence involved—the seized chemical—is not readily identifiable by sight or touch and can easily be tampered with or substituted."[83]

---

[79] *People v. Laba*, G.R. No. 199938, January 28, 2013, 689 SCRA 367, 374 [Per *J.* Perlas-Bernabe, Second Division].

[80] *Id*.

[81] *People v. Watamama,* 692 Phil. 102, 106 (2012) [Per *J.* Villarama, Jr., First Division].

[82] *People v. Guzon,* G.R. No. 199901, October 19, 2013, 707 SCRA 384, 406 [Per *J.* Reyes, First Division].

[83] *Id*.

To show that "the drugs examined and presented in court were the very ones seized [from the accused],"[84] testimony as to the "chain of custody" of the seized drugs must be presented. Chain of custody is:

> the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[85]

and is governed by Section 21 of the Comprehensive Dangerous Drugs Act of 2002. Section 21, before amendment by Republic Act No. 10640 in 2013, provides, in part:

> SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

---

[84] *Id*.

[85] Dangerous Drugs Board Regulation No. 1, Series of 2002, Sec. 1(b).

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.]

The purpose of Section 21 is "to [protect] the accused from malicious imputations of guilt by abusive police officers[.]"[86]

Nevertheless, Section 21 cannot be used to "thwart the legitimate efforts of law enforcement agents."[87] "Slight infractions or nominal deviations by the police from the prescribed method of handling the corpus delicti [as provided in Section 21] should not exculpate an otherwise guilty defendant."[88] Thus, "substantial adherence"[89] to Section 21 will suffice, and, as Section 21(a) of the Implementing Rules and Regulations of the Comprehensive Dangerous Drugs Act provides:

---

[86] *People v. Sultan,* 637 Phil. 528, 537 (2010) [Per *J.* Villarama, Jr., Third Division].

[87] *Id*. at 538.

[88] *Id*.

[89] *People v. Watamama*, 692 Phil. 102, 107 (2012) [Per *J*. Villarama, Jr., First Division].

[N]on-compliance with [the] requirements [of Section 21] 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[.]

We agree with the trial court and the Court of Appeals that accused-appellant is guilty beyond reasonable doubt of attempting to transport dangerous drugs. The prosecution proved the essential element of the crime; accused-appellant would have successfully moved 13.96 grams of methamphetamine hydrochloride from Manila to Cebu had she not been apprehended at the initial check-in area at the Manila Domestic Airport Terminal 1. The prosecution need not present the airline ticket to prove accused-appellant's intention to board an aircraft; she submitted herself to body frisking at the airport when 13.96 grams of methamphetamine hydrochloride was found in her person.[90]

It is true that NUP Bilugot testified in court that she recovered only a single plastic sachet from accused-appellant. As to its contents, NUP Bilugot testified that she could not remember whether this single sachet contained several other sachets:

Q - After you saw the napkin, what else did you see after [accused-appellant] [lowered] her panty?

A - One thing place(d) in a sachet attached to the panty.

Q - What was attached to the panty?

A - *A sachet, sir*.

. . . . . .

Q - What about the plastic sachet that you recovered, if you see those plastic of shabu, would you be able to identify it?

A - Yes, sir.

Q - How would you be able to identify?

A - We place(d) our initials, sir.

---

[90] See *People v. Cadidia*, G.R. No. 191263, October 16, 2013, 707 SCRA 494, 506 [Per *J.* Perez, Second Division].

Q - *And what is the marking that you placed in that plastic sachet?*

A - My initials, FSB.

. . . . . .

Q - I am showing to you madam witness a plastic sachet containing three plastic sachets containing shabu which was previously marked as Exhibit "B," "B-1," "B-2," "B-3" and ["]B-4," kindly go over the same Miss Witness and tell us what is the relation of this plastic sachet containing shabu from those that you found from the possession of the accused?

A - *During that time I recovered one plastic sachet only from her, sir.*

Q - *And did you come to know how many plastic sachets of shabu that were contained in that one plastic sachet?*

A - *No, sir.*[91] (Emphasis supplied)

Accused-appellant points out that NUP Bilugot's testimony contrasts with that of SPO2 Ragadio, who testified that NUP Bilugot turned over *two* sachets to him. These sachets, according to SPO2 Ragadio, further contained a total of seven smaller sachets all containing methamphetamine hydrochloride. SPO2 Ragadio then initialled the two outer sachets but not the seven smaller sachets:

Q - So what happened next Mr. Witness after Florence Bilugot brought the female passenger to the comfort room?

A - According to her, she was able to get two transparent plastic bag [sic] from the passenger.

. . . . . .

Q - And so what did you do if any Mr. Witness after you were informed by Florence Bilugot that she was able to find two paslic [sic] sachets from the possession of the female passenger?

A - *The two plastic sachets were handed to me by her sir.*

---

[91] CA *rollo,* pp. 23-25, Decision dated March 5, 2005.

. . . . . .

Q - So all in all how many transparent sachet[s] containing this two transparent plastic that were turned over to you by Florence Bilugot?

A - Seven (7) all in all, sir.

. . . . . .

Q - *And how many plastic sachet[s] where you put your initial?*

A - *Two*.

Q - *Only two?*

A - *Yes, sir*.[92] (Emphasis supplied)

Despite the discrepancy in the testimonies as to the number of sachets obtained from accused-appellant, there is evidence that NUP Bilugot marked *two* plastic sachets. Police Inspector Tecson, the Forensic Chemist who subjected the specimen to chemical analysis, reported that he received two plastic sachets marked with "FSB," "RDR," and "RSA."[93] "FSB" are the initials of NUP Bilugot.[94]

Having marked two plastic sachets, NUP Bilugot confirmed that she obtained those two sachets from accused-appellant. This corroborates SPO2 Ragadio's testimony that he received two sachets from NUP Bilugot, which were further placed inside a plastic:

Q - By the way, Mr. Witness, when NUP frisker Florence Bilugot turn(ed) over to you these two pieces of plastic sachets containing while [sic] crystalline substance which according to you were found to be positive for shabu when examined, what was their condition at that time?

A - It was placed in a plastic, sir.[95]

---

[92] *Id*. at 29-33.

[93] *Rollo,* p. 17.

[94] CA *rollo,* p. 24.

[95] *Id*. at 29.

NUP Bilugot may not have remembered the contents of the sachet she seized from accused-appellant. Still, "witnesses are not expected to remember every single detail of an incident with perfect or total recall."[96] That NUP Bilugot candidly stated in open court that she could not remember the contents of the sachet suggests that she was telling the truth and was not rehearsed.[97]

It is likewise true that the seven smaller sachets inside the two plastic sachets were not initialled.[98] Nevertheless, the marking of the corpus delicti as a means to preserve its identity should be done only "as far as practicable."[99] In this case, only the two outer sachets could be marked because the two sachets were *heat-sealed*.[100] The two outer sachets would have to be opened for the seven smaller sachets to be marked. This would have contaminated the specimen.

Thus, the prosecution successfully established the identity of the corpus delicti. In addition, the chain of custody was unbroken. Both NUP Bilugot and SPO2 Ragadio testified that after NUP Bilugot seized the specimen, she immediately endorsed it to SPO2 Ragadio. SPO2 Ragadio then turned over the two plastic sachets to investigators detailed at the Philippine Center for Aviation and Security. SPO2 Ragadio's testimony states, in part:

Q - You mentioned awhile ago . . . the plastic sachet containing shabu, how did you know that the two plastic sachet were turn [sic] over by Florence Bilugot contain shabu?

---

[96] *People v. Langcua*, G.R. No. 190343, February 6, 2013, 690 SCRA 123, 134 [Per *J.* Perez, Second Division], citing *People v. Alas*, 340 Phil. 423, 432 (1997) [Per *J.* Panganiban, Third Division].

[97] CA *rollo*, p. 24.

[98] *Id*. at 35.

[99] *People v. Obmiranis,* 594 Phil. 561 (2008) [Per *J.* Tinga, Second Division]; *Mallillin v. People*, 576 Phil. 576, 587 (2008) [Per *J.* Tinga, Second Division].

[100] *Rollo*, p. 8.

A - When Florence Bilugot handed to me according to her that plastic is containing shabu.

Q - You said that there were two plastic sachet[s] that were recovered from the possession of the female passenger turned over to you by Florence Bilugot, did you examine the two plastic sachet[s] that were turned over to you?

A - Yes, sir.

Q - Who actually examined the contents of these two plastic sachet[s] that were turned over to you?

A - The investigator of the 2nd [Regional Aviation Security Office].

. . . . . .

Q - How did the investigator examine the two plastic sachet[s] in your presence?

A - He opened the plastic in front of the passenger and weight [sic] it.

. . . . . .

Q - In this two plastic sachet[s] how many plastic sachet that contain [sic] in them?

A - One has three and the other has four.

Q - So in one plastic sachet contain [sic] three transparent plastic bag[s] containing white crystalline substance?

A - Yes, sir.

Q - What about the other one?

A - Four.

Q - So all in all how many transparent plastic sachet[s] containing this [sic] two transparent plastic that were turned over to you by Florence Bilugot?

A - Seven (7) all in all, sir.

. . . . . .

Q - By the way Mr. Witness, when NUP frisker Florence Bilugot turn[ed] over to you this [sic] two pieces of plastic sachet

containing white crystalline substance which according to you were found to be positive for shabu when examined, what was their condition at that time?

A - It was place[d] in a plastic, sir.

. . . . . .

Q - Mr. Witness if this plastic sachet containing shabu will be shown to you, would you be able to identify them?

A - Yes, sir.

Q - How will you be able to identify them?

A - The initials, sir.

Q - And what are the initials that were place [sic] in these plastic?

A - RBR

Q - And what does that initial RBR mean?

A - Reynato B. Ragadio.[101]

Investigators from the Philippine Drug Enforcement Agency then collected the specimen and finally turned it over to the Philippine National Police Crime Laboratory for testing.

We agree with the Court of Appeals when it cited *People v. Dulay*,[102] which states that:

> [I]n cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on the part of the police officers or deviation from the regular performance of their duties. . . . The findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect unless the trial court overlooked substantial facts and circumstances, which, if considered, would materially affect the result of the case.[103]

---

[101] *Id*. at 11-12, Court of Appeals Decision.

[102] 468 Phil. 56 (2004) [Per *J*. Azcuna, First Division].

[103] *Id*. at 65.

We find no ill motive on the part of NUP Bilugot or SPO2 Ragadio to implicate accused-appellant had it not been true that sachets of methamphetamine hydrochloride were seized from her. We, therefore, uphold her conviction.

Accused-appellant being guilty of attempt to transport dangerous drugs, the trial court correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00 per Section 5 in relation to Section 26 of the Comprehensive Dangerous Drugs Act of 2002.

In crimes committed in airports, the prosecution relies heavily on airport security personnel and procedures for evidence. Recently, cases of illegal possession of ammunition committed in airports have been on the news, with some suggesting that airport security personnel are behind this *laglag-bala* modus operandi. Whether or not there is truth in these reports, the public has since been more concerned with airport security procedures.

The rise in cases of *laglag-bala*, however, does not excuse the laxity in processing other pieces of evidence. Drugs equally destroy lives, as do bullets fired with a gun. Prosecuting drug dealers and users should be given equal vigilance.

WHEREFORE, the appeal is **DISMISSED**. The Court of Appeals Decision dated May 30, 2005 in CA-G.R. CR-H.C. No. 00942 affirming the conviction of accused-appellant Cristy Dimaano y Tipdas by Branch 119 of the Regional Trial Court, Pasay City for violation of Section 5 in relation to Section 26 of Republic Act No. 9165 is **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *del Castillo,* and *Mendoza, JJ.,* concur.

Brion, J., see dissenting opinion.

DISSENTING OPINION

BRION, *J.*:

I disagree with the *ponencia* in his conclusion that accused-appellant Cristy Dimaano *y* Tipdas (*Cristy*) should be convicted of illegal attempt to transport dangerous drugs under Section 5, in relation to Section 26, of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Antecedents

On November 13, 2002, Non-Uniformed Personnel Florence S. Bilugot (*NUP Bilugot*), while being detailed as frisker at the initial check-in departure area of the Manila Domestic Airport Terminal 1, frisked Cristy as a standard operating procedure for departing passengers. When NUP Bilugot felt a bulging hard object near Cristy's buttocks, she asked what it was. Cristy replied it was a sanitary napkin. Suspicious, NUP Bilugot requested that they proceed to the ladies' comfort room for a thorough inspection.

NUP Bilugot then asked Cristy to remove her panties. On the panties' crotch was a panty liner on top of a sanitary napkin, and between these was **a plastic sachet** as **big as a shampoo packet**. Seeing it contained a white crystalline substance similar to "tawas" inside the packet, NUP Bilugot asked Cristy what it was. Cristy allegedly replied that it was *shabu*. When NUP Bilugot asked if she owned it, Cristy replied that she was just asked to bring it. NUP Bilugot then secured the plastic sachet and turned it over to Senior Police Officer 2 Reynato Ragadio (*SPO2 Ragadio*).

SPO2 Ragadio, however, recalled receiving from NUP Bilugot **two (2) transparent plastic sachets**, which NUP Bilugot placed inside a plastic bag. Together with NUP Bilugot, SPO2 Ragadio brought Cristy to the Philippine Center for Aviation and Security (*PCAS*) where the arresting officers wrote their respective initials on the two plastic sachets.

Investigators detailed at the PCAS examined the contents of the two plastic sachets. One sachet contained three (3) smaller sachets while the other contained four (4) smaller ones. Thirty minutes later, the Philippine Drug Enforcement Agency (*PDEA*) investigators arrived to collect the confiscated items on which they had placed their initials. Cristy was brought to the PDEA office at the Ninoy Aquino International Airport thereafter.

The prosecution charged Cristy with violation of Section 5 in relation to Section 26 of R.A. No. 9165 before the Regional Trial Court (*RTC*), Branch 119, Pasay City, in an Information that provides:

> That on or about the 13th day of November, 2002, at the Manila Domestic Airport Terminal I, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, being then a departing passenger for Cebu, without authority of law, did then and there willfully, unlawfully and feloniously have in her possession and attempt to transport 13.96 grams of Methyllamphetamine (sic) Hydrochloride (shabu), a dangerous drug.
>
> Contrary to law.[1]

Cristy pleaded not guilty to the charge during her arraignment.

Cristy waived her right to present her evidence during trial. Instead, her counsel filed a memorandum and argued that the prosecution failed to establish her guilt beyond reasonable doubt on the following grounds:

1) The discrepancy in the testimonies of NUP Bilugot and SPO2 Ragadio casts serious doubt in establishing the identity of the dangerous drug. NUP Bilugot testified that he was able to obtain **a plastic sachet** from Cristy's panty, SPO2 Ragadio, on the other hand, said that he received **two (2) plastic sachets** from NUP Bilugot after they came out of the ladies' comfort room; and

---

[1] CA *rollo*, p. 9.

2) The element of intent to transport was not established because the prosecution failed to present her airline ticket, which was also confiscated from her, to prove that she was departing from Manila to Cebu.

In its decision dated March 5, 2005, the RTC found Cristy guilty beyond reasonable doubt of attempting to transport *shabu*. The trial court explained that, despite the discrepancies in the testimonies of NUP Bilugot and SPO2 Ragadio, the chain of custody, nevertheless, remained unbroken. Immediately after NUP Bilugot seized the *shabu* from Cristy, she immediately turned over the same to SPO2 Ragadio, who was just outside the door of the ladies' comfort room. **The trial court added that SPO2 Ragadio's testimony that he received from NUP Bilugot two (2) plastic sachets, which were further placed inside a bigger plastic packet, explained why NUP Bilugot said that she obtained only one (1) plastic sachet from Cristy.**

As to the element of intent to transport, the RTC justified that since Cristy was apprehended prior to her departure at the Domestic Airport, the presentation of the airline ticket was unnecessary.

Accordingly, the RTC sentenced Cristy to suffer the penalty of life imprisonment and ordered her to pay a fine of ₱500,000.00.

In its decision of May 30, 2006, the CA affirmed the RTC's ruling. The appellate court was not convinced by Cristy's arguments because aside from her allegations, Cristy did not present any evidence to support her claim.

The CA upheld the RTC's findings that the difference in the testimonies of NUP Bilugot and SPO2 Ragadio did not destroy the credibility of the prosecution witnesses because the testimony given by the latter proved that the chain of custody over the confiscated items remained unbroken. The CA quoted SPO2 Ragadio's explanation that he and the PCAS investigator examined the drugs in the presence of Cristy.

With respect to the airline ticket, the CA agreed with the trial court that the prosecution did not need to present it just to

prove Cristy's intention to transport illegal drugs. The fact that Cristy was apprehended at the initial check-in departure area of the Manila Domestic Airport already proved that she was bound for Cebu to transport dangerous drugs.

Before this Court, Cristy maintains that the prosecution failed to establish the identity of the illegal drugs allegedly seized from her because there were material inconsistencies in the crucial first link in the chain of custody.

The *Ponencia*'s Ruling

Despite the inconsistencies as to the number of plastic sachets confiscated, the *ponencia* agreed with the lower courts that the chain of custody was not broken because NUP Bilugot immediately turned over whatever she discovered hidden in Cristy's underwear to SPO2 Ragadio right after coming out of the ladies' comfort room. Moreover, the *ponencia* appreciated the explanation that the two (2) plastic sachets were placed inside a bigger plastic sachet.

The *ponencia* ruled that failing to mark all of the seven (7) smaller plastic sachets is a mere nominal deviation from the requirements under Section 21 because the two (2) larger plastic sachets, containing the seven (7) smaller ones, were duly marked with the initials of NUP Bilugot and SPO2 Ragadio.

In affirming Cristy's conviction, the *ponencia* held that the prosecution proved the essential element of the crime *illegal attempt to transport dangerous drugs;* Cristy would have successfully moved 13.96 grams of *shabu* from Manila to Cebu had she not been apprehended at the initial check-in area at the Manila Domestic Airport.

The Dissent

I vote to *acquit* the accused-appellant on the ground of reasonable doubt.

It is basic in criminal prosecution that an accused is presumed innocent of a charge unless his guilt is proven beyond reasonable doubt. In cases involving dangerous drugs, proof beyond

reasonable doubt demands that **unwavering exactitude is observed in establishing the *corpus delicti*** – the body of the crime whose core is the confiscated illicit drug.[2] In meeting this quantum of proof, the chain of custody requirement under Section 21 of R.A. No. 9165 ensures that doubts concerning the identity of the drug are removed.

As a method of authenticating evidence, the chain of custody rule requires that the admission of the exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it would be.[3] It would thus include a testimony about every link in the chain – from the moment the item was seized to the time it was offered in court as evidence – such that every person who handled the same would admit as to how and from whom it was received; where it was and what happened to it while in the witness' possession; the condition in which it was received; and the condition in which it was delivered to the next link in the chain.[4] **The same witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same**.[5] It is from the testimony of every witness who handled the evidence where a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.[6]

Over the years, we have recognized the following links that must be established to ensure the preservation of the identity and integrity of the confiscated drug: ***first*, the seizure and**

---

[2] *People v. Capuno*, G.R. No. 185715, January 19, 2011, 640 SCRA 233, 248.

[3] *Id.*; See *People v. Obmiranis*, G.R. No. 181492, December 16, 2008, 574 SCRA 140, 149; *Mallillin v. People*, G.R. No. 172953, April 30, 2008, 576 Phil. 576, 587.

[4] *Id.*

[5] *Id.*

[6] *Id.*

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.[7]

To my mind, the prosecution miserably failed to prove the crucial first link in the chain of custody because it failed to logically reconcile the discrepancy on **how many sachets were really confiscated from Cristy** and how many sachets were actually turned over to SPO2 Ragadio.

To recall, NUP Bilugot testified that he recovered and identified **only** one (1) transparent plastic sachet containing *shabu*:

Q. After you saw the napkin, what else did you see after she low[er]ed her panty?
A. One thing place(d) in a sachet attached to the panty.

Q. What was attached to the panty?
A. A sachet, sir.[8]

x x x x x x x x x

Q. What about the plastic sachets that you recovered, if you see those plastic shabu, would you be able to identify it?
A. Yes, sir.

Q. How would be able to identify?
A. We place(d) our initials, sir.

Q. And what is the marking that you placed in the plastic sachet?
A. My initial, FSB.

Q. And that signifies what?
A. Florence S. Bilugot.[9]

---

[7] *People v. Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

[8] TSN, September 9, 2003, p. 11.

[9] *Id.* at 13.

Q. I am showing to you madam witness a plastic sachet containing three plastic sachets containing shabu which was previously marked as Exhibit "B," "B-1," "B-2," "B-3," and "B-4," kindly go over the same, Miss Witness, and tell us what is the relation of this plastic sachet to those you found in the possession of the accused?

A. During that time I recovered one plastic sachet only from her, sir. [emphasis supplied]

Q. And did you come to know how many plastic sachets of shabu that were contained in that one plastic sachet?

A. No, sir.

Considering that the plastic sachet recovered from Cristy was transparent, NUP Bilugot could also have easily noticed that there were plastic sachets inside a bigger plastic sachet. As pointed out by the *ponencia*, NUP Bilugot could not remember whether this single sachet contained several other sachets. In fact, Bilugot said it contained crystalline substance similar to "tawas," thus, she saw what the transparent sachet contained.

SPO2 Ragadio, on the other hand, declared on the witness stand that NUP Bilugot handed to him *two* plastic sachets. SPO2 Ragadio in fact confirmed that he placed his initials on *two* sachets.

Taken all together, the inconsistency as to how many plastic sachets were really recovered from Cristy and eventually turned over to SPO2 Ragadio, and the incomplete testimony of NUP Bilugot cast serious doubt as to the identity of the drugs presented in court.

Minor inconsistencies pertain only to a collateral matter, which does not have anything to do with the essential elements of the offense with which an accused is charged. On the other hand, contradictions and inconsistencies, which are irreconcilable and pertain to substantial matters, cast doubt over the veracity of the charge against the accused. Testimonial inconsistencies are substantial where they have something to do with the essential elements of the crime involving dangerous drugs.

In the present case, the difference between the quantity of *shabu* confiscated from Cristy and turned over to SPO2 Ragadio is a substantial inconsistency because it goes into establishing the *corpus delicti* of the crime.

I also cannot share the *ponencia*'s position that the non-marking of the seven (7) smaller sachets was a mere "nominal deviation" from the requirements under Section 21 of R.A. 9165.

Marking means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the item/s seized.[10] Crucial in proving the unbroken chain of custody is the marking of the seized drugs or other related items because failure to do so casts reasonable doubt on the authenticity of the *corpus delicti*. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus preventing switching, "planting," or contamination of evidence.[11]

Here, what was marked were only the two (2) plastic sachets containing the seven (7) smaller sachets – not the latter, which would be more appropriate given the number of sachets supposedly recovered from Cristy. We cannot accept the *ponencia*'s explanation that the marking of the seven sachets could contaminate them since it would have required the opening of the two heat-sealed sachets that contained these seven sachets.

We point out that the 7 smaller sachets were also heat-sealed. The marking procedure would have only required the placing of the initials on these 7 plastic sachets; it would not involve opening of these sachets. To my mind (and contrary to the *ponencia*'s position), the marking of the other sachets would

---

[10] *People v. Edaño*, G.R. No. 188133, July 7, 2014, 729 SCRA 255, 267.

[11] *People v. Sabdula*, G.R. No. 184758, April 21, 2014, 722 SCRA 90, 100, citing *People v. Alejandro*, G.R. No. 176350, August 10, 2011, 655 SCRA 279, 289-290.

ensure all the more the preservation of the integrity and evidentiary value of the seized specimen.

Notably, SPO2 Ragadio testified that he and NUP Bilugot wrote their respective initials (*i.e.,* "*RBR*" and "*FSB*") on the two sachets. Police Inspector Abraham B. Tecson, however, stated that he received from Police Chief Inspector Roseller Fabian two plastic sachets marked with "FSB," "RDR," and "RSA." It was not clear who owned the initials RDR and RSA.

The *ponencia*'s narration of facts also stated that three investigators from the PDEA placed their initials on the two plastic sachets. If SPO2 Ragadio and NUP Bilugot placed their initials on the two sachets before the PDEA investigators placed theirs, then there should have been 5 initials on the sachets. We reiterate that P/Insp. Fabian testified that the sachets bore only the initials "FSB," "RDR" and "RSA."

As a result of the lapses and/or irregularities that attended the marking procedure, we cannot agree with the *ponencia*'s view that Cristy's guilt of the crime charged had been proven with moral certainty. Simply put, the prosecution failed to establish that the seven sachets were the same sachets confiscated from her.

The presumption of regularity in the performance of official duty applies only when there is no deviation from the regular performance of duty.[12] The regular performance as to the initial contact with the dangerous drug is outlined in the first paragraph of Section 21 of R.A. No. 9165:

> (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

---

[12] *People v. Casabuena*, G.R. No. 186455, November 19, 2014, citing *People v. Martinez*, G.R. No. 191366, December 13, 2010, 637 SCRA 791, 822.

> (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;
>
> xxx xxx xxx

I reiterate that marking is the starting point in the custodial link, thus it is vital that this procedure be properly done because succeeding handlers of the specimens will use the markings as reference. Therefore, any deviation from this vital process requires a justification from the apprehending team for their noncompliance.

Corollarily, the facts narrated by the *ponencia* did not show that the seized drugs had been inventoried and photographed 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 by persons who had contact with the confiscated plastic sachets, *i.e.*, NUP Bilugot, SPO2 Ragadio, investigators from the Philippine Center for Aviation and Security, and investigators from the PDEA. Notably, the defense did not offer any justifiable ground why these officials failed to comply with the required vital processes in the safekeeping of drugs. We stress that it is not for this Court to provide the justifiable ground that would excuse the police officers from non-observance of the required procedure in the handling and custody of the seized drugs.

All told, the prosecution failed to meet the quantum of proof required in establishing that the prohibited drugs identified in court were the same prohibited drugs allegedly found inside Cristy's underwear. In effect, we have in this case a counterpart of the "*tanim bala*" that has raised a lot of complaints at the airport; here, it is "*tanim shabu*."

Under the circumstances, Cristy should be **ACQUITTED** because the prosecution failed to overcome the constitutional presumption of innocence by not proving beyond reasonable doubt the *corpus delicti* of an illegal attempt to transport dangerous drugs.

THIRD DIVISION

[G.R. No. 180402. February 10, 2016]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PILIPINAS SHELL PETROLEUM CORPORATION,** *respondent.*

SYLLABUS

CIVIL LAW; CIVIL CODE; EFFECT AND APPLICATION OF LAWS; DOCTRINE OF *STARE DECISIS*; THE COURT MUST ADHERE TO THE PRINCIPLE OF LAW LAID DOWN IN A PREVIOUS CASE AND APPLY THE SAME IN THE PRESENT CASE, ESPECIALLY WHEN THE FACTS, ISSUES, AND EVEN THE PARTIES INVOLVED ARE EXACTLY IDENTICAL; CASE AT BAR.— Under the doctrine of *stare decisis,* the Court must adhere to the principle of law laid down in *Pilipinas Shell* and apply the same in the present case, especially since the facts, issues, and even the parties involved are exactly identical. Thus, the Court hereby holds that Pilipinas Shell's claim for refund/tax credit must be granted pursuant to *Pilipinas Shell,* as its petroleum products sold to international carriers for the period of November 2000 to March 2001 are exempt from excise tax, these international carriers being exempt from payment of excise tax under Section 135(a) of the NIRC. The Court further notes that during the pendency of this case, the Court, sitting *en banc,* rendered a decision in *Chevron Philippines, Inc. v. Commissioner of Internal Revenue,* which likewise involved the refund of excise taxes paid on the importation of petroleum products. Applying the principle enunciated in *Pilipinas Shell,* the Court granted therein petitioner Chevron Philippines, Inc.'s motion for reconsideration and directed therein respondent CIR to refund the excise taxes paid on the petroleum products sold to Clark Development Corporation in the period from August 2007 to December 2007, or to issue a tax credit certificate. The Court stated that while the claims in *Pilipinas Shell* and *Chevron* were premised on different subsections of Section 135 of the NIRC, "the basic tax principle applicable was the same in both cases — that

excise tax is a tax on property; hence, the exemption from the excise tax expressly granted under Section 135 of the NIRC must be construed in favor of the petroleum products on which the excise tax was initially imposed."

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Cruz Marcelo & Tenefrancia for respondent.

D E C I S I O N

REYES, *J.*:

Assailed in the present Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the Decision[2] dated July 13, 2007 rendered by the Court of Tax Appeals (CTA) *en banc* in CTA EB Case No. 279, which affirmed the Decision[3] dated November 28, 2006 of the CTA Second Division in CTA Case No. 6554, ordering the refund or issuance of a tax credit certificate in favor of respondent Pilipinas Shell Petroleum Corporation (Pilipinas Shell) for the excise taxes it paid on petroleum products sold to international carriers. Petitioner Commissioner of Internal Revenue (CIR) also assailed the CTA Resolution[4] dated October 18, 2007 denying its motion for reconsideration.

Antecedent Facts

Pilipinas Shell sold and delivered petroleum products to various international carriers of the Philippines or foreign registry for their use outside the Philippines for the period of November

[1] *Rollo,* pp. 11-39.

[2] Penned by Presiding Justice Ernesto D. Acosta, with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez, concurring; *id*. at 42-50.

[3] Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justices Erlinda P. Uy and Olga Palanca-Enriquez concurring; *id*. at 57-77.

[4] *Id*. at 52-55.

2000 to March 2001. A portion of these sales and deliveries was sourced by Pilipinas Shell from Petron Corporation (Petron) by virtue of a "loan or borrow agreement" between them. The excise taxes paid by Petron were passed on to Pilipinas Shell and the latter, in turn, sold these to international carriers net of excise taxes. The other portion was sourced by Pilipinas Shell from its tax-paid inventories.[5]

Pilipinas Shell subsequently tiled two separate claims for the refund or credit of the excise taxes paid on the foregoing sales, totaling ₱49,058,733.09. Due to the inaction of the Bureau of Internal Revenue (BIR) on its claims, Pilipinas Shell decided to file a petition for review with the CTA.[6]

On November 28, 2006, the CTA Second Division rendered its Decision granting Pilipinas Shell's claim but at a reduced amount of ₱39,305,419.49.[7] Said amount was computed based on Pilipinas Shell's sales and deliveries of petroleum products to international carriers sourced from its own tax-paid inventories. The claim for refund/credit of the excise taxes from the sales and deliveries coming from the portion sourced from Petron was disallowed by the CTA on the ground that Pilipinas Shell is not the proper party to claim the same.

The CIR filed a motion for reconsideration of the CTA decision but it was denied by the CTA in its Resolution[8] dated February 23, 2007. Hence, it filed a petition for review before the CTA *en banc*.[9]

On July 13, 2007, the CTA *en banc* rendered the assailed decision dismissing the BIR's petition for lack of merit and affirming the assailed CTA decision and resolution. Its motion for reconsideration having been denied per assailed

---

[5] *Id*. at 43.

[6] *Id*.

[7] *Id*. at 75.

[8] *Id*. at 81-85.

[9] *Id*. at 44.

Resolution[10] dated October 18, 2007, the CIR now comes to this Court on petition for review.

The arguments raised by the CIR are basically the same as those raised before the CTA Second Division and *en banc,* that is, Pilipinas Shell is not entitled to a refund/credit of the excise taxes paid on its sales and deliveries to international carriers for the following reasons: (1) excise taxes are levied on the manufacturer/producer prior to sale and delivery to international carriers and, regardless of its purchaser, said taxes must be shouldered by the manufacturer/producer or in this case, Pilipinas Shell; (2) the excise taxes paid by Pilipinas Shell do not constitute taxes erroneously paid as they are rightfully due from Pilipinas Shell as manufacturer/producer of the petroleum products sold to international carriers; (3) the intent of the law – Section 135 of the National Internal Revenue Code (NIRC) – is to exempt the international carriers from paying the excise taxes but not the manufacturer/producer; and (4) BIR Ruling No. 051-99, Revenue Regulations No. 5-2000 and other BIR issuances allowing tax refund/credit of excise taxes paid on petroleum products sold to tax-exempt entities or agencies should be nullified for being contrary to Sections 129, 130 and 148 of the NIRC.[11]

For its part, Pilipinas Shell argued, among others, that the excise tax exemption on petroleum products sold to international carriers is based on principles of international comity and to insist on its payment under the circumstances and suggest that it be recovered by the manufacturer as part of its selling price would be to render meaningless its purpose.[12]

Ruling of the Court

The Court need not unnecessarily belabor the arguments posed by the parties as these have already been squarely dealt

[10] *Id*. at 52-55.

[11] *Id*. at 17-34.

[12] *Id*. at 125-130.

with recently in G.R. No. 188497 entitled *"Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation."*[13]

In said case, the same respondent in this case, Pilipinas Shell, sought a refund/credit of the excise taxes allegedly paid erroneously on sales and deliveries of gas and fuel oils to various international carriers during the period of October to December 2001. As in the present case, Pilipinas Shell alleged that it was exempt from payment of excise taxes levied on its petroleum products sold and delivered to international carriers of foreign registry. The same petitioner in this case, the CIR, as represented by the Office of the Solicitor General, objected to the tax refund/credit granted by the CTA, also on the same ground raised in the present case – that the excise tax on petroleum products is levied on the manufacturer of the petroleum product regardless of its purchaser or buyer and that the grant of exemption under Section 135 of the NIRC simply means that the manufacturer cannot pass on to the international carrier-buyer the excise taxes it paid on its petroleum products.

Initially, the Court sustained CIR's arguments, reversed the CTA ruling and denied Pilipinas Shell's claim for tax refund/credit. In a Decision[14] dated April 25, 2012, the Court concluded that Pilipinas Shell's locally manufactured petroleum products are subject to excise tax under Section 148 of the NIRC. The Court also ruled that the exemption from excise tax payment on petroleum products under Section 135(a) "merely allows the international carriers to purchase petroleum products without the excise tax component as an added cost in the price fixed by the manufacturers or distributors/sellers. Consequently, the oil companies which sold such petroleum products to international carriers are not entitled to a refund of excise taxes previously paid on the goods."[15]

---

[13] April 25, 2012, 671 SCRA 241.

[14] *Id.*

[15] *Id*. at 263.

In a Resolution[16] dated February 19, 2014, however, the Court addressed the argument of Pilipinas Shell in its motions for reconsideration that Section 135(a) intended the tax exemption to apply to petroleum products at the point of production, among others. The Court found merit in Pilipinas Shell's motions for reconsideration and consequently directed the CIR to issue a tax credit certificate to Pilipinas Shell. The dispositive portion of the resolution reads:

> **WHEREFORE**, the Court hereby resolves to:
>
> (l) **GRANT** the original and supplemental motions for reconsideration filed by respondent Pilipinas Shell Petroleum Corporation; and
>
> (2) **AFFIRM** the Decision dated March 25, 2009 and Resolution dated June 24, 2009 of the Court of Tax Appeals *En Banc* in CTA EB No. 415; and **DIRECT** petitioner Commissioner of Internal Revenue to refund or to issue a tax credit certificate to Pilipinas Shell Petroleum Corporation in the amount of ₱95,014,283.00 representing the excise taxes it paid on petroleum products sold to international carriers from October 2001 to June 2002.
>
> **SO ORDERED**.[17]

In granting Pilipinas Shell's motions for reconsideration, the Court ruled:

> We maintain that Section 135 (a), in fulfillment of international agreement and practice to exempt aviation fuel from excise tax and other impositions, prohibits the passing of the excise tax to international carriers who buys petroleum products from local manufacturers/sellers such as respondent. However, **we agree that there is a need to reexamine the *effect* of denying the domestic manufacturers/sellers' claim for refund of the excise taxes they already paid on petroleum products sold to international carriers, and its serious implications on our Government's commitment to the goals and objectives of the Chicago Convention.**

---

[16] *Rollo,* pp. 258-267.

[17] *Id*. at 266.

The Chicago Convention, which established the legal framework for international civil aviation, did not deal comprehensively with tax matters. Article 24 (a) of the Convention simply provides that fuel and lubricating oils on board an aircraft of a Contracting State, on arrival in the territory of another Contracting State and retained on board on leaving the territory of that State, shall be exempt from customs duty, inspection fees or similar national or local duties and charges. Subsequently, the exemption of airlines from national taxes and customs duties on spare parts and fuel has become a standard element of bilateral air service agreements (ASAs) between individual countries.

The importance of exemption from aviation fuel tax was underscored in the following observation made by a British author in a paper assessing the debate on using tax to control aviation emissions and the obstacles to introducing excise duty on aviation fuel, thus:

xxx xxx xxx

With the prospect of declining sales of aviation jet fuel sales to international carriers on account of major domestic oil companies' unwillingness to shoulder the burden of excise tax, or of petroleum products being sold to said carriers by local manufacturers or sellers at still high prices, the practice of "tankering" would not be discouraged. This scenario does not augur well for the Philippines' growing economy and the booming tourism industry. Worse, our Government would be risking retaliatory action under several bilateral agreements with various countries. **Evidently, construction of the tax exemption provision in question should give primary consideration to its broad implications on our commitment under international agreements.**

In view of the foregoing reasons, we find merit in respondent's motion for reconsideration. We therefore hold that **respondent, as the statutory taxpayer who is directly liable to pay the excise tax on its petroleum products, is entitled to a refund or credit of the excise taxes it paid for petroleum products sold to international carriers, the latter having been granted exemption from the payment of said excise tax under Sec. 135(a) of the NIRC.**[18] (Citation omitted and emphases ours)

---

[18] *Id*. at 265-266.

Under the doctrine of *stare decisis,*[19] the Court must adhere to the principle of law laid down in *Pilipinas Shell* and apply the same in the present case, especially since the facts, issues, and even the parties involved are exactly identical. Thus, the Court hereby holds that Pilipinas Shell's claim for refund/tax credit must be granted pursuant to *Pilipinas Shell,* as its petroleum products sold to international carriers for the period of November 2000 to March 2001 are exempt from excise tax, these international carriers being exempt from payment of excise tax under Section 135(a) of the NIRC.

The Court further notes that during the pendency of this case, the Court, sitting *en banc,* rendered a decision in *Chevron Philippines, Inc. v. Commissioner of Internal Revenue,*[20] which likewise involved the refund of excise taxes paid on the importation of petroleum products. Applying the principle enunciated in *Pilipinas Shell,* the Court granted therein petitioner Chevron Philippines, Inc.'s motion for reconsideration and directed therein respondent CIR to refund the excise taxes paid on the petroleum products sold to Clark Development Corporation in the period from August 2007 to December 2007, or to issue a tax credit certificate. The Court stated that while the claims in *Pilipinas Shell* and *Chevron* were premised on different subsections of Section 35 of the NIRC, "the basic tax principle applicable was the same in both cases — that excise tax is a tax on property; hence, the exemption from the excise tax expressly granted under Section 135 of the NIRC must be construed in favor of the petroleum products on which the excise tax was initially imposed."[21]

Lastly, the Court cannot grant CIR's prayer that BIR Ruling No. 051-99, Revenue Regulations No. 5-2000 and other BIR issuances allowing tax refund/credit of excise taxes paid on petroleum products sold to tax-exempt entities or agencies be

---

[19] *J.R.A. Philippines, Inc. v. CIR,* 647 Phil. 33 (2010).

[20] G.R. No. 210836, September 1, 2015.

[21] The CIR's motion for reconsideration of the Court's Decision dated September 1, 2015 in *Chevron* case was denied with finality in a Resolution dated November 10, 2015.

declared invalid. What the CIR wants is a wholesale invalidation of these issuances, which the Court will not allow.

For one, *Pilipinas Shell* already ruled that petroleum products sold by local manufacturers/sellers to international carriers are exempt from the imposition of excise taxes as these international carriers enjoy exemption from payment of excise taxes under Section 135(a) of the NIRC. For another, the CIR failed to state with specificity the tenor of these issuances, except that these relate to the BIR's alleged grant of excise tax exemption on petroleum products, without even making an effort to present an official copy of these issuances, much less its contents. Moreover, the Court took upon itself the task of looking into these issuances and discovered that BIR Ruling No. 051-99[22] actually involves the petroleum product withdrawals by Petron who is not even party to the present case. On the other hand, Revenue Regulations No. 5-2000[23]

---

[22] <ftp:llftp.bir.gov.ph/webadmin/pdfs/rulings/rulings 1999 underscore digest.pdf> (visited July 24, 2012). A summary of BIR Ruling No. 051-99 dated April 19, 1999 reads:

The petroleum product withdrawals **by Petron Corporation** are for use by entities or agencies exempt from excise tax under Section 135 of the Tax Code of 1997, and that the petroleum products are to be delivered to the tax-exempt entities within ten (10) days (for the period of January 1, 1998 to June 30, 1998); within five (5) days (for the period July 1, 1998 to December 31, 1998) from the date of removal of such products; and before removal from the place of production of such products (from January 1, 1999 and thereafter). Accordingly, Petron is allowed to claim a tax credit/refund of the excise taxes paid on petroleum products sold to tax-exempt entities or agencies, subject to the two-year prescriptive period under Section 229 of the Tax Code of 1997. (Emphasis ours)

[23] <http://www.bir.gov.ph/lumangweb/rr2000.html#rr5-2000> (visited July 24, 2012). A summary of Revenue Regulations No. 5-2000 states:

REVENUE REGULATIONS No. 5-2000 issued August 15, 2000 prescribes the regulations governing the manner of the issuance of Tax Credit Certificates (TCCs) and the conditions for their use, revalidation and transfer. A TCC may be used by the grantee or his assignee in the payment of his direct internal revenue tax liability. However, in no case shall the TCC be used in the payment of the following: 1) payment or remittance for any kind of withholding tax; 2) payment arising from the availment of tax amnesty declared under a legislative enactment; 3) payment of deposits on withdrawal

does not pertain solely to refund/credit of excise taxes on petroleum products but prescribes general regulations on the manner of the issuance of tax credit certificates and the conditions for their use, revalidation and transfer. For these reasons, the Court cannot sanction the CIR's "shotgun approach" and sustain its bare arguments without more.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Velasco, Jr. (Chairperson), *Peralta,* and *Perez, JJ.,* concur.

Leonen,[*] *J.,* dissents, consistent with his opinion in G.R. No. 210836 *Chevron vs. CIR* (Sept. 2015).

---

of excisable articles; 4) payment of taxes not administered or collected by the BIR; and 5) payment of compromise penalty. Moreover, in no case shall a tax refund or TCC be given resulting from availment of incentives granted pursuant to special laws for which no actual tax payment was made.

BIR-issued TCCs may be transferred in favor of an assignee subject only to the following conditions: 1) the transfer of a valid TCC must be with prior approval of the Commissioner or his duly authorized representative; 2) the transfer should be limited to one transfer only; and 3) the transferee shall use the TCC assigned to him strictly in payment of his direct internal revenue tax liability and in no case shall the same be available for conversion to cash in his hands. Any TCC issued which remains unutilized after five (5) years from the date of issue shall, unless revalidated before the end of the fifth year, be considered invalid. This means that the TCC shall not be allowed for use in payment of any of the taxpayer's internal revenue tax liability nor allowed to be transferred and the unutilized amount thereof shall revert to the General Fund of the National Government. The revalidated TCC shall be valid for a period of five years from the date of issue. Any request for conversion into cash refund of unutilized tax credits may be allowed during the validity period of the TCC, subject to conditions specified in the Revenue Regulations. Any TCC issued prior to January 1, 1998, may be submitted for revalidation by the holder within six (6) months prior to the end of the fifth (5^{th}) year. No revalidated TCC shall be issued unless the Commissioner's duly authorized representative has certified that the applicant taxpayer has no outstanding tax liability. If the holder has any outstanding tax liability, said liability should be applied first against the TCC sought to be revalidated through the issuance of a Tax Debit Memo.

[*] Additional member per Raffle dated October 20, 2014 *vice* Associate Justice Francis H. Jardeleza.

THIRD DIVISION

[G.R. No. 185603. February 10, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **LOCAL SUPERIOR OF THE INSTITUTE OF THE SISTERS OF THE SACRED HEART OF JESUS OF RAGUSA,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); APPLICATION FOR REGISTRATION BASED ON SECTION 14(1); REQUISITES.—A perusal of the respondent's Application for Registration revealed that the application is based on Section 14(1) of Presidential Decree (P.D.) No. 1529, otherwise known as the Property Registration Decree, and not prescription as what the petitioner implied x x x. There are three obvious requisites for the filing of an application for registration of title stated in Section 14(1) of P.D. No. 1529. *First*, that the property in question is alienable and disposable land of the public domain; *second,* that the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation; and *third* that such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier.

2. ID.; ID.; ID.; ID.; REQUIREMENT OF POSSESSION IN THE CONCEPT OF AN OWNER PRIOR TO 1945, DULY ESTABLISHED IN CASE AT BAR.— To prove its open, continuous, exclusive and notorious possession in the concept of an owner on or before June 12, 1945, the respondent presented its witnesses, one of whom is Gonzales, a former possessor of the subject land. Gonzales executed a judicial affidavit whereupon he was subjected to direct and cross examination during trial. x x x As Gonzales was already 12 years old in 1945, surely he could have perceived the fact that his grandfather had already possessed the land, planted trees and introduced improvements thereon. It is of no moment that the earliest tax

declaration presented was dated 1948. In *Republic of the Philippines v. Court of Appeals*, it was held that the belated declaration of the lot for tax purposes does not necessarily mean that possession by the previous owners thereof did not commence in 1945 or earlier. As long as the testimony supporting possession for the required period is credible, the court will grant the petition for registration. Additionally, the trial court took judicial notice of the fact that tax declarations kept intact in the Municipal Assessor's Office of Silang started only in 1948. Tacking the possession of its predecessors-in-interest, the respondent fulfilled the requirement of possession in the concept of an owner prior to 1945.

3. **ID.; ID.; ID.; ID.; ALIENABLE AND DISPOSABLE CHARACTER OF THE LAND; IT IS REQUIRED THAT THE PROPERTY SOUGHT TO BE REGISTERED IS ALREADY ALIENABLE AND DISPOSABLE AT THE TIME THE APPLICATION FOR REGISTRATION OF TITLE IS FILED.—** The Court has resolved the issue on the correct interpretation of Section 14(1) of P.D. No. 1529 in *Naguit* case where it was held that "the more reasonable interpretation of Section 14(1) is that it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed." "Unlike Section 14(1), Section 14(2) explicitly refers to the principles on prescription under existing laws. Accordingly, we are impelled to apply the civil law concept of prescription, as set forth in the Civil Code, in our interpretation of Section 14(2). There is no similar demand on our part in the case of Section 14(1)." x x x Thus, if the basis of the application is Section 14(1), it is enough for an applicant to comply with the requirements provided there under.

4. **ID.; ID.; ID.; ID.; ID.; THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES-COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICER CERTIFICATION IS INSUFFICIENT TO PROVE THE ALIENABLE AND DISPOSABLE CHARACTER OF THE LAND SOUGHT TO BE REGISTERED.—** The respondent, to establish the alienable and disposable character of the land, submitted a certification from the DENR-Community Environment and Natural Resources Officer (CENRO) which states that the subject land is verified to be within the "Alienable and Disposable land

per land Classification Map No. 3013 established under Project No. 20-A and approved as such under FAO 4-1656 on March 15, 1982." However, in light of the Court's ruling in *Republic of the Philippines v. T.A.N. Properties, Inc*., the DENR-CENRO certification is insufficient to prove the alienable and disposable character of the land sought to be registered x x x. For this reason, the Court finds that a remand of this case to the court *a quo* for further reception of evidence is in order. The respondent must be able to demonstrate the alienable and disposable character of the land in accordance with the requirements set forth in *T.A.N. Properties*; only then would the application for registration be granted.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Anarna Law Office for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by the Republic of the Philippines (petitioner) seeking the reversal of the Decision[2] dated December 4, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 90179, which affirmed the Decision[3] dated March 9, 2007 of the 2nd Municipal Circuit Trial Court of Silang-Amadeo, Silang, Cavite in LRC No. 2006-324.

Facts

The undisputed facts as recounted by the CA, are as follows:

---

[1] *Rollo,* pp. 8-22.

[2] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Isaias P. Dicdican and Japar B. Dimaampao concurring; *id*. at 24-38.

[3] Issued by Presiding Judge Ma. Victoria N. Cupin-Tesorero; *id*. at 125-135.

The applicant is a religious institution created and organized under Philippine law. The complaint alleges that the applicant acquired the subject property by way of purchase, as evidenced by a Deed of Sale on September 19, 2005, and has since been in applicant's continuous, uninterrupted, open and public possession in the concept of an owner from the said date. Prior to such purchase, applicant's predecessors-in-interest have been in the same kind of possession over the subject parcel of land as early as 1940, or for more than fifty years. It was further alleged in the complaint that this subject parcel of land is not occupied by any other individual or entity. Furthermore, as required by the Rules, the names and full addresses of the adjoining lot owners were also alleged in the complaint.

The jurisdictional requirements having [been] complied with, the trial court set the application for registration for hearing.

In the proceedings below, [the petitioner], through the Office of the Solicitor General, interposed its Opposition to the application, citing the following grounds:

First, neither the applicant nor its predecessors-in-interest have been in open, continuous, exclusive and notorious possession of the parcel of land in question for a period of not less than thirty years.

Secondly, the tax declarations and tax payments offered by applicants in evidence do not serve as muniments of title over the subject property, especially since they appear to be of recent vintage.

Thirdly, [t]he claim of ownership in fee simple on the basis of a Spanish title or grant can no longer be availed of by the applicant who has failed to file an appropriate application for registration within a period of six months from February 16, 1976 as required by P.D. No. 892.

Lastly, the parcel of land applied for is a portion of the public domain belonging to the [petitioner], and thus, not subject to appropriation.

After the proceedings have been conducted, the trial court rendered a judgment granting the Application for Registration. The pertinent portions of the assailed Decision state:

> After shifting [sic] through the documentary evidence adduced by the applicant, there is no doubt that the latter's predecessor[s]-in-interest, Andres Velando, and Juana Velando,

> had been exercising absolute ownership and possession over the subject property since 1948 up to 2005 or for a period of fifty[-]seven (57) years or from time immemorial. This Court takes judicial notice that the existing tax declarations that are intact in the Municipal Assessor's Office of Silang started only in 1948.
>
> It appears that as early as in 1948, Andres Velando had been issued with Tax Declaration No. 2078 (Exh. "K"). Thereafter, he continuously paid the realty taxes thereon under Tax Declaration No. 1434 for taxable years of 1961 up to 1962. In total, he took actual and continuous possession therein for a period of fourteen (14) years. After his death, his daughter, Juana Velando stepped into his shoes by causing the transfer of the realty assessment in her name under Tax Declaration No. 10550 (Exh. "M") in 1963 and continuously up to 2005, to wit: 8398, 6323, 5457, 5901, 3958, 97-09632, 18 026 00190, 18 026 01005, and 18 026 01006 (Exs. "N", "O", "P", "Q", "R", ["S"], "T", "U", and "V")[.]
>
> Upon collating the respective possessions of applicant's pre[d]ecessors-in-interest, Andres Velando and Juana Velando, the length of time could be reckoned to the extent of fifty[-] six (56) years, which shall be tacked with the actual, public and open possession by herein applicant of one (1) year wherein the latter also continuously declared it for taxation purposes under Tax Declaration No. 18 026 01015 (Exh. "W["]). As a consequence thereof, their consolidated possession and ownership would total to fifty[-]seven (57) years.[4] (Citation omitted)

The trial court approved the application for registration of the Local Superior of the Institute of the Sisters of the Sacred Heart of Jesus of Ragusa's (respondent) title.[5] The petitioner appealed the trial court's decision to the CA, pointing out that the certification issued by the Department of Environment and Natural Resources (DENR) Forest Management Services clearly shows that the subject lot was declared alienable and disposable only on March 15, 1982. Thus, considering that the present application for registration was filed less than 30 years

---

[4] *Id*. at 26-28.

[5] *Id*. at 125-135.

later, or on March 2, 2006, the confirmation of title in the name of the respondent was erroneous because the 30-year period of possession should be reckoned only from the time that the lot applied for was declared alienable.[6]

On December 4, 2008, the CA affirmed the trial court's decision.[7] The CA hinged its judgment on the respondent's and its predecessors-in- interest's period of possession which dated back to 1943, as testified to by one of the previous possessors, Romulo Gonzales (Gonzales), thus:

> It has been established that the period of possession of the applicant and its predecessors-in-interest commenced as far back as 1943. This is clear from the testimony of [Gonzales], one of the previous o[wn]ers of the subject property, who testified that he first came to know of the said property when he was 10 years old in 1943 and even then, he already knew that his grandfather Andres Velando was the owner of the same, judging from the fact that the latter had introduced improvements thereon. The said testimony coming from a witness whose credibility was never disputed is enough to establish possession in the concept of an owner. x x x - - -
>
> xxx xxx xxx
>
> In the case before Us, the witness was already ten years old when he first came to know of his grandfather's ownership of the property. Surely, at that age, he was already capable of perceiving such matter. Moreover, there is reason to believe that such p[er]ception was strengthened and confirmed by his subsequent observations on the said property over time. Given this, We do not find difficulty in giving credence to his testimony.[8] (Citation omitted)

The CA also made reference to *Republic of the Philippines v. Bibonia*[9] and *Republic of the Philippines v. Court of Appeals (Naguit* case),[10] stating that "[t]he fact that the state has already

---

[6] *Id*. at 28-29.

[7] *Id*. at 24-38.

[8] *Id*. at 35-37.

[9] 552 Phil. 345 (2007).

[10] 489 Phil. 405 (2005).

classified such land as alienable only goes to show that it no longer intends to keep it as its own. What matters, therefore, is that when the time the application was made, the said land was already declared alienable. A contrary ruling would only negate the classification of such land as alienable, because following oppositor-applicant' s reasoning, registration of such lands would still not be possible even if the state has already relinquished its claim over the same."[11]

Issue

Unsatisfied, the petitioner filed the present petition raising the lone issue:

THE [CA] SERIOUSLY ERRED ON A QUESTION OF LAW IN RULING THAT THE APPLICANT'S PERIOD OF POSSESSION IS SUFFICIENT TO WARRANT REGISTRATION OF TITLE IN RESPONDENT'S NAME.[12]

Ruling of the Court

Open and continuous possession in the concept of an owner on or before June 12, 1945

The petitioner's contention was that the CA "considered respondent's possession over the subject tract of land sufficient to grant the confirmation of title in his name—even as such possession was obtained before the declaration that the same is alienable and disposable land of the public domain. In so doing, the [CA] ignored the well-settled principle of law that it is only from the date of declaration of such land as alienable that the period for counting the statutory requirement of possession will start."[13]

A perusal of the respondent's Application for Registration[14] revealed that the application is based on Section 14(1) of

---

[11] *Rollo,* p. 34.

[12] *Id*. at 13.

[13] *Id*. at 8.

[14] *Id*. at 52-58.

Presidential Decree (P.D.) No. 1529, otherwise known as the Property Registration Decree, and not prescription as what the petitioner implied:

> 4. Applicant acquired the subject parcel of land by way of purchase on September 19, 2005 and have since there [sic] up to the present, been in continuous, uninterrupted, open, public and in the concept of an owner possession [sic] thereof. On the other hand, its predecessors-in-interest have been in the same kind of possession over this parcel of land since 1940 up to the present[.][15]

Section 14 of P.D. No. 1529 states the following:

> Section 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 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.
>
> (3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.
>
> (4) Those who have acquired ownership of land in any other manner provided for by law. (Emphasis ours)

There are three obvious requisites for the filing of an application for registration of title stated in Section 14(1) of P.D. No. 1529. *First,* that the property in question is alienable and disposable land of the public domain; *second,* that the applicants by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation; and *third* that such possession is under a *bona fide* claim of ownership since June 12, 1945 or earlier.[16]

---

[15] *Id*. at 54.

[16] *Supra* note 10, at 413.

To prove its open, continuous, exclusive and notorious possession in the concept of an owner on or before June 12, 1945, the respondent presented its witnesses, one of whom is Gonzales, a former possessor of the subject land. Gonzales executed a judicial affidavit[17] whereupon he was subjected to direct and cross examination during trial. The following can be gleaned from his affidavit:

Q: When were you born?
A: I was born on September 5, 1933 at Silang, Cavite, Sir.

Q: So if you were born on September 5, 1933, you were 10 years old in 1943, am I correct?
A: Yes, sir.

Q: During that time who owned this parcel of land?
A: It was owned by my grandfather, Andres Belando, Sir.

Q: What were the improvements, if any, that could be found thereon during [sic] at that time?
A: It was planted to [sic] palay, pineapple, papaya and some coconut trees.

Q: After Andres Belando, who became the owner of this property?
A: He was succeeded by Juana Belando.

Q: What are the improvements that Juana Belando introduced?
A: What I know is that my mother maintained the improvements introduced by her father, sir.

Q: Did you know if this property was enclosed with fence?
A: Yes Sir. It was previously fenced with kakwate and sarasa. At present, it is now fenced with partly concrete and partly stakes [sic] with barbed wires.[18]

As Gonzales was already 12 years old in 1945, surely he could have perceived the fact that his grandfather had already possessed the land, planted trees and introduced improvements thereon. It is of no moment that the earliest tax declaration presented was dated 1948. In *Republic of the Philippines v.*

---

[17] *Rollo,* pp. 109-111.

[18] *Id*. at 110.

Court of Appeals,[19] it was held that the belated declaration of the lot for tax purposes does not necessarily mean that possession by the previous owners thereof did not commence in 1945 or earlier. As long as the testimony supporting possession for the required period is credible, the court will grant the petition for registration.[20] Additionally, the trial court took judicial notice of the fact that tax declarations kept intact in the Municipal Assessor's Office of Silang started only in 1948. Tacking the possession of its predecessors-in-interest, the respondent fulfilled the requirement of possession in the concept of an owner prior to 1945.

Land must be alienable and disposable at the time of application for registration

The Court has resolved the issue on the correct interpretation of Section 14(1) of P.D. No. 1529 in *Naguit* case where it was held that "the more reasonable interpretation of Section 14(1) is that it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed."[21]

"Unlike Section 14(1), Section 14(2) explicitly refers to the principles on prescription under existing laws. Accordingly, we are impelled to apply the civil law concept of prescription, as set forth in the Civil Code, in our interpretation of Section 14(2). There is no similar demand on our part in the case of Section 14(1)."[22] In *Republic of the Philippines v. Iglesia ni Cristo,*[23] the Court affirmed the earlier pronouncements in *Naguit* and *Heirs of Mario Malabanan v. Republic of the Philippines,*[24] thus:

---

[19] 402 Phil. 498 (2001).

[20] *Id*. at 510-511. Also cited in *Sps. Recto v. Republic of the Phils.,* 483 Phil. 81, 89 (2004).

[21] *Supra* note 10, at 414.

[22] *Heirs of Mario Malabanan v. Rep. of the Phils.,* 605 Phil. 244, 277 (2009).

[23] 609 Phil. 218 (2009).

[24] 605 Phil. 244 (2009).

Moreover, we wish to emphasize that our affirmation of *Naguit* in *Malabanan*—as regards the correct interpretation of Sec. 14(1) of PD 1529 relative to the reckoning of possession *vis-a-vis* the declaration of the property of the public domain as alienable and disposable—is indeed more in keeping with the spirit of the Public Land Act, as amended, and of PD 1529. These statutes were enacted to conform to the State's policy of encouraging and promoting the distribution of alienable public lands to spur economic growth and remain true to the ideal of social justice.[25] (Citation omitted)

Thus, if the basis of the application is Section 14(1), it is enough for an applicant to comply with the requirements provided there under. The petitioner's argument to exclude any period of possession prior to the date when the lot was classified as alienable and disposable in computing the period of possession is irrelevant, and would take the respondent's application outside the purview of Section 14(1) and place it under Section 14(2), which is an entirely different concept.

The respondent, to establish the alienable and disposable character of the land, submitted a certification[26] from the DENR-Community Environment and Natural Resources Officer (CENRO) which states that the subject land is verified to be within the "Alienable and Disposable land per land Classification Map No. 3013 established under Project No. 20-A and approved as such under FAO 4-1656 on March 15, 1982." However, in light of the Court's ruling in *Republic of the Philippines v. T.A.N Properties, Inc.,*[27] the DENR-CENRO certification is insufficient to prove the alienable and disposable character of the land sought to be registered:

[I]t is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls

---

[25] *Supra* note 23, at 229-230.

[26] Folder of Exhibits, Exhibit "X", p. 35.

[27] 578 Phil. 441 (2008).

within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. x x x.[28]

For this reason, the Court finds that a remand of this case to the court *a quo* for further reception of evidence is in order. The respondent must be able to demonstrate the alienable and disposable character of the land in accordance with the requirements set forth in *T.A.N Properties;* only then would the application for registration be granted. Similarly, in *Republic v. Bantigue Point Development Corporation,*[29] the Court remanded the case to the trial court to afford the respondent therein an opportunity to submit a certified true copy of the original classification approved by the DENR Secretary, failing which would result in the denial of the application for registration.

WHEREFORE, premises considered, the petition is **DENIED**. The case is **REMANDED** to the 2nd Municipal Circuit Trial Court of Silang-Amadeo, Silang, Cavite, for reception of evidence to prove that the property sought to be registered is alienable and disposable land of the public domain.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta,* and *Perez, JJ.,* concur.

Jardeleza, J., on leave.

---

[28] *Id.* at 452-453.

[29] 684 Phil. 192 (2012).

FIRST DIVISION

[G.R. No. 190534. February 10, 2016]

C.F. SHARP CREW MANAGEMENT, INC., RONALD AUSTRIA, and ABU DHABI NATIONAL TANKER CO., *petitioners, vs.* **LEGAL HEIRS OF THE LATE GODOFREDO REPISO, represented by his wife LUZVIMINDA REPISO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); SHOULD BE CONSTRUED LIBERALLY IN FAVOR OF THE FILIPINO SEAFARERS, FOR IT WAS DESIGNED PRIMARILY FOR THEIR PROTECTION AND BENEFIT IN THE PURSUIT OF THEIR EMPLOYMENT ON BOARD OCEAN-GOING VESSELS.— As a rule, stipulations in an employment contract not contrary to statutes, public policy, public order or morals have the force of law between the contracting parties. In controversies between a laborer and his master, doubts reasonably arising from the evidence or in the interpretation of agreements and writing should be resolved in the former's favor. The policy is to extend the doctrine to a greater number of employees who can avail of the benefits under the law, in consonance with the avowed policy of the State, under Article XIII, Section 3 of the 1987 Constitution, to give maximum aid and protection to labor. Consistent with this policy, the POEA-SEC was designed primarily for the protection and benefit of Filipino seafarers in the pursuit of their employment on board ocean-going vessels. As such, it is a standing principle that its provisions are to be construed and applied fairly, reasonably, and liberally in their favor.

2. ID.; ID.; 1996 POEA-SEC; COMPENSATION AND BENEFITS FOR DEATH; A SEAFARER'S DEATH IS COMPENSABLE WHEN THE ILLNESS LEADING TO HIS DEATH WAS CONTRACTED DURING THE TERM OF HIS CONTRACT OR IN THE COURSE OF HIS

EMPLOYMENT; CASE AT BAR.— [H]erein respondents are entitled to the benefits they are claiming as it can be logically and reasonably concluded from the particular circumstances in the case at bar that Godofredo contracted the illness which eventually caused his death during the term of his contract or in the course of his employment. x x x Godofredo had no previous record of hypertension and/or heart disease before he boarded M/T *Umm Al Lulu* on May 20, 2002; but when he was repatriated at a port in Manila on March 16, 2003 and examined by Dr. Reyes on March 17, 2003, he was already diagnosed to be suffering from "Essential Hypertension." On March 19, 2003, just three days after his repatriation, Godofredo died and the underlying cause for his death was identified as "Hypertensive Heart Disease." Taking into account these circumstances, the Court is convinced that Godofredo contracted hypertension and/or heart disease during his term of employment with petitioners beginning May 20, 2002 until his repatriation on March 16, 2003. In contrast, the Court is not swayed by petitioners' contention that the 10-month period was too short for Godofredo to have developed his illness, which was totally unsubstantiated.

3. ID.; ID.; ID.; ID.; THE HEIRS OF A SEAFARER WHO DIED AFTER HIS MEDICAL REPATRIATION CAN STILL RECOVER COMPENSATION AND BENEFITS.— It is important to determine definitively that Godofredo was repatriated for medical reasons because Section 20(A)(1) of the 1996 POEA-SEC covered cases wherein the seafarer's death occurred "during the term of his contract." The same phrase could be found in Section 20(A)(1) of the 2000 POEA-SEC, only this more recent version of the provision additionally required that the death be "work-related." Strictly, medical repatriation of the seafarer at the point of hire meant the termination of his employment. Nevertheless, in *Canuel v. Magsaysay Maritime Corporation*, the Court adjudged that the heirs of a seafarer who died after his medical repatriation could still recover the compensation and benefits provided in Section 20(A) of the 2000 POEA-SEC x x x. [T]he Court herein x x x considers medical repatriation an exceptional circumstance and allows the heirs of the seafarer who died after he had been medically repatriated to recover the compensation and benefits provided in Section 20(A) of the 1996 POEA-SEC.

The phrase "death of the seafarer during the term of his contract" in Section 20(A)(1) of the 1996 POEA-SEC should not be strictly and literally construed to mean that the seafarer's death should have occurred during the term of his employment; it is enough that the seafarer's work-related injury or illness which eventually caused his death occurred during the term of his employment.

4. ID.; ID.; ID.; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; POST-EMPLOYMENT MEDICAL EXAMINATION; REQUIRED FOR COMPENSATION AND BENEFITS FOR A SEAFARER'S INJURY AND ILLNESS BUT NOT A REQUISITE FOR COMPENSATION AND BENEFITS FOR A SEAFARER'S DEATH.— The insistence of petitioners on the post-employment medical examination of the seafarer by a company-designated physician within three days from arrival at the point of hire is misplaced. Said post-employment medical examination was required under Section 20(B)(3) of the 1996 POEA-SEC for compensation and benefits for a seafarer's injury or illness; it was not a requisite under Section 20(A) of the 1996 POEA-SEC for compensation and benefits for a seafarer's death. In addition, Section 20(B)(3) of the 1996 POEA-SEC itself allowed as an exception from said requirement a seafarer who is physically incapacitated from complying with same. Apparently, in the case at bar, Godofredo was already of poor health and weak physical condition upon his repatriation on March 16, 2003, which necessitated his immediate visit to a nearby clinic the very next day, on March 17, 2003. In any case, Godofredo still had until March 19, 2003 to see a company-designated physician but he died on the same day of a cause ("Hypertensive Heart Disease") directly linked to the illness ("Essential Hypertension") he developed during his term of employment on M/T *Umm Al Lulu* and for which he was medically repatriated.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario Law Offices for petitioners.
Bantog and Andaya Law Offices for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Assailed in this Petition for Review on *Certiorari* filed by petitioners C.F. Sharp Crew Management, Inc. (C.F. Sharp), Ronald Austria (Austria), and Abu Dhabi National Tanker Company (ADNATCO) are: (1) the Decision[1] dated September 9, 2009 of the Court of Appeals in CA-G.R. SP No. 98857, which reversed and set aside the Decision[2] dated August 24, 2006 and Resolution[3] dated February 27, 2007 of the National Labor Relations Commission (NLRC) in NLRC OFW CN 04-04-00916-00 and reinstated the Decision[4] dated September 23, 2005 of the Labor Arbiter in NLRC-NCR Case No. (M)04-04-00916-00; and (2) the Resolution[5] dated December 9, 2009 of the appellate court in the same case which denied the Motion for Reconsideration of petitioners.

On April 24, 2002, Godofredo Repiso (Godofredo) was hired as a Messman on board M/T *Umm Al Lulu* by petitioner C.F. Sharp, a local manning agency, on behalf of its principal, petitioner ADNATCO, a marine transportation company based in the United Arab Emirates. Godofredo and petitioner Austria, as representative of petitioners C.F. Sharp and ADNATCO, signed a Contract of Employment,[6] which was approved by the Philippine Overseas Employment Administration (POEA) on May 9, 2002.

---

[1] *Rollo*, pp. 50-60; penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Mario L. Guariña III and Mariflor Punzalan-Castillo concurring.

[2] CA *rollo*, pp. 27-37; penned by Commissioner Gregorio O. Bilog III with Presiding Commissioner Lourdes C. Javier concurring and Tito F. Genilo (on leave).

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

[4] *Id*. at 181-194.

[5] *Rollo*, p. 79.

[6] CA *rollo,* p. 45.

Prior to embarkation, Godofredo underwent a pre-employment medical examination (PEME) and was declared physically fit to work. Godofredo boarded M/T *Umm Al Lulu* on May 20, 2002. Godofredo was repatriated in Manila on March 16, 2003. The next day, March 17, 2003, Godofredo went to a medical clinic in Kawit, Cavite where he was examined by Doctor Cayetano G. Reyes, Jr. (Dr. Reyes). Dr. Reyes diagnosed Godofredo with "Essential Hypertension" and advised Godofredo to take the prescribed medication and rest for a week.[7]

At about 10:00 in the morning on March 19, 2003, Godofredo was waiting for a ride when he suddenly lost consciousness and fell to the ground. Good samaritans brought Godofredo to Del Pilar Hospital where he was pronounced dead on arrival.[8] Based on Godofredo's Certificate of Death,[9] the causes for his death were as follows:

Immediate cause	:	Irreversible Shock
Antecedent cause	:	Acute Myocardial Infarction
Underlying cause	:	Hypertensive Heart Disease

Godofredo died leaving behind respondents as his legal heirs, namely, his wife, Luzviminda,[10] and three children, Marie Grace (20 years old), Gerald (17 years old), and Gretchen (13 years old).[11]

On September 17, 2003, respondent Luzviminda, through her lawyer, sent a letter[12] notifying petitioner C.F. Sharp of Godofredo's death and demanding the payment of the following amounts:

---

[7] *Id*. at 46.

[8] *Id*. at 56.

[9] *Id*. at 47.

[10] Marriage Contract, CA *rollo* p. 41.

[11] Certificates of Live Birth, CA *rollo,* pp. 42-44.

[12] CA *rollo*, pp. 48-49.

Death compensation	--- US$	60,000.00
Children Allowance (3 minors x $15,000.00)	--- US$	45,000.00
Burial Allowance	--- US$	1,000.00
TOTAL	--- US$	106,000.00

Respondent Luzviminda sent another letter[13] dated February 3, 2004 to petitioner C.F. Sharp conveying her willingness to accept the amount of US$65,000.00 as compromise settlement. However, respondent Luzviminda's demand remained unheeded.

Thus, respondents filed with the NLRC a Complaint against petitioners for recovery of death compensation benefits, burial and children's allowances, moral and exemplary damages, and attorney's fees. The Complaint was docketed as NLRC-NCR Case No. (M)04-04-00916-00.

The parties exchanged Position Papers and other pleadings.

Respondents' Arguments

Respondents alleged that during the last weeks of Godofredo's 10-month contract as Messman on board M/T *Umm Al Lulu*, he was already experiencing continuous headaches and body pains, more pronounced in the nape area. From that moment, Godofredo became entitled to disability benefits from petitioners. Godofredo was repatriated in Manila on March 16, 2003 for medical reasons. When Godofredo died on March 19, 2003 due to his illness, his right to disability benefits was converted to the right to death benefits.

Respondents also posited that although Godofredo's Contract of Employment was executed on April 24, 2002, it was governed by the 1996 POEA-Standard Employment Contract (SEC)[14] rather

---

[13] *Id*. at 51.

[14] Department of Labor and Employment (DOLE) Department Order No. 33 and Philippine Overseas Employment Administration (POEA) Memorandum Circular No. 55, both series of 1996.

than the 2000 POEA-SEC[15] because the implementation of the latter was enjoined by a temporary restraining order (TRO) issued by the Court.[16] To be compensable under the 1996 POEA-SEC, it was not necessary to prove that the illness or death was work-related, it being sufficient that the same occurred during the term of the seafarer's employment. According to respondents, the following facts established that Godofredo died of an illness which he acquired on board M/T *Umm Al Lulu* and, thus, entitled respondents to recover death benefits: (1) Godofredo was declared fit to work by petitioners' designated physician prior to embarkation; (2) Godofredo served on board M/T *Umm Al Lulu* until his repatriation; and (3) Godofredo died within 72 hours upon arrival in the Philippines.

Respondents additionally averred that petitioners were estopped from alleging that Godofredo was already sick prior to his embarkation on M/T *Umm Al Lulu*. Petitioners had all the opportunity to determine Godofredo's medical and mental fitness during the PEME, but at the end of such examination, petitioners found Godofredo fit to work. Moreover, the 1996 POEA-SEC did not contain any provision on a seafarer's concealment of a pre-existing illness, such provision was only introduced by the 2000 POEA-SEC.

Respondents further reasoned that there was no need for Godofredo to submit himself to a mandatory post-employment medical examination within 72 hours from his arrival in Manila as said requirement only applied to claims for sickness allowance. Besides, Godofredo could already be deemed exempt from complying with said requirement on the ground of physical impossibility as even before the expiration of the 72-hour period for compliance, he lost consciousness and was declared dead on arrival at the hospital.

---

[15] DOLE Department Order No. 4 and POEA Memorandum Circular No. 9, both series of 2000.

[16] POEA Memorandum Circular No. 11, series of 2000.

Lastly, respondents invoked Article 4[17] of the Labor Code of the Philippines, Article 1702[18] of the Civil Code of the Philippines, and *Nicario v. National Labor Relations Commission,*[19] and asserted that doubts in the interpretation of labor laws and regulations, as well as doubts reasonably arising from conflicting evidence of the parties, should be resolved in favor of labor.

Accordingly, respondents prayed for death benefits in the amount of US$60,000.00; burial allowance in the amount of US$1,000.00; allowances for their three children below the age of 21 in the total amount of US$21,000.00;[20] and moral and exemplary damages. Also, respondents prayed for the award of attorney's fees, alleging that petitioners, in gross and evident bad faith, refused to satisfy their just and demandable claim, and forced them to litigate to protect their interests.

Petitioners' Arguments

Petitioners countered that Godofredo never complained of any illness to the master or any officer of M/T *Umm Al Lulu* while on board said vessel, and that Godofredo was able to perform his functions as a Messman throughout the duration of his employment. Petitioners only came to know about Godofredo's illness when after more than six months from his repatriation, petitioners received a letter from respondent Luzviminda's counsel demanding compensation and allowance benefits on account of Godofredo's death in the aggregate amount of US$106,000.00.

---

[17] ARTICLE 4. *Construction in favor of labor*. — All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.

[18] ARTICLE 1702. In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.

[19] 356 Phil. 936, 943 (1998).

[20] US$7,000 (child allowance) x 3 = US$21,000.00.

Petitioners contended that Godofredo's death is not compensable as it did not occur during the term of his employment. A seafarer's term of employment commenced from his actual departure from the airport or seaport in the point of hire and ceased upon completion of his period of contractual service, signing-off, and arrival at the point of hire. Godofredo's 10-month contract was about to expire on March 20, 2003 when he was safely repatriated without any medical condition a few days earlier, on March 16, 2003, as he was already in a convenient port. Godofredo finished his employment contract upon signing off from M/T *Umm Al Lulu* and arriving in Manila, his point of hire, on March 16, 2003. Clearly, Godofredo's death on March 19, 2003 was not compensable because it happened beyond the term of his contract.

In addition, petitioners maintained that Godofredo's death was not work-related. As a Messman, Godofredo's duties were limited to assisting the Chief Cook in the preparation of food and could not have contributed to his demise or increased the risk of acquiring the illness which caused his death. Godofredo was not subjected to any unusual strain or required to perform any strenuous activity that could trigger a heart attack.

Petitioners also argued that a hypertensive heart disease takes years to develop and most probably Godofredo was already suffering from said disease even before the start of his employment contract. However, Godofredo failed to disclose his ailment during his PEME, thus, barring respondents from receiving death benefits on the ground of concealment of a pre-existing illness. Godofredo likewise failed to submit himself to a mandatory post-employment medical examination within three working days from his disembarkation, another ground for the denial of respondents' claim for death benefits.

Finally, petitioners maintained that there was no basis to award attorney's fees to respondents because petitioners only acted within their legal right in denying respondents' claim for death benefits, and no bad faith or malice can be imputed against them.

Ruling of the Labor Arbiter

Labor Arbiter Arden S. Anni (Anni) rendered a Decision on September 23, 2005 in respondents' favor.

Labor Arbiter Anni found that Godofredo's 10-month employment contract commenced on May 20, 2002, upon his departure from Manila on board M/T *Umm Al Lulu*, and remained effective until March 20, 2003, when such contract should have expired/ended, so his death on March 19, 2003 occurred within the term of his employment. Labor Arbiter Anni further found that Godofredo was repatriated for medical reasons on March 16, 2003, a few days prior to the expiration/end of his contract:

> As earlier mentioned, [Godofredo]'s contract was supposed to expire on March 20, 2003, but then he was repatriated on March 16, 2003, *i.e*., four (4) days before the expiration of his contract. Seemingly, we can assume, *ipso facto*, that [Godofredo] was quickly repatriated on March 16, 2003 because of his continuous headaches and body pains, more pronounced in the nape area. And, rightly so, because on March 17, 2003 [Godofredo] was treated at the clinic of Dr. Cayetano Reyes in Cavite and was diagnosed as suffering from "Essential Hypertension." The ship captain must have been informed of [Godofredo]'s illness on board; Otherwise, who will issue the discharge and repatriation Order? This explains why the sudden discharge of [Godofredo] on March 16, 2003. Thus, to our (sic) mind, [Godofredo]'s repatriation was due to medical reason, and not due to finish contract as claimed by [petitioners]. Lamentably, none of the parties adduced evidence to prove their respective averments in this regard, not even the ship's logbook or the Master's order of discharge. Assuming arguendo, that [Godofredo] was not medically repatriated, would he be entitled to compensation benefits? YES, [Godofredo] would still be entitled to compensation benefits under Section 20(A) of the POEA Contract because he died due to work-related illness x x x.
>
> Indeed, the circumstances surrounding the repatriation of [Godofredo] were shrouded with doubts and ambiguities, ergo. We are constrained to resolve such doubts and ambiguities in favor of labor. "It is a well-settled doctrine that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. It is a time-honored rule

that in controversies between a laborer and his master, doubts reasonably arising from the evidence or, in the interpretation of agreements and writings, should be resolved in the former's favor." (Nicario vs. NLRC, G.R. No. 125340, September 17, 1998).[21]

Labor Arbiter Anni concluded that Godofredo's illness was work-related, thus, rendering the latter's subsequent death compensable:

As borne out by the records, [Godofredo] disembarked from the vessel on March 16, 2003. The following day (March 17), he was treated at the clinic of Dr. Cayetano G. Reyes who diagnosed him as suffering from "Essential Hypertension" and required to rest for one (1) week with medication (Annex "D", [respondents'] position paper). On March 19, 2003, [Godofredo] lost his life. Cause of death indicates:

Immediate Cause - Irreversible Shock
Antecedent Cause - Acute Myocardial Infarction
Underlying Cause - Hypertensive Heart Disease
(Annex "E", Suppra. [sic])

It must be stressed, at this point, that [Godofredo]'s treatment happened in one day (24-Hour) interval from his arrival in Manila and his death occurred within two days (48-Hour) from his treatment by Dr. Cayetano G. Reyes. In a span of only three days (72-hour) from [Godofredo]'s repatriation, a loss of a father – the only breadwinner in the family, suddenly struck the Repiso family like a lightning from the sky.

The sequence of events led us to conclude that [Godofredo]'s illness (Hypertension) was work-related as it was caused and/or aggravated by the nature of his work as Messman on board the vessel "M/T Umm Al Lulu."

In compensation benefits, the rules of the Employee's Compensation Commission (PD 626) are similar to the rules of the POEA Contract insofar as the principle of work-related illness and theory of aggravation are concerned. The rule is: "For the sickness and the resulting disability or death to be compensable, the sickness must be the result of an occupational disease listed in Section 32-A of

---

[21] CA *rollo*, pp. 186-187.

the POEA Contract with the conditions set therein satisfied; Otherwise, proof must be shown that the risk of contracting the disease is increased by the working conditions (Vda. De Inquillo vs. ECC, G.R. No. 51543, June 6, 1989)." Another case, "if the illnesses are not occupational diseases, the claimant must present proof that he contracted them in the course of his employment. x x x (Galanida vs. ECC, et al., GR No. 70660, September 24, 1987)." (See Azucena's Labor Code, Vol. 1, 5th Ed. p. 387).

Noteworthy mentioning here is the fact that [Godofredo]'s illness (Essential Hypertension) is an Occupational Disease and listed No. 20 in Section 32-A of the POEA Contract. On this score alone, we find [Godofredo]'s death compensable in accordance with Section 20(A) of the POEA Standard Contract. Probability, not certainty, is the touchstone. x x x.[22]

Petitioners' arguments that respondents' claim for death benefits was barred by Godofredo's concealment of a pre-existing illness and non-compliance with the mandatory post-employment medical examination within 72-hours from his arrival were rejected by Labor Arbiter Anni in this wise:

Did [Godofredo conceal] his hypertension (essential) during the pre-employment medical examination? The answer is NO. "Hypertension can be easily detected by a simple blood pressure check up using blood pressure apparatus. *Hypertension*, also called *High Blood Pressure*, condition in which the blood pressure in either arteries or veins is abnormally high. Blood pressure is the force exerted by the blood against the walls of the blood vessels. x x x Known as the "silent killer" because it may be present for years with no perceptible symptoms, hypertension is usually detected by a routine blood pressure test. x x x Hypertension is usually classified by cause as either essential (of unknown origin) or secondary (the result of a specific disease or disorder)." (p. 202, Vol. 6, the New Encyclopedia Britannica).

[Godofredo] underwent this kind of routine blood pressure test every time he was on contract with [petitioners] to board an ocean-going vessel. This Pre-employment Medical Examination is done by the company-designated physician before the signing of

---

[22] *Id*. at 189-190.

employment contract. Once the seaman-applicant passed this examination, he is, for all intents and purposes, considered fit to work on board the vessel. And [Godofredo] was subjected to this kind of medical examination for several times in the long years of his employment with CF Sharp since 1990. For [petitioners] to claim that [Godofredo] hid his illness during the pre-employment medical examination is, to us (sic), preposterous-if not, absurd. x x x

xxx xxx xxx

As to the Fourth Issue, we rule likewise in favor of [respondents]. There is no credence to [petitioners'] argument that [Godofredo]'s failure to report to CF Sharp within three (3) days from his return is fatal to [respondents'] claim for compensation benefit. The reasons are obvious: how can [Godofredo] report to CF Sharp when on the second day of his arrival in Manila he was being treated by Dr. Cayetano Reyes? And on the third day, while about to report to CF Sharp office, he collapsed and eventually died on March 19, 2003? We need not elaborate the obvious. Besides, the three-day mandatory reporting requirement applies only to the forfeiture of sickness allowance on the assumption that the seafarer signed off from the vessel for medical treatment. It does not apply to death benefit compensation under Section 20 (A) of the POEA Contract. Under these circumstances, we find it not only unnecessary, but also impossible for [Godofredo] to comply with the three-day mandatory reporting requirement.[23]

And because respondents were compelled to litigate and incurred expenses to protect their rights and interests, Labor Arbiter Anni granted respondents' prayer for attorney's fees.

In the end, Labor Arbiter Anni decreed:

WHEREFORE, PREMISES CONSIDERED, judgment is rendered, as follows:

1. Declaring that the death of seaman Godofredo Repiso occurred during the term of his employment contract and the same was work-related;

---

[23] *Id*. at 191-192.

2. Ordering [petitioners] jointly and severally, to pay [respondents] the amount of FIFTY THOUSAND US DOLLARS (US$50,000.00) as death benefit;

3. Ordering [petitioners], jointly and severally, to pay [respondents] the amount of TWENTY-ONE THOUSAND US DOLLARS (US$21,000.00) as additional benefits due each child of Luzviminda Repiso and the late Godofredo Repiso, at US$7,000.00 per child (US$7,000.00 x 3 = US$21,000.00);

4. Ordering [petitioners], jointly and severally, to pay [respondents] burial expenses in the amount of ONE THOUSAND US DOLLARS (US$1,000.00); and

5. Ordering [petitioners], jointly and severally, to pay [respondents] ten percent (10%) of the total monetary award as and by way of attorney's fees.

Claims for moral and exemplary damages are dismissed for lack of merit.

Payment can be made in US DOLLARS or in PHILIPPINE PESOS [equivalent] at the time of payment.[24]

Ruling of the NLRC

Petitioners filed with the NLRC a Notice of Appeal with Memorandum of Appeal,[25] docketed as NLRC OFW CN 04-04-00916-00, essentially reiterating their allegations and arguments before the Labor Arbiter.

In its Decision dated August 24, 2006, the NLRC found merit in petitioners' appeal.

At the outset of its Decision, the NLRC established that the 1996 POEA-SEC governed the case given that the implementation of the 2000 POEA-SEC was suspended by a TRO issued by the Court.

---

[24] *Id*. at 193-194.

[25] *Id*. at 195-223.

The NLRC then proceeded to rule that Godofredo's death on March 19, 2003 already occurred outside the term of his employment contract:

We believe that the Labor Arbiter over-extended the meaning of the phrase "term of his contract" as used in the above provision. We do not have to go beyond the provisions of the standard contract to understand what it actually refers to:

> *"Section 2. Commencement/Duration of Contract*
>
> *A. The employment contract between the employer and seafarer shall commence upon actual departure of the seafarer from the airport [or seaport] in the point of hire and with a POEA-approved contract. It shall be effective until the seafarer's date of arrival at the point of hire upon termination of his employment pursuant to Section 18 of this Contract.*
>
> *xxx xxx xxx*
>
> and,
>
> *Section 18. Termination of Employment.*
>
> *A. The employment of the seafarer shall cease when the seafarer completes his period of contractual service aboard the vessel, signs off from the vessel and arrives at the point of hire.*

It is not an uncommon practice in the shipping industry that seafarers get off at the nearest and convenient port before the expiration of their contracts. Yet, this does not mean that they have not completed their services. The provisions on termination would not have found their way to the standard contract if their purpose were not to clarify how term of employment or term of contract should be interpreted. On this basis, We hold that when [Godofredo] disembarked on March 16, 2003, he did so for no other reason but that he already finished his contract of 10 months. We cannot accept the claim that he was repatriated for medical reasons because no evidence was ever adduced to prove it so. Even the Labor Arbiter noted that there was no ship logbook or Master's report, to indicate that [Godofredo] was suffering from any illness before he was repatriated. His death three (3) days after arrival, unfortunate it may seem, is merely circumstantial.

Moreover, We find that support from jurisprudence that "term of contract" refers to the actual existence of employer-employee relations. In the most recent case of Gau Sheng Phils. vs. Estella Joaquin (G.R. No. 144665, September 8, 2004), the Supreme Court denied the claim for death benefits on the ground that seaman Joaquin's employment had been terminated on the date he was repatriated, upon mutual consent, which was merely 28 days after he was deployed. Thus, there is here a categorical recognition that term of employment is not necessarily the duration of the contract. On this criterion alone, the claim for death and burial benefits must fail.[26]

The NLRC also held that respondents failed to prove that Godofredo's illness and death were work-related:

Even under the old contract, We find the issue of work relation applicable. In the same Gau Sheng case (infra), the high court ruled that death compensation cannot be awarded unless there is substantial evidence showing that (a) the cause of death was reasonably connected with his work; or (b) the sickness for which he died is an accepted occupational disease; or (c) his working conditions increased the risk of contracting the disease for which he died.

In the instant case, [respondents were] unsuccessful in proving that [Godofredo]'s death was brought about by his recent work on board. [Godofredo] never complained of or reported any illness to [petitioners] before, during and after his disembarkation from M/T Umm Al Lulu. Based on the records, [petitioners] came to know of [Godofredo]'s death only months after his repatriation on March 16, 2003, or in September 2003 when they received the first letter of demand from [respondents] for payment of death benefits. The only documents they presented to support their claims were the doctor's certificate showing that [Godofredo] was diagnosed on March 17, 2003 as having essential hypertension and the death certificate showing the cause of death as hypertensive heart disease. But these do not prove that he contracted or suffered from the illness while on board during the term of his employment from May 20, 2002 to March 16, 2003. In fact, he was not even repatriated for medical reasons but for a finished contract.

---

[26] *Id.* at 32-33.

On the other hand, [petitioners] substantially established that [Godofredo]'s death was not a factor. [Respondents] did not deny that as a messman, [Godofredo]'s duties were largely limited to the preparation of food in an assisting capacity to the Chief Cook. To our mind, there is thus nothing in his duties that could increase the risk of contracting a hypertensive heart disease.

Although hypertension and heart disease are admittedly work-related illnesses, they being included in the list of occupational diseases under the standard contract, [respondents] failed to meet the requisite conditions for compensability. Section 32-A of the contract provides that: "hypertension classified as primary or essentials is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability; Provided, that, the following documents substantiate it: (a) chest x-ray report, (b) ECG report, (c) blood chemistry, (d) funduscopy report, and (e) C-T scan." And for cardio-vascular diseases (or heart diseases), it is required that: "Any of the following conditions must be met: (a) If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work. (b) The strain of work that brings about an acute attack must be [of] sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship. (c) If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship."

Records show that these conditions have not been satisfied. As earlier stated, it was not shown that [Godofredo] contracted or suffered from the illness while on board. Neither did the nature of [Godofredo]'s work as messman involve severe strain.

At this juncture, We must stress that award of compensation under the POEA standard contract can not rest on speculations or presumptions. As held by the Supreme Court in the case of Rosario vs. Denklav Marine (G.R. No. 166906, March 16, 2005):

> x x x. It would be too presumptive for this Court to contemplate even the probability that Romeo contracted this illness while on board M/T Endurance. The burden is on the beneficiaries to show a reasonable connection between the causative

circumstances in the employment of the deceased employee and his death or permanent total disability. x x x.

To reiterate, the [respondents] failed to discharge this burden. Thus, the Labor Arbiter should have denied both claims for death and burial benefits.[27]

The NLRC finally adjudged:

WHEREFORE, premises considered, [petitioners'] appeal is GRANTED.

The appealed decision is REVERSED and SET- ASIDE and a new one is hereby entered DISMISSING the complaint [for] lack of merit.[28]

Respondents filed a Motion for Reconsideration, which was denied by the NLRC in a Resolution dated February 27, 2007.

Ruling of the Court of Appeals

In their Petition for *Certiorari*[29] before the Court of Appeals, docketed as CA-G.R. SP No. 98857, respondents ascribed grave abuse of discretion on the part of the NLRC in denying their claims for death benefits and attorney's fees; and prayed for the reversal of the "anti-labor and anti-social justice" Decision of the NLRC and reinstatement of Labor Arbiter Anni's Decision.

The Court of Appeals, in its Decision dated September 9, 2009, granted respondents' Petition.

The Court of Appeals disagreed with the NLRC ruling that Godofredo already finished his contract of 10 months when he disembarked from M/T *Umm Al Lulu* on March 16, 2003 and concurred in Labor Arbiter Anni's finding that Godofredo was repatriated on said date for medical reasons. The appellate court rationalized that:

The above observations of the Labor Arbiter are more in consonance with the principle that strict rules of evidence are not applicable in

---

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

[28] *Id*. at 36.

[29] *Id.* at 2-26.

claims for compensation. In the case of *NFD International Manning Agencies, Inc. vs. NLRC*, the Supreme Court held:

> "Strict rules of evidence, it must be remembered, are not applicable in claims for compensation and disability benefits. Private respondent having substantially established the causative circumstances leading to his permanent total disability to have transpired during his employment, we find the NLRC to have acted in the exercise of its sound discretion in awarding permanent total disability benefits to private respondent. Probability and not the ultimate degree of certainty is the test of proof in compensation proceedings."

Contrary to the finding of the NLRC, records do not show that Godofredo disembarked from the vessel at the nearest and convenient port due to "end of contract." Neither was it shown or proven by [petitioners] that Godofredo's contractual service aboard the vessel "M/T UMM AL LULU" was completed or that he signed-off from the vessel. On the contrary, We find by preponderance of evidence that Godofredo was repatriated on 16 March 2003 for medical reasons before his contract was to end on 20 March 2003. In fact, as also found by the Labor Arbiter, Godofredo immediately sought medical treatment at the Clinic of Dr. Cayetano G. Reyes on 17 March 2003, where he was required to rest for one (1) week with medication.

Conversely, this Court is at a [loss] why [petitioners], having easy access over the ship's logbook or master's report, failed to present the same before the NLRC or the Labor Arbiter to disprove [respondents'] claim that [Godofredo] was repatriated for medical reasons and to prove the latter's end of contract. Their failure to do so only constrains us more to believe that indeed, Godofredo was repatriated for medical reasons on 16 March 2003, or three (3) days before his untimely death on 19 March 2003.[30] (Citation omitted.)

The Court of Appeals thus determined that the NLRC Decision was indeed rendered with grave abuse of discretion, being capricious and whimsical as it was contrary to the present facts and existing jurisprudence. Before ending, the appellate court deemed it worthy to stress:

---

[30] *Rollo*, pp. 58-59.

On a final note, the doctrine annunciated in the case of *Wallem Maritime Services, Inc. vs. NLRC*, wherein the High Court held that the POEA Standard Employment Contract for Seamen is designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels, need not be emphasized. The provisions of the POEA Standard Employment Contract for Seamen must, therefore, be construed and applied fairly, reasonably and liberally in favor of the Seamen. Only then can its beneficent provisions be fully carried into effect.[31]

Accordingly, the dispositive portion of the Court of Appeals Decision reads:

WHEREFORE, premises considered, the petition is GRANTED. The assailed Decision and Resolution of the NLRC, Third Division, dated 24 August 2006 and 27 February 2007, respectively, are hereby REVERSED and SET ASIDE for having been issued with grave abuse of discretion. The 23 September 2005 Decision of the labor arbiter is REINSTATED. No costs.[32]

Petitioners filed a Motion for Reconsideration,[33] but the same was denied in the assailed Resolution dated December 9, 2009.

The Ruling of the Court

Aggrieved, petitioners filed the instant Petition for Review on *Certiorari*[34] raising the following legal and factual issues:

1. Whether the Court of Appeals committed serious, reversible error of law in failing to consider that the contract of employment of Mr. Godofredo Repiso was terminated upon his arrival in the Philippines (the point of hire) as provided in POEA-SEC.

2. Whether the Court of Appeals committed serious, reversible error of law in failing to consider that Mr. Godofredo Repiso never died of an illness suffered on board as there was no evidence showing any medical discomfort or incidents on board leading to such conclusion.

---

[31] *Id*. at 59-60.

[32] *Id*. at 60.

[33] *Id*. at 61-77.

[34] *Id*. at 24-48.

3. Whether the Court of Appeals committed serious, reversible error of law in failing to consider that respondents' failure to submit evidence of any incident on board is not equivalent to substantial evidence required in any quasi-judicial proceedings, such as the NLRC, to prove an illness suffered on board.[35]

There is no merit in the present Petition.

It must be stressed that issues of facts may not be raised under Rule 45 of the Rules of Court because this Court is not a trier of facts. It is not to re-examine and assess the evidence on record, whether testimonial and documentary.[36] There are, however, recognized exceptions,[37] such as the instant case, where the factual findings of the Labor Arbiter and the Court of Appeals are inconsistent with that of the NLRC.

Whether or not Godofredo's death is compensable depends on the terms and conditions of his Contract of Employment. The employment of seafarers, including claims for death benefits, is governed by the contracts they sign at the time of their engagement. As long as the stipulations in said contracts are not contrary to law, morals, public order, or public policy, they have the force of law between the parties. Nonetheless, while

---

[35] *Id*. at 28.

[36] *Litonjua, Jr. v. Eternit Corporation*, 523 Phil. 588, 605 (2006).

[37] (1) When the conclusion is a finding grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) **when the findings of fact are conflicting**; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. (*Litonjua, Jr. v. Eternit Corporation*, *id*.)

the seafarer and his employer are governed by their mutual agreement, the POEA Rules and Regulations require that the POEA-SEC be integrated in every seafarer's contract.[38]

Pertinent provisions of Godofredo's Contract of Employment are reproduced below:

1. That the employee shall be employed on board under the following terms and conditions

1.1 Duration of Contract	10.00 months
1.2 Position	MESSMAN/GP
1.3 Basic Monthly Salary	$ 560.21 per month
1.4 Living Allowance	$ 0.00 per month
1.5 Hours of Work	44.00 per week
1.6 Overtime Rate	$224.08 per month for the first 90.00 OT hours $3.50 in excess of 90.00 OT Hours
1.7 Vacation leave with pay	6.00 days per month
1.8 POINT OF HIRE	MANILA

2. The herein terms and conditions in accordance with [Department of Labor and Employment (DOLE)] Department Order No. 4 and [POEA] Memorandum Circular No. 09, both Series of 2000, shall be strictly and faithfully observed.

3. Any alterations or changes, in any part of this Contract shall be evaluated, verified, processed, and approved by the Philippine Overseas Employment Administration (POEA). Upon approval, the same shall be deemed an integral part of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-Going Vessels.

4. Violations of the terms and conditions of this Contract with its approved addendum shall be ground for disciplinary action against the erring party.[39]

---

[38] *Inter-Orient Maritime, Inc. v. Candava*, G.R. No. 201251, June 26, 2013, 700 SCRA 174, 182.

[39] CA *rollo*, p. 45.

DOLE Department Order No. 04 and POEA Memorandum Circular No. 09, both series of 2000, referred to in Paragraph No. 2 of the afore-quoted Contract, put into effect the 2000 POEA-SEC. However, by reason of a TRO issued by this Court enjoining the implementation of certain provisions of the 2000 POEA-SEC, the POEA issued Memorandum Circular No. 11, series of 2000, on **September 12, 2000**, which advised that (a) Section 20, Paragraphs (A), (B), and (D) of the 1996 POEA-SEC should be applied in lieu of Section 20, Paragraphs (A), (B), and (D) of the 2000 POEA-SEC; and (b) Implementation of Section 20, Paragraphs (E) and (G) of the 2000 POEA-SEC was suspended. Section 20 of both the 1996 and 2000 POEA-SEC governed the Compensation and Benefits of Filipino seafarers. POEA rescinded its Memorandum Circular No. 11, series of 2000, and gave effect to the full text of the 2000 POEA-SEC, in its Memorandum Circular No. 02, series of 2002, issued on **June 5, 2002**. Consequently, at the time Godofredo and petitioners executed the subject Contract of Employment on **April 24, 2002**, Section 20 of the 1996 POEA-SEC applied.

Respondents' claims for benefits are based on Section 20(A) of the 1996 POEA-SEC, which provided:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR DEATH

1. **In case of death of the seafarer during the term of his contract**, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

xxx xxx xxx

4. The other liabilities of the employer **when the seafarer dies as a result of injury or illness during the term of employment** are as follows:

a. The employer shall pay the deceased's beneficiary all outstanding obligations due the seafarer under this Contract.

b. The employer shall transport the remains and personal effects of the seafarer to the Philippines at employer's expense except if the death occurred in a port where local government laws or regulations do not permit the transport of such remains. In case death occurs at sea, the disposition of the remains shall be handled or dealt with in accordance with the master's best judgment. In all cases, the employer/master shall communicate with the manning agency to advise for disposition of seafarer's remains.

c. The employer shall pay the beneficiaries of the seafarer the Philippine currency equivalent to the amount of One Thousand US dollars (US$1,000) for burial expenses at the exchange rate prevailing during the time of payment. (Emphasis supplied.)

As a rule, stipulations in an employment contract not contrary to statutes, public policy, public order or morals have the force of law between the contracting parties. In controversies between a laborer and his master, doubts reasonably arising from the evidence or in the interpretation of agreements and writing should be resolved in the former's favor. The policy is to extend the doctrine to a greater number of employees who can avail of the benefits under the law, in consonance with the avowed policy of the State, under Article XIII, Section 3 of the 1987 Constitution, to give maximum aid and protection to labor.[40] Consistent with this policy, the POEA-SEC was designed primarily for the protection and benefit of Filipino seafarers in the pursuit of their employment on board ocean-going vessels. As such, it is a standing principle that its provisions are to be construed and applied fairly, reasonably, and liberally in their favor.[41]

---

[40] *Remigio v. National Labor Relations Commission*, 521 Phil. 330, 345 (2006).

[41] *Racelis v. United Philippine Lines, Inc.,* G.R. No. 198408, November 12, 2014.

For a seafarer's death to be compensable under the 1996 POEA-SEC, the Court explicitly ruled in *Inter-Orient Maritime, Inc. v. Candava*[42] that:

> The prevailing rule under the 1996 POEA-SEC was that the illness leading to the eventual death of seafarer **need not be shown to be work-related** in order to be compensable, but must be proven to have been **contracted during the term of the contract**. Neither is it required that there be proof that the working conditions increased the risk of contracting the disease or illness. An injury or accident is said to arise **"in the course of employment"** when it takes place within the period of employment, at a place where the employee reasonably may be, and while he is fulfilling his duties or is engaged in doing something incidental thereto. (Emphases supplied, citations omitted.)

Based on the foregoing, herein respondents are entitled to the benefits they are claiming as it can be logically and reasonably concluded from the particular circumstances in the case at bar that Godofredo contracted the illness which eventually caused his death during the term of his contract or in the course of his employment.

Respondents alleged, and petitioners did not refute, that Godofredo's employment with petitioner C.F. Sharp started way back in 1990. From then until his last employment with petitioner C.F. Sharp in 2002-2003, there was no record of him suffering from hypertension and/or heart disease. Before Godofredo boarded M/T *Umm Al Lulu* on May 20, 2002, he underwent PEME and was declared fit to work. This negates petitioners' claim that Godofredo concealed a pre-existing illness. It is true that the Court had previously declared that the PEME could not be relied upon to inform the employer/s of a seafarer's true state of health, and there were instances when the PEME could not have divulged the seafarer's illness considering that the examinations were not exploratory.[43] Even so, as Labor Arbiter

---

[42] *Supra* note 38 at 182.

[43] *NYK-Fil Ship Management, Inc. v. National Labor Relations Commission*, 534 Phil. 725, 739 (2006).

Anni and the Court of Appeals observed in the instant case, Godofredo's hypertension and/or heart disease could have been easily detected by standard/routine tests included in the PEME, *i.e.*, blood pressure test, electrocardiogram, chest x-ray, and/or blood chemistry.

Godofredo had no previous record of hypertension and/or heart disease before he boarded M/T *Umm Al Lulu* on May 20, 2002; but when he was repatriated at a port in Manila on March 16, 2003 and examined by Dr. Reyes on March 17, 2003, he was already diagnosed to be suffering from "Essential Hypertension." On March 19, 2003, just three days after his repatriation, Godofredo died and the underlying cause for his death was identified as "Hypertensive Heart Disease." Taking into account these circumstances, the Court is convinced that Godofredo contracted hypertension and/or heart disease during his term of employment with petitioners beginning May 20, 2002 until his repatriation on March 16, 2003. In contrast, the Court is not swayed by petitioners' contention that the 10-month period was too short for Godofredo to have developed his illness, which was totally unsubstantiated.

Worth reiterating herein are the following pronouncements of the Court in *Wallem Maritime Services, Inc. v. National Labor Relations Commission:*[44]

> [B]efore Faustino Inductivo was made to sign the employment contract with petitioners he was required to undergo, as a matter of procedure, medical examinations and was declared fit to work by no less than petitioners' doctors. Petitioners cannot now be heard to claim that at the time Faustino Inductivo was employed by them he was afflicted with a serious disease, and that the medical examination conducted on the deceased seaman was not exploratory in nature such that his disease was not detected in the first instance. Being the employer, petitioners had all the opportunity to pre-qualify, screen and choose their applicants and determine whether they were medically, psychologically and mentally fit for the job upon employment. The moment they have chosen an applicant they are deemed to have subjected him to the required pre-qualification standards.

---

[44] 376 Phil. 738, 746-748 (1999).

But even assuming that the ailment of Faustino Inductivo was contracted prior to his employment on board "MT Rowan," this is not a drawback to the compensability of the disease. It is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits provided therefor. It is enough that the employment had contributed, even in a small degree, to the development of the disease and in bringing about his death.

xxx xxx xxx

Neither is it necessary, in order to recover compensation, that the employee must have been in perfect condition or health at the time he contracted the disease. Every workingman brings with him to his employment certain infirmities, and while the employer is not the insurer of the health of the employees, he takes them as he finds them and assumes the risk of liability. If the disease is the proximate cause of the employee's death for which compensation is sought, the previous physical condition of the employee is unimportant and recovery may be had therefor independent of any pre-existing disease. (Citation omitted.)

Besides, it bears to point out that the implementation of Section 20(E) of the 2000 POEA-SEC, disqualifying a seafarer from any compensation and benefits because of concealment of a pre-existing condition,[45] was explicitly suspended by Memorandum Circular No. 11, series of 2000, and the 1996 POEA-SEC contained no such provision.

Godofredo's 10-month Contract of Employment was to end on March 20, 2003. Yet, Godofredo was already repatriated on March 16, 2003 in Manila. Respondents allege that Godofredo was repatriated for medical reasons because he was already experiencing continuous headaches and body pains on board M/T *Umm Al Lulu*. Petitioners aver that Godofredo was merely

---

[45] E. A seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits. This may also be a valid ground for termination of employment and imposition of the appropriate administrative and legal sanctions.

repatriated at a convenient port, allowed under Section 19(B) of the 2000 POEA-SEC[46] which stated:

> **SECTION 19. REPATRIATION**
>
> xxx xxx xxx
>
> (B) If the vessel arrives at a convenient port before the expiration of the contract, the master/employer may repatriate the seafarer from such port, provided the unserved portion of his contract is not more than one (1) month. The seafarer shall be entitled only to his earned wages and earned leave pay and to his basic wages corresponding to the unserved portion of the contract, unless within 60 days from disembarkation, the seafarer is rehired at the same rate and position, in which case the seafarer shall be entitled only to his earned wages and earned leave pay.

"Convenient port" was defined as "any port where it is practicable, economical, safe and convenient to repatriate the seafarer."[47]

Between the two claims as to the reason for Godofredo's repatriation, that of the respondents is more persuasive, especially considering that Godofredo, the very next day following his repatriation, did not rest or spend time with his family, but immediately went to a medical clinic to see a doctor. This could only mean that Godofredo was already not feeling well. In fact, Dr. Reyes, who examined Godofredo on March 17, 2003, diagnosed him with "Essential Hypertension" and advised him to take the prescribed medication and rest for a week; but only two days after, on March 19, 2003, Godofredo already collapsed and died from his heart ailment. This sequence of events establishes Godofredo's ill state of health upon his repatriation in Manila on March 16, 2003.

The burden was thus shifted to petitioners to prove that Godofredo was only repatriated at a convenient port. However,

---

[46] Referred to Section 19(B) of the 2000 POEA-SEC since it was not covered by Memorandum Circular No. 11, series of 2000.

[47] No. 2 of the Definition of Terms of the 2000 POEA-SEC.

aside from their bare allegations, petitioners did not present any other proof of their purported reason for Godofredo's repatriation. Petitioners explain that they no longer presented in evidence the ship's logbook or master's report since Godofredo did not complain of or suffer any illness on board M/T *Umm Al Lulu*, hence, there was no such entry in the ship's logbook or any master's report of such incident. The Court notes though that petitioners had possession of and access to all logbooks and records of M/T *Umm Al Lulu*, and presentation of the said logbooks and records would have been material to prove the **actual absence** of any entry or report regarding Godofredo's health while he was on board. Moreover, it is difficult to believe that petitioners had absolutely no log entry or record regarding Godofredo's repatriation, whether for medical or any other reason. Godofredo could not have disembarked from M/T *Umm Al Lulu* without express authority or consent from the master of the ship or petitioners as Godofredo's employers, and such authority or consent would have most likely stated the justifying cause for the same. That petitioners did not present such logbooks and records even gives rise to the presumption that something in said logbooks and records is actually adverse to petitioners' case.

It is important to determine definitively that Godofredo was repatriated for medical reasons because Section 20(A)(1) of the 1996 POEA-SEC covered cases wherein the seafarer's death occurred "during the term of his contract." The same phrase could be found in Section 20(A)(1) of the 2000 POEA-SEC, only this more recent version of the provision additionally required that the death be "work-related."[48] Strictly, medical repatriation of the seafarer at the point of hire meant the termination of his employment.[49] Nevertheless, in *Canuel v. Magsaysay Maritime*

---

[48] 1. In case of work-related death of the seafarer, during the term of his contract the employer shall pay the beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

[49] Section 18(B)(1) of both the 1996 POEA-SEC and 2000 POEA-SEC.

Corporation,[50] the Court adjudged that the heirs of a seafarer who died after his medical repatriation could still recover the compensation and benefits provided in Section 20(A) of the 2000 POEA-SEC, reasoning as follows:

> Applying the rule on liberal construction, the Court is thus brought to the recognition that **medical repatriation cases should be considered as an exception to Section 20 of the 2000 POEA-SEC.** Accordingly, the phrase "work-related death of the seafarer, **during the term of his employment contract**" under Part A (1) of the said provision **should not be strictly and literally construed to mean that the seafarer's work-related death should have precisely occurred during the term of his employment. Rather, it is enough that the seafarer's work-related injury or illness which eventually causes his death should have occurred during the term of his employment**. Taking all things into account, the Court reckons that it is by this method of construction that undue prejudice to the laborer and his heirs may be obviated and the State policy on labor protection be championed. For if the laborer's death was brought about (whether fully or partially) by the work he had harbored for his master's profit, then it is but proper that his demise be compensated. (Emphases supplied.)

As the following survey of cases in *Canuel* will show, the Court had previously granted claims for death benefits (some under the 1984 and 1996 POEA-SEC) even though the seafarers' death occurred after their repatriation:

> Meanwhile, on the opposite end of the jurisprudential spectrum, the Court, in a number of cases, **granted** claims for death benefits although the seafarers' death therein had occurred after their repatriation primarily because of the causal connection between their work and the illness which had eventually resulted in their death.
>
> In the 1999 case of *Wallem Maritime Service, Inc. v. NLRC*, the death benefit claims of the heirs of the seafarer who had died after having been repatriated on account of "mutual consent" between him and his employer was allowed by the Court because of the "reasonable connection" between his job and his illness. As pertinently stated in that case:

---

[50] G.R. No. 190161, October 13, 2014.

> It is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits provided therefor. **It is enough that the employment had contributed, even in a small degree, to the development of the disease and in bringing about his death.**
>
> It is indeed safe to presume that, at the very least, the nature of Faustino Inductivo's employment had contributed to the aggravation of his illness – if indeed it was pre-existing at the time of his employment – and therefore it is but just that he be duly compensated for it. **It cannot be denied that there was at least a reasonable connection between his job and his lung infection, which eventually developed into *septicemia* and ultimately caused his death. As a [utility man] on board the vessel, he was exposed to harsh sea weather, chemical irritants, dusts, etc., all of which invariably contributed to his illness.**
>
> Neither is it necessary, in order to recover compensation, that the employee must have been in perfect condition or health at the time he contracted the disease. Every workingman brings with him to his employment certain infirmities, and while the employer is not the insurer of the health of the employees, he takes them as he finds them and assumes the risk of liability. If the disease is the proximate cause of the employee's death for which compensation is sought, the previous physical condition of the employee is unimportant and recovery may be had therefor independent of any pre-existing disease.

Later, the Court, in *Seagull Shipmanagement and Transport, Inc. v. NLRC* – a sickness and permanent disability claims case decided under the auspices of the 1984 version of the POEA-SEC (which, unlike the present standard contract, only requires that the illness of death occur during the term of the employment whether work-related or not) – significantly observed that:

> Even assuming that the ailment of the worker was contracted prior to his employment, this still would not deprive him of compensation benefits. **For what matters is that his work had contributed, even in a small degree, to the development of the disease and in bringing about his eventual death.** Neither is it necessary, in order to recover compensation, that

> the employee must have been in perfect health at the time he contracted the disease. A worker brings with him possible infirmities in the course of his employment, and while the employer is not the insurer of the health of the employees, he takes them as he finds them and assumes the risk of liability. **If the disease is the proximate cause of the employee's death for which compensation is sought, the previous physical condition of the employee is unimportant, and recovery may be had for said death, independently of any pre-existing disease.**

The Court similarly took into account the work-relatedness element in granting the death benefits claim in *Interorient Maritime Enterprises, Inc. v. Remo*, a 2010 case decided under the 1996 POEA-SEC which operated under parameters identical to the 1984 POEA-SEC. Quoted hereunder are the pertinent portions of that ruling:

> It was established on record that before the late Lutero Remo signed his last contract with private respondents as Cook-Steward of the vessel "M/T Captain Mitsos L," he was required to undergo a series of medical examinations. Yet, he was declared "fit to work" by private respondents' company designated-physician. On April 19, 1999, Remo was discharged from his vessel after he was hospitalized in Fujairah for atrial fibrillation and congestive heart failure. **His death on August 28, 2000, even if it occurred months after his repatriation, due to hypertensive cardio-vascular disease, could clearly have been work related.** Declared as "fit to work" at the time of hiring, and hospitalized while on service on account of "atrial fibrillation and congestive heart failure," his eventual death due to "hypertensive cardio-vascular disease" could only be work related. The death due to "hypertensive cardio-vascular disease" could in fact be traced to Lutero Remo's being the "Cook-Steward." **As Cook-Steward of an ocean going vessel, Remo had no choice but to prepare and eat hypertension inducing food, a kind of food that eventually caused his "hypertensive cardio-vascular disease," a disease which in turn admittedly caused his death.**
>
> **Private respondents cannot deny liability for the subject death by claiming that the seafarer's death occurred beyond the term of his employment and worsely, that there has been misrepresentation on the part of the seafarer.** For, as

> employer, the private respondents had all the opportunity to pre-qualify, thoroughly screen and choose their applicants to determine if they are medically, psychologically and mentally fit for employment. That the seafarer here was subjected to the required pre-qualification standards before he was admitted as Cook-Steward, it thus has to be safely presumed that the late Remo was in a good state of health when he boarded the vessel.

More recently, in the 2013 case of *Inter-Orient Maritime, Incorporated v. Candava*, also decided under the framework of the 1996 POEA-SEC, the Court pronounced that the seafarer's death therein, despite occurring after his repatriation, remains "compensable for having been caused by an illness duly established to have been contracted in the course of his employment."[51] (Citations omitted.)

The Court highlighted at the end of *Canuel* that:

> [C]onsidering the constitutional mandate on labor as well as relative jurisprudential context, the rule, restated for a final time, should be as follows: **if the seafarer's work-related injury or illness (that eventually causes his medical repatriation and, thereafter, his death, as in this case) occurs during the term of his employment, then the employer becomes liable for death compensation benefits under Section 20 (A) of the 2000 POEA-SEC.** The provision cannot be construed otherwise for to do so would not only transgress prevailing constitutional policy and deride the bearings of relevant case law but also result in a travesty of fairness and an indifference to social justice.[52]

Therefore, the Court herein likewise considers medical repatriation an exceptional circumstance and allows the heirs of the seafarer who died after he had been medically repatriated to recover the compensation and benefits provided in Section 20(A) of the 1996 POEA-SEC. The phrase "death of the seafarer during the term of his contract" in Section 20(A)(1) of the 1996 POEA-SEC should not be strictly and literally construed to mean that the seafarer's death should have occurred during the term of his employment; it is enough that the seafarer's work-related injury or illness which eventually caused his death occurred during the term of his employment.

---

[51] *Id*.

[52] *Id*.

The insistence of petitioners on the post-employment medical examination of the seafarer by a company-designated physician within three days from arrival at the point of hire is misplaced. Said post-employment medical examination was required under Section 20(B)(3) of the 1996 POEA-SEC for compensation and benefits for a seafarer's injury or illness; it was not a requisite under Section 20(A) of the 1996 POEA-SEC for compensation and benefits for a seafarer's death. In addition, Section 20(B)(3) of the 1996 POEA-SEC itself allowed as an exception from said requirement a seafarer who is physically incapacitated from complying with same.[53] Apparently, in the case at bar, Godofredo was already of poor health and weak physical condition upon his repatriation on March 16, 2003, which necessitated his immediate visit to a nearby clinic the very next day, on March 17, 2003. In any case, Godofredo still had until March 19, 2003 to see a company-designated physician but he died on the same day of a cause ("Hypertensive Heart Disease") directly linked to the illness ("Essential Hypertension") he developed during his term of employment on M/T *Umm Al Lulu* and for which he was medically repatriated. Again, the observation of the Court in *Wallem Maritime Services, Inc.*, quoted below, is of particular significance to Godofredo's case:

> Admittedly, Faustino Inductivo did not subject himself to post-employment medical examination within three (3) days from his return to the Philippines, as required by the above provision of the POEA standard employment contract. But such requirement is not absolute and admits of an exception, *i.e.*, when the seaman is physically incapacitated from complying with the requirement. Indeed, for a man who was terminally ill and in need of urgent medical attention one could not reasonably expect that he would immediately resort to and avail of the required medical examination, assuming that he was still capable of submitting himself to such examination at that time. It is quite understandable that his immediate desire was to be with his family in Nueva Ecija whom he knew would take care of him. Surely, under the circumstances, we cannot deny him, or his surviving heirs after his death, the right to claim benefits under the law.[54]

---

[53] Section 20(B)(3), Memorandum Circular No. 55, Series of 1996.

[54] *Wallem Maritime Services, Inc. v. National Labor Relations Commission, supra* note 44 at 748.

Equally unavailing in this case are the references made by the NLRC to the requirements for compensable death from occupational diseases, listed under Section 32-A of the 2000 POEA-SEC. However, Section 32 (Schedule of Disability or Impediment for Injuries Suffered and Diseases Including Occupational Diseases or Illness Contracted) and Section 32-A (Occupational Diseases) of the 2000 POEA-SEC could only be applied in relation to Section 20 (Compensation and Benefits) of the same POEA-SEC, and as the Court previously declared herein, the use or implementation of Section 20 of the 2000 POEA-SEC was suspended by POEA Memorandum Circular No. 11, series of 2000. In the meantime, Section 20 of the 1996 POEA-SEC applied to Godofredo's case; and the 1996 POEA-SEC did not contain a provision corresponding to Section 32-A of the 2000 POEA-SEC. To apply Section 32-A of the 2000 POEA-SEC to Godofredo's case would be to impose additional conditions on the claim for compensation and benefits for his death based on Section 20(A) of the 1996 POEA-SEC, which would be contrary to the rule on liberal construction of the laws and contracts in favor of labor.

Finally, the cases cited by petitioners, in which the Court denied the claims for compensation and benefits for seafarers' death occurring after their repatriation, are not on all fours with this case. In *Hermogenes v. Osco Shipping Services, Inc.*,[55] the claim for compensation and benefits was not granted because there was no clear reason why the seafarer's contract of employment was terminated just two months after it started; his death occurred more than three years after such termination of contract; and there was no medical proof that his death was due to an illness contracted during his last term of employment. The seafarer in *Prudential Shipping Management Corporation v. Sta. Rita*[56] was medically repatriated and his contract of employment was deemed terminated on March 8, 2000. He underwent surgery to repair his umbilical hernia and for which he was already paid sickness allowance. He died more than a year later on March 18, 2001

[55] 504 Phil. 564 (2005).

[56] 544 Phil. 94 (2007).

of "cardiopulmonary arrest secondary to metabolic acidosis, acute renal failure and hepatocellular carcinoma." The claim for compensation and benefits was denied in said case since the seafarer's death was not shown to be connected to the umbilical hernia for which he was repatriated in March 2000. *Klaveness Maritime Agency, Inc. v. Beneficiaries of Anthony Allas*,[57] already involved the 2000 POEA-SEC which not only required that the seafarer's death occurred or the illness causing the seafarer's death was contracted during the term of employment, but also that said death/illness was work-related. Therein seafarer died one and a half years after the termination of his employment and there was no substantial evidence linking his urinary bladder cancer to his work, thus, barring his heirs' claim for compensation and benefits for his death. *Estate of Posedio Ortega v. Court of Appeals*[58] also concerned the 2000 POEA-SEC. In less than a month from boarding the ship, therein seafarer fell ill, and was diagnosed with lung cancer and repatriated to the Philippines, where he underwent chemotherapy and medication. Barely three months after his repatriation, the seafarer succumbed to lung cancer. The Court did not allow the claim for compensation and benefits for the seafarer's death as there was no showing that his lung cancer was brought about by his short stint on board the employer's vessel.

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is **DENIED**. The assailed Decision dated September 9, 2009 and Resolution dated December 9, 2009 of the Court of Appeals in CA-G.R. SP No. 98857 are **AFFIRMED**.

SO ORDERED.

Sereno, C.J., Bersamin, Perlas-Bernabe, and *Jardeleza, JJ.,* concur.

---

[57] 566 Phil. 579 (2008).

[58] 576 Phil. 601 (2008).

THIRD DIVISION

[G.R. No. 192075. February 10, 2016]

ROBERTO PALO *y* DE GULA,[1] *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; PROVEN IN CASE AT BAR.— To secure a conviction for illegal possession of a dangerous drug, the concurrence of the following elements must be established by the prosecution: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) Such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. The Court finds that these elements were proven by the prosecution in the present case. PO3 Capangyarihan testified in a clear and straightforward manner that when he chanced upon petitioner, the latter was caught red-handed in the illegal 'possession of *shabu* and was arrested *in flagrante delicto.* On direct examination, the police officer positively identified the petitioner as the person holding, scrutinizing and from whom the plastic sachet was confiscated. After conducting a chemical analysis, the forensic chemical officer certified that the plastic sachet recovered from the petitioner was found to contain 0.03 gram of *shabu.* Nowhere in the records was it shown that the petitioner is lawfully authorized to possess the dangerous drug. Furthermore, Daguman admitted that the petitioner intentionally sought and succeeded in getting hold of *shabu.* Clearly, the petitioner knowingly possessed the dangerous drug, without any legal authority to do so, in violation of Section 11, Article II of R.A. No. 9165.

---

[1] *Rollo,* pp. 41 & 65; and records, p. 169. Petitioner's name is stated as Roberto Palo *y* De Gula in the CA and RTC decisions as well as in the present petition. Further, his driver's license bears the same name.

2. ID.; ID.; CHAIN OF CUSTODY RULE; THE INTEGRITY AND EVIDENTIARY VALUE OF *SHABU* SEIZED FROM THE ACCUSED HAD BEEN PRESERVED IN THE PRESENT CASE AND THE PROSECUTION WAS ABLE TO ESTABLISH EVERY LINK IN THE CHAIN OF CUSTODY.— The Court is convinced that the integrity and evidentiary value of *shabu* seized from the petitioner had been preserved under the chain of custody rule even though the prescribed procedure under Section 21 (1), Article II of R.A. No. 9165, as implemented by Section 21(a), Article II of the IRR of R.A. No. 9165, was not strictly complied with. Here, evidence shows that immediately after both the petitioner and the plastic sachet were brought to the police station by PO3 Capangyarihan, the latter marked the plastic sachet with petitioner's initials "RPD" and turned them over to investigator SPO1 Tapar. SPO1 Tapar forwarded the plastic sachet bearing "RPD" initials as well as the letter-request for laboratory examination to PO2 Isla. PO2 Isla delivered the same marked sachet and the letter-request to forensic chemical officer P/Insp. Sioson, of the PNPCL-NPDCLO, for examination of the contents of said sachet. As earlier mentioned, the contents of the marked sachet tested positive for methylamphetamine hydrochloride or *shabu*. It should be emphasized that the parties have already stipulated on the names of the above-stated persons who handled and essentially covered every movement of the seized item. The parties are bound by the stipulations they made in the trial court. In effect, the prosecution was able to account for every link in the chain of custody starting from the time the *shabu* was confiscated by the arresting officer from the petitioner until the same was received by the forensic chemical officer for examination. Moreover, when the prosecution presented as evidence in court the plastic sachet with "RPD" initials, PO3 Capangyarihan positively identified that the *shabu* submitted for laboratory examination is the same one taken from the petitioner.

3. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; PROPER PENALTY.— [T]he penalty for illegal possession of less than five (5) grams of *shabu* is imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00). Under the

Indeterminate Sentence Law, the petitioner shall be sentenced to an indeterminate sentence, the minimum period of which shall not be less than the minimum term fixed by law while the maximum period shall not exceed the maximum term prescribed under the same law. The RTC and CA sentenced the petitioner to suffer the penalty of eight years (8) and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum. The lower courts also ordered the petitioner to pay a fine of Three Hundred Thousand Pesos (₱300,000.00). The penalty meted out by the RTC and CA should be modified as it is not in accord with the provisions of the Indeterminate Sentence Law. Applying the Indeterminate Sentence Law the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, is proper under the premises. With respect to the imposed fine of Three Hundred Thousand Pesos (₱300,000.00), this amount is sustained as it is in accordance with that prescribed under Section 11(3), Article II of R.A. No. 9165.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

For this Court's consideration is a Petition for Review on *Certiorari*[2] under Rule 45 which seeks to reverse and set aside the September 22, 2009 Decision[3] of the Court of Appeals (CA) in CA-G.R. CR No. 31677. The assailed decision affirmed the July 27, 2007 Decision[4] of the Regional Trial Court (RTC) of

---

[2] *Id*. at 10-25.

[3] CA *rollo,* pp. 84-97; penned by Associate Justice Martin S. Villarama, Jr. (now a retired member of this Court) and concurred in by Associate Justices Magdangal M. De Leon and Ricardo R. Rosario.

[4] Records, pp. 139-144; penned by Judge Maria Nena J. Santos.

Valenzuela City, Branch 171, in Criminal Case No. 586-V-02, finding Roberto Palo y De Gula (petitioner) guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Antecedent Facts

Petitioner and his co-accused Jesus Daguman *y* Ramos (Daguman) were charged with violation of Section 11 (illegal possession of dangerous drugs), Article II of R.A. No. 9165 in an Information[5] which reads:

> "That on or about July 24, 2002 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without any authority of law, did then and there wil[l]fully, unlawfully and feloniously have in their possession, custody and control 0.03 gram of Methamphetamine Hydrochloride (shabu), knowing the same to be a regulated drug.
>
> Contrary to Law."

The two accused were apprehended by the authorities. After posting their bail bonds, both were ordered released. At the scheduled arraignment on September 23, 2002, only Daguman appeared and pleaded not guilty to the offense charged.[6] The petitioner's sister, Carolina Geronimo, explained that petitioner's failure to appear in said arraignment was because he was suffering from some kind of mental disorder.[7] For this reason, the trial court ordered the family of the petitioner that he be brought to the National Center for Mental Health for psychiatric evaluation. The trial court also directed the attending physician to submit a report on the petitioner's mental condition. After receipt of notice that the petitioner was fit for trial, the trial

---

[5] *Id*. at 1.

[6] *Id*. at 24.

[7] *Id.*

court set his arraignment on March 10, 2003 during which he entered a plea of not guilty.[8]

Version of the Prosecution

To establish its case, the prosecution presented Police Officer 3 Miguel Capangyarihan (PO3 Capangyarihan). During trial, the testimonies of all other prosecution witnesses namely: Police Officer 1 Ernesto Santos (POl Santos), Senior Police Officer 1 Reynaldo Tapar (SPO1 Tapar), Police Officer 2 Miguel Isla (PO2 Isla), and Police Inspector Juanita Sioson (P/Insp. Sioson) were dispensed with upon stipulation by the parties.

PO3 Capangyarihan, a member of the Valenzuela City Police, testified that at around 6:30 in the evening of July 24, 2002, he was walking along a dark alley at Mercado Street, Gen. T. De Leon in Valenzuela City. With him at that time was a boy who was a victim of a stabbing incident and right behind them, was PO1 Santos. While they were walking toward the petitioner's direction, at a distance of about five to seven meters, PO3 Capangyarihan saw the petitioner and Daguman talking to each other. PO3 Capangyarihan also noticed the petitioner holding a plastic sachet in his hand who was then showing it to Daguman. Believing that the plastic sachet contained *shabu,* from the manner by which the petitioner was holding the sachet, PO3 Capangyarihan immediately approached the petitioner, held and recovered from his hand the said plastic sachet. Right there and then, the petitioner was arrested by PO3 Capangyarihan. Daguman was also arrested by PO1 Santos.

PO3 Capangyarihan further testified that the petitioner and Daguman were informed of their constitutional rights and that the two accused, together with the item seized, were brought to the police station where the confiscated item was marked by PO3 Capangyarihan with petitioner's initials "RPD." During his cross-examination, PO3 Capangyarihan disclosed that there is a rampant selling of *shabu* at the place where the two accused

---

[8] *Id*. at 49.

were apprehended and that his suspicion was aroused by the petitioner's delicate way of handling the plastic sachet.

PO3 Capangyarihan turned over the petitioner, Daguman and the confiscated item to SPO1 Tapar, the investigator of the case. The parties stipulated that SPO1 Tapar received one (1) heat-sealed transparent plastic sachet with "RPD" marking from PO3 Capangyarihan, which item was marked in evidence as Exhibit "B". SPOl Tapar prepared the letter-request for the examination of the substance found inside the plastic sachet. Also stipulated was the fact that after SPOl Tapar's investigation, the seized item (Exhibit "B") and the said letter-request were transmitted by him to PO2 Isla for delivery to the Philippine National Police Crime Laboratory-Northern Police District Crime Laboratory Office (PNPCL-NPDCLO).

The testimony of PO2 Isla was dispensed with as the prosecution and defense agreed that: (1) he received from SPO1 Tapar the seized item marked as Exhibit "B" as well as the corresponding letter-request for laboratory examination; (2) he delivered these two to the PNPCL- NPDCLO; and (3) both the seized item and the letter-request were accepted by P/Insp. Sioson.

Likewise dispensed with was the testimony of P/Insp. Sioson, a forensic chemical officer of the PNPCL-Camp Crame, Quezon City, after the defense acknowledged that her office received one (1) heat-sealed small transparent plastic sachet bearing the marking "RPD" (Exhibit "B") together with the letter-request for laboratory examination. In addition, the defense admitted that the contents of the sachet tested positive for methylamphetamine hydrochloride, more commonly known as *shabu.* P/Insp. Sioson's examination of the submitted specimen was reduced into writing as embodied in her Chemistry Report No. D-706-02 containing the following entries:

"SPECIMEN SUBMITTED:

A-One (1) heat-sealed transparent plastic sachet with markings "RPD" containing 0.03 gram of white crystalline substance. xxx

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of prohibited and/or regulated drug. xxx

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the tests for Methylamphetamine hydrochloride, a regulated drug. xxx

CONCLUSION:

Specimen A contains Methylamphetamine hydrochloride, a regulated drug. xxx"[9]

Lastly, the parties stipulated on the fact that PO1 Santos, also of the Valenzuela City Police Station, arrested Daguman but found no *shabu* in his possession at the time of his arrest.[10]

Version of the Defense

The defense, on the other hand, presented the petitioner and Daguman as witnesses.

According to the petitioner, he can no longer recall the date and time of his arrest. All the same, the petitioner testified that he and Daguman were just sitting along the road, in front of a house that was raided by PO3 Capangyarihan and PO1 Santos. One or two persons were arrested from the raid. The petitioner averred that when the police officers passed by him and Daguman, they were arrested and frisked but nothing was found in their persons. Nevertheless, the two accused were made to board the police vehicle, brought to the police station and detained thereat. The petitioner insisted that he had never been involved in any drug-related incident prior to his arrest. On cross-examination, he stated that he only complained to his sister of the illegality of his arrest.[11]

---

[9] *Id*. at 4.

[10] *Id.* at 57.

[11] TSN, June 15, 2004, p. 8.

Testifying in his behalf, Daguman denied the accusation against him. He claimed that on the day of the incident, he went to the petitioner's place to play *cara y cruz.* Instead of gambling, Daguman was invited by the petitioner to go somewhere to get *shabu.* Daguman narrated that they rode a jeep and alighted at Mercado Street, Valenzuela City to look for the person from whom the petitioner would buy *shabu.* After the two accused met a certain Joseph, a *shabu* seller, the transaction between the petitioner and the latter started. While the petitioner and Joseph were busily selecting which plastic sachet had more contents, they caught the attention of the police officers. The police officers approached them and when they were about to be arrested, the petitioner went berserk, challenged the arresting officers to a fistfight and told them that they were only brave as they were armed. Nonetheless, the three were arrested. Daguman confirmed that several plastic sachets were confiscated from Joseph while one (1) small plastic sachet of *shabu* and a ₱100.00 bill were recovered from the petitioner at the time of their apprehension. On direct and cross-examination, Daguman categorically stated that no *shabu* was taken from him.[12]

The RTC's Ruling

After trial, judgment was rendered by the RTC convicting the petitioner of the offense charged. The trial court ruled that the prosecution sufficiently established all the elements of illegal possession of dangerous drugs and as the petitioner had been caught *in flagrante delicto,* his warantless arrest was justified pursuant to Section 5, Rule 113 of the Rules of Court.[13] The

---

[12] TSN, April 25, 2006, pp. 6-7.

[13] Section 5, Rule 113 ofthe Rules of Court provides:

> Section 5. *Arrest without warrant; when lawful.* A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge

RTC applied the presumption of regularity in the performance of the police officers' duties since no ill motive on their part was shown by the defense. However, the trial court acquitted Daguman for insufficiency of evidence. The dispositive portion of the RTC Decision reads:

> **WHEREFORE,** premises considered, accused **ROBERT[O] PALO *y* DE GULA** is hereby found **GUILTY** beyond reasonable doubt for violation of *Section 11, Article II of R.A. No. 9165.* Consequently, said accused is hereby ordered to suffer the penalty of imprisonment of **eight years (8) and one (1) day** as minimum to **fourteen (14) years and eight (8) months** as maximum. In addition thereto, the said accused is further ordered to pay a **FINE** of **Three Hundred Thousand Pesos (Php 300,000.00).**
>
> Anent, accused **JESUS DAGUMAN *y* RAMOS**, for insufficiency of evidence, he is hereby **ACQUITTED** of the offense charged. Accordingly, the bailbond posted by the said accused for his provisional liberty is hereby ordered **RELEASED** from liability.
>
> The Branch Clerk of this Court is hereby directed to turn over to PDEA the drugs used as evidence in this case for proper disposition.
>
> **SO ORDERED.**[14]

The CA's Ruling

On appeal, the CA affirmed the prior ruling of the RTC. The CA held that the chain of custody over the seized item was unbroken from the time it was confiscated from the petitioner at the crime scene until the same was brought to the crime laboratory for examination. It added that failure of the police

---

> of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

[14] Records, pp. 143-144.

officer to comply strictly with the directives embodied in Section 21, Article II of R.A. No. 9165 is not necessarily fatal to the prosecution's case if justifiable grounds exist and for as long as the integrity and evidentiary value of the seized item has been properly preserved. The appellate court also found the testimony of PO3 Capangyarihan credible and accorded the police officer the presumption of regularity in the performance of his official duty. On the other hand, it completely disregarded the self-serving and uncorroborated denial by the petitioner.

Thereafter, the petitioner filed his Motion for Reconsideration[15] of the CA Decision. Finding no merit in the motion, it was denied by the CA through its Resolution[16] dated April 14, 2010.

The Issues

Hence, this Petition for Review on *Certiorari* raising two issues, namely: (1) whether the Honorable Court of Appeals gravely erred in finding the petitioner guilty beyond reasonable doubt of the crime charged despite the dearth of evidence supporting the prosecution's contention; and (2) whether the Honorable Court of Appeals gravely erred in affirming the decision of the trial court notwithstanding the arresting officers' patent non-compliance with the proper chain of custody of the seized dangerous drugs.

The Court's Ruling

The petition is bereft of merit.

Illegal possession of dangerous drugs is penalized under Section 11, Article II of R.A. No. 9165, to wit:

> Section 11. *Possession of Dangerous Drugs.*— The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law,

---

[15] CA *rollo,* pp. 98-102.

[16] *Id*. at 122-123.

shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

xxx xxx xxx

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

xxx xxx xxx

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

To secure a conviction for illegal possession of a dangerous drug, the concurrence of the following elements must be established by the prosecution: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[17]

The Court finds that these elements were proven by the prosecution in the present case. PO3 Capangyarihan testified in a clear and straightforward manner that when he chanced upon petitioner, the latter was caught red-handed in the illegal possession of *shabu* and was arrested *in flagrante delicto*. On direct examination, the police officer positively identified the petitioner as the person holding, scrutinizing and from whom the plastic sachet was confiscated. After conducting a chemical

[17] *Tionco v. People,* G.R. No. 192284, March 11, 2015.

analysis, the forensic chemical officer certified that the plastic sachet recovered from the petitioner was found to contain 0.03 gram of *shabu.* Nowhere in the records was it shown that the petitioner is lawfully authorized to possess the dangerous drug. Furthermore, Daguman admitted that the petitioner intentionally sought and succeeded in getting hold of *shabu.* Clearly, the petitioner knowingly possessed the dangerous drug, without any legal authority to do so, in violation of Section 11, Article II of R.A. No. 9165.

The Court concurs with the trial court in attributing full faith and credence to the testimony of PO3 Capangyarihan. His detailed narration in court remained consistent with the documentary and object evidence submitted by the prosecution. As there is nothing in the record to indicate that PO3 Capangyarihan was impelled by improper motive when he testified against the petitioner, the Court upholds the presumption of regularity in the apprehending officer's performance of official duty.

In addition to the above-metioned elements, the prosecution must prove the *corpus delicti*[18] which in drug-related cases refers to the dangerous drug itself,[19] in this case, *shabu.* As repeatedly ruled by this Court, the identity, integrity and evidentiary value of the *corpus delicti* are properly preserved for as long as the chain of custody of the same are duly established.[20]

The essence of the chain of custody rule is to make sure that the dangerous drug presented in court as evidence against the accused is the same dangerous drug recovered from his or her possession.[21]

---

[18] In *People v. Climaco,* 687 Phil. 593, 603 (20 12), *corpus delicti* is defined as the body of the crime.

[19] *Id.*

[20] *People v. Alviz,* G.R. No. 177158, February 6, 2013, 690 SCRA 61, 76.

[21] *People v. Musa,* G.R. No. 199735, October 24, 2012, 684 SCRA 622, 638.

To preserve the chain of custody over the seized drugs, Section 21(1), Article II of R.A. No. 9165[22] prescribes:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*– The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.
>
> xxx xxx xxx

The aforequoted provision is expounded in Section 2l(a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, to wit:

> SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment

[22] Section 21 of R.A. No. 9165 has been amended by R.A. No. 10640 (An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002"). Taking into account that the incident in this case occurred on July 24, 2002 and the old law was favorable to herein petitioner, the Court shall apply the earlier version of Section 21 and its corresponding; Implementing Rules and Regulations.

so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided,* that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further,* that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.[23]

In seeking acquittal, the petitioner insists that the failure of the arresting officers to comply with the directives outlined in Section 21(a), Article II of the IRR of R.A. No. 9165 particularly on the requirements of markings, physical inventory and photograph of the seized items translates to their failure to preserve the integrity and evidentiary value of the confiscated item.

The Court disagrees with the argument of the petitioner.

The fact that the apprehending officer marked the plastic sachet at the police station, and not at the place of seizure, did not compromise the integrity of the seized item. Jurisprudence has declared that "marking upon immediate confiscation" contemplates even marking done at the nearest police station or office of the apprehending team.[24] Neither does the absence

---

[23] *Id*. at 636-638.

[24] *Marquez v. People,* G.R. No. 197207, March 13, 2013, 693 SCRA 468, 475.

of a physical inventory nor the lack of photograph of the confiscated item renders the same inadmissible. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items as these would be used in determining the guilt or innocence of the accused.[25]

The Court is convinced that the integrity and evidentiary value of *shabu* seized from the petitioner had been preserved under the chain of custody rule even though the prescribed procedure under Section 21(1), Article II of R.A. No. 9165, as implemented by Section 21(a), Article II of the IRR of R.A. No. 9165, was not strictly complied with.

Here, evidence shows that immediately after both the petitioner and the plastic sachet were brought to the police station by PO3 Capangyarihan, the latter marked the plastic sachet with petitioner's initials "RPD" and turned them over to investigator SPO1 Tapar. SPO1 Tapar forwarded the plastic sachet bearing "RPD" initials as well as the letter-request for laboratory examination to PO2 Isla. PO2 Isla delivered the same marked sachet and the letter-request to forensic chemical officer P/Insp. Sioson, of the PNPCL-NPDCLO, for examination of the contents of said sachet. As earlier mentioned, the contents of the marked sachet tested positive for methylamphetamine hydrochloride or *shabu.*

It should be emphasized that the parties have already stipulated on the names of the above-stated persons who handled and essentially covered every movement of the seized item. The parties are bound by the stipulations they made in the trial court.

In effect, the prosecution was able to account for every link in the chain of custody starting from the time the *shabu* was confiscated by the arresting officer from the petitioner until the same was received by the forensic chemical officer for examination. Moreover, when the prosecution presented as evidence in court the plastic sachet with "RPD" initials, PO3 Capangyarihan positively identified that the *shabu* submitted

---

[25] *Tionco v. People,* G.R. No. 192284, March 11, 2015.

for laboratory examination is the same one taken from the petitioner.

Further, the Court sees no compelling reason to deviate from the factual findings of the trial court as affirmed by the appellate court. Fundamental is the rule that factual findings of the trial courts involving the credibility of witnesses are accorded great weight and respect when no glaring errors, gross misapprehension of facts or speculative, arbitrary and unsupported conclusions can be gathered from such findings.[26]

The lower courts correctly rejected petitioner's defense of denial for being self-serving and uncorroborated. Denial is inherently a weak defense which cannot outweigh positive testimony of a prosecution witness.[27] "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] In the instant case, the defense of denial fails even more when the petitioner's co-accused, Daguman, confirmed that the petitioner had every intent to possess and was caught in actual possession of *shabu.*

Thus, the Court affirms the conviction of the petitioner for illegal possession of 0.03 gram of *shabu.*

As previously cited, the penalty for illegal possession of less than five (5) grams of *shabu* is imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00). Under the Indeterminate Sentence Law, the petitioner shall be sentenced to an indeterminate sentence, the minimum period of which shall not be less than

---

[26] *People v. Macatingag,* G.R. No. 181037, January 19, 2009, 576 SCRA 354, 366.

[27] *People v. Bitancor,* 441 Phil. 758, 769 (2002).

[28] *People v. Salvador,* G.R. No. 190621, February 10, 2014, 715 SCRA 617, 632.

the minimum term fixed by law while the maximum period shall not exceed the maximum term prescribed under the same law.

The RTC and CA sentenced the petitioner to suffer the penalty of eight years (8) and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum. The lower courts also ordered the petitioner to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).

The penalty meted out by the RTC and CA should be modified as it is not in accord with the provisions of the Indeterminate Sentence Law. Applying the Indeterminate Sentence Law the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, is proper under the premises.

With respect to the imposed fine of Three Hundred Thousand Pesos (₱300,000.00), this amount is sustained as it is in accordance with that prescribed under Section 11(3), Article II of R.A. No. 9165.

WHEREFORE, the September 22, 2009 CA Decision in CA-G.R. CR No. 31677 is hereby **AFFIRMED** with **MODIFICATION.** Petitioner Roberto Palo y De Gula is sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Reyes,* and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No.194548. February 10, 2016]

JUANA VDA. DE ROJALES, Substituted by her heirs, represented by CELERINA ROJALES-SEVILLA, *petitioner, vs.* **MARCELINO DIME, Substituted by his heirs, represented by BONIFACIA MANIBAY,** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; PRINCIPLE OF RELATIVITY OF CONTRACTS; CONTRACTS CAN ONLY BIND THE PARTIES WHO ENTERED INTO IT, AND CANNOT FAVOR OR PREJUDICE A THIRD PERSON, EVEN IF HE IS AWARE OF SUCH CONTRACT AND HAS ACTED WITH KNOWLEDGE THEREOF.— [T]he parties to a contract are the real parties-in-interest in an action upon it. The basic principle of relativity of contracts is that contracts can only bind the parties who entered into it, and cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof. Hence, one who is not a party to a contract, and for whose benefit it was not expressly made, cannot maintain an action on it. One cannot do so, even if the contract performed by the contracting parties would incidentally inure to one's benefit. As evidenced by the contract of *Pacto de Retro* sale, petitioner, the vendor, bound herself to sell the subject property to respondent, the vendee, and reserved the right to repurchase the same property for the same amount within a period of nine (9) months from March 24, 1999 to December 24, 1999. Therefore, in an action for the consolidation of title and ownership in the name of vendee in accordance with Article 1616 of the Civil Code, the indispensable parties are the parties to the *Pacto de Retro* Sale — the vendor, the vendee, and their assigns and heirs.

2. ID.; ID.; ID.; SALES; CONTRACT OF SALE; A PERSON WHO IS NOT PRIVY TO THE CONTRACT OF SALE CANNOT MAINTAIN AN ACTION FOR CONSOLIDATION

OF OWNERSHIP AND TITLE OF THE SUBJECT PROPERTY IN HER NAME, FOR SHE WAS NOT A PARTY TO THE CONTRACT; CASE AT BAR.— Villamin, as the alleged source of the consideration, is not privy to the contract of sale between the petitioner and the respondent. Therefore, she could not maintain an action for consolidation of ownership and title of the subject property in her name since she was not a party to the said contract. Where there is no privity of contract, there is likewise no obligation or liability to speak about. This Court, in defining the word "privy" in the case of *Republic vs. Grijaldo,* said that the word privy denotes the idea of succession, thus, he who by succession is placed in the position of one of those who contracted the judicial relation and executed the private document and appears to be substituting him in the personal rights and obligation is a privy. For not being an heir or an assignee of the respondent, Villamin did not substitute respondent in the personal rights and obligation in the *pacto de retro* sale by succession. Since she is not privy to the contract, she cannot be considered as indispensable party in the action for consolidation of title and ownership in favor of respondent. A cursory reading of the contract reveals that the parties did not clearly and deliberately confer a favor upon Villamin, a third person.

3. **ID.; ID.; HUMAN RELATIONS; UNJUST ENRICHMENT; WHEN PRESENT.—** Unjust enrichment exists when a person unjustly retains a benefit at the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The prevention of unjust enrichment is a recognized public policy of the State, as embodied in Article 22 of the Civil Code which provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

4. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION; NON-COMPLIANCE THEREWITH OR A DEFECT THEREIN DOES NOT NECESSARILY RENDER THE PLEADING FATALLY DEFECTIVE SINCE VERIFICATION IS ONLY A FORMAL REQUIREMENT, NOT JURISDICTIONAL.—** [N]on-compliance with

verification or a defect therein does not necessarily render the pleading fatally defective. Verification, like in most cases required by the rules of procedure, is a formal requirement, not jurisdictional. It is mainly intended to secure an assurance that matters which are alleged are done in good faith or are true and correct and not of mere speculation. Thus, when circumstances so warrant, "the court may simply order the correction of unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may thereby be served." The RTC waived the strict compliance for verification when it acted on the motion for reconsideration in the interest of justice and equity and allowed the further reception of evidence. Therefore, it is erroneous to dismiss the case based on the non-compliance of verification.

5. ID.; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS; A NOTARIZED DOCUMENT ENJOYS THE PRESUMPTION OF REGULARITY AND IS CONCLUSIVE AS TO THE TRUTHFULNESS OF ITS CONTENTS, ABSENT ANY CLEAR AND CONVINCING PROOF TO THE CONTRARY.— Settled is the rule that generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity. In other words, absent any clear and convincing proof to the contrary, a notarized document enjoys the presumption of regularity and is conclusive as to the truthfulness of its contents. Irregularities in the notarization of the document may be established by oral evidence of persons present in said proceeding. We rule that petitioner failed to present clear and convincing evidence to overcome such presumption of regularity of a public document.

6. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; THE NATURE OF A CONTRACT IS NOT DETERMINED BY THE NOMENCLATURE USED BY THE CONTRACTING PARTIES BUT BY THEIR INTENTION AS SHOWN BY THEIR CONDUCT, WORDS, ACTIONS AND DEEDS PRIOR TO, DURING, AND AFTER EXECUTING THE AGREEMENT.— [T]he nomenclature used by the contracting parties to describe a

contract does not determine its nature. The decisive factor is their intention — as shown by their conduct, words, actions and deeds — prior to, during, and after executing the agreement. Thus, even if a contract is denominated as a *pacto de retro,* the owner of the property may still disprove it by means of parol evidence, provided that the nature of the agreement is placed in issue by the pleadings filed with the trial court.

APPEARANCES OF COUNSEL

Aimee Jean P. Leaban for petitioner.
Irwin Marzan & Pedro Belmi for respondent.

D E C I S I O N

PERALTA, *J.*:

Challenged and sought to be set aside in this petition for review on *certiorari* dated December 9, 2010 of petitioner Juana Vda. de Rojales, substituted by her heirs Celerina Rojales, Reynaldo Rojales, Pogs Rojales, Olive Rojales and Josefina Rojales is the Decision[1] dated August 16, 2010 of the Court of Appeals *(CA),* as reiterated in its Resolution[2] dated November 15, 2010 in CA-G.R. CV No. 92228, reversing and setting aside the Decision[3] dated May 7, 2008 of the Regional Trial Court *(RTC)* of Nasugbu, Batangas, Branch 14, which dismissed the petition for the consolidation of ownership and title over Lot 4-A covered by Transfer Certificate of Title *(TCT)* No. T-55726 in the name of the respondent Marcelino Dime.

The antecedents are as follows:

---

[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ramon R. Garcia and Manuel M. Barrios, concurring; *rollo,* pp. 20-33.

[2] *Id*. at 19.

[3] Penned by Executive/Presiding Judge Wilfredo De Joya Mayor, *id.* at 36-46.

Petitioner Juana Vda. de Rojales owned a parcel of land (Lot 4-A) located at Barrio Remanente, Municipality of Nasugbu, Batangas consisting of 2,064 square meters covered by TCT No. T-55726.[4]

In a petition dated May 30, 2000 filed before the RTC of Nasugbu, Batangas, Branch 14, respondent Marcelino Dime alleged that on May 16, 1999, petitioner conveyed under a *pacto de retro* contract Lot 4-A in favor of respondent for and in consideration of the sum of ₱2,502,932.10.[5] Petitioner reserved the right to repurchase the property for the same price within a period of nine (9) months from March 24, 1999 to December 24, 1999.[6] Despite repeated verbal and formal demands to exercise her right, petitioner refused to exercise her right to repurchase the subject property.[7]

In her answer, petitioner denied the execution of the *pacto de retro* sale in favor of respondent and alleged that she had not sold the subject property.[8] She claimed that the document presented by respondent was falsified since the fingerprint appearing therein was not hers and the signature of the Notary Public Modesto S. Alix was not his.[9] She also averred that she filed falsification and use of falsified documents charges against respondent.[10]

In her sworn statement attached to her Answer, petitioner alleged that she mortgaged the subject property with the Batangas Savings and Loan Bank for ₱100,000.00 when her daughter Violeta Rojales Rufo needed the money for application of overseas work; Antonio Barcelon redeemed the property and paid

---

[4] *Id.* at 21.

[5] *Id.*

[6] Records, p. 4.

[7] *Rollo,* p. 21.

[8] Records, p. 12.

[9] *Id.*

[10] *Id.* at 13.

₱260,000.00 for the debt plus the unpaid interest with the bank; when Barcelon entered the mayoralty race, he demanded payment of the debt, then mortgaged the title of the subject property with respondent; and the signatures appearing in the documents were falsified.[11]

During the pre-trial, the parties agreed that petitioner is the registered owner of the subject property, and that she once mortgaged the property with the Batangas Savings & Loan Bank in order to secure a loan of ₱200,000.00 from the bank.[12] They also submitted the following issues for resolution: whether the *pacto de retro* sale was executed by petitioner; whether the consideration of the sale has been paid to petitioner; and whether the contract of sale con *pacto de retro* is genuine.[13]

Upon the joint motion of the parties, the RTC issued an Order dated November 16, 2000 directing the questioned thumbmark be referred to the fingerprint expert of the National Bureau of Investigation *(NBI)* to determine whether the thumbmark appearing in the *pacto de retro* contract and the specimen thumbmark of the petitioner are the same.[14]

On April 16, 2001, the NBI submitted a copy of Dactyloscopic Report FP Case No. 2000-349 by Fingerprint Examiner Eriberto B. Gomez, Jr. to the court: It was concluded therein that the questioned thumbmark appearing on the original-duplicate copy of the notarized *pacto de retro* sale and the standard right thumbmark, taken by Police Officer Marcelo Quintin Sosing, were impressed by and belong to the same person, the petitioner.[15]

Respondent passed away on June 22, 2002 before the trial on the merits of the case ensued. Being his compulsory heirs, respondent's estranged wife Bonifacia Dime and their children

---

[11] *Id.* at 17.

[12] *Id.* at 51.

[13] *Id.* at 51-52.

[14] *Id.* at 60.

[15] *Id.* at 70.

Cesario Antonio Dime and Marcelino Dime, Jr., substituted him in the suit.[16]

On July 11, 2006, the heirs of respondent filed a Manifestation and Motion to Dismiss the Complaint on the ground that it was Rufina Villamin, respondent's common law wife, who was the source of the fund in purchasing Lot 4-A.[17] They alleged that the consolidation of ownership and title to respondent would be prejudicial to Villamin and would unjustly enrich them.[18] Consequently, the RTC, through Judge Christino E. Judit, in an Order dated July 12, 2006, dismissed the case with prejudice on the ground that the case was not filed by an indispensable party, Villamin.[19]

However, on August 2, 2006, Atty. Pedro N. Belmi, the counsel of respondent, filed a Motion for Reconsideration praying to set aside the dismissal with prejudice on the ground that Villamin and the daughters of petitioner, Manilyn Rojales Sevilla and Olivia Rojales, tricked and manipulated the respondent's widow and her children to affix their signatures on the motion to dismiss.[20] Atty. Belmi insisted that the RTC erred in giving credence to the motion without his verification that the motion was indeed freely and voluntarily executed by the parties.[21]

Feeling that the respondent's counsel already lost his trust and confidence to his impartiality and lack of bias to resolve the case, Judge Judit inhibited himself from the case on January 25, 2007 without waiting for the petitioner to file a motion for inhibition against him.[22] This Court designated Judge Wilfredo De Joya Mayor to replace Judge Judit.[23]

---

[16] *Rollo,* p. 23.

[17] Records, p. 290.

[18] *Id.*

[19] *Id.* at 292.

[20] *Id.* at 294.

[21] *Id.* at 295.

[22] *Id.* at 304.

[23] *Id.* at 306.

In an Order dated October 25, 2007, Judge Mayor set aside the order of dismissal of the case and set the hearing for further reception of evidence.[24]

Thereafter, the RTC ruled in favor of the petitioner. The court *a quo* ratiocinated that it is a clear mistake to rule on the merits of the case knowing that such was not filed by the indispensable party, hence, the judgment will be void.[25] The RTC considered the unverified motion for reconsideration filed by Atty. Belmi as an unsigned pleading.[26] It further held that the manifestation and motion to dismiss deserved the presumption of validity since there was no sufficient proof that the compulsory heirs who substituted respondent were made to sign such motion without knowing its content.[27] The *fallo* of the decision reads:

WHEREFORE, premises considered, the above-captioned case is hereby DISMISSED for utterly lack of merit.

SO ORDERED.[28]

Aggrieved, respondent assailed the decision before the CA. In a Decision dated August 16, 2010, the CA reversed and set aside the decision of the RTC. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the instant appeal is GRANTED and the herein assailed Decision of the trial court dated May 7, 2008 is hereby REVERSED and SET ASIDE. Accordingly, judgment is hereby rendered ordering the consolidation of ownership over the property (Lot 4-A) covered by TCT No. T-55726 in the name of the vendee a retro Marcelino Dime.

SO ORDERED.[29]

---

[24] *Id.* at 308.

[25] *Id.* at 45.

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

[27] *Supra* note 25.

[28] *Id.* at 46.

[29] *Supra* note 1, at 33.

The CA rejected the ruling of the court *a quo* that Villamin was an indispensable party. It ruled that the person who provided the funds for the purchase of the property is not considered as an indispensable party in a case of consolidation of title filed by respondent, the vendee, in whose favor the petitioner sold the subject property under the contract of sale con *pacto de retro*.[30]

Upon the denial of her Motion for Reconsideration by the CA, petitioner filed the instant petition raising the following issues:

A. THE HONORABLE COURT OF APPEALS ERRED IN GIVING DUE COURSE TO THIS APPEAL DESPITE THE MANIFESTATION OF THE HEIRS OF MARCELINO DIME TO DISMISS THE CASE.

B. THE HONORABLE COURT OF APPEALS ERRED WHEN IT DISREGARDED THE NECESSITY OF VERIFICATION OF THE RESPONDENTS IN THE MOTION FOR RECONSIDERATION FILED BEFORE THE REGIONAL TRIAL COURT.

C. THE HONORABLE COURT OF APPEALS ERRED IN ALLOWING THE CONSOLIDATION OF THE TITLE DESPITE THE MANIFESTATION AND ADMISSION OF THE RESPONDENTS THAT CONTINUING SO WOULD CONSTITUTE UNJUST ENRICHMENT.

D. THE HONORABLE COURT OF APPEALS ERRED WHEN IT RULED THAT THE PETITIONERS FAILED TO OVERCOME THE PRESUMPTION OF REGULARITY OF THE SUBJECT PACTO DE RETRO SALE.

This Court finds the instant petition devoid of merit.

Bisecting the first and third issues, this Court notes that the petitioner basically argues that the CA erred in ordering the consolidation of ownership and title in the name of respondent Dime since his heirs have filed a motion to dismiss which admitted therein that a ruling of the trial court in respondent's favor is

---

[30] *Rollo,* pp. 29-30.

tantamount to unjust enrichment considering that Villamin provided the funds for the purchase of the subject property.

Relying on the principle that the client has the exclusive control of the cause of action on the claim or demand sued upon, petitioner insists that the filing of the manifestation reflected the intention of the heirs of respondent to enter into a settlement with the petitioner.[31]

Settled is the rule that a client has an undoubted right to settle her litigation without the intervention of the attorney, for the former is generally conceded to have exclusive control over the subject matter of the litigation and may at anytime, if acting in good faith, settle and adjust the cause of action out of court before judgment, even without the attorney's intervention.[32]

While we agree with the petitioner that the heirs, as the client, has the exclusive control over the subject matter of litigation and may settle the case without the attorney's intervention, we deny the rationale of the filing of the motion to dismiss by the heirs. It was alleged that they would be unjustly enriched should the court order the consolidation of the title of Lot 4-A in the name of respondent since the source of the consideration was Villamin, respondent's common-law wife.

As relevant to the case at bar, Articles 1311 and 1607 of the Civil Code provide:

Article 1311. **Contracts take effect only between the parties, their assigns and heirs**, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. **A mere incidental benefit or interest of a person is not sufficient. The contracting**

---

[31] *Id.*

[32] *Malvar vs. Kraft Food Phils., Inc., et al.,* G.R. No. 183952, September 9, 2013, 705 SCRA 242, 262.

parties must have clearly and deliberately conferred a favor upon a third person. (emphasis supplied).

xxx xxx xxx

Article 1607. In case of real property, the consolidation of ownership in the vendee by virtue of the failure of the vendor to comply with the provisions of Article 1616 shall not be recorded in the Registry of Property without a judicial order, after the vendor has been duly heard.

We have consistently held that the parties to a contract are the real parties-in-interest in an action upon it.[33] The basic principle of relativity of contracts is that contracts can only bind the parties who entered into it, and cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof.[34] Hence, one who is not a party to a contract, and for whose benefit it was not expressly made, cannot maintain an action on it.[35] One cannot do so, even if the contract performed by the contracting parties would incidentally inure to one's benefit.[36]

As evidenced by the contract of *Pacto de Retro* sale,[37] petitioner, the vendor, bound herself to sell the subject property to respondent, the vendee, and reserved the right to repurchase the same property for the same amount within a period of nine (9) months from March 24, 1999 to December 24, 1999.[38] Therefore, in an action for the consolidation of title and ownership in the name of vendee in accordance with Article 1616[39] of the

---

[33] *Spouses Oco vs. Limbaring,* 516 Phil. 691, 704 (2006).

[34] *Philippine National Bank vs. Dee,* G.R. No. 182128, February 19, 2014, 717 SCRA 14.

[35] *Supra* note 33.

[36] *Id.*

[37] Records, p. 4.

[38] *Id.*

[39] Article 1616. The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale, and in addition:

Civil Code, the indispensable parties are the parties to the *Pacto de Retro* Sale – the vendor, the vendee, and their assigns and heirs.

Villamin, as the alleged source of the consideration, is not privy to the contract of sale between the petitioner and the respondent. Therefore, she could not maintain an action for consolidation of ownership and title of the subject property in her name since she was not a party to the said contract.

Where there is no privity of contract, there is likewise no obligation or liability to speak about.[40] This Court, in defining the word "privy" in the case of *Republic vs. Grijaldo,*[41] said that the word privy denotes the idea of succession, thus, he who by succession is placed in the position of one of those who contracted the judicial relation and executed the private document and appears to be substituting him in the personal rights and obligation is a privy.[42]

For not being an heir or an assignee of the respondent, Villamin did not substitute respondent in the personal rights and obligation in the *pacto de retro* sale by succession. Since she is not privy to the contract, she cannot be considered as indispensable party in the action for consolidation of title and ownership in favor of respondent. A cursory reading of the contract reveals that the parties did not clearly and deliberately confer a favor upon Villamin, a third person.

Petitioner alleges that the consolidation of the title should not be allowed since the heirs admitted that they would be unjustly enriched, Villamin being the source of the fund used for the purchase of the subject property.[43]

(l) The expenses of the contract, and any other legitimate payments made by reason of the sale;

(2) The necessary and useful expenses made on the thing sold.

[40] *Spouses Borromeo v. Hon. Court of Appeals,* 573 Phil. 400, 411-412 (2008).

[41] 122 Phil. 1060, 1069 (1965).

[42] *Republic v. Grijaldo, supra.*

[43] *Id.* at 15.

Unjust enrichment exists when a person unjustly retains a benefit at the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.[44] The prevention of unjust enrichment is a recognized public policy of the State, as embodied in Article 22 of the Civil Code which provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."[45]

This Court notes that the RTC relied on the bare assertions of the heirs in dismissing the case with prejudice. The records are bereft of evidence to support the allegation that Villamin has indeed provided the consideration. Not being a privy to the *pacto de retro* sale, Villamin cannot be considered to have been prejudiced with the consolidation of title in respondent's name. Assuming *arguendo* that she was indeed the source of the consideration, she has a separate cause of action against respondent. The legal obligation of respondent to her is separate and distinct from the contract of sale con *pacto de retro,* thus, the award of consolidation of title in her name would be untenable.

Anent the issue on verification, Section 4, Rule 7 of the Rules of Court provides as follows:

> Sec. 4. Verification.— Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
>
> A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

We do not agree with petitioner's assertion that the motion for reconsideration should not have been allowed since the respondent failed to pose a reasonable explanation on the absence of verification.

---

[44] *Gonzalo vs. Tarnate, Jr.,* G.R. No. 160600, January 15,2014.

[45] *Id.*

Time and again, we have said that non-compliance with verification or a defect therein does not necessarily render the pleading fatally defective.[46] Verification, like in most cases required by the rules of procedure, is a formal requirement, not jurisdictional.[47] It is mainly intended to secure an assurance that matters which are alleged are done in good faith or are true and correct and not of mere speculation.[48] Thus, when circumstances so warrant, "the court may simply order the correction of unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may thereby be served."[49]

The RTC waived the strict compliance for verification when it acted on the motion for reconsideration in the interest of justice and equity and allowed the further reception of evidence. Therefore, it is erroneous to dismiss the case based on the non-compliance of verification. As discussed earlier, Villamin is not privy to the *pacto de retro* sale between the petitioner and the respondent. Hence, the case should not have been dismissed because Villamin is not an indispensable party in an action for consolidation of ownership and title emanating from the contract of *pacto de retro* sale.

Petitioner's allegation that respondent should have executed affidavits in denying what was written in the manifestation and motion to dismiss based on Rule 8, Section 8[50] of the Rules of Court is unfounded. Such rule is applicable in contesting an action or defense based on a written instrument or document copied or attached to the pleading. In the case at bar, it is the

---

[46] *Fernandez vs. Villegas,* G.R. No. 200191, August 20, 2014, 733 SCRA 548, 556.

[47] *Heirs of Austino and Genoveva Mesina vs. Heirs of Fian, Jr.,* G.R. No. 201816, April 8, 2013.

[48] *Id*.

[49] *Id.*

[50] Section 8. *How to contest such documents.* — When an action or defense is founded upon a written instrument, copied in or attached to the

motion to dismiss that is being contested and not a written instrument or document which an action or defense is based on.

Petitioner avers that the CA erred in relying on the NBI Fingerprint Examination. She alleges that the opinion of one claiming to be an expert is not binding upon the court.

There is nothing on record that would compel this Court to believe that said witness, Fingerprint Examiner Gomez, has improper motive to falsely testify against the petitioner nor was his testimony not very certain. His testimony is worthy of full faith and credit in the absence of evidence of an improper motive. His straightforward and consistent testimonies bear the earmarks of credibility.

Gomez testified during direct and cross examination, the process of examination of the fingerprints and his conclusion:[51]

ATTY: BELMI:

Q: Will you kindly tell the court what was the result of your examination?

A: After having thorough examination, comparison and analysis, the thumbmark appearing on the [Pacto] de Retro and the right thumbmark appearing on the original copy of PC/INP Fingerprint form taken by SPO3 Marcelo Quintin Sosing were impressed by one and the same person.

xxx xxx xxx

Q: How do you go about this comparison to determine whether that thumbmark were impressed by the same person?

---

corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath specifically denies them, and sets forth what he claims to be the facts, but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

[51] TSN, October 28, 2003, *rollo,* pp. 4-8, 10-11 and TSN, July 27, 2004, *rollo,* p. 5.

A: We must locate the three elements of comparing, the number 1 is type of fingerprint pattern.

xxx xxx xxx

A: There are three elements, after knowing the fingerprint pattern and they are of the same fingerprint the next step is to know the flow of the rages of the fingerprint pattern or the shape.

xxx xxx xxx

Q: Then what is next?

A: After number 2, the last is the most important one because you must locate the number of ridges of characteristics and their relationship with each other because it is the basis of identification of the fingerprint.

Q: Meaning the description of the ridges?

A: Yes, sir, the identification features appearing on the fingerprint.

Q: What did you see?

A: I found that there were 13 identical points to warrant the positive identification.

Q: [Those] 13 points [are] more than enough to determine whether those thumbmark[s] [are] done by one and the same person?

A: Yes, sir.

xxx xxx xxx

Q: Where did you base your conclusion that the thumbprint on the Pacto de Retro Sale over and above the name Juana Vda. de Rojales is genuine thumbprint of the same person?

A: Well, we only respon[d]ed to the request of the court to compare with the thumbprint appearing on the Pacto de Retro Sale to that of the fingerprint appearing on the thumbprint form.

Q: You mean to say you were provided with the standard finger print of the subject?

A: Yes, sir.

xxx xxx xxx

COURT:

Q: Now, with this photograph blown-up, you have here 13 points, will you please explain to the court how these 13 points agree from that standard to that questioned document?

A: I found 2x4 bifurcation, it means that single rage splitting into two branches.

Q: You pointed out?

A: I found the bifurcation on the standard that corresponds exactly to the bifurcation which I marked number 1 in both photograph[s].

Q: From the center?

A: As to the number and location with respect to the core, I found that both questioned and standard coincide.

xxx xxx xxx

Q: Now, but the layer does not change in point 1, how many layer from the core?

A: Froin the core, there are 4 intervening layers from number 1 to number 2 and it appears also the questioned 4 intervening layers between number 1 and number 2, so, the intervening rages between ends of this characteristics are all both in agreement.

xxx xxx xxx

ATTY. SALANGUIT:

Q: Can you say that based on the questioned thumbmark, you would be able to arrive an accurate evaluation between the questioned thumbmark and standard thumbmark?

A: Yes, [ma'am].

Q: Even if the questioned thumbmark is a little bit blurred as to the standard thumbmark?

A: [Even though] the questioned thumbmark is a little bit blurred but still the ridge characteristics is still discernible.

Q: You are telling us that among many people here in the world, nobody have the same thumbmark as another person and that include the thumbmark of a twins?

A: Yes, [ma'am].

xxx xxx xxx

A meticulous perusal of the records reveals that during the trial, petitioner's lawyer manifested that the petitioner, through her former counsel, has bound herself with the result of the NBI Fingerprint Examination.[52] It was further admitted in the court that there is no more issue about the authenticity and genuineness of the thumbmark.[53] Petitioner's counsel manifested:[54]

ATTY. SALANGUIT:

Your honor, the nature of the testimony of the defendant is to prove the fact that she never really sold the property a retro to anybody. That is the property covered by Transfer Certificate of Title. That is at presently subject of the complaint.

COURT:

How about the documents which was turned out to be tampered?

ATTY. SALANGUIT:

Your honor, I understand that based on the records of the case[,] [petitioner's] counsel has already found himself to be bound by the result of the NBI investigation. Actually, your honor, there is no more issue about the authenticity and genuineness of the thumbmark of the defendant, so what we only prove today is that the defendant never really intentionally sold the property to anybody.

ATTY. BELMI:

With that manifestation, we will allow the defendant, in the interest of justice.

xxx xxx xxx

The CA ruled that the presumption of regularity accorded to a public document must stand in the presence of the evidence

---

[52] TSN, January 17, 2005, *rollo,* p. 3.

[53] *Id.*

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

showing that the thumbmark in the contract belongs to the petitioner, and due to her failure to present clear and convincing evidence to overcome such legal presumption.

Settled is the rule that generally, a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity.[55] In other words, absent any clear and convincing proof to the contrary, a notarized document enjoys the presumption of regularity and is conclusive as to the truthfulness of its contents.[56] Irregularities in the notarization of the document may be established by oral evidence of persons present in said proceeding.[57]

We rule that petitioner failed to present clear and convincing evidence to overcome such presumption of regularity of a public document. Petitioner submitted the specimen signature of the notary public but the same was never presented during the trial nor was authenticated. Records disclose that after she admitted to being bound with conclusion of the NBI regarding the issue on the thumbmark, petitioner did not present any evidence to rebut the due execution of the notarized contract of sale con *pacto de retro*. Instead, she presented her testimony and the testimony of her daughter Josefina Rojales to prove that she never intended to sell her property.

The inconsistencies in petitioner's claims cast doubt to the credibility of her testimonies. We note that petitioner admitted, as reflected in the pre-trial order,[58] that she once mortgaged her property to the bank. However, she denied the same during the trial and further claimed that it was the respondent who mortgaged the title with the bank.[59]

---

[55] *Lazaro, et al. vs. Agustin, et al.,* 632 Phil. 310 (20l0).

[56] *Spouses Palada vs. Solidhank Corporation,* 668 Phil. 172 (2011).

[57] *Manzano, Jr. vs. Garcia,* 697 Phil. 376 (2011).

[58] *Supra* note 12.

[59] Records, p. 244.

To prove her lack of intention to sell the property, petitioner maintained that the respondent borrowed the title from her. She herself took the witness stand and testified during the direct and cross examination that,[60]

COURT:

Q: Are you aware of any or were you shown a purported document wherein it was alleged that you sold that property to the plaintiff Marcelino Dime?

A: No, sir, I am already old and I don't know.

xxx xxx xxx

Q: You mean to say that you did not bother to go to Marcelino Dime after a complaint was filed against you considering that he was a neighbor of yours?

A: He just borrowed the title, sir, and I don't know.

Q: You mean to say that [you have] a title over that property and that property was borrowed by Marcelino Dime, [is that] what you mean?

A: Yes, sir.

xxx xxx xxx

ATTY. BELMI:

Q: Mrs. Witness, when Dime took from you the title, you asked him why he was taking the title?

A: Yes, sir, he told me that he will just borrow the title.

xxx xxx xxx

Q: This property covered by the title was mortgaged with the Batangas Savings and Loan Bank?

A: He (respondent) was the one who mortgaged the title but he did not give the money to us, sir.

Q: So, when he took the title from you, Dime told you that he will mortgage the property with the bank?

A: Yes, sir, he will use the money.

---

[60] TSN, January 17, 2005, *rollo,* pp. 5, 10-11.

Q: So, you mean to say that you were not the one who mortgaged the property with the bank?
A: He (respondent) was the one who mortgaged the property, sir.

xxx xxx xxx

COURT:

Q: Are you aware that Marcelino Dime could not be able to mortgage the property to the bank if you [do not] have any document, a Special Power of Attorney authorizing Dime to mortgage the property with the bank?
A: I did not give any authority, sir.

xxx xxx xxx

Her daughter Josefina claimed otherwise. She averred that her mother has previously mortgaged the property with the bank and that it was Barcelon who redeemed the property from the bank.[61] She admitted that Barcelon borrowed the title from her mother because there was already a buyer.[62] She also alleged that Barangay Captain Esguerra and his secretary Laila Samonte, upon the instruction of Barcelon, took the title from them.[63] Thus, her testimony contradicts her mother's claim that respondent borrowed the title from her.

We have consistently decreed that the nomenclature used by the contracting parties to describe a contract does not determine its nature.[64] The decisive factor is their intention—as shown by their conduct, words, actions and deeds—prior to, during, and after executing the agreement.[65] Thus, even if a contract is denominated as a *pacto de retro,* the owner of the property

---

[61] Records, p. 254.

[62] *Id.*

[63] *Id.* at 255.

[64] *Ramos vs. Sarao, et al.,* 491 Phil. 288 (2005).

[65] *Id.*

may still disprove it by means of parole evidence,[66] provided that the nature of the agreement is placed in issue by the pleadings filed with the trial court.[67]

Petitioner failed to specifically allege in all her pleadings that she did not intend to sell her property to respondent, instead, she maintained that there was no *pacto de retro* sale because her thumbmark and the notary public's signature were falsified. She should have raised the issue that respondent merely borrowed the title from her and promised to pay her in her pleadings and not belatedly claimed the same after the NBI ruled that the thumbmark in the contract was hers.

In light of petitioner's inconsistent and bare allegations and the conflicting testimony of her other witness, we rule that petitioner failed to overcome the presumption of regularity of the notarized contract of *Pacta de Retro* sale. Moreover, this Court is unconvinced that petitioner has successfully proven that her agreement with respondent was not a *pacto de retro* sale but a contract of loan secured by a mortgage of the subject property.

---

[66] Rules of Court, Rule 130, Section 9. Evidence of written agreements.— When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
(c) The validity of the written agreement; or
(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills.

[67] *Supra* note 64.

WHEREFORE, the petition for review on *certiorari* dated December 9, 2010 of petitioner Juana Vda. de Rojales, substituted by her heirs Celerina Rojales, Reynaldo Rojales, Pogs Rojales, Olive Rojales and Josefina Rojales is hereby **DENIED.** The Decision and Resolution, dated August 16, 2010 and November 15, 2010, respectively, of the Court of Appeals in CA-G.R. CV No. 92228 are hereby **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), *Perez, Reyes,* and *Jardeleza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 195145. February 10, 2016]

MANILA ELECTRIC COMPANY, *petitioner, vs.* **SPOUSES SULPICIO and PATRICIA RAMOS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 7832 (THE ANTI-ELECTRICITY AND ELECTRIC TRANSMISSION LINES/MATERIALS PILFERAGE ACT OF 1994); ELECTRICITY PILFERAGE; DISCONNECTION OF ELECTRIC SERVICE; REQUISITES.— ***Section 4(a)*** of R.A. 7832 provides that the discovery of an outside connection attached on the electric meter shall constitute as *prima facie* evidence of illegal use of electricity by the person who *benefits* from the illegal use *if* the discovery is **personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board** *(ERB)*. With the presence of such *prima facie* evidence, the electric service provider is within its rights to immediately disconnect the

electric service of the consumer *after* due notice. x x x Additionally, Section 6 of R.A. 7832 affords a private electric utility the right and authority to immediately disconnect the electric service of a consumer who has been caught *in flagrante delicto* doing any of the acts covered by Section 4(a). However, the law clearly states that the disconnection may only be done *after* serving a written notice or warning to the consumer. To reiterate, R.A. 7832 has two requisites for an electric service provider to be authorized to disconnect its customer's electric service on the basis of alleged electricity pilferage: *first,* an officer of the law or an authorized ERB representative must be present during the inspection of the electric facilities; and *second*, even if there is *prima facie* evidence of illegal use of electricity and the customer is caught *in flagrante delicto* committing the acts under Section 4(a), the customer must still be given due notice prior to the disconnection.

2. **MERCANTILE LAW; PUBLIC SERVICE ACT; PUBLIC UTILITIES; CONTRACT OF SERVICE; THE IMMEDIATE DISCONNECTION OF THE CUSTOMER'S ELECTRIC CONNECTION IN CASE AT BAR WAS A VIOLATION OF THE CONTRACT OF SERVICE.—** [W]e observe that MERALCO also failed to follow its own procedure for the discontinuance of service under its contract of service with the respondents. x x x There is nothing in its contract of service that gives MERALCO the authority to immediately disconnect a customer's electric connection. MERALCO's contractual right to disconnect electric service arises *only* after the customer has been notified of his adjusted bill and has been afforded the opportunity to pay the differential billing. In this case, the disconnection of the respondents' electric service happened on November 5, 1999, while the demand for the payment of differential billing was made through a letter dated December 4, 1999. **Thus, we hold that MERALCO breached its contract of service with the respondents as it disconnected the latter's electric service *before* they were ever notified of the differential billing.**

3. **POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 7832 (THE ANTI-ELECTRICITY AND ELECTRIC TRANSMISSION LINES/MATERIALS PILFERAGE ACT OF 1994); DIFFERENTIAL BILLING; A PUBLIC UTILITY'S CLAIM FOR DIFFERENTIAL BILLING CANNOT BE**

GRANTED UNLESS THERE IS SUFFICIENT EVIDENCE TO PROVE ENTITLEMENT; DIFFERENTIAL BILLING, DEFINED.— Section 6 of R.A. 7832 defines differential billing as *"the amount to be charged to the person concerned for the unbilled electricity illegally consumed by him."* Clearly, the law provides that the person who *actually consumed* the electricity illegally shall be liable for the differential billing. It does not *ipso facto* make liable for payment of the differential billing the registered customer whose electrical facilities had been tampered with and utilized for the illegal use of electricity. In this case, as the *prima facie* presumption afforded by Section 4 of R.A. 7832 does not apply, it falls upon MERALCO to first prove that the respondents had actually installed the outside connection attached on their electric meter and that they had benefited from the electricity consumed through the outside connection before it could hold them liable for the differential billing. The records show that MERALCO presented no proof that it ever caught the respondents, or anyone acting in the respondents' behalf, in the act of tampering with their electric meter. x x x While this Court recognizes the right of MERALCO as a public utility to collect system losses, the courts cannot and will not blindly grant a public utility's claim for differential billing if there is no sufficient evidence to prove entitlement. **As MERALCO failed to sufficiently prove its claim for payment of the differential billing, we rule that the respondents cannot be held liable for the billed amount.**

4. **CIVIL LAW; CIVIL CODE; DAMAGES; ACTUAL DAMAGES; INTENDED NOT TO ENRICH THE INJURED PARTY BUT TO PUT HIM IN THE POSITION IN WHICH HE WAS IN BEFORE HE WAS INJURED.—** [A]ctual damages pertain to such injuries or losses that are actually sustained and are susceptible of measurement. They are intended not to enrich the injured party but to put him in the position in which he was in before he was injured. In *Viron Transportation Co., Inc. v. Delos Santos*, we explained that in order to recover actual damages, there must be pleading and proof of the damages suffered x x x. In this case, Patricia stated that her family's food expenses doubled after MERALCO disconnected their electric services as they could no longer cook at home. We note, however, that there is no sufficient proof presented to show the actual food expenses that the

respondents incurred. Nevertheless, Patricia also testified that they were forced to move to a new residence after living without electricity for eight (8) months at their home in Tondo, Manila. They proved this allegation through the presentation of a contract of lease and receipts for payment of monthly rentals for 42 months amounting to ₱210,000.00. Thus, **we find it proper to increase the award of actual damages from ₱100,000.00 to ₱210,000.00**.

5. **ID.; ID.; ID.; MORAL DAMAGES; MAY BE PROPERLY AWARDED TO PERSONS WHO HAVE BEEN UNJUSTLY DEPRIVED OF PROPERTY WITHOUT DUE PROCESS OF LAW.—** [M]oral damages are designed to compensate and alleviate the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar harm unjustly caused to a person. They may be properly awarded to persons who have been unjustly deprived of property without due process of law. In *Regala v. Carin*, we discussed the requisites for the award of moral damages, *viz*: "In fine, an award of moral damages calls for the presentation of 1) evidence of besmirched reputation or physical, mental or psychological suffering sustained by the claimant; 2) a culpable act or omission factually established; 3) proof that the wrongful act or omission of the defendant is the proximate cause of the damages sustained by the claimant; and 4) the proof that the act is predicated on any of the instances expressed or envisioned by Article 2219 and Article 2220 of the Civil Code."

6. **ID.; ID.; ID.; ID.; AWARDED AS A MEANS TO EASE THE MORAL SUFFERING THE COMPLAINANT SUFFERED DUE TO THE DEFENDANT'S CULPABLE ACTION.—** Applied to this case, after due consideration of the manner of disconnection of the respondents' electric service and the length of time that the respondents had to endure without electricity, we find the award of moral damages proper. x x x However, we find the award of ₱1,500,000.00 in moral damages to be excessive. Moral damages are not intended to enrich the complainant as a penalty for the defendant. It is awarded as a means to ease the moral suffering the complainant suffered due to the defendant's culpable action. While prevailing jurisprudence deems it appropriate to award ₱100,000.00 in moral damages in cases where MERALCO wrongfully

disconnected electric service, we hold that such amount is not commensurate with the injury suffered by the respondents. Thus, in view of the specific circumstances present in this case, **we reduce the award of moral damages from ₱1,500,000.00 to ₱300,000.00**.

7. ID.; ID.; ID.; EXEMPLARY DAMAGES; ALLOWED BY LAW AS A WARNING TO THE PUBLIC AND AS A DETERRENT AGAINST THE REPETITION OF SOCIALLY DELETERIOUS ACTIONS.— [E]xemplary or corrective damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated, or compensatory damages. The award of exemplary damages is allowed by law as a warning to the public and as a deterrent against the repetition of socially deleterious actions. In numerous cases, this Court found that MERALCO failed to comply with the requirements under R.A. 7832 before a disconnection of a customer's electric service could be effected. In these cases, we aptly awarded exemplary damages against MERALCO to serve as a warning against repeating the same actions. In this case, MERALCO totally failed to comply with the two requirements under R.A. 7832 before disconnecting the respondents' electric service. While MERALCO insists that R.A. 7832 gives it the right to disconnect the respondents' electric service, nothing in the records indicates that it attempted to comply with the statutory requirements before effecting the disconnection. Under these circumstances, we find that the previous awards against MERALCO have not served their purpose as a means to prevent the repetition of the same damaging actions that it has committed in the past. Therefore, **we increase the award of exemplary damages from ₱300,000.00 to ₱500,000.00** in the hope that this will persuade MERALCO to be more prudent and responsible in its observance of the requirements under the law in disconnecting a customer's electrical supply.

APPEARANCES OF COUNSEL

Elias Santos for petitioner.
YF Lim & Associates for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] assailing the July 30, 2010 decision[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 87843 entitled "*Spouses Sulpicio and Patricia Ramos v. Manila Electric Company,*" that affirmed the Regional Trial Court's *(RTC)* August 22, 2006 decision[3] in Civil Case No. 99-95975.

The August 22, 2006 RTC decision ordered the Manila Electric Company *(MERALCO)* to restore the electric power connection of Spouses Sulpicio and Patricia Ramos *(respondents)* and awarded them ₱2,000,000.00, with legal interest, in total damages.

The Factual Antecedents

MERALCO is a private corporation engaged in the business of selling and distributing electricity to its customers in Metro Manila and other franchise areas. The respondents are registered customers of MERALCO under Service Identification Number *(SIN)* 409076401.

MERALCO entered into a contract of service with the respondents agreeing to supply the latter with electric power in their residence at 2760-B Molave St., Manuguit, Tondo, Manila. To measure the respondents' electric consumption, it installed the electric meter with serial number 330ZN43953 outside the front wall of the property occupied by Patricia's brother, Isidoro Sales, and his wife, Nieves Sales (*Nieves*), located beside the respondents' house.

On November 5, 1999, MERALCO's service inspector inspected the respondents' electrical facilities and found an outside connection attached to their electric meter. The service inspector

---

[1] Petition for Review on *Certiorari, rollo,* pp. 8-29.

[2] Penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Magdangal M. De Leon and Manuel M. Barrios, *id.* at 36-50.

[3] Penned by Presiding Judge Placido C. Marquez, *id.* at 123-144.

traced the connection, an illegal one, to the residence and appliances of Nieves. Nieves was the only one present during the inspection and she was the one who signed the Metering Facilities Inspection Report.

Due to the discovery of the illegal connection, the service inspector disconnected the respondents' electric services on the same day. The inspection and disconnection were done *without* the knowledge of the respondents as they were not at home and their house was closed at the time.

The respondents denied that they had been using an illegal electrical connection and they requested MERALCO to immediately reconnect their electric services. Despite the respondents' request, MERALCO instead demanded from them the payment of ₱179,231.70 as differential billing.

On December 20, 1999, the respondents filed a **complaint for breach of contract with preliminary mandatory injunction and damages** against MERALCO before the RTC, Branch 40, City of Manila. They prayed for the immediate reconnection of their electric service and the award of actual, moral, and exemplary damages, attorney's fees, and litigation expenses.

In a decision dated August 22, 2006, the RTC ordered MERALCO to reconnect the respondents' electric service and awarded damages as follows:

> WHEREFORE, Judgment is rendered directing defendant MERALCO to permanently reconnect immediately the plaintiff's electric services, and for said defendant to pay the following:
>
> 1. ₱100,000.00 as actual or compensatory damages;
> 2. ₱1,500,000.00 as moral damages;
> 3. ₱300,000.00 as exemplary damages;
> 4. ₱100,000.00 as attorney's fees; and,
> 5. Costs of suit;
>
> with legal interest on the total damages of ₱2,000,000.00 from the date of this Judgment until fully paid.

SO ORDERED.[4]

MERALCO appealed the RTC's decision to the CA.

In its assailed July 30, 2010 decision,[5] the CA denied the appeal for lack of merit and affirmed the RTC's order of reconnection and award for payment of damages. The appellate court held that MERALCO failed to comply not only with its own contract of service, but also with the requirements under Sections 4 and 6 of Republic Act No. 7832, or the *Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994 (R.A. 7832),* when it resorted to the immediate disconnection of the respondents' electric service without due notice. It also ruled that the respondents were not liable for the differential billing as it had not been established that they knew or consented to the illegal connection or even benefited from it.

MERALCO moved for the reconsideration of the decision, but the CA denied its motion in a resolution[6] dated **January 3, 2011**. The present petition for review on *certiorari*[7] was filed with this Court on March 4, 2011, as a consequence.

The Petition

MERALCO argues that under R.A. 7832, it had the right and authority to immediately disconnect the electric service of the respondents after they were caught *in flagrante delicto* using a tampered electrical installation.

MERALCO also claims that by virtue of their contract of service, the respondents are liable to pay the differential billing regardless of whether the latter benefited from the illegal electric service or not. It adds that this is true even if the respondents did not personally tamper with the electrical facilities.

---

[4] *Id.* at 144.

[5] *Supra* note 2.

[6] *Rollo,* pp. 63-66.

[7] *Supra* note 1.

Finally, MERALCO contends that there is no basis for the award of damages as the disconnection of the respondents' electric service was done in good faith and in the lawful exercise of its rights as a public utility company.

The Respondents' Comment

In their comment[8] of June 29, 2011, the respondents pray for the denial of the present petition for lack of merit. They argue that the discovery of an outside connection attached to their electric meter does not give MERALCO the right to automatically disconnect their electric service as the law provides certain mandatory requirements that should be observed before a disconnection could be effected. They claim that MERALCO failed to comply with these statutory requirements.

Also, the respondents contend that MERALCO breached its contractual obligations when its service inspector immediately disconnected their electric service without notice. They claim that this breach of contract, coupled with MERALCO's failure to observe the requirements under R.A. 7832, entitled them to damages which were sufficiently established with evidence and were rightfully awarded by the RTC and affirmed by the CA.

Lastly, the respondents argue that they are not liable to MERALCO for the differential billing as they were not the ones who illegally consumed the unbilled electricity through the illegal connection.

The Court's Ruling

We DENY the petition for review on *certiorari* as we find no reversible error committed by the CA in issuing its assailed decision.

The core issue in this case is whether MERALCO had the right to immediately disconnect the electric service of the respondents upon discovery of an outside connection attached to their electric meter.

---

[8] *Rollo,* pp. 223-240.

The distribution of electricity is a basic necessity that is imbued with public interest. Its provider is considered as a public utility subject to the strict regulation by the State in the exercise of its police power. **Failure to comply with these regulations gives rise to the presumption of bad faith or abuse of right**.[9]

Nevertheless, the State also recognizes that electricity is the property of the service provider. R.A. 7832 was enacted by Congress to afford electric service providers multiple remedies to protect themselves from electricity pilferage. These remedies include the **immediate disconnection of the electric service** of an erring customer, criminal prosecution, and the imposition of surcharges.[10] However, the service provider must avail of any or all of these remedies *within legal bounds*, in strict compliance with the requirements and/or conditions set forth by law.

Section 4(a) of R.A. 7832 provides that the discovery of an outside connection attached on the electric meter shall constitute as *prima facie* evidence of illegal use of electricity by the person who *benefits* from the illegal use *if* the discovery is **personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board** *(ERB)*. With the presence of such *prima facie* evidence, the electric service provider is within its rights to immediately disconnect the electric service of the consumer *after* due notice.

This Court has repeatedly stressed the significance of the presence of an authorized government representative during an inspection of electric facilities, *viz.*:

The presence of government agents who may authorize immediate disconnections go into the essence of due process. Indeed, we cannot allow respondent to act virtually as prosecutor and judge in imposing the penalty of disconnection due to alleged meter tampering. That would not sit well in a democratic country. After all, Meralco is a monopoly that derives its power from the government. Clothing it with unilateral authority to disconnect would

---

[9] *Samar II Electric Cooperative, Inc. v. Quijano*, G.R. No. 144474, April 27, 2007, 522 SCRA 364, 375, 376.

[10] *Id.* at 376-377.

be equivalent to giving it a license to tyrannize its hapless customers.[11] (emphasis supplied)

Additionally, Section 6 of R.A. 7832 affords a private electric utility the right and authority to immediately disconnect the electric service of a consumer who has been caught *in flagrante delicto* doing any of the acts covered by Section 4(a). However, the law clearly states that the disconnection may only be done *after* serving a written notice or warning to the consumer.

To reiterate, R.A. 7832 has two requisites for an electric service provider to be authorized to disconnect its customer's electric service on the basis of alleged electricity pilferage: *first,* an officer of the law or an authorized ERB representative must be present during the inspection of the electric facilities; and *second*, even if there is *prima facie* evidence of illegal use of electricity and the customer is caught *in flagrante delicto* committing the acts under Section 4(a), the customer must still be given due notice prior to the disconnection.[12]

In its defense, MERALCO insists that it observed due process when its service inspector disconnected the respondents' electric service, *viz.*:

Under the present situation, there is no doubt that due process, as required by R.A. 7832, was observed [when] the petitioner discontinued the electric supply of respondent: there was an inspection conducted in the premises of respondent with the consent of their authorized representative; it was discovered during the said inspection that private respondents were using outside connection; the nature of the violation was explained to private respondents' representative; the inspection and discovery was personally witnessed and attested to by private respondents' representative; **private respondents failed and refused to pay the differential billing amounting to ₱179,231.70 before their electric service was disconnected**.[13] (emphasis supplied)

---

[11] *Quisumbing v. Manila Electric Company*, G.R. No. 142943, April 3, 2002, 380 SCRA 195, 208.

[12] *Manila Electric Company v. Navarro-Domingo,* G.R. No. 161893, June 27, 2006, 493 SCRA 363, 371.

[13] See Petition for Review on *Certiorari*, *rollo,* p. 22.

After a thorough examination of the records of the case, we find no proof that MERALCO complied with these two requirements under R.A. 7832. MERALCO never even alleged in its submissions that an ERB representative or an officer of the law was present during the inspection of the respondents' electric meter. Also, it did not claim that the respondents were ever notified beforehand of the impending disconnection of their electric service.

In view of MERALCO's failure to comply with the strict requirements under Sections 4 and 6 of R. A. No. 7832, **we hold that MERALCO had no authority to immediately disconnect the respondents' electric service.** As a result, the immediate disconnection of the respondents' electric service is **presumed to be in bad faith.**

We point out, too, that MERALCO's allegation that the respondents refused to pay the differential billing *before* the disconnection of their electric service is an obvious falsity. MERALCO never disputed the fact that the respondents' electric service was disconnected on November 5, 1999 – the same day as when the electric meter was inspected. Also, MERALCO's demand letter for payment of the differential billing is dated December 4, 1999. Thus, there is no truth to the statement that the respondents first failed to pay the differential billing and only then was their electric service disconnected.

The disconnection of respondents' electric service is not supported by MERALCO's own Terms and Conditions of Service.

In addition, we observe that MERALCO also failed to follow its own procedure for the discontinuance of service under its contract of service with the respondents. We quote in this regard the relevant terms of service:

DISCONTINUANCE OF SERVICE:

The Company reserves the right to discontinue service in case the customer is in arrears in the payment of bills in those cases where the meter stopped or failed to register the correct amount of energy consumed, or failure to comply with any of these terms and

conditions or in case of or to prevent fraud upon the Company. **Before disconnection is made in case of or to prevent fraud, the Company may adjust the bill of said customer accordingly and if the adjusted bill is not paid, the Company may disconnect the same.** In case of disconnection, the provisions of Revised Order No. 1 of the former Public Service Commission (now ERC) shall be observed. Any such suspension of service shall not terminate the contract between the Company and the customer.[14] (emphasis supplied)

There is nothing in its contract of service that gives MERALCO the authority to immediately disconnect a customer's electric connection. MERALCO's contractual right to disconnect electric service arises *only* after the customer has been notified of his adjusted bill and has been afforded the opportunity to pay the differential billing.

In this case, the disconnection of the respondents' electric service happened on November 5, 1999, while the demand for the payment of differential billing was made through a letter dated December 4, 1999. **Thus, we hold that MERALCO breached its contract of service with the respondents as it disconnected the latter's electric service *before* they were ever notified of the differential billing.**

Differential billing

Section 6 of R.A. 7832 defines differential billing as *"the amount to be charged to the person concerned for the unbilled electricity illegally consumed by him."* Clearly, the law provides that the person who *actually consumed* the electricity illegally shall be liable for the differential billing. It does not *ipso facto* make liable for payment of the differential billing the registered customer whose electrical facilities had been tampered with and utilized for the illegal use of electricity.

In this case, as the *prima facie* presumption afforded by Section 4 of R.A. 7832 does not apply, it falls upon MERALCO to first prove that the respondents had actually installed the outside connection attached on their electric meter and that they had benefited

---

[14] See Petition for Review on *Certiorari*, *rollo,* p. 16.

from the electricity consumed through the outside connection before it could hold them liable for the differential billing.

The records show that MERALCO presented no proof that it ever caught the respondents, or anyone acting in the respondents' behalf, in the act of tampering with their electric meter. As the CA correctly held, the respondents could not have been caught *in flagrante delicto* committing the tampering since they were not present during the inspection of the electric meter, nor were any of their representatives at hand.[15] Moreover, the presence of an outside connection attached to the electric meter operates only as a *prima facie* evidence of electricity pilferage under R.A. 7832; it is not enough to declare the respondents *in flagrante delicto* tampering with the electric meter.[16] In fact, MERALCO itself admitted in its submissions that Nieves was the illegal user of the outside connection attached to the respondents' electric meter.[17]

On this point, MERALCO argues that Nieves was an authorized representative of the respondents. However, the records are bereft of any sufficient proof to support this claim. The fact that she is an occupant of the premises where the electric meter was installed does not make her the respondents' representative considering that the unit occupied by the respondents is separate and distinct from the one occupied by Nieves and her family. Similarly, the fact that Nieves was able to show the respondents' latest electric bill does not make her the latter's authorized representative.

While this Court recognizes the right of MERALCO as a public utility to collect system losses, the courts cannot and will not blindly grant a public utility's claim for differential billing if there is no sufficient evidence to prove entitlement.[18]

---

[15] *Go v. Leyte II Electric Cooperative, Inc.*, G.R. No. 176909, February 18, 2008, 546 SCRA 187, 195.

[16] *Manila Electric Company v. Chua*, G.R. No. 160422, July 5, 2010, 623 SCRA 81, 98.

[17] See MERALCO'S Answer with Compulsory Counterclaim, *rollo,* p. 92.

[18] *Manila Electric Company v. Wilcon Builders Supply, Inc.,* G.R. No. 171534, June 30, 2008, 556 SCRA 742, 756, 757.

As MERALCO failed to sufficiently prove its claim for payment of the differential billing, we rule that the respondents cannot be held liable for the billed amount.

On the issue of damages

With MERALCO in bad faith for its failure to follow the strict requirements under R.A. 7832 in the disconnection of the respondents' electric service, we agree with the CA that the award of damages is in order. However, we deem it proper to modify the award in accordance with prevailing jurisprudence.

First, actual damages pertain to such injuries or losses that are actually sustained and are susceptible of measurement. They are intended not to enrich the injured party but to put him in the position in which he was in before he was injured.[19]

In *Viron Transportation Co., Inc. v. Delos Santos*,[20] we explained that in order to recover actual damages, there must be pleading and proof of the damages suffered, *viz.*:

> Actual damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages**. To justify an award of actual damages, there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts.** (emphasis supplied)

In this case, Patricia stated that her family's food expenses doubled after MERALCO disconnected their electric services as they could no longer cook at home. We note, however, that there is no sufficient proof presented to show the actual food expenses that the respondents incurred. Nevertheless, Patricia also testified that they were forced to move to a new residence after living without electricity for eight (8) months at their home in Tondo, Manila. They proved this allegation through the presentation of a contract of lease and receipts for payment of

---

[19] *Oceaneering Contractors (PHILS), Inc. v. Barretto,* G.R. No. 184215, February 9, 2011, 642 SCRA 596, 605, 606.

[20] G.R. No. 138296, November 22, 2000, 345 SCRA 509, 519.

monthly rentals for 42 months amounting to ₱210,000.00. Thus, **we find it proper to increase the award of actual damages from ₱100,000.00 to ₱210,000.00**.

Second, moral damages are designed to compensate and alleviate the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar harm unjustly caused to a person.[21] They may be properly awarded to persons who have been unjustly deprived of property without due process of law.[22]

In *Regala v. Carin*,[23] we discussed the requisites for the award of moral damages, *viz*:

> In fine, an award of moral damages calls for the presentation of 1) evidence of besmirched reputation or physical, mental or psychological suffering sustained by the claimant; 2) a culpable act or omission factually established; 3) proof that the wrongful act or omission of the defendant is the proximate cause of the damages sustained by the claimant; and 4) the proof that the act is predicated on any of the instances expressed or envisioned by Article 2219 and Article 2220 of the Civil Code.

Applied to this case, after due consideration of the manner of disconnection of the respondents' electric service and the length of time that the respondents had to endure without electricity, we find the award of moral damages proper. Aside from having to spend eight (8) months in the dark at their own residence, Patricia testified that they suffered extreme social humiliation, embarrassment, and serious anxiety as they were subjected to gossip in their neighborhood of stealing electricity through the use of an illegal connection. The damage to the respondents' reputation and social standing was aggravated by their decision to move to a new residence following the absolute refusal of MERALCO to restore their electric services.

---

[21] *Regala v. Carin,* G.R. No. 188715, April 6, 2011, 647 SCRA 419, 426.

[22] CIVIL CODE, Article 32.

[23] *Supra* note 21, at 427-428.

However, we find the award of ₱1,500,000.00 in moral damages to be excessive. Moral damages are not intended to enrich the complainant as a penalty for the defendant. It is awarded as a means to ease the moral suffering the complainant suffered due to the defendant's culpable action.[24] While prevailing jurisprudence deems it appropriate to award ₱100,000.00 in moral damages in cases where MERALCO wrongfully disconnected electric service,[25] we hold that such amount is not commensurate with the injury suffered by the respondents. Thus, in view of the specific circumstances present in this case, **we reduce the award of moral damages from ₱1,500,000.00 to ₱300,000.00**.

Third, exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated, or compensatory damages. The award of exemplary damages is allowed by law as a warning to the public and as a deterrent against the repetition of socially deleterious actions.[26]

In numerous cases,[27] this Court found that MERALCO failed to comply with the requirements under R.A. 7832 before a disconnection of a customer's electric service could be effected. In these cases, we aptly awarded exemplary damages against MERALCO to serve as a warning against repeating the same actions.

---

[24] *Manila Electric Company v. Jose*, G.R. No. 152769, February 14, 2007, 515 SCRA 669, 680.

[25] *Supra* note 17.

[26] *Tan v. OMC Carriers, Inc.,* G.R. No. 190521, January 12, 2011, 639 SCRA 471, 485.

[27] *Quisumbing v. Manila Electric Company*, *supra* note 11; *Manila Electric Company v. Santiago*, G.R. No. 170482, September 4, 2009, 598 SCRA 315; *Manila Electric Company v. Castillo*, G.R. No. 182976, January 14, 2013, 688 SCRA 455; *Manila Electric Company v. Chua*, *supra* note 16; *Manila Electric Company v. Hsing Nan Tannery,* G.R. No. 178913, February 12, 2009, 578 SCRA 640; *Manila Electric Company v. Navarro-Domingo, supra* note 12.

In this case, MERALCO totally failed to comply with the two requirements under R.A. 7832 before disconnecting the respondents' electric service. While MERALCO insists that R.A. 7832 gives it the right to disconnect the respondents' electric service, nothing in the records indicates that it attempted to comply with the statutory requirements before effecting the disconnection.

Under these circumstances, we find that the previous awards against MERALCO have not served their purpose as a means to prevent the repetition of the same damaging actions that it has committed in the past. Therefore, **we increase the award of exemplary damages from ₱300,000.00 to ₱500,000.00** in the hope that this will persuade MERALCO to be more prudent and responsible in its observance of the requirements under the law in disconnecting a customer's electrical supply.

Lastly, in view of the award of exemplary damages, we find the award of attorney's fees proper, in accordance with Article 2208(1) of the Civil Code. **We find the CA's award of attorney's fees in the amount of ₱100,000.00 just and reasonable under the circumstances.**

WHEREFORE, the petition is **DENIED.** The decision dated July 30, 2010 and resolution dated January 3, 2011 of the Court of Appeals in CA-G.R. CV No. 87843 are **AFFIRMED** with the following modifications: MERALCO is ordered to pay respondents Spouses Sulpicio and Patricia Ramos ₱210,000.00 as actual damages, ₱300,000.00 as moral damages, ₱500,000.00 as exemplary damages, and ₱100,000.00 as attorneys fees. Costs against Manila Electric Company.

SO ORDERED.

Carpio (*Chairperson*)*, del Castillo, Mendoza,* and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 199194. February 10, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **JOSE B. SAREÑOGON, JR.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY BE AVAILED OF TO CHALLENGE THE DECISION OF THE TRIAL COURT ON A PETITION FOR DECLARATION OF PRESUMPTIVE DEATH.—** In the 2005 case of *Republic v. Bermudez-Lorino,* we held that the RTC's Decision on a Petition for declaration of presumptive death pursuant to Article 41 of the Family Code is immediately final and executory. Thus, the CA has no jurisdiction to entertain a notice of appeal pertaining to such judgment. Concurring in the result, Justice (later Chief Justice) Artemio Panganiban further therein pointed out that the correct remedy to challenge the RTC Decision was to institute a petition for *certiorari* under Rule 65, and not a petition for review under Rule 45. "x x x [U]nder Article 41 of the Family Code, the losing party in a summary proceeding for the declaration of presumptive death may file a petition for *certiorari* with the CA on the ground that, in rendering judgment thereon, the trial court committed grave abuse of discretion amounting to lack of jurisdiction. From the Decision of the CA, the aggrieved party may elevate the matter to this Court via a petition for review on *certiorari* under Rule 45 of the Rules of Court."

2. **CIVIL LAW; FAMILY CODE; MARRIAGE; DECLARATION OF PRESUMPTIVE DEATH; REQUISITES.—** In *Republic v. Cantor*, we x x x held that: "Before a judicial declaration of presumptive death can be obtained, it must be shown that the prior spouse had been absent for four consecutive years and the present spouse had a well-founded belief that the prior spouse was already dead. Under Article 41 of the Family Code, there are four essential requisites for the declaration of presumptive death: 1. That the absent spouse has been missing for four consecutive years, or two consecutive years if the

disappearance occurred where there is danger of death under the circumstances laid down in Article 391 of the Civil Code; 2. That the present spouse wishes to remarry; 3. That the present spouse has a well-founded belief that the absentee is dead; and, 4. That the present spouse files a summary proceeding for the declaration of presumptive death of the absentee."

3. ID.; ID.; ID.; ID.; ID.; "WELL-FOUNDED BELIEF" STANDARD, EXPLAINED; THE COURT IMPOSES A STRICT STANDARD IN PETITIONS FOR DECLARATION OF PRESUMPTIVE DEATH.— With respect to the third element (which seems to be the element that in this case invites extended discussion), the holding is that the – "mere absence of the spouse (even for such period required by the law), or lack of news that such absentee is still alive, failure to communicate [by the absentee spouse or invocation of the] general presumption on absence under the Civil Code [would] not suffice. This conclusion proceeds from the premise that Article 41 of the Family Code places upon the present spouse the burden of proving the additional and more stringent requirement of 'well-founded belief' which can only be discharged upon a due showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse's whereabouts but, more importantly, that the absent spouse is [either] still alive or is already dead. x x x The law did not define what is meant by 'well-founded belief.' It depends upon the circumstances of each particular case. Its determination, so to speak, remains on a case-to-case basis. To be able to comply with this requirement, the present spouse must prove that his/her belief was the result of diligent and reasonable efforts and inquiries to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. It requires exertion of active effort (not a mere passive one)." x x x Given the Court's imposition of "strict standard" in a petition for a declaration of presumptive death under Article 41 of the Family Code, it must follow that there was no basis at all for the RTC's finding that Jose's Petition complied with the requisites of Article 41 of the Family Code, in reference to the "well-founded belief" standard. If anything, Jose's pathetically anemic efforts to locate the missing Netchie are notches below the required degree of stringent diligence prescribed by jurisprudence. For, aside from his bare claims that he had inquired from alleged

friends and relatives as to Netchie's whereabouts, Jose did not call to the witness stand specific individuals or persons whom he allegedly saw or met in the course of his search or quest for the allegedly missing Netchie. Neither did he prove that he sought the assistance of the pertinent government agencies as well as the media. Nor did he show that he undertook a thorough, determined and unflagging search for Netchie, say for at least two years (and what those years were), and naming the particular places, provinces, cities, barangays or municipalities that he visited, or went to, and identifying the specific persons he interviewed or talked to in the course of his search.

LEONEN, *J., dissenting opinion*:

1. CIVIL LAW; FAMILY CODE; MARRIAGE; DECLARATION OF PRESUMPTIVE DEATH; A STRICT STANDARD SHOULD NOT BE IMPOSED ON THE PRESENT SPOUSE IN ASCERTAINING THE STATUS AND WHEREABOUTS OF THE ABSENT SPOUSE.— I maintain that such a strict standard cannot be the basis for appreciating the efforts made by a spouse in ascertaining the status and whereabouts of his or her absent spouse. This strict standard makes it apparent that marital obligations remain incumbent only upon the present spouse. It unduly reduces the mutual duty of presence to the sole and exclusive obligation of the spouse compelled to embark on a search. It turns a blind eye to how the absent spouse has failed to live up to his or her own duty to be present. x x x Spouses are fundamentally called "to live together, observe mutual love, respect and fidelity, and render mutual help and support." Presence is integral to marital relations. x x x Focusing on the supposed inadequacies of Jose's efforts makes it seem as though the burden of presence is his alone to bear, when it is Netchie who is missing. It is she who has proven herself no longer capable of performing her marital obligations. As she has been absent for the statutorily prescribed period despite her obligations as Jose's spouse, Netchie must be considered presumptively dead. The majority heavily quotes from *Cantor* and cites the supposed rationale for imposing a strict standard: that is, to ensure that Article 41 petitions are not used as shortcuts to undermine the indissolubility of marriage. I addressed this matter in my Dissent in *Orcelino-Villanueva*

x x x. As with *Cantor* and *Orcelino-Villanueva*, "[t]he majority is gripped with the apprehension that a petition for declaration of presumptive death may be availed of as a dangerous expedient." As also with these cases, however, nothing here sustains and justifies fear. Inordinate anxiety is all that there is. What is manifest is that Jose has established facts that warrant the declaration that Netchie is presumptively dead.

2. ID.; ID.; ID.; ID.; PETITIONS FOR DECLARATION OF PRESUMPTIVE DEATH OF AN ABSENT SPOUSE; INITIATED AND BASED ON A WELL-GROUNDED BELIEF WHICH IS INTENDED TO SUSTAIN A PRESUMPTION.— Petitions for declaration of presumptive death of an absent spouse are specifically provided for in Article 41 of the Family Code x x x. Article 41 permits a spouse to seek judicial relief, *not* on the basis of antecedent occurrences that have actually transpired, but on the mere basis of a "belief." Article 41 petitions are, thus, unique in that they may be initiated and prosper *not* based on something concrete, but based on something that can be considered an abstraction: a spouse's state of mind. Because this abstraction cannot otherwise be factually established, it becomes necessary to inquire into how the petitioning spouse actually conducted himself or herself, that is, his or her overt acts. Article 41 imposes a qualitative standard for the availing of relief. Not only must there be a belief, this belief must be "well-grounded." To say that this belief is well-grounded is to say that there is "*reasonable basis* for holding to such belief." Therefore, what Article 41 requires is the satisfaction of a basic and plain test: rationality. What is rational or reasonable to a person is a matter that cannot be dealt with in absolute terms. Context is imperative. In appreciating reasonableness, cut-and-dried a priori standards cannot control. Reliance on such standards erroneously presupposes similarity, if not complete uniformity, of human experience x x x. As vital as the point ***from which*** Article 41 petitions proceed (i.e., reasonable belief) is the point ***to which*** they intend to proceed, that is, sustaining a mere presumption. As crucial as the starting point of a well-founded belief is the intended endpoint of a mere presumption x x x. The figurative bookends—the root and the cusp—of Article 41 petitions delineate the boundaries of judicial inquiry. A strict standard grounded on idealized standards, on "what should have been," is misplaced.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Acosta Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

A petition for certiorari pursuant to Rule 65 of the Rules of Court is the proper remedy to challenge a trial court's declaration of presumptive death under Article 41 of The Family Code of the Philippines[1] (Family Code).[2]

This Petition for Review on *Certiorari*[3] assails the October 24, 2011 Decision[4] of the Court of Appeals (CA) in CA-G.R. SP No. 04158-MIN dismissing the Petition for *Certiorari* filed by petitioner Republic of the Philippines (Republic).

Factual Antecedents

On November 4, 2008, respondent Jose B. Sareñogon, Jr. (Jose) filed a Petition[5] before the Regional Trial Court (RTC) of Ozamiz[6] City-Branch 15 for the declaration of presumptive death of his wife, Netchie S.[7] Sareñogon (Netchie).[8]

---

[1] EXECUTIVE ORDER NO. 209.

[2] *Republic v. Cantor*, G.R. No. 184621, December 10, 2013, 712 SCRA 1, 16-18.

[3] *Rollo*, pp. 9-40.

[4] *Id*. at 42-50; penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Zenaida T. Galapate-Laguilles.

[5] *Id*. at. 51-52.

[6] Also spelled as "Ozamis" in other parts of the CA Decision.

[7] In *Rollo,* p. 53, Netchie's maiden name per a copy of their Marriage Contract dated August 10, 1996 is "Netchie S. Polistico".

[8] *Rollo*, p. 43.

In an Amended Order dated Februrary 11, 2009, the RTC set the Petition for initial hearing on April 16, 2009. It likewise directed the publication of said Order in a newspaper of general circulation in the cities of Tangub, Ozamiz and Oroquieta, all in the province of Misamis Occidental. Nobody opposed the Petition.[9] Trial then followed.[10]

Jose testified that he first met Netchie in Clarin, Misamis Occidental in 1991.[11] They later became sweethearts and on August 10, 1996, they got married in civil rites at the Manila City Hall.[12] However, they lived together as husband and wife for a month only because he left to work as a seaman while Netchie went to Hongkong as a domestic helper.[13] For three months, he did not receive any communication from Netchie.[14] He likewise had no idea about her whereabouts.[15] While still abroad, he tried to contact Netchie's parents, but failed, as the latter had allegedly left Clarin, Misamis Occidental.[16] He returned home after his contract expired.[17] He then inquired from Netchie's relatives and friends about her whereabouts, but they also did not know where she was.[18] Because of these, he had to presume that his wife Netchie was already dead.[19] He filed the Petition before the RTC so he could contract another marriage pursuant to Article 41 of the Family Code.[20]

---

[9] *Id*. at 54.

[10] *Id*. at 43.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*. at 43-44 and 54.

[17] *Id*. at 44 and 54.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 44 and 55.

Jose's testimony was corroborated by his older brother Joel Sareñogon, and by Netchie's aunt, Consuelo Sande.[21] These two witnesses testified that Jose and Netchie lived together as husband and wife only for one month prior to their leaving the Philippines for separate destinations abroad.[22] These two added that they had no information regarding Netchie's location.[23]

Ruling of the Regional Trial Court

In its Decision[24] dated January 31, 2011 in Spec. Proc. No. 045-08, the RTC held that Jose had established by preponderance of evidence that he is entitled to the relief prayed for under Article 41 of the Family Code.[25] The RTC found that Netchie had disappeared for more than four years, reason enough for Jose to conclude that his wife was indeed already dead.[26] The dispositive portion of the Decision reads:

> VIEWED IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered declaring respondent presumptively dead for purposes of remarriage of petitioner.
>
> SO ORDERED.[27]

Proceedings before the Court of Appeals

On April 19, 2011, the Republic, through the Office of the Solicitor General (OSG), elevated the judgment of the RTC to the CA *via* a Petition for *Certiorari*[28] under Rule 65 of the Revised Rules of Court.

---

[21] *Id*. at 44 and 54.

[22] *Id*.

[23] *Id*.

[24] *Id*. at 54-55; penned by Executive Judge Edmundo P. Pintac.

[25] *Id*. at 44 and 55.

[26] *Id*.

[27] *Id*. at 55.

[28] *Id*. at 42 and 44.

In its Decision[29] of October 24, 2011, the CA held that the Republic used the wrong recourse by instituting a petition for *certiorari* under Rule 65 of the Revised Rules of Court. The CA perceived no error at all in the RTC's judgment granting Jose's Petition for the declaration of the presumptive death of his wife, Netchie. The CA thus held in effect that the Republic's appeal sought to correct or review the RTC's alleged misappreciation of evidence which could not translate into excess or lack of jurisdiction amounting to grave abuse of discretion.[30] The CA noted that the RTC properly caused the publication of the Order setting the case for initial hearing.[31] The CA essentially ruled that, "[a] writ of *certiorari* may not be used to correct a lower court's evaluation of the evidence and factual findings. In other words, it is not a remedy for mere errors of judgment, which are correctible by an appeal."[32] The CA then disposed of the case in this wise:

> WHEREFORE, the petition for certiorari is dismissed.
>
> SO ORDERED.[33]

Issues

The Republic filed the instant Petition[34] raising the following issues:

> THE HONORABLE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN ITS ASSAILED DECISION BECAUSE:
>
> I
>
> THE HONORABLE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW IN DISMISSING THE REPUBLIC'S

---

[29] *Id*. at 42-50.

[30] *Id*. at 49.

[31] *Id*.

[32] *Id*.

[33] *Id*. at 50.

[34] *Id*. at 9-40.

PETITION FOR REVIEW ON CERTIORARI UNDER RULE 65, ON THE GROUND THAT THE PROPER REMEDY SHOULD HAVE BEEN TO APPEAL THE RTC DECISION, BECAUSE IMMEDIATELY FINAL AND EXECUTORY JUDGMENTS OR DECISIONS ARE NOT APPEALABLE UNDER THE EXPRESS PROVISION OF LAW.

II

THE ALLEGED EFFORTS OF RESPONDENT IN LOCATING HIS MISSING WIFE DO NOT SUFFICIENTLY SUPPORT A "WELL-FOUNDED BELIEF" THAT RESPONDENT'S ABSENT WIFE X X X IS PROBABLY DEAD.[35]

Petitioner's Arguments

The Republic insists that a petition for *certiorari* under Rule 65 of the Revised Rules of Court is the proper remedy to challenge an RTC's immediately final and executory Decision on a presumptive death.[36]

The Republic claims that based on jurisprudence, Jose's alleged efforts in locating Netchie did not engender or generate a well-founded belief that the latter is probably dead.[37] It maintains that even as Jose avowedly averred that he exerted efforts to locate Netchie, Jose inexplicably failed to enlist the assistance of the relevant government agencies like the Philippine National Police, the National Bureau of Investigation, the Department of Foreign Affairs, the Bureau of Immigration, the Philippine Overseas Employment Administration, or the Overseas Workers Welfare Administration.[38] It likewise points out that Jose did not present any disinterested person to corroborate his allegations that the latter was indeed missing and could not be found.[39] It also contends that Jose did not advert to circumstances, events,

---

[35] *Id*. at 16-17.

[36] *Id*. at 17-27, 102-109.

[37] *Id*. at 27-35, 109-114.

[38] *Id*. at 31, 111-112.

[39] *Id*. at 31-32, 112.

occasions, or situations that would prove that he did in fact make a comprehensive search for Netchie.[40] The Republic makes the plea that courts should ever be vigilant and wary about the propensity of some erring spouses in resorting to Article 41 of the Family Code for the purpose of terminating their marriage.[41]

Finally, the Republic submits that Jose did not categorically assert that he wanted to have Netchie declared presumptively dead because he intends to get married again, an essential premise of Article 41 of the Family Code.[42]

Respondent's Arguments

Jose counters that the CA properly dismissed the Republic's Petition because the latter's petition is erected upon the ground that the CA did not correctly weigh or calibrate the evidence on record, or assigned to the evidence its due worth, import or significance; and that such a ground does not avail in a petition for *certiorari* under Rule 65 of the Revised Rules of Court.[43] Jose also contends that the Republic should have instead filed a motion for reconsideration[44] of the RTC's Decision of January 31, 2011, reasoning out that a motion for reconsideration is a plain, speedy and adequate remedy in law. Jose furthermore submits that the RTC did not act arbitrarily or capriciously in granting his petition because it even dutifully complied with the publication requirement.[45] He moreover argues that to sustain the present petition would allow the executive branch to unduly make inroads into judicial territory.[46] Finally, he insists that the trial court's factual findings are entitled to great weight and respect as these were arrived after due deliberation.[47]

---

[40] *Id*. at 31, 112.

[41] *Id*. at 33-35, 113-114.

[42] *Id*. at 35-36, 114-115.

[43] *Id*. at 62-63, 90-92.

[44] *Id*. at 63, 93.

[45] *Id*. at 63-65, 92.

[46] *Id*. at 64, 92.

[47] *Id*. at 65, 92-93.

This Court's Ruling

This Court finds the Republic's petition meritorious.

A petition for certiorari under Rule 65 of the Rules of Court is the proper remedy to question the RTC's Decision in a summary proceeding for the declaration of presumptive death

In the 2005 case of *Republic v. Bermudez-Lorino,*[48] we held that the RTC's Decision on a Petition for declaration of presumptive death pursuant to Article 41 of the Family Code is immediately final and executory. Thus, the CA has no jurisdiction to entertain a notice of appeal pertaining to such judgment.[49] Concurring in the result, Justice (later Chief Justice) Artemio Panganiban further therein pointed out that the correct remedy to challenge the RTC Decision was to institute a petition for *certiorari* under Rule 65, and not a petition for review under Rule 45.[50]

We expounded on this appellate procedure in *Republic v. Tango:*[51]

This case presents an opportunity for us to settle the rule on appeal of judgments rendered in summary proceedings under the Family Code and accordingly, refine our previous decisions thereon.

Article 238 of the Family Code, under Title XI: SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW, establishes the rules that govern summary court proceedings in the Family Code:

> ART. 238. Until modified by the Supreme Court, the procedural rules in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such

---

[48] 489 Phil. 761 (2005).

[49] *Id*. at 768-769.

[50] *Republic v. Granada,* 687 Phil. 403, 408-409 (2012), citing *Republic v. Bermudez-Lorino*, *supra*.

[51] 612 Phil. 76 (2009).

> cases shall be decided in an expeditious manner without regard to technical rules.

In turn, Article 253 of the Family Code specifies the cases covered by the rules in chapters two and three of the same title. It states:

> ART. 253. The foregoing rules in Chapters 2 and 3 hereof shall likewise govern summary proceedings filed under Articles 41, 51, 69, 73, 96, 124 and 217, insofar as they are applicable. (Emphasis supplied.)

In plain text, Article 247 in Chapter 2 of the same title reads:

> ART. 247. The judgment of the court shall be immediately final and executory.

By express provision of law, the judgment of the court in a summary proceeding shall be immediately final and executory. As a matter of course, it follows that no appeal can be had of the trial court's judgment in a summary proceeding for the declaration of presumptive death of an absent spouse under Article 41 of the Family Code. It goes without saying, however, that an aggrieved party may file a petition for certiorari to question abuse of discretion amounting to lack of jurisdiction. Such petition should be filed in the Court of Appeals in accordance with the Doctrine of Hierarchy of Courts. To be sure, even if the Court's original jurisdiction to issue a writ of certiorari is concurrent with the RTCs and the Court of Appeals in certain cases, such concurrence does not sanction an unrestricted freedom of choice of court forum. x x x[52] (Citation omitted; Underscoring supplied)

"In sum, under Article 41 of the Family Code, the losing party in a summary proceeding for the declaration of presumptive death may file a petition for *certiorari* with the CA on the ground that, in rendering judgment thereon, the trial court committed grave abuse of discretion amounting to lack of jurisdiction. From the Decision of the CA, the aggrieved party may elevate the matter to this Court via a petition for review on *certiorari* under Rule 45 of the Rules of Court."[53]

---

[52] *Id*. at 82-83.

[53] *Republic v. Granada, supra* note 50 at 411.

In fact, in *Republic v. Narceda,*[54] we held that the OSG availed of the wrong remedy when it filed a notice of appeal under Rule 42 with the CA to question the RTC's Decision declaring the presumptive death of Marina B. Narceda.[55]

Above all, this Court's ruling in *Republic v. Cantor*[56] made it crystal clear that the OSG properly availed of a petition for *certiorari* under Rule 65 to challenge the RTC's Order therein declaring Jerry Cantor as presumptively dead.

Based on the foregoing, it is clear that the Republic correctly availed of *certiorari* under Rule 65 of the Revised Rules of Court in assailing before the CA the aforesaid RTC's Decision.

The "well-founded belief" requisite under Article 41 of the Family Code is complied with only upon a showing that sincere honest-to-goodness efforts had indeed been made to ascertain whether the absent spouse is still alive or is already dead

We now proceed to determine whether the RTC properly granted Jose's Petition.

Article 41 of the Family Code pertinently provides that:

> Art. 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.
>
> For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary

---

[54] G.R. No. 182760, April 10, 2013, 695 SCRA 483.

[55] *Id*. at 489-490.

[56] *Supra* note 2 at 14-18.

proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse. (83a)

In *Republic v. Cantor*,[57] we further held that:

> Before a judicial declaration of presumptive death can be obtained, it must be shown that the prior spouse had been absent for four consecutive years and the present spouse had a well-founded belief that the prior spouse was already dead. Under Article 41 of the Family Code, there are four essential requisites for the declaration of presumptive death:
>
> 1. That the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391 of the Civil Code;
>
> 2. That the present spouse wishes to remarry;
>
> 3. That the present spouse has a well-founded belief that the absentee is dead; and,
>
> 4. That the present spouse files a summary proceeding for the declaration of presumptive death of the absentee.[58] (Underscoring supplied)

With respect to the third element (which seems to be the element that in this case invites extended discussion), the holding is that the –

> mere absence of the spouse (even for such period required by the law), or lack of news that such absentee is still alive, failure to communicate [by the absentee spouse or invocation of the] general presumption on absence under the Civil Code [would] not suffice. This conclusion proceeds from the premise that Article 41 of the Family Code places upon the present spouse the burden of proving the additional and more stringent requirement of "well-founded belief" which can only be discharged upon a due showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the

---

[57] *Id*.

[58] *Id*. at 18.

absent spouse's whereabouts but, more importantly, that the absent spouse is [either] still alive or is already dead.

xxx xxx xxx

The law did not define what is meant by "well-founded belief." It depends upon the circumstances of each particular case. Its determination, so to speak, remains on a case-to-case basis. To be able to comply with this requirement, the present spouse must prove that his/her belief was the result of diligent and reasonable efforts and inquiries to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. It requires exertion of active effort (not a mere passive one).[59] (Emphasis omitted; underscoring supplied)

In the case at bar, the RTC ruled that Jose has "well-founded belief" that Netchie was already dead upon the following grounds:

(1) Jose allegedly tried to contact Netchie's parents while he was still out of the country, but did not reach them as they had allegedly left Clarin, Misamis Occidental;

(2) Jose believed/presumed that Netchie was already dead because when he returned home, he was not able to obtain any information that Netchie was still alive from Netchie's relatives and friends;

(3) Jose's testimony to the effect that Netchie is no longer alive, hence must be presumed dead, was corroborated by Jose's older brother, and by Netchie's aunt, both of whom testified that he (Jose) and Netchie lived together as husband and wife only for one month and that after this, there had been no information as to Netchie's whereabouts.

In the above-cited case of *Republic v. Cantor,*[60] this Court held that the present spouse (Maria Fe Espinosa Cantor) merely conducted a "passive search" because she simply made unsubstantiated inquiries from her in-laws, from neighbors and

---

[59] *Republic v. Cantor, supra* note 2 at 20, citing *Republic v. Court of Appeals,* 513 Phil. 391, 397-398 (2005).

[60] *Supra* note 2.

friends. For that reason, this Court stressed that the degree of diligence and reasonable search required by law is not met (1) when there is failure to present the persons from whom the present spouse allegedly made inquiries especially the absent spouse's relatives, neighbors, and friends, (2) when there is failure to report the missing spouse's purported disappearance or death to the police or mass media, and (3) when the present spouse's evidence might or would only show that the absent spouse chose not to communicate, but not necessarily that the latter was indeed dead.[61] The rationale for this palpably stringent or rigorous requirement has been marked out thus:

> x x x [T]he Court, fully aware of the possible collusion of spouses in nullifying their marriage, has consistently applied the "strict standard" approach. This is to ensure that a petition for declaration of presumptive death under Article 41 of the Family Code is not used as a tool to conveniently circumvent the laws. Courts should never allow procedural shortcuts and should ensure that the stricter standard required by the Family Code is met. x x x
>
> The application of this stricter standard becomes even more imperative if we consider the State's policy to protect and strengthen the institution of marriage. Since marriage serves as the family's foundation and since it is the state's policy to protect and strengthen the family as a basic social institution, marriage should not be permitted to be dissolved at the whim of the parties. x x x
>
> x x x [I]t has not escaped this Court's attention that the strict standard required in petitions for declaration of presumptive death has not been fully observed by the lower courts. We need only to cite the instances when this Court, on review, has consistently ruled on the sanctity of marriage and reiterated that anything less than the use of the strict standard necessitates a denial. To rectify this situation, lower courts are now expressly put on notice of the strict standard this Court requires in cases under Article 41 of the Family Code." (Citations omitted)[62]

---

[61] *Republic v. Cantor, supra* note 2 at 20-25, citing *Republic v. Court of Appeals, supra*, *Republic v. Granada, supra* note 50, and *Republic v. Nolasco,* G.R. No. 94053, March 17, 1993, 220 SCRA 20.

[62] *Republic v. Cantor, supra* note 2 at 25-27.

Given the Court's imposition of "strict standard" in a petition for a declaration of presumptive death under Article 41 of the Family Code, it must follow that there was no basis at all for the RTC's finding that Jose's Petition complied with the requisites of Article 41 of the Family Code, in reference to the "well-founded belief" standard. If anything, Jose's pathetically anemic efforts to locate the missing Netchie are notches below the required degree of stringent diligence prescribed by jurisprudence. For, aside from his bare claims that he had inquired from alleged friends and relatives as to Netchie's whereabouts, Jose did not call to the witness stand specific individuals or persons whom he allegedly saw or met in the course of his search or quest for the allegedly missing Netchie. Neither did he prove that he sought the assistance of the pertinent government agencies as well as the media. Nor did he show that he undertook a thorough, determined and unflagging search for Netchie, say for at least two years (and what those years were), and naming the particular places, provinces, cities, barangays or municipalities that he visited, or went to, and identifying the specific persons he interviewed or talked to in the course of his search.

WHEREFORE, the Petition is **GRANTED**. The Decision dated October 24, 2011 of the Court of Appeals in CA-G.R. SP No. 04158-MIN is **REVERSED AND SET ASIDE**. The respondent's Petition in said Spec. Proc. No. 045-08 is accordingly **DISMISSED**.

SO ORDERED.

Carpio (*Chairperson*), *Brion,* and *Mendoza, JJ.,* concur.

Leonen, J., see dissenting opinion.

DISSENTING OPINION

LEONEN, *J.*:

I dissent.

A petition praying for the declaration of presumptive death of an absent spouse should be resolved on its own merits, not

on the basis of preconceived notions of acts that the present spouse ought to have done. Approaching such cases with an a priori disapproving stance, which may be trumped only by compliance with an idealized "to-do list," is unreasonable. It not only prevents courts from appreciating the present spouse's efforts for their inherent merits; it also casts aside the more basic—and statutorily imposed[1]—duty of each spouse to be present: "to live together, observe mutual love, respect and fidelity, and render mutual help and support."[2]

Respondent Jose B. Sareñogon (Jose) was an overseas Filipino worker. Harsh realities, such as the lack of economic opportunities at home compounded with the need to provide for a fledgling family, compelled him to work abroad as a seafarer. However, because of Jose's dire situation, not only he but also his wife Netchie S. Sareñogon (Netchie) was compelled to go abroad in search of greener pastures. Within a month of being married, Jose and Netchie had to endure the bitterness of being separated in foreign lands just to make ends meet.[3]

As things would turn out, it was not only their deliberate, self-imposed separation that Jose would have to endure. Three months after leaving home for employment overseas, Jose received no communication from Netchie.[4] Even his inquiries with Netchie's parents proved futile as they were not to be found in their residence in Clarin, Misamis Occidental.[5] Undaunted, Jose personally searched for Netchie as soon as his means allowed him—that is, as soon as his contract as a seafarer expired—approaching her relatives and friends, all to no avail.[6] It was

---

[1] Article 68 of the Family Code obliges the husband and the wife "to live together, observe mutual love, respect and fidelity, and render mutual help and support."

[2] FAMILY CODE, Art. 68.

[3] *Rollo*, p. 43.

[4] *Id*.

[5] *Id*. at 43-44.

[6] *Id*.

only after all these that Jose resigned himself to Netchie's loss and pursued appropriate legal action through the Petition we now resolve.[7]

The majority is of the opinion that Jose's Petition for declaration of Netchie's presumptive death must be denied. It concludes that Jose failed to show that he acted out of the well-founded belief that Netchie was already dead and asserts that Jose's efforts did not show "honest-to-goodness efforts"[8] to ascertain whether Netchie was still alive. In doing so, the majority relies chiefly on *Republic of the Philippines v. Cantor*,[9] where a "strict standard"[10] was imposed on petitions for declaration of presumptive death of absent spouses.

I registered my Dissent in *Cantor*; I do so again here.

As in *Cantor*,[11] I maintain that such a strict standard cannot be the basis for appreciating the efforts made by a spouse in ascertaining the status and whereabouts of his or her absent spouse. This strict standard makes it apparent that marital obligations remain incumbent only upon the present spouse. It unduly reduces the mutual duty of presence to the sole and exclusive obligation of the spouse compelled to embark on a search. It turns a blind eye to how the absent spouse has failed to live up to his or her own duty to be present. As I emphasized in my Dissent in the similar case of *Republic of the Philippines v. Orcelino-Villanueva*:[12]

---

[7] *Id*.

[8] *Ponencia*, p. 7.

[9] G.R. No. 184621, December 10, 2013, 712 SCRA 1 [Per *J*. Brion, *En Banc*].

[10] *Ponencia*, p. 10.

[11] *J*. Leonen, Dissenting Opinion in *Republic of the Philippines v. Cantor*, G.R. No. 184621, December 10, 2013, 712 SCRA 1, 35-53 [Per *J*. Brion, *En Banc*].

[12] *J*. Leonen, Dissenting Opinion in *Republic of the Philippines v. Orcelino-Villanueva*, G.R. No. 210929, July 29, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929_leonen.pdf> [Per *J*. Mendoza, Second Division].

The marital obligations provided for by the Family Code require the continuing presence of each spouse. A spouse is well to suppose that this shall be resolutely fulfilled by the other spouse. Failure to do so for the period established by law gives rise to the presumption that the absent spouse is dead, thereby enabling the spouse present to remarry.[13]

Petitions for declaration of presumptive death of an absent spouse are specifically provided for in Article 41 of the Family Code, which reads:

Art. 41. A marriage contracted by any person during subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present has a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

Article 41 permits a spouse to seek judicial relief, *not* on the basis of antecedent occurrences that have actually transpired, but on the mere basis of a "belief." Article 41 petitions are, thus, unique in that they may be initiated and prosper *not* based on something concrete, but based on something that can be considered an abstraction: a spouse's state of mind.[14] Because this abstraction cannot otherwise be factually established, it becomes necessary to inquire into how the petitioning spouse actually conducted himself or herself, that is, his or her overt acts.

---

[13] *Id*. at 2.

[14] *Republic v. Court of Appeals and Alegro*, 513 Phil. 391 (2005) [Per *J*. Callejo, Sr., Second Division].

Article 41 imposes a qualitative standard for the availing of relief. Not only must there be a belief, this belief must be "well-grounded." To say that this belief is well-grounded is to say that there is "*reasonable basis* for holding to such belief."[15] Therefore, what Article 41 requires is the satisfaction of a basic and plain test: rationality.[16]

What is rational or reasonable to a person is a matter that cannot be dealt with in absolute terms. Context is imperative. In appreciating reasonableness, cut-and-dried a priori standards cannot control. Reliance on such standards erroneously presupposes similarity, if not complete uniformity, of human experience:

> What is rational in each case depends on context. Rationality is not determined by the blanket imposition of pre-conceived standards. Rather, it is better determined by an appreciation of a person's unique circumstances.[17]

As vital as the point ***from which*** Article 41 petitions proceed (i.e., reasonable belief) is the point ***to which*** they intend to proceed, that is, sustaining a mere presumption. As crucial as the starting point of a well-founded belief is the intended endpoint of a mere presumption:

> [A]ll that Article 41 calls to sustain is a presumption. By definition, there is no need for absolute certainty. A presumption is, by nature, favorable to a party and dispenses with the burden of proving. Consequently, neither is there a need for conduct that establishes such a high degree of cognizance that what is established is proof, and no longer a presumption:

---

[15] *J.* Leonen, Dissenting Opinion in *Republic v. Cantor*, G.R. No. 184621, December 10, 2013, 712 SCRA 1, 48 [Per *J.* Brion, *En Banc*].

[16] *Id*.

[17] *J.* Leonen, Dissenting Opinion in *Republic of the Philippines v. Orcelino-Villanueva*, G.R. No. 210929, July 29, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929_leonen.pdf> 3 [Per *J.* Mendoza, Second Division].

> In declaring a person presumptively dead, a court is called upon to sustain a *presumption*, it is not called upon to conclude on verity or to establish actuality. In so doing, a court infers despite an acknowledged uncertainty. Thus, to insist on such demanding and extracting evidence to "show enough *proof* of a well-founded belief", is to insist on an inordinate and intemperate standard.[18]

The figurative bookends—the root and the cusp—of Article 41 petitions delineate the boundaries of judicial inquiry. A strict standard grounded on idealized standards, on "what should have been," is misplaced.

The dearth of resources at Jose's disposal is manifest. It was for the precise reason of his modest status that both he and his wife found themselves having to leave the Philippines for employment within only a month of being married.

What remains clear is that Jose exerted efforts *as best as he could*. Even as his circumstances prevented him from returning to the Philippines, he searched for Netchie through her parents. However, even Netchie's parents could not be found. As soon as he was able to return to the Philippines, that is, as soon as his contract as a seafarer expired, he personally launched a search for Netchie. Undaunted by the absence of Netchie's own parents, Jose asked Netchie's other relatives and friends for her whereabouts. Even this, however, proved futile.

The circumstances of Netchie's absence are attested to not only by Jose's own testimony but also by those of Netchie's own aunt and Jose's brother.[19]

Jose may not have been a man of disconsolate or utterly miserable means, but he was certainly one who had to contend with his modest and limited capacities. It is in light of this that his efforts must be appreciated. It may be conceded that Jose

---

[18] *Id*., citing *J*. Leonen, Dissenting Opinion in *Republic v. Cantor*, G.R. No. 184621, December 10, 2013, 712 SCRA 1, 48 [Per *J*. Brion, *En Banc*].

[19] *Rollo*, p. 44.

could have engaged in other, ostensibly more painstaking efforts, such as seeking the aid of police officers, filing a formal missing-person report, and announcing Netchie's absence in radio or television programs. However, insisting on these other, idyllic acts that Jose could have done compels him to comply with illusory objectives that may just have been beyond his means. As I emphasized in my Dissent in *Orcelino-Villanueva*:

> This court must realize that insisting upon an ideal will never yield satisfactory results. A stringent evaluation of a party's efforts made out of context will always reveal means through which a spouse could have 'done more' or walked the proverbial extra mile to ascertain his or her spouse's whereabouts. A reason could always be conceived for concluding that a spouse did not try 'hard enough.'[20]

The majority characterizes Jose's search as a mere "passive search"[21] and notes that Jose failed to satisfy the standards supposedly set by *Cantor*.[22] I caution against the use of such dismissive descriptions as "passive" in the face of seeming non-compliance with *Cantor's* requirements. Even more, I caution against a continuing and indiscriminate reliance on *Cantor*'s stringent requirements. Doing so proceeds from a misplaced presumption that the factual moorings of all Article 41 petitions are alike and that the standards that suffice for one case are the only ones that will suffice for all others.

---

[20] *J.* Leonen, Dissenting Opinion in *Republic of the Philippines v. Orcelino-Villanueva*, G.R. No. 210929, July 29, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929_leonen.pdf> [Per *J.* Mendoza, Second Division].

[21] *Ponencia*, p. 9.

[22] *Id*. As the *ponencia* summarizes: "[T]he degree of diligence and reasonable search required by law is not met (1) when there is failure to present the persons from whom the present spouse allegedly made inquiries especially the absent spouse's relatives or neighbors and friends, (2) when there is failure to report the missing spouse's purported disappearance or death to the police or mass media, and (3) when the present spouse's evidence might or would only show that the absent spouse chose not to communicate, but not necessarily that the latter was indeed dead."

Spouses are fundamentally called "to live together, observe mutual love, respect and fidelity, and render mutual help and support."[23] Presence is integral to marital relations. As I explained in my Dissent in *Cantor:*

> The opinions of a recognized authority in civil law, Arturo M. Tolentino, are particularly enlightening:
>
> > **Meaning of "Absent" Spouse.**—The provisions of this article are of American origin, and must be construed in the light of American jurisprudence. An identical provision (except for the period) exists in the California civil code (section 61); California jurisprudence should, therefore, prove enlightening. It has been held in that jurisdiction that, as respects the validity of a husband's subsequent marriage, a presumption as to the death of his first wife cannot be predicated upon an absence resulting from his leaving or deserting her, as it is his duty to keep her advised as to his whereabouts. The spouse who has been left or deserted is the one who is considered as the 'spouse present'; such spouse is not required to ascertain the whereabouts of the deserting spouse, and after the required number of years of absence of the latter, the former may validly remarry.
>
> Precisely, it is a deserting spouse's failure to comply with what is reasonably expected of him or her and to fulfill the responsibilities that are all but normal to a spouse which makes reasonable (*i.e.*, well-grounded) the belief that should he or she fail to manifest his or her presence within a statutorily determined reasonable period, he or she must have been deceased. The law is of the confidence that spouses will in fact "live together, observe mutual love, respect and fidelity, and render mutual help and support" such that it is not the business of the law to assume any other circumstance than that a spouse is deceased in case he or she becomes absent.[24] (Emphasis in the original)

---

[23] FAMILY CODE, Art. 68.

[24] *J.* Leonen, Dissenting Opinion in *Republic v. Cantor*, G.R. No. 184621, December 10, 2013, 712 SCRA 1, 51-52 [Per *J.* Brion, *En Banc*], citing ARTURO M. TOLENTINO, *Commentaries and Jurisprudence on the Civil Code of the Philippines,* 281-282 (1990), in turn citing *People v. Glab*, 13 App. (2d) 528, 57 Pac. (2d) 588 and *Harrington Estate*, 140 Cal. 244, 73 Pac. 1000; and FAMILY CODE, Art. 68.

Focusing on the supposed inadequacies of Jose's efforts makes it seem as though the burden of presence is his alone to bear, when it is Netchie who is missing. It is she who has proven herself no longer capable of performing her marital obligations. As she has been absent for the statutorily prescribed period despite her obligations as Jose's spouse, Netchie must be considered presumptively dead.

The majority heavily quotes from *Cantor* and cites the supposed rationale for imposing a strict standard: that is, to ensure that Article 41 petitions are not used as shortcuts to undermine the indissolubility of marriage. I addressed this matter in my Dissent in *Orcelino-Villanueva*:

> While this is a valid concern, the majority goes to unnecessary lengths to discharge this burden. Article 41 of the Family Code itself concedes that there is a degree of risk in presuming a spouse to be dead, as the absent spouse may, in fact, be alive and well. Thus, Article 41 provides that declarations of presumptive death are "without prejudice to the reappearance of the absent spouse." The state is thus not bereft of remedies.
>
> Consistent with this, Article 42 of the Family Code provides for the automatic termination of the subsequent marriage entered into by the present spouse should the absent spouse reappear:
>
> > Art. 42. The subsequent marriage referred to in the preceding Article shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void ab initio.
> >
> > A sworn statement of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person, with due notice to the spouses of the subsequent marriage and without prejudice to the fact of reappearance being judicially determined in case such fact is disputed.

Moreover, in *Santos v. Santos*, we recognized that in cases where a declaration of presumptive death was fraudulently obtained, the subsequent marriage shall not only be terminated, but all other effects

of the declaration nullified by a successful petition for annulment of judgment:

> The proper remedy for a judicial declaration of presumptive death obtained by extrinsic fraud is an action to annul the judgment. An affidavit of reappearance is not the proper remedy when the person declared presumptively dead has never been absent.
>
> . . . . . .
>
> Therefore, for the purpose of not only terminating the subsequent marriage but also of nullifying the effects of the declaration of presumptive death and the subsequent marriage, mere filing of an affidavit of reappearance would not suffice.[25] (Citations omitted)

As with *Cantor* and *Orcelino-Villanueva*, "[t]he majority is gripped with the apprehension that a petition for declaration of presumptive death may be availed of as a dangerous expedient."[26] As also with these cases, however, nothing here sustains and justifies fear. Inordinate anxiety is all that there is. What is manifest is that Jose has established facts that warrant the declaration that Netchie is presumptively dead. Thus, the present Petition must be denied.

ACCORDINGLY, I vote to **DENY** the Petition. The Decision of the Court of Appeals in CA-G.R. SP No. 04158-MIN affirming the January 31, 2011 Decision of Branch 15 of the Regional Trial Court, Ozamis City, declaring Netchie S. Sareñogon presumptively dead, pursuant to Article 41 of the Family Code, must be affirmed.

---

[25] *J*. Leonen, Dissenting Opinion in *Republic of the Philippines v. Orcelino-Villanueva*, G.R. No. 210929, July 29, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/210929_leonen.pdf> 5–6 [Per *J*. Mendoza, Second Division].

[26] *Id*. at 6.

SECOND DIVISION

[G.R. No. 199537. February 10, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ANDREA TAN,** *respondent.*

SYLLABUS

1. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); THE PRIMARY SUBSTANTIVE LAW WHICH GOVERNS THE CLASSIFICATION, GRANT, AND DISPOSITION OF ALIENABLE AND DISPOSABLE LANDS OF THE PUBLIC DOMAIN.— All lands of the public domain belong to the State. It is the fountain from which springs any asserted right of ownership over land. Accordingly, the State owns all lands that are not clearly within private ownership. This is the Regalian Doctrine which has been incorporated in all of our Constitutions and repeatedly embraced in jurisprudence. Under the present Constitution, lands of the public domain are not alienable except for **agricultural lands**. The Public Land Act *(PLA)* governs the classification, grant, and disposition of alienable and disposable lands of the public domain. It is the primary substantive law on this matter. Section 11 thereof recognizes judicial confirmation of imperfect titles as a mode of disposition of alienable public lands. Relative thereto, Section 48(b) of the PLA identifies who are entitled to judicial confirmation of their title x x x.

2. ID.; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); PRESCRIBES HOW REGISTRABLE LANDS, INCLUDING ALIENABLE PUBLIC LANDS, ARE BROUGHT WITHIN THE COVERAGE OF THE TORRENS SYSTEM.— The Property Registration Decree *(PRD)* complements the PLA by prescribing how registrable lands, including alienable public lands, are brought within the coverage of the Torrens system. Section 14 of the PRD enumerates the qualified applicants for original registration of title x x x. The PRD also recognizes prescription as a mode of acquiring ownership under the Civil Code. Nevertheless, prescription under Section 14(2) must not

be confused with judicial confirmation of title under Section 14(1).

3. ID.; ID.; ID.; JUDICIAL CONFIRMATION OF TITLE; REQUISITES.— Judicial confirmation of title requires: 1. That the applicant is a Filipino citizen; 2. That the applicant, by himself or through his predecessors-in-interest, has been in open, continuous, exclusive and notorious possession and occupation of the property since June 12, 1945; 3. That the property had been declared *alienable* and *disposable* as of the filing of the application.

4. ID.; ID.; ID.; APPLICATION BASED ON ACQUISITIVE PRESCRIPTION; FOR THE PURPOSE OF PRESCRIPTION, PRIOR DECLARATION THAT THE PROPERTY HAS BECOME ALIENABLE AND DISPOSABLE IS NOT SUFFICIENT.— Only private property can be acquired by prescription. Property of public dominion is outside the commerce of man. It cannot be the object of prescription because prescription does not run against the State in its sovereign capacity. However, when property of public dominion is no longer intended for public use or for public service, it becomes part of the patrimonial property of the State. When this happens, the property is withdrawn from public dominion and becomes property of private ownership, albeit still owned by the State. The property is now brought within the commerce of man and becomes susceptible to the concepts of legal possession and prescription. In the present case, respondent Tan's application is not anchored on judicial confirmation of an imperfect title because she does not claim to have possessed the subject lot since June 12, 1945. Her application is based on acquisitive prescription on the claim that: (1) the property was declared alienable and disposable on September 1, 1965; and (2) she had been in open continuous, public, and notorious possession of the subject lot in the concept of an owner for over thirty (30) years. In our 2009 decision and 2013 resolution in *Malabanan*, we already held *en banc* that a declaration that property of the public dominion is alienable and disposable does not *ipso facto* convert it into patrimonial property. x x x While a prior declaration that the property has become alienable and disposable is sufficient in an application for judicial confirmation of title under Section 14(1) of the *PRD,* it does not suffice for the purpose of prescription under the Civil Code.

5. ID.; ID.; ID.; ID.; CONVERSION OF A PROPERTY OF PUBLIC DOMINION INTO A PATRIMONIAL PROPERTY; CONDITIONS.— Before prescription can even begin to run against the State, the following conditions must concur to convert the subject into patrimonial property: 1. The subject lot must have been classified as agricultural land in compliance with Sections 2 and 3 of Article XII of the Constitution; 2. The land must have been classified as alienable and disposable; 3. There must be a declaration from a competent authority that the subject lot is no longer intended for public use, thereby converting it to patrimonial property. Only when these conditions are met can applicants begin their public and peaceful possession of the subject lot in the concept of an owner.

LEONEN, *J.*, *concurring opinion*:

1. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; STATE OWNERSHIP OF LANDS IS LIMITED TO LANDS OF THE PUBLIC DOMAIN AND LANDS THAT ARE IN PRIVATE POSSESSION IN THE CONCEPT OF AN OWNER SINCE TIME IMMEMORIAL ARE CONSIDERED NEVER TO HAVE BEEN PUBLIC.— I disagree with the ponencia's statement that "the State owns all lands that are not clearly within private ownership." This statement is an offshoot of the idea that our Constitution embraces the Regalian Doctrine as the most basic principle in our policies involving lands. The Regalian Doctrine has not been incorporated in our Constitution. x x x [T]here is no basis for the presumption that all lands belong to the state. The Constitution limits state ownership of lands to "lands of the public domain[.]"Lands that are in private possession in the concept of an owner since time immemorial are considered never to have been public. They were never owned by the state. x x x Hence, documents of title issued for such lands are not to be considered as a state grant of ownership. They serve as confirmation of property rights already held by persons. They are mere evidence of ownership. The recognition of private rights over properties that have long been held as private is consistent with our constitutional duty to uphold due process. The state cannot, on the sole basis of the land's "unclear" private character, always successfully oppose applications for registration of titles,

especially when the land involved has long been privately held and historically regarded by private persons as their own.

2. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); APPLICATION BASED ON ACQUISITIVE PRESCRIPTION; ALIENABLE AND DISPOSABLE CHARACTER OF LAND; THE CERTIFICATION ISSUED BY THE COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE IS NOT SUFFICIENT TO SHOW THAT THE LAND IS ALIENABLE AND DISPOSABLE PUBLIC LAND.— Respondent Andrea Tan's application for registration was granted by the land registration court. The Court of Appeals affirmed the land registration court's Decision based on the certification issued by the Community Environment and Natural Resources Office (CENRO) that the land was already classified as alienable and disposable. By submitting the CENRO's certification, therefore, respondent applicant admitted that prior to her possession, the land was part of the public domain. However, she failed to clearly show that the land was classified as alienable and disposable public land. In several cases, we have clearly ruled that the CENRO' s certificate is not sufficient.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Florido and Largo Law Office for respondent.

D E C I S I O N

BRION, *J.*:

This is a petition for review on *certiorari* filed by the Republic of the Philippines (*Republic*) from the May 29, 2009 decision[1] and October 18, 2011 resolution[2] of the Court of Appeals *(CA)*

[1] *Rollo*, pp. 37-44. Penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Stephen C. Cruz and Rodil V. Zalameda.

[2] *Id.* at 31-35. Penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pampio A. Abarintos and Eduardo B. Peralta, Jr.

in **CA-G.R. CEB-CV No. 00702.** The CA denied the Republic's appeal from **LRC Case No. N-144**[3] wherein the Municipal Trial Court in Consolacion, Cebu, granted respondent Andrea Tan's application for land title registration.

Antecedents

On October 2, 2002, Tan applied for the original registration of title of **Lot No. 4080, Cad. 545-D (new)** situated in Casili, Consolacion, Cebu *(the subject lot)*. She alleged that she is the absolute owner in fee simple of the said 7,807 square-meter parcel of residential land she purchased from a certain Julian Gonzaga on September 17, 1992. Her application was docketed as **LRC Case No. N-144.**

After complying with the jurisdictional requirements, the land registration court issued an order of general default, excepting the State which was duly represented by the Solicitor General.

During the trial, Tan proved the following facts:

1. The subject lot is within Block 1, Project No. 28, per LC Map No. 2545 of Consolacion, Cebu;
2. The subject lot was declared alienable and disposable on September 1, 1965, pursuant to Forestry Administrative Order No. 4-1063;
3. Luciano Gonzaga who was issued Tax Declaration Nos. 01465 in 1965 and 02983 in 1972 initially possessed the subject lot.
4. After Luciano's death, Julian Gonzaga inherited the subject lot;
5. Andrea Tan purchased the subject lot from Julian Gonzaga on September 17, 1992;
6. She, through her predecessors, had been in peaceful, open, continuous, exclusive, and notorious possession

[3] *Id*. at 45-48. Through Presiding Judge Jocelyn G. Uy-Po.

of the subject lot in the concept of an owner for over thirty (30) years.

On 28 April 2004, the land registration court granted Tan's application. The court confirmed her title over the subject lot and ordered its registration.

The Republic appealed the case to the CA, arguing that Tan failed to prove that she is a Filipino citizen who has been in open, continuous, exclusive, and notorious possession and occupation of the subject lot, in the concept of an owner, since June 12, 1945, or earlier, immediately preceding the filing of her application. The appeal was docketed as **CA-G.R. CEB-CV No. 00702.**

On May 29, 2009, the CA denied the appeal. The CA observed that under the Public Land Act, there are two kinds of applicants for original registration: (1) those who had possessed the land since June 12, 1945; and (2) those who already acquired the property through prescription. The respondent's application fell under the second category.

The CA noted that before land of the public domain can be acquired by prescription, it must have been declared alienable and disposable agricultural land. The CA pointed to the certification issued by the Community Environment and Natural Resources Office (CENRO) as evidence that the subject was classified as alienable and disposable on September 1, 1965, pursuant to Land Classification Project No. 28. The CA concluded that Tan had already acquired the subject lot by *prescription*.

On July 2, 2009, the Republic moved for reconsideration. Citing *Republic v. Herbieto,*[4] it argued that an applicant for judicial confirmation of title must have been in possession and occupation of the subject land since June 12, 1945, or earlier, and that the subject land has been likewise already declared alienable and disposable since June 12, 1945, or earlier.[5]

---

[4] G.R. No. 156117, 26 May 2005, 459 SCRA 183, 186.

[5] *Rollo,* p. 52.

On October 18, 2011, the CA denied the motion for reconsideration citing the then recent case of *Heirs of Mario Malabanan v. Rep. of the Philippines*[6] which abandoned the ruling in *Herbieto. Malabanan* declared that our law does not require that the property should have been declared alienable and disposable since June 12, 1945, as long as the declaration was made before the application for registration is filed.[7]

On January 5, 2012, the Republic filed the present petition for review on *certiorari.*

The Petition

The Republic argues: (1) that the CA misapplied the doctrine in *Malabanan*; and (2) that the CENRO certification and tax declarations presented were insufficient to prove that the subject lot was no longer intended for public use.

Meanwhile, the respondent insists that she has already proven her title over the subject lot. She maintains that the classification of the subject lot as alienable and disposable public land by the DENR on September 1, 1965, per Land Classification Project No. 28, converted it into patrimonial property of the State.

From the submissions, the lone issue is whether a declaration that Government-owned land has become alienable and disposable sufficiently converts it into patrimonial property of the State, making it susceptible to acquisitive prescription.

Our Ruling

We find the petition meritorious.

All lands of the public domain belong to the State. It is the fountain from which springs any asserted right of ownership over land. Accordingly, the State owns all lands that are not clearly within private ownership. This is the Regalian Doctrine which has been incorporated in all of our Constitutions and

---

[6] 605 Phil. 244 (2009).

[7] *Id*. at 269, citing *Republic v. Court of Appeals,* G.R. No. 144507, 17 January 2005, 448 SCRA 442.

repeatedly embraced in jurisprudence.[8] Under the present Constitution, lands of the public domain are not alienable except for **agricultural lands**.[9]

The Public Land Act[10] *(PLA)* governs the classification, grant, and disposition of alienable and disposable lands of the public domain. It is the primary substantive law on this matter. Section 11 thereof recognizes judicial confirmation of imperfect titles as a mode of disposition of alienable public lands.[11] Relative thereto, Section 48(b) of the PLA identifies who are entitled to judicial confirmation of their title:

> (b) Those who by themselves or through their predecessors-in-interest have been in **open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, since June 12, 1945**, immediately preceding the filing of the application for confirmation of title, except when prevented by war or force majeure. Those 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. (As amended by PD 1073.)

---

[8] *La Bugal-B'laan Tribal Association, Inc. v. Sec. Ramos,* 465 Phil. 860, 866 (2004); *Secretary of Environment and Natural Resources v. Yap,* G.R. No. 167707, 8 October 2008, 568 SCRA 164, 200; *Republic v. Ching,* G.R. No. 186166, 20 October 2010, 634 SCRA 415.

[9] Art. XII, Sections 2, 3, PHIL. CONST.

[10] Commonwealth Act No. 141 (as amended), [THE PUBLIC LAND ACT], (1936).

[11] Section 11. Public lands suitable for agricultural purposes can be disposed of only as follows:

1. For homestead settlement;
2. By sale;
3. By lease; and
4. **By confirmation of imperfect or incomplete titles:**
   - **(a) By judicial legalization**
   - (b) By administrative legalization (free patent)

The Property Registration Decree[12] *(PRD)* complements the PLA by prescribing how registrable lands, including alienable public lands, are brought within the coverage of the Torrens system. Section 14 of the PRD enumerates the qualified applicants for original registration of title:

Section 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 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**;

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws;

(4) Those who have acquired ownership of land in any other manner provided for by law.[13]

The PRD also recognizes prescription as a mode of acquiring ownership under the Civil Code.[14] Nevertheless, prescription under Section 14(2) must not be confused with judicial confirmation of title under Section 14(1). Judicial confirmation of title requires:

1. That the applicant is a Filipino citizen;[15]
2. That the applicant, by himself or through his predecessors-in- interest, has been in open, continuous, exclusive and

---

[12] Presidential Decree No. 1529, [PROPERTY REGISTRATION DECREE] (1978).

[13] Section 14, PROPERTY REGISTRATION DECREE.

[14] See CIVIL CODE, Arts. 712 and 1106.

[15] Section 48 (b), PUBLIC LAND ACT.

notorious possession and occupation of the property since June 12, 1945;[16]

3. That the property had been declared *alienable* and *disposable* as of the filing of the application.[17]

Only private property can be acquired by prescription. Property of public dominion is outside the commerce of man.[18] It cannot be the object of prescription[19] because prescription does not run against the State in its sovereign capacity.[20] However, when property of public dominion is no longer intended for public use or for public service, it becomes part of the patrimonial property of the State.[21] When this happens, the property is withdrawn from public dominion and becomes property of private ownership, albeit still owned by the State.[22] The property is now brought within the commerce of man and becomes susceptible to the concepts of legal possession and prescription.

In the present case, respondent Tan's application is not anchored on judicial confirmation of an imperfect title because she does not claim to have possessed the subject lot since June 12, 1945. Her application is based on acquisitive prescription on the claim that: (1) the property was declared alienable and disposable on September 1, 1965; and (2) she had been in open continuous, public, and notorious possession of the subject lot in the concept of an owner for over thirty (30) years.

---

[16] Section 48 (b), PUBLIC LAND ACT; Section 14(1), PROPERTY REGISTRATION DECREE.

[17] *Heirs of Mario Malabanan v. Republic of the Philippines,* 704 SCRA 561, 581 (2013); *Republic v. Court of Appeals, supra* note 7.

[18] Art. 1113, CIVIL CODE.

[19] Art. 1113, CIVIL CODE.

[20] Art. 1108, CIVIL CODE.

[21] Art. 422, CIVIL CODE.

[22] Art. 425, CIVIL CODE.

In our 2009 decision and 2013 resolution[23] in *Malabanan*, we already held *en banc* that a declaration that property of the public dominion is alienable and disposable does not *ipso facto* convert it into patrimonial property. We said:

> 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.[24]

While a prior declaration that the property has become alienable and disposable is sufficient in an application for judicial confirmation of title under Section 14(1) of the *PRD,* it does not suffice for the purpose of prescription under the Civil Code.[25] Before prescription can even begin to run against the State, the following conditions must concur to convert the subject into patrimonial property:

1. The subject lot must have been classified as agricultural land in compliance with Sections 2 and 3 of Article XII of the Constitution;

---

[23] *Heirs of Mario Malabanan v. Republic of the Philippines, supra* note 17.

[24] *Heirs of Mario Malabanan v. Rep. of the Philippines, supra* note 7.

[25] Art. 1134. Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

Art. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

2. The land must have been classified as alienable and disposable;[26]

3. There must be a declaration from a competent authority that the subject lot is no longer intended for public use, thereby converting it to patrimonial property.

Only when these conditions are met can applicants begin their public and peaceful possession of the subject lot in the concept of an owner.

In the present case, the third condition is absent. Even though it has been declared alienable and disposable, the property has not been withdrawn from public use or public service. Without this, prescription cannot begin to run because the property has not yet been converted into patrimonial property of the State. It remains outside the commerce of man and the respondent's physical possession and occupation thereof do not produce any legal effect. In the eyes of the law, the respondent has never acquired legal possession of the property and her physical possession thereof, no matter how long, can never ripen into ownership.

WHEREFORE, we hereby **GRANT** the petition. The May 29, 2009 decision and October 18, 2011 resolution of the Court of Appeals in **CA-G.R. CEB-CV No. 00702** are **REVERSED** and **SET ASIDE**. The respondent's application for Land Registration is **DENIED** for lack of merit. No pronouncement as to costs.

SO ORDERED.

Carpio (Chairperson), *del Castillo,* and *Mendoza, JJ.,* concur.

Leonen, J., see separate concurring opinion.

---

[26] Sec. 6, PUBLIC LAND ACT.

CONCURRING OPINION

LEONEN, *J.:*

I concur in the result.

Respectfully, I disagree with the ponencia's statement that "the State owns all lands that are not clearly within private ownership."[1] This statement is an offshoot of the idea that our Constitution embraces the Regalian Doctrine as the most basic principle in our policies involving lands.

The Regalian Doctrine has not been incorporated in our Constitution. Pertinent portion of the Constitution provides:

> SEC. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State[.][2]

Thus, there is no basis for the presumption that all lands belong to the state. The Constitution limits state ownership of lands to "lands of the public domain[.]"[3] Lands that are in private possession in the concept of an owner since time immemorial are considered never to have been public.[4] They were never owned by the state.

In *Cariño v. Insular Government*:[5]

> The [Organic Act of July 1, 1902] made a bill of rights, embodying the safeguards of the Constitution, and, like the Constitution, extends those safeguards to all. It provides that "no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein

---

[1] *Ponencia*, p. 3.

[2] CONST., Art. XII, Sec. 2.

[3] CONST., Art. XII, Sec. 2.

[4] CONST., Art. XII, Sec. 2.

[5] 212 U.S. 449 (1909).

the equal protection of the laws." § 5. In the light of the declaration that we have quoted from § 12, it is hard to believe that the United States was ready to declare in the next breath that . . . it meant by "property" only that which had become such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it proposed to treat as public land what they, by native custom and by long association,—one of the profoundest factors in human thought—regarded as their own.

. . . . . .

It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land.[6]

Hence, documents of title issued for such lands are not to be considered as a state grant of ownership. They serve as confirmation of property rights already held by persons. They are mere evidence of ownership.[7] The recognition of private rights over properties that have long been held as private is consistent with our constitutional duty to uphold due process.[8]

The state cannot, on the sole basis of the land's "unclear" private character, always successfully oppose applications for registration of titles, especially when the land involved has long been privately held and historically regarded by private persons as their own.[9]

This case can be resolved without resort to the fiction of the Regalian Doctrine.

Respondent Andrea Tan's application for registration was granted by the land registration court.[10] The Court of Appeals affirmed the land registration court's Decision based on the

---

[6] *Id*. at 459-460.

[7] See *Cariño v. Insular Government,* 212 U.S. 449, 457-460 (1909).

[8] CONST., Art. III, Sec. 1.

[9] See *Cariño v. Insular Government,* 212 U.S. 449, 457-460 (1909).

[10] *Ponencia*, p. 2. The registration was granted on April 28, 2004.

certification issued by the Community Environment and Natural Resources Office (CENRO) that the land was already classified as alienable and disposable.[11]

By submitting the CENRO's certification, therefore, respondent applicant admitted that prior to her possession, the land was part of the public domain. However, she failed to clearly show that the land was classified as alienable and disposable public land.

In several cases, we have clearly ruled that the CENRO's certificate is not sufficient.

ACCORDINGLY, I concur that the Petition should be **GRANTED.**

THIRD DIVISION

[G.R. No. 199683. February 10, 2016]

ARLENE T. SAMONTE, VLADIMIR P. SAMONTE, MA. AUREA S. ELEPAÑO, *petitioners, vs.* **LA SALLE GREENHILLS, INC., BRO. BERNARD S. OCA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; REGULAR EMPLOYEES; KINDS.— Article 280 of the Labor Code classifies employees into regular, project, seasonal, and casual x x x. The provision classifies regular employees into two kinds (1) those "engaged to perform activities which are usually necessary or desirable in the usual business

---

[11] *Id.* at 2-3. The Decision was dated May 29, 2009.

or trade of the employer"; and (2) casual employees who have "rendered at least one year of service, whether such service is continuous or broken."

2. ID.; ID.; FIXED-TERM EMPLOYMENT; THE REPEATED RENEWALS OF THE FIXED-TERM CONTRACT MAKE FOR A REGULAR EMPLOYMENT.— [A] fixed-term employment is allowable under the Labor Code only if the term was voluntarily and knowingly entered into by the parties who must have dealt with each other on equal terms not one exercising moral dominance over the other. x x x Further, a fixed-term contract is an employment contract, the repeated renewals of which make for a regular employment. x x x Citing *Dumpit-Murillo vs. Court of Appeals and Philips Semiconductors, Inc. v. Fadriquela,* we declared in *Fuji* [*Network Television v. Espiritu*] that the repeated engagement under contract of hire is indicative of the necessity and desirability of the [employee's] work in respondent's business and where employee's contract has been continuously extended or renewed to the same position, with the same duties and remained in the employ without any interruption, then such employee is a regular employee.

3. ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; POWER OF CONTROL; REFERS TO THE EXISTENCE OF THE POWER AND NOT NECESSARILY TO THE ACTUAL EXERCISE THEREOF.— While vague in its sparseness, the Contract of Retainer very clearly spelled out that LSGI had the power of control over petitioners. Time and again we have held that the power of control refers to the existence of the power and not necessarily to the actual exercise thereof, nor is it essential for the employer to actually supervise the performance of duties of the employee. It is enough that the employer has the right to wield that power.

APPEARANCES OF COUNSEL

Chenaide P. Aceret for petitioners.
Laguesma Magsalin Consulta & Gastardo for respondents.

D E C I S I O N

PEREZ, *J.*:

As each and all of the various and varied classes of employees in the gamut of the labor force, from non-professionals to professionals, are afforded full protection of law and security of tenure as enshrined in the Constitution, the entitlement is determined on the basis of the nature of the work, qualifications of the employee, and other relevant circumstances.

Assailed in this petition for review on *certiorari* is the Decision[1] of the Court of Appeals in C.A. G.R. SP No. 110391 affirming the Decision of the National Labor Relations Commission (NLRC) in NLRC CA No. 044835-05[2] finding that petitioners Arlene T. Samonte, Vladimir P. Samonte and Ma. Aurea S. Elepaño were fixed-term employees of respondent La Salle Greenhills, Inc. (LSGI). The NLRC (First Division) ruling is a modification of the ruling of the Labor Arbiter that petitioners were independent contractors of respondent LSGI.[3]

The facts are not in dispute.

From 1989, and for fifteen (15) years thereafter, LSGI contracted the services of medical professionals, specifically pediatricians, dentists and a physician, to comprise its Health Service Team (HST).

Petitioners, along with other members of the HST signed uniform one-page Contracts of Retainer for the period of a specific academic calendar beginning in June of a certain year (1989 and the succeeding 15 years) and terminating in March of the following year when the school year ends. The Contracts of Retainer succinctly read, to wit:

---

[1] Penned by Associate Justice Rosalinda Asuncion-Vicente with Justices Romeo F. Barza, Edward D. Sorongon concurring, *rollo,* pp. 57-69.

[2] *Id*. at 104-109.

[3] *Id*. at 244-258.

C O N T R A C T O F R E T A I N E R

Name of Retainer _____

Address _____

Community Tax Cert. No. _____

Issued at _____ on _____

Taxpayer Identification No. (TlN) _____

Department Assigned to _____ HRD-CENTRO Operation_____

Project/Undertaking (Description and Duration)

_____ Health Services _____

Job Task (Description and Duration)

School [physician] from June 1, [x x x] to March 31, [x x x]
Rate _____

Conditions:

1. This retainer is only temporary in character and, as above specified, shall be solely and exclusively limited to the project/undertaking and/ or to the job/task assigned to the retainer within the said project/ undertaking;

2. This retainer shall, without need of any notice to the retainer, automatically cease on the aforespecified expiration date/s of the said project/undertaking and/or the said job/task; provided, that this retainer shall likewise be deemed terminated if the said project/ undertaking and/or job/task shall be completed on a date/s prior to their aforespecified expiration date/s;

3. The foregoing notwithstanding, at any time prior to said expiration or completion date/s, La Salle Greenhills, Inc. may upon prior written notice to the retainer, terminate this contract should the retainer fail in any way to perform his assigned job/task to the satisfaction of La Salle Greenhills, Inc. or for any other just cause.

HERMAN G. ROCHESTER
Head Administrator

_____
Retainer

BELEN T. MASILUNGAN
Personnel Officer

_____
Date Signed

Signed in the Presence of:

DANTE M. FERRER	BRO. BERNARD S. OCA
FRD Head Administrator	President[4]

After fifteen consecutive years of renewal each academic year, where the last Contract of Retainer was for the school year of 2003-2004 *i.e.,* June 1, 2003 to March 31, 2004, LSGI Head Administrator, Herman Rochester, on that last day of the school year, informed the Medical Service Team, including herein petitioners, that their contracts will no longer be renewed for the following school year by reason of LSGI's decision to hire two (2) full-time doctors and dentists. One of the physicians from the same Health Service Team was hired by LSGI as a full-time doctor.

When petitioners', along with their medical colleagues', requests for payment of their separation pay were denied, they filed a complaint for illegal dismissal with prayer for separation pay, damages and attorney's fees before the NLRC. They included the President of LSGI, Bro. Bernard S. Oca, as respondent.

In their Position Paper, petitioners alleged that they were regular employees who could only be dismissed for just and authorized causes, who, up to the time of their termination, regularly received the following amounts:

1. Monthly salary for the ten-month period of a given school year:

Name	Monthly Salary
a) Jennifer A. Ramirez	Php 20,682.73
b) Brandon D. Ericta	28,603.62
c) [Petitioner] Arlene T. Samonte	20,682.73
d) [Petitioner] Vladimir P. Samonte	20,682.73

[4] CA *rollo,* pp. 234-240.

e) Alma S. Resurrecion	12,700.83
f) Ma. Socorro A. Salazar	21,117.00
g) [Petitioner] Ma. Aurea S. Elepañio	8,429.43

2. Annual 13th Month Pay equivalent to their one month salary;

3. Automatic yearly increase to their monthly salary, the rate of which is discretionary to LSGI's Executive Administrator based on a comparative rate to the across the board increase of the regular school employees which increase was subsequently reflected in their [HST'S] monthly salaries for the following school year;

4. Since 1996, as a result of the HST's request for a performance bonus, the team was likewise evaluated for a year-end performance rating by HRD- CENTRO Head Administrator, the Assistant Principal, the Health Services Team Leader and the designated Physician's Coordinator, complainant Jennifer Ramirez.

To further bolster their claim of regular employment, complainants pointed out the following in their Position Paper:

In the course of their employment, each of the complainants served an average of nine hours a week. But beyond their duty hours, they were on call for any medical exigencies of the La Sallian community. Furthermore, over the years, additional tasks were assigned to the complainants and were required to suffer the following services/activites:

a) To attend staff meetings and to participate in the formulation/ adoption of policies and programs designed to enhance the School services to its constituents and to upgrade the School's standards. Complainants' involvement in Staff Meetings of the Health Services Unit of respondent school was a regular activity associated with personnel who are regular employees of an institution;

b) To participate in various gatherings and activities sponsored by the respondent school such as the Kabihasnan (the bi-annual school fair), symposiums, seminars, orientation programs, workshops, lectures, etc., including purely political activities such as the

NAMFREL quick count, of which the respondent school is a staunch supporter;

c) Participation of the complainants in Medical/Dental Missions in the name of respondent school;

d) Formulation of the Health Services Unit Manual;

e) Participation in the collation of evaluation of services rendered by the Health Services Unit, as required for the continuing PAASCU (Philippine Association of Accredited Schools Colleges & Universities) accreditation of the School;

f) Participation in the yearly evaluation of complainants, which is a function of regular employees in the HRD-CENTRO Operations, of the HRD-CENTRO Head Administrator;

g) Designation of certain complainants, particularly Dr. Jennifer A. Ramirez, as member of panel of investigation to inquire into an alleged misdemeanor of a regular employee of respondent school; and

h) Regular inspection of the canteen concessionaire and the toilet facilities of the school premises to insure its high standards of sanitation.

Complainants were likewise included among so-called members of the "LA SALLIAN FAMILY: Builder of a Culture of Peace," under the heading "Health Services Team" of the La Salle Green Hills High School Student Handbook 2003-2004. Such public presentation of the complainants as members of the "LA SALLIAN FAMILY" leaves no doubt about the intent of respondent school to project complainants as part of its professional staff.[5]

On the other hand, in their Position Paper,[6] LSGI denied that complainants were regular employees, asserting that complainants were independent contractors who were retained by LSGI by reason of their medical skills and expertise to provide ancillary medical and dental services to both its students and faculty, consistent with the following circumstances:

---

[5] *Id*. at 195-209.

[6] *Id*. at 210-229.

1. Complainants were professional physicians and dentists on retainer basis, paid on monthly retainer fees, not regular salaries;

2. LSGI had no power to impose disciplinary measures upon complainants including dismissal from employment;

3. LSGI had no power of control over how complainants actually performed their professional services.

In the main, LSGI invoked the case of *Sonza v. ABS-CBN*[7] to justify its stance that complainants were independent contractors and not regular employees citing, thus:

> SONZA contends that ABS-CBN exercised control over the means and methods of his work.
>
> SONZA's argument is misplaced. ABS-CBN engaged SONZA's services specifically to co-host the "Mel & Jay" programs. ABS-CBN did not assign any other work to SONZA. To perform his work, SONZA only needed his skills and talent. How SONZA delivered his lines, appeared on television, and sounded on radio were outside ABS-CBN's control. SONZA did not have to render 8 hours of work per day. The Agreement required SONZA to attend only rehearsals and tapings of the shows, as well as pre and post-production staff meetings. ABS-CBN could not dictate the contents of SONZA's script. However, the Agreement prohibited SONZA from criticising in his shows ABS-CBN or its interests. The clear implication is that SONZA had a free hand on what to say or discuss in his shows provided he did not attack ABS-CBN or its interests.

As previously adverted, the Labor Arbiter dismissed petitioners' (and their colleagues') complaint and ruled that complainants, as propounded by LSGI, were independent contractors under retainership contracts and never became regular employees of LSGI. The Labor Arbiter based its overall finding of the absence of control by LSGI over complainants on the following points:

1. The professional services provided by complainants, including herein petitioners, cannot be considered as necessary

---

[7] G.R. No. 138051, June 10, 2004.

to LSGI's business of providing primary and secondary education to its students.

2. The payslips of complainants are not salaries but professional fees less taxes withheld for the medical services they provided;

3. Issuance of identification cards to, and the requirement to log the time-in and time-out of, complainants are not indicia of LSGI's power of control over them but were only imposed for, security reasons and in compliance with the agreed clinic schedules of complainants at LSGI premises.

4. In contrast to regular employees of LSGI, complainants: (a) were not required to attend or participate in school-sponsored activities and (b) did not enjoy benefits such as educational subsidy for their dependents.

5. On this score alone, complainants' respective clinic schedule at LSGI for two (2) to three (3) days a week for three (3) hours a day, for a maximum of nine (9) hours a week, was not commensurate to the required number of hours work rendered by a regular employee in a given week of at least 40 hours a week or 8 hours a day for five (5) days. In addition, the appointed clinic schedule was based on the preference of complainants.

Curiously, despite the finding that complainants were independent contractors and not regular employees, the Labor Arbiter, on the ground of compassionate social justice, awarded complainants separation pay at the rate of one-half month salary for every year of service:

Separately, both parties, complainants, including herein petitioners, and respondents appealed to the NLRC.

At the outset, the NLRC disagreed with the Labor Arbiter's ruling that complainants were independent contractors based on the latter's opinion that the services rendered by complainants are not considered necessary to LSGl's operation as an educational institution. The NLRC noted that Presidential Decree No. 856, otherwise known as the Sanitation Code of the

Philippines, requires that private educational institutions comply with the sanitary laws. Nonetheless, the NLRC found that complainants were fixed-period employees whose terms of employment were subject to agreement for a specific duration. In all, the NLRC ruled that the Contracts of Retainer between complainants and LSGI are valid fixed-term employment contracts where complainants as medical professionals understood the terms thereof when they agreed to such continuously for more than ten (10) years. Consequently, the valid termination of their retainership contracts at the end of the period stated therein, did not entitle complainants to reinstatement, nor, to payment of separation pay.

At this point, only herein petitioners, filed a petition for *certiorari* under Rule 65 of the Rules of Court before the Court of Appeals alleging that grave abuse of discretion attended the ruling of the NLRC that they were not regular employees and thus not entitled to the twin remedies of reinstatement to work with payment of full backwages or separation pay with backwages.

In dismissing the petition for *certiorari,* the appellate court ruled that the NLRC did not commit an error of jurisdiction which is correctible by a writ of *certiorari.* The Court of Appeals found that the NLRC's ruling was based on the Contracts of Retainer signed by petitioners who, as professionals, supposedly ought to have known the import of the contracts they voluntarily signed, *i.e.* (a) temporary in character; (b) automatically ceasing on the specified expiration date, or (c) likewise deemed terminated if job/task shall be completed on a date prior to specified expiration date.

The Court of Appeals ruled against petitioners' claim of regular employment, thus:

> Moreover, this Court is not persuaded by petitioners' averments that they are regular employees simply because they received benefits such as overtime pay, allowances, Christmas bonuses and the like; or because they were subjected to administrative rules such as those that regulate their time and hours of work, or subjected to LSGI's disciplinary rules and regulations; or simply because they were treated

as part of LSGI's professional staff. It must be emphasised that LSGI, being the employer, has the inherent right to regulate all aspects of employment of every employee whether regular, probationary, contractual or fixed-term. Besides, petitioners were hired for specific tasks and under fixed terms and conditions and it is LSGI's prerogative to monitor their performance to see if they are doing their tasks according to the terms and conditions of their contract and to give them incentives for good performance.[8]

Hence, this petition for review on *certiorari* raising the following issues for resolution of the Court:

I. WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT PETITIONERS WERE FIXED-PERIOD EMPLOYEES AND NOT REGULAR EMPLOYEES OF LSGI.

II. WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT HAVING RULED THAT PETITIONERS WERE ILLEGALLY DISMISSED FROM WORK.

III. WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT HAVING RULED THAT PETITIONERS ARE ENTITLED TO REINSTATEMENT, BACKWAGES AND OTHER MONETARY BENEFITS PROVIDED BY LAW, MORAL AND EXEMPLARY DAMAGES, AS WELL AS ATTORNEY'S FEES.

IV. WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT HAVING RULED THAT RESPONDENTS ARE SOLIDARILY LIABLE AS THEY ACTED IN BAD FAITH AND WITH MALICE IN DEALING WITH THE PETITIONERS.[9]

The pivotal issue for resolution is whether the Court of Appeals correctly ruled that the NLRC did not commit grave abuse of discretion in ruling that petitioners were not regular employees who may only be dismissed for just and authorized causes.

---

[8] *Rollo*, p. 66.

[9] *Id.* at 21.

Our inquiry and disposition will delve into the kind of employment relationship between the parties, such employment relationship having been as much as admitted by LSGI and then ruled upon categorically by the NLRC and the appellate court which both held that petitioners were fixed- term employees and not independent contractors.

Article 280 of the Labor Code classifies employees into regular, project, seasonal, and casual:

Art. 280. Regular and casual employment. The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year 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 provision classifies regular employees into two kinds (1) those "engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer"; and (2) casual employees who have "rendered at least one year of service, whether such service is continuous or broken."

The NLRC correctly identified the existence of an employer-employee relationship between petitioners and LSGI and not a bilateral independent contractor relationship. On more than one occasion, we recognised certain workers to be independent contractors: individuals with unique skills and talents that set

them apart from ordinary employees.[10] We found them to be independent contractors because of these unique skills and talents and the lack of control over the means and methods in the performance of their work. In some instances, doctors and other medical professional may fall into this independent contractor category, legitimately providing medical professional services. However, as has been declared by the NLRC and the appellate court, petitioners herein are not independent contractors.

We need to examine next the ruling of the NLRC and the Court of Appeals that petitioners were fixed-term employees.

To factually support such conclusion, the NLRC solely relied on the case of *Brent v. Zamor*[11] and perfunctorily noted that petitioners, professional doctors and dentists, continuously signed the contracts for more than ten (10) years. Such was heedless of our prescription that the ruling in *Brent* be strictly construed, applying only to cases where it appears that the employer and employee are on equal footing. Observably, nowhere in the two and half page ratiocination of the NLRC was there reference to the standard that "it [should] satisfactorily appear that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former on the latter."

From *Brent,* which remains as the exception rather than the rule in the determination of the nature of employment, we are schooled that there are employment contracts where a "fixed term is an essential and natural appurtenance" such as overseas employment contracts and officers in educational institutions. We learned thus:

> [T]he decisive determinant in the term employment contract should not be the activities that the employee is called upon to perform,

---

[10] *Orozco v. Court of Appeals, et al.,* 584 Phil. 35 [2008]; *Seblante et al. v. Court of Appeals*, 671 Phil. 213 (2011); *Bernarte v. Philippine Basketball Association,* 673 Phil. 384 (2011); *Sonza v. Court of Appeals,* G.R. No. 138051, June 10, 2004.

[11] 260 Phil. 747 (1990).

but the day certain agreed upon by the parties for the commencement and termination of their employment relationship, a day certain being understood to be "that which must necessarily come, although it may not be known when.

xxx xxx xxx

Accordingly, and since the entire purpose behind the development of legislation culminating in the present Article 280 of the Labor Code clearly appears to have been, as already observed, to prevent circumvention of the employee's right to be secure in his tenure, the clause in said article indiscriminately and completely ruling out all written or oral agreements conflicting with the concept of regular employment as defined therein should be construed to refer to the substantive evil that the Code itself has singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where a fixed period of employment was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or where it satisfactorily appears that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.

Tersely put, a fixed-term employment is allowable under the Labor Code only if the term was voluntarily and knowingly entered into by the parties who must have dealt with each other on equal terms not one exercising moral dominance over the other.

Indeed, *Price, et al. v. Innodata Corp.,* teaches us, from the wording of Article 280 of the Labor Code, that the nomenclature of contracts, especially employment contracts, does not define the employment status of a person: Such is defined and prescribed by law and not by what the parties say it should be. Equally important to consider is that a contract of employment is impressed with public interest such that labor contracts must yield to the common good. Thus, provisions of applicable statutes are deemed written into the contract, and the parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other.

Further, a fixed-term contract is an employment contract, the repeated renewals of which make for a regular employment. In *Fuji Network Television v. Espiritu,*[12] we noted that Fuji's argument that Espiritu was an independent contractor under a fixed-term contract is contradictory where employees under fixed-term contracts cannot be independent contractors because in fixed-term contracts, an employer-employee relationship exists. Significantly, we ruled therein that Espiritu's contract indicating a fixed term did not automatically mean that she could never be a regular employee which is precisely what Article 280 of the Labor Code sought to avoid. The repeated renewal of Espiritu's contract coupled with the nature of work performed pointed to the regular nature of her employment despite contrary claims of Fuji and the nomenclature of the contract. Citing *Dumpit-Murillo v. Court of Appeals*[13] and *Philips Semiconductors, Inc. v. Fadriquela*,[14] we declared in *Fuji* that the repeated engagement under contract of hire is indicative of the necessity and desirability of the [employee's] work in respondent's business and where employee's contract has been continuously extended or renewed to the same position, with the same duties and remained in the employ without any interruption, then such employee is a regular employee.

In the case at bar, the Court of Appeals disregarded the repeated renewals of the Contracts of Retainer of petitioners spanning a decade and a half. The Court of Appeals ruled that petitioners never became regular employees:

> [T]his Court is not persuaded by petitioners' averments that they are regular employees simply because they received benefits such as overtime pay, allowances, Christmas bonuses and the like; or because they were subjected to administrative rules such as those that regulate their time and hours of work, or subjected to LSGI's disciplinary rules and regulations; or simply because they were treated as part of LSGI's professional staff. It must be emphasised that

---

[12] G.R. Nos. 204944-45, December 3, 2014.

[13] 551 Phil. 725 (2007).

[14] 471 Phil. 355 (2004).

LSGI, as the employer, has the inherent right to regulate all aspects of employment of every employee whether regular, probationary, contractual or fixed-term. Besides, petitioners were hired for specific tasks and under fixed terms and conditions and it is LSGI's prerogative to monitor their performance to see if they are doing their tasks according to the terms and conditions of their contract and to give them incentives for good performance.[15]

We completely disagree with the Court of Appeals.

The uniform one-page Contracts of Retainer signed by petitioners were prepared by LSGI alone. Petitioners, medical professionals as they were, were still not on equal footing with LSGI as they obviously did not want to lose their jobs that they had stayed in for fifteen (15) years. There is no specificity in the contracts regarding terms and conditions of employment that would indicate that petitioners and LSGI were on equal footing in negotiating it. Notably, without specifying what are the tasks assigned to petitioners, LSGI "may upon prior written notice to the retainer, terminate [the] contract should the retainer fail in any way to perform his assigned job/task to the satisfaction of La Salle Greenhills, Inc. or for any other just cause."[16]

While vague in its sparseness, the Contract of Retainer very clearly spelled out that LSGI had the power of control over petitioners.

Time and again we have held that the power of control refers to the existence of the power and not necessarily to the actual exercise thereof, nor is it essential for the employer to actually supervise the performance of duties of the employee.[17] It is enough that the employer has the right to wield that power.

In all, given the following: (1) repeated renewal of petitioners' contract for fifteen years, interrupted only by the close of the school year; (2) the necessity of the work performed by

---

[15] *Rollo,* p. 66

[16] *Id*. at 65.

[17] *Corporal Sr. v. National Labor Relations Commission,* 395 Phil. 980 (2000).

petitioners as school physicians and dentists; and (3) the existence of LSGI's power of control over the means and method pursued by petitioners in the performance of their job, we rule that petitioners attained regular employment, entitled to security of tenure who could only be dismissed for just and authorized causes. Consequently, petitioners were illegally dismissed and are entitled to the twin remedies of payment of separation pay and full back wages. We order separation pay in lieu of reinstatement given the time that has lapsed, twelve years, in the litigation of this case.

We clarify, however, that our ruling herein is only confined to the three (3) petitioners who had filed this appeal by *certiorari* under Rule 45 of the Rules of Court, and prior thereto, the petition for *certiorari* under Rule 65 thereof before the Court of Appeals. The Decision of the NLRC covering other complainants in NLRC CA No. 044835-05 has already become final and executory as to them.

Not being trier of facts, we remand this case to the NLRC for the determination of separation pay and full back wages from the time petitioners were precluded from returning to work the school year 2004 and compensation for work performed in that period.

WHEREFORE, the petition is **GRANTED.** The Decision of the Court of Appeals in CA G.R. SP No. 110391 is **REVERSED AND SET ASIDE.** The Decisions of the NLRC in NLRC CA No. 044835-05 and NLRC CASE No. 00-0607081-04 are **ANNULLED AND SET ASIDE.** The Complaint of petitioners Arlene T. Samonte, Vladimir P. Samonte, Ma. Carmen Aurea S. Elepaño against La Salle Greenhills, Inc. for illegal dismissal is **GRANTED.** We **REMAND** this case to the NLRC for the computation of the three (3) petitioners' separation pay and full back wages.

No pronouncement as to costs.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Reyes,* and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 201073. February 10, 2016]

PHILIPPINE AIRLINES, INC. *petitioner, vs.* **PAL EMPLOYEES SAVINGS & LOAN ASSOCIATION, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; GRANTED BY A COURT TO PREVENT AN INJURY OR STOP THE FURTHERANCE OF AN INJURY UNTIL THE MERITS OF THE CASE CAN BE FULLY ADJUDGED.— PAL cannot hope to gain anything beneficial from its deliberate refusal to comply with the orders and directives of the court. PAL's obstinate disobedience to the RTC's TRO and WPI led to the disruption of the *status quo* and to the exposure of PESALA to deficits and losses, for which it should be liable. In *United Coconut Planters Bank v. United Alloy Phils. Corp.,* the Court, quoting *Capitol Medical Center v. Court of Appeals,* explained that *"(t)he sole object of a preliminary injunction,* whether prohibitory or mandatory, *is to preserve the status quo until the merits of the case can be heard."* In *Buyco v. Baraquia,* we further clarified that a preliminary injunction "is usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the *status quo* of the controversy **before a full hearing can be had on the merits of the case**." Indeed, an injunction is granted by a court in order to prevent an injury or to stop the furtherance of an injury until the merits of the case can be fully adjudged. In the case at bar, PAL' s defiance of the TRO and the WPI caused PESALA to incur a shortfall in the amount of ₱44,488,716.41. This shortfall could have been precluded if only PAL complied with the TRO and the WPI and preserved the *status quo*. Since such loss was brought about by PAL's non-compliance with the directives of the RTC, then fair play dictates that PAL should be held liable for its insolence.

2. ID.; ID.; RELIEF; A CLAIM MAY BE GRANTED EVEN IF NOT PRAYED FOR IN THE COMPLAINT PROVIDED IT WAS DULY HEARD AND PROVEN DURING TRIAL, AND THE OPPOSING PARTY WAS AFFORDED THE OPPORTUNITY TO CONTEST IT; CASE AT BAR.— PAL also claims that the RTC erred in granting PESALA a relief not prayed for in the Complaint. x x x [I]t is a settled rule that a court cannot grant a relief not prayed for in the pleadings or in excess of that being sought. In *Bucal v. Bucal,* the Court, reiterating the ruling in *DBP v. Teston,* explained: "Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, **absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief**. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is **to prevent surprise** to the defendant." In the case at bar, the records show that PAL was afforded due notice and an opportunity to be heard with regard to PESALA's claim of ₱44,488, 716.41. x x x Moreover, the prayer in the Complaint did state that "(o)ther reliefs just and equitable in the premises are likewise prayed." In *Sps. Gutierrez v. Sps. Valiente, et al.,* the Court, echoing the ruling in *BPI Family Bank v. Buenaventura,* held that: **"(T)he general prayer is broad enough to 'justify extension of a remedy different from or together with the specific remedy sought.'** Even without the ·prayer for a specific remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence introduced so warrant. **The court shall grant relief warranted by the allegations and the proof even if no such relief is prayed for**. The prayer in the complaint for other reliefs equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for." Undeniably, PESALA's claim of ₱44,488,716.41 is a necessary consequence of the action it filed against PAL. As said claim was duly heard and proven during trial, with PAL being afforded the opportunity to contest it, the RTC and the Court of Appeals did not err in granting such claim.

3. ID.; EVIDENCE; IF THERE IS NEITHER AN EXPRESSED NOR IMPLIED DENIAL OF LIABILITY, BUT DURING THE COURSE OF NEGOTIATIONS THE DEFENDANT

EXPRESSED A WILLINGNESS TO PAY THE PLAINTIFF, THIS ADMISSION, COUPLED WITH THE ASSURANCE OF PAYMENT BINDS THE DEFENDANT.— Even if viewed as an offer of compromise, which is generally inadmissible in evidence against the offeror in civil cases, PAL's acknowledgment of its liability to PESALA in the amount of ₱44,488,716.41 falls under one of the exceptions to the rule of exclusion of compromise negotiations. In *Tan v. Rodil,* the Court, citing the case of *Varadero de Manila v. Insular Lumber Co.,* held that if there is neither an expressed nor implied denial of liability, but during the course of negotiations the defendant expressed a willingness to pay the plaintiff, then such offer of the defendant can be taken in evidence against him. In the case at bar, PAL admitted the amount of ₱44,488,716.41 without an expressed nor implied denial of liability. This admission, coupled with an assurance of payment, binds PAL.

4. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; AWARD OF INTEREST; WHEN PROPER.—** In addition, the Court finds that an award of interest is in order. In *Nacar v. Gallery Frames,* the Court clarified that: "When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum."* x x x As further elucidated by the Court in *Nacar,* when the judgment of the court awarding a sum of money becomes final and executory, a legal interest at the rate of 6% per annum shall be imposed, counted from the time of finality until full satisfaction of the judgment, as this interim period is deemed an equivalent to a forbearance of credit.

5. **ID.; ID.; HUMAN RELATIONS; UNJUST ENRICHMENT; WHEN PRESENT.—** [T]he Court's directive for PAL to remit to PESALA the amount of ₱44,488,716.41 does not preclude PAL from seeking due reimbursement from the members of PESALA whose accounts were not accordingly deducted. x x x [T]he Court is not holding PAL as a guarantor of the debts of these PESALA members; thus, PAL can rightfully claim the principal amount of ₱44,488,716.41 from these concerned PESALA members. This clarification is in consonance with the principle against unjust enrichment. In *Grandteq Industrial*

Steel Products, Inc., et al. v. Margallo, we defined unjust enrichment as follows: "x x x [T]here is unjust enrichment when (1) a person is unjustly benefitted, and (2) such benefit is derived at the expense of or with damages to another. **The main objective of the principle of unjust enrichment is to prevent one from enriching oneself at the expense of another.** It is commonly accepted that this doctrine simply means that a person shall not be allowed to profit or enrich himself inequitably at another's expense. One condition for invoking this principle is that the aggrieved party has no other action based on a contract, quasi-contract, crime, quasi-delict, or any other provision of law." As the amount of ₱44,488,716.41 is actually comprised of loans of certain PESALA members which were not duly deducted from their respective salaries, then fair play dictates that these PESALA members should pay the remaining balances of their loans and reimburse PAL.

APPEARANCES OF COUNSEL

PAL Legal Affairs Department for petitioner.
De Sagun Law Office for respondent.

D E C I S I O N

PEREZ, *J.*:

Assailed in the present Petition for Review on *Certiorari* is the Decision dated September 13, 2011[1] and the Resolution dated March 13, 2012[2] of the Court of Appeals (CA) in CA-G.R. CV No. 82098, CA-G.R. CR No. 28341, and CA-G.R. CR No. 28655, which affirmed with modification the Consolidated Decision dated November 6, 2002[3] of the Regional Trial Court

---

[1] *Rollo,* pp. 48-77; penned by Associate Justice Ramon A. Cruz, and concurred in by Associate Justices Jose C. Reyes, Jr. and Antonio L. Villamor.

[2] *Id*. at 78-80.

[3] *Id*. at 96-114; penned by Pairing Judge Pedro De Leon Gutierrez.

(RTC), Branch 118, Pasay City in Civil Case Nos. 97- 1026 and 00-0016.

Factual Background

Respondent Philippine Airlines (PAL) Employees Savings and Loan Association, Inc. (PESALA) is a private non-stock corporation, the principal purposes of which are "(t)o promote and cultivate the habit of thrift and saving among its members; and to that end, to receive moneys on deposits from said members; (t)o loan said deposits to members when in need."[4]

With the enactment of Republic Act (R.A.) No. 3779 *(Savings and Loan Association Law),* PESALA submitted the necessary requirements to the Bangko Sentral ng Pilipinas (BSP) so that PESALA will be authorized to operate as a savings and loan association. Among the documents required by and submitted to the BSP was a Certification dated June 20, 1969 issued by Mr. Claro C. Gloria, then Vice President for Industrial Relations of PAL, to the effect that PAL sanctions and supports the systems and operations of the PESALA; and that it "allows and implements an arrangement whereby the PESALA collects loan repayments, capital contributions, and deposits from its members by payroll deduction through the facilities of PAL. The said Certification reads:[5]

This is to certify that the Philippine Air Lines, Inc.:

1. Sanctions and supports the systems and operations of the PAL Employees Savings and Loan Association, Inc. (PESALA);

2. Allows and implements an arrangement whereby the PAL Employees Savings and Loan Association collects loan repayments, capital contributions, and deposits from its members by payroll deduction through the facilities of PAL;

---

[4] *Id*. at 154-155; Articles of Incorporation of PAL Employees Savings and Loan Association (PESALA).

[5] *Id*. at 183.

3. Has loaned to the PESALA specific office space to enable it to carry on its normal business until such time as it will have already acquired its own office; and

4. Authorizes the Association to conduct business within the PAL office space loaned to the Association, Monday through Friday, from 8:00 A.M. to 1:00 P.M., and 2:00 P.M. to 4:30 P.M.

On January 28, 1972, the BSP issued to PESALA Certificate of Authority No. C-062.[6] Since then and until the filing of the present case before the trial court, PAL religiously complied with its arrangement with PESALA to carry-out the payroll deductions of the loan repayments, capital contributions, and deposits of PESALA members.[7]

The controversy began on July 11, 1997, when PESALA received from Atty. Jose C. Blanco (Blanco), then PAL Labor Affairs Officer-in-Charge, a Letter[8] informing it that PAL shall implement a maximum 40% salary deduction on all its Philippine-based employees effective August 1, 1997. The Letter stated that, as all present Philippine-based collective bargaining agreements (CBAs) contain this maximum 40% salary deduction provision and to prevent "zero net pay" situations, PAL was going to strictly enforce said provision.

Foreseeing difficulties, PESALA estimated that if the 40% ceiling will be implemented, "then only around 8% (₱19,200,000.00) of the total monthly payroll of ₱240,000,000.00 due to PESALA will be collected by PAL. The balance of around ₱48,000,000.00 will have to be collected directly by plaintiff PESALA from its members who number around 13,000 and who have different offices nationwide."[9] PESALA claimed that this scenario is highly possible as PESALA was only

---

[6] *Id*. at 185.

[7] *Id*. at 123; Complaint.

[8] *Id*. at 188.

[9] *Id*. at 128; Complaint.

ninth in the priority order of payroll deductions.[10] In the obtaining circumstances, PESALA's computation showed that "(t)here will remain an uncollected amount of ₱38,400,000.00 monthly for which plaintiff will suffer loss of interest income of around ₱3,840,000.00 monthly."[11]

Antecedent Proceedings

On August 6, 1997, PESALA filed a Complaint[12] for Specific Performance, Damages or Declaratory Relief with a Prayer

---

[10] *Id*. at 189. Priority Order of the Payroll Deductions:

1. Legal or Mandatory Deductions
2. Personal Loans with SSS
3. Company Accounts
4. Employee Share of Group Insurance
5. Additional Government Deduction (optional)
6. Union Dues/Membership Fees
7. Other Personal Loans with Government Agencies
8. POMP Accounts
9. Personal Accounts with Concessionaires
    a. PESALA (Philippine Airlines Employees Savings and Loan Association)
    b. PECCU (Philippine Airlines Credit Cooperative Union)
    c. PIFCO (Pilots Integrated Funding Corporation)
    d. ALPAP-CCU (ALPAP Credit Cooperative Union)
    e. PAEMBA (Philippine Airlines Employees Mutual Aid and Benefits Association)
    f. PALEACCI (PALEA Credit Cooperative, Inc.)
10. Personal Insurances
    a. Insular Life
    b. Phil-am Life
    c. National Life
    d. Lincoln Life
    e. Manila Bankers

[11] *Id*. at 129; Complaint.

[12] *Id*. at 115-150.

for Temporary Restraining Order and Injunction before the RTC of Pasay City, and which was docketed as Civil Case No. 97-1026. The Complaint prayed for the following:[13]

WHEREFORE, premises considered, plaintiff most respectfully prays that:

1. Upon the filing of this Complaint, a temporary restraining order be issued prohibiting defendants or any of their representatives from implementing the 40% limitation on the salary deductions as stated in the Jose C. Blanco's letter dated July 11, 1997 on the deductions pertaining to the loan repayments, capital contributions and deposits authorized by the PESALA members which will be remitted to PESALA and to order defendants to maintain status quo ante litem and to strictly enforce the aforesaid payroll deductions in favor of PESALA;

2. After notice and hearing, a writ of preliminary injunction be issued against the defendants preventing the latter from committing the aforesaid acts under the preceding paragraph upon such bond as this Honorable Court may equitably and reasonably fix and to strictly enforce the payroll deductions in favor of PESALA during the pendency of the case;

3. After trial and hearing, judgment be rendered as follows:

   a. Making the preliminary injunction permanent with respect to the acts stated in paragraph 1 of the prayer; and

   b. Ordering defendants to pay to PESALA the amount of ₱3,840,000.00 monthly as damages reckoned from the time PAL starts applying the 40% maximum deductions on the PESALA deductions; and

   c. Ordering the defendants jointly and severally to pay plaintiff the sum of ₱250.000.00 as attorney's fees and ₱5,000.00 as appearance fee per appearance as well as the costs of litigation.

Other reliefs just and equitable in the premises are likewise prayed.

---

[13] *Id*. at 148-150.

In the Order dated August 11, 1997, the RTC issued a Temporary Restraining Order (TRO) prohibiting PAL and its representatives from implementing the maximum 40% salary deduction, to wit:[14]

> In order to preserve the *status quo* between the parties pending resolution on the prayer for the issuance of a writ of preliminary injunction included in the complaint, a Temporary Restraining Order is hereby issued enjoining/prohibiting defendants or any of their representatives from enforcing/implementing the maximum 40% salary deduction on the Philippine based PAL employees as stated in the letter of defendant Jose C. Blanco dated July 11, 1997, on the deductions pertaining to the loan repayments, capital contributions and deposits authorized by the PESALA members which will be remitted to PESALA.

PAL, however, was not able to comply with the TRO for the August 1-15, 1997 payroll as it allegedly received a copy of the said TRO after the corresponding payroll was already prepared. As the TRO was not complied with, only ₱3,672,051.52 was remitted by PAL to PESALA instead of the usual ₱28,500,000.00.[15]

After a finding that the alleged CBA provision on the maximum 40% deduction was applicable only to union dues, and as the PESALA deductions were duly authorized by the member-employees, the RTC granted the injunctive writ prayed for by PESALA, enjoining PAL, Blanco, and all other persons or officials acting under them from implementing the maximum 40% limitation on salary deductions, and ordering PAL to strictly enforce the payroll deductions in favor of PESALA until further orders from the court. The Order dated September 3, 1997 states.[16]

> In view of all the foregoing, finding merit in the herein injunctive prayer, the same is GRANTED. Let therefore, a Writ of Preliminary Injunction be issued, enjoining the defendants Philippine Airlines

---

[14] *Id*. at 98; as stated in the RTC Decision dated November 6, 2002.

[15] *Id*. at 202; as stated in the Order dated September 3, 1997.

[16] *Id*. at 204.

and Jose Blanco, and all other persons or officials acting under them from implementing the 40% limitation on the salary deductions as stated in the letter of defendant Jose C. Blanco dated July 11, 1997, pertaining to the loan repayments, capital contributions and deposits authorized by the PESALA members which will be remitted to PESALA and to maintain the status *quo ante litem* and to strictly enforce the payroll deductions in favor of plaintiff PESALA until further order from this Court, upon plaintiff s posting of a credible injunction bond in the amount of One Million (₱1,000,000.00) Pesos.

SO ORDERED.

PAL failed to comply with the terms of the Order dated September 3, 1997. For the pay period of September 1-15, 1997, the deduction advice given by PESALA was for ₱31,870,194.45 but only ₱27,209,088.24 was deducted, leaving a balance of ₱4,661,106.21. For the pay period of September 16-30, 1997, the deduction advice was for ₱31,678,265.85 but only ₱27,755,336.75 was deducted, leaving a balance of ₱3,922,929.10. For the pay period of October 1-15, 1997, the deduction advice was for ₱31,366,866.24 but only ₱27,668,179.53 was deducted, leaving a balance of ₱3,698,686.71. For the pay period of October 16-31, 1997, the deduction advice was for ₱31,074,983.79 but only ₱27,887,935.13 was deducted, leaving a balance of ₱3,187,048.66. For the pay period of November 1-15, 1997, the deduction advice was for ₱31,062,541.02 but only ₱27,897,703.61 was deducted, leaving a balance of ₱3,164,837.41. For the pay period of November 16-30, 1997, the deduction advice was for ₱31,306,925.06 but only ₱28,476,282.37 was deducted, leaving a balance of ₱2,830,642.69. For the pay period of December 1-15, 1997, the deduction advice was for ₱31,468,236.78 but only P28,363,695.00 was deducted, leaving a balance of ₱3,104,541.78. For the pay period of December 16-31, 1997, the deduction advice was for ₱31,258,380.50 but only ₱27,387,361.59 was deducted, leaving a balance of ₱3,871,018.91. For the pay period of January 1-15, 1998, the deduction advice was for ₱31,304,373.14 but only ₱25,382,534.85 was deducted, leaving a balance of ₱5,921,838.29. For the pay period of January 16-30, 1998,

the deduction advice was for ₱31,687,242.52 but only ₱27,190,730.72 was deducted, leaving a balance of ₱4,496,511.80. For the pay period of February 1-15, 1998, the deduction advice was for ₱31,919,262.26 but only ₱26,269,660.41 was deducted, leaving a balance of ₱5,649,601.85.[17] Thus, from September 1, 1997 to February 15, 1998, a balance of ₱44,488,760.41[18] was incurred.[19]

In an Order dated March 11, 1998, the RTC ordered PAL to remit to PESALA the amount of ₱44,488, 716.41, to wit:[20]

> WHEREFORE, and based on the foregoing considerations, finding the motion of the plaintiff to be meritorious, the same is hereby GRANTED. Defendants are hereby ordered to remit to the plaintiff PESALA the total undeducted amount of ₱44,488,716.41 which corresponds to pay periods from September 1997 to February 15, 1998, and to cause the deductions in full in the succeeding pay periods in accordance with the deduction advice of the plaintiff.
>
> SO ORDERED.

In the meantime, PAL was placed under receivership on June 23, 1998. Thus, in the Order dated July 1, 1998, the Securities and Exchange Commission (SEC) prohibited PAL from paying any amounts in respect of any liabilities incurred prior to June 23, 1998 and declared all claims for payment against PAL suspended.[21]

---

[17] *Id*. at 213-214.

[18] Actual computation yields the sum of ₱44,508,763.41.

[19] *Rollo,* pp. 210-211; Second Supplemental Manifestation and Motion.

[20] *Id*. at 232.

[21] "Considering that the interests of PAL's investors and creditors are the paramount concern of this Commission, and to afford a fair opportunity, as well, for the implementation of a Rehabilitation Plan should one be approved by this Commission, this Hearing Panel finds it necessary to amplify its Order of June 23, 1998 and, by way of supplement, hereby orders that:

(1) Petitioner shall not sell, transfer or assign whether on credit, privately or otherwise, or lease or mortgage the assets or any part thereof out of the ordinary course of its business, without

In defense, PAL claimed that PESALA never filed any claims with the Rehabilitation Receiver of PAL nor with the SEC that is why it was unable to comply with the RTC's Order dated March 11, 1998.[22]

During the hearing held on December 4, 1998, however, then PAL's counsel, Atty. Emmanuel Pena, and Blanco assured the Court that: (1) PAL will regularly remit to PESALA the full amount per pay period that is due to the latter, and (2)

---

the approval of this Commission in respect of any transaction exceeding Three Million Pesos (₱3,000,000.00) in Philippine Currency;

(2) Petitioner shall not pay any amounts owing in respect to liabilities it incurred prior to the 23rd day of June 1998 without the approval of this Commission;

(3) In the light of the Order of the Commission appointing an Interim Receiver all claims for payment against PAL are deemed suspended. Further, in order that the operations of PAL shall not be hampered in the meantime that the Interim Receiver is still formulating the Rehabilitation Plan, the Interim Receiver is hereby given the authority to pay for the utilities or services, inclusive of goods and services requested by, supplied to, provided to and received by the petitioner subsequent to 23 June 1998. Considering thus, all persons, firms and corporations are hereby directed to honor all commitments with PAL, neither terminating nor cancelling any agreements, or disturbing or interfering with the utility services, including, but not limited to the furnishing of fuel, gas, oil, heat, electricity, water, telephone or any other utility of like kind, furnished up to the present date to the petitioner, unless with prior notice to the petitioner or upon order of this Commission.

(4) All persons, firms and corporations are urged to continue performing and observing any terms, conditions and provisions contained in any agreement with the petitioner subject to the obligations of the petitioner to pay for any goods and services requested by and supplied to the petitioner for the period commencing with the date of this Order. Finally, all persons, firms and corporations are likewise directed to honor the occupation by the petitioner of any asset leased by the petitioner, subject to the obligation of the petitioner to pay occupation rent, as the case may be, for the period commending the 23rd day of June, but not arrears, at the rent presently payable by the petitioner."

[22] *Rollo,* p. 57; CA Decision.

PAL will pay PESALA the balance of ₱44,488.716.41 by January 1999. These assurances were embodied in the Order dated December 4, 1998.[23]

Despite said assurances, PAL still failed to make good its word. On January 17, 2000, PESALA filed a Petition for Indirect Contempt against Blanco, Mr. Avelino L. Zapanta (then PAL President), and Mr. Andrew L. Huang (then PAL Senior Vice President-Finance and Chief Financial Officer) before the Regional Trial Court of Pasay City, docketed as Civil Case No. 00-0016, and consolidated with Civil Case No. 97-1026.

In the Decision dated November 6, 2002, the RTC made the writ of preliminary injunction earlier issued as permanent, thus ordering PAL and its officials to strictly comply with and implement the arrangement between the parties whereby PAL deducts from the salaries of PESALA members through payroll deductions the loan repayments, capital contributions and deposits of said members, and to remit the same to PESALA. The RTC also declared Blanco, Zapanta, and Huang guilty of indirect contempt and ordered them to remit or turn-over to PESALA the amount of ₱44,488,716.41 within three days from receipt of the Decision, otherwise their arrest and detention shall be ordered immediately. The dispositive of the said Decision reads:[24]

WHEREFORE, the foregoing premises considered, judgment is hereby rendered in favor of the plaintiff/petitioner and against defendants/respondents:

a. Ordering the defendants and all other officials, persons or agents acting under them to strictly comply with and implement the arrangement between the parties whereby defendants deduct from the salaries of the members of PESALA through payroll deductions the loan repayments, capital contributions and deposits of said members and to remit the same to plaintiff immediately giving full priority

---

[23] *Id*. at 111; as stated in the RTC Decision.

[24] *Id*. at 112-114.

to plaintiffs deduction as contained in the Clarificatory Order dated May 19, 2000;

b. Making the writ of preliminary injunction earlier issued as permanent;

c. Ordering the defendants to pay the plaintiff attorney's fees of ₱250,000.00;

d. Declaring the herein respondents Jose C. Blanco, Avelino L. Zapanta in his capacity as President of the Philippine Airlines and Andrew L. Huang, in his capacity as Senior Vice President-Finance and Chief Financial Officer of the Philippine Airlines, Inc., as guilty of indirect contempt for their contemptuous refusal and failure to comply with the lawful Orders dated March 11, 1998 and December 4, 1998 which have already become final and executory as the Petition for Certiorari of defendants on the Order of this Court dated March 11, 1998 had been denied by the Court of Appeals per its Entry of Judgment in CA-G.R. SP 48654 dated May 14, 1999. Hence, respondents are hereby ordered to remit/ turn over to plaintiff/petitioner the amount of ₱44,480,716.41 within three (3) days from receipt hereof otherwise, their arrest and detention shall be ordered immediately.

e. Ordering the defendants/respondents to pay the cost of this suit.

SO ORDERED.

On November 11, 2002, PAL, Blanco, Zapanta, and Huang appealed the RTC Decision. The appeal of Civil Case No. 97-1026 was docketed as CA-G.R. CV No. 82098, while the appeal of Criminal Case No. 00-0016 was docketed as CA-G.R. CR No. 28341and CA-G.R. CR No. 28655. These appeals were consolidated.

While the appeals were pending before the Court of Appeals, PESALA moved for the execution of the RTC Order dated March 11, 1998. The RTC issued a Writ of Execution pending appeal and the consequent Notices of Garnishment. Upon appeal, the Court of the Appeals, as sustained by the Supreme

Court, nullified the Writ of Execution and Notices of Garnishment.[25]

Going back to the case at bar, in the Decision dated September 13, 2011, the Court of Appeals dismissed the appeal in CA-G.R. CV No. 82098, but granted the appeals in CA-G.R. CR Nos. 28341 and 28655. It affirmed with modification the RTC Decision in that it upheld the agreement between the parties whereby PAL deducts from the salaries of PESALA members through payroll deductions the loan repayments, capital contributions and deposits of said members, as well as the RTC Order directing the remittance of ₱44,488,716.41[26] to PESALA, but it declared Blanco, Zapanta, and Huang not guilty of indirect contempt. Thus, the Court of Appeals ruled:[27]

> **WHEREFORE**, premises considered, the appeal in CA-G.R. CV No. 82098 is **DISMISSED** while the appeal in CA-G.R. CR. Nos. 28341 and 28655 is **GRANTED**. The Decision of the Regional Trial Court dated November 6, 2002 is **AFFIRMED with MODIFICATION** that **respondents-appellants Jose C. Blanco, Avelino L. Zapanta and Andrew L. Huang are held <u>not</u> guilty of indirect contempt**. The order for them "to remit/turn over to plaintiff/petitioner the amount of ₱44,480,716.41 within three (3) days from receipt" of the November 6, 2002 Decision "otherwise, their arrest and detention shall be ordered immediately" is **REVERSED**.
>
> Costs against the Defendants-Appellants.
>
> **SO ORDERED.**

Issues

In the present petition, petitioner raises the following issues:[28]

I.

The Court of Appeals ruled in a manner contrary to law and the Honorable Court's rulings in *De Ysasi v Arceo* and *Lazo*

---

[25] See G.R. No. 161110, September 13, 2011.

[26] The CA referred to this amount as ₱44,480,716.41.

[27] *Rollo,* p. 74.

[28] *Id*. at 25.

vs. Republic Surety & Insurance Co. **when it sustained the lower court's adjudication of matters that are beyond the issues presented in Civil Case No. 97-1026.**

II.

The Court of Appeals ruled in a manner contrary to Article 2055 of the Civil Code and the Honorable Court's rulings when it effectively declared a contract of guaranty between PAL and the members-debtors of PESALA.

III.

The Court of Appeals ruled in a manner contrary to law when it sustained the imposition of terms, conditions and standards not provided for by Republic Act No. 8367.

In raising these issues, PAL is essentially contesting the order directing it to pay PESALA the amount of ₱44,488,716.41, representing the balance between the deduction advice and the actual deducted amount.

Our Ruling

We deny the petition.

PAL contends that its right to due process was violated when the Court of Appeals sustained the RTC ruling for it to remit to PESALA the amount of ₱44,488,716.41, which amount was not specifically prayed for in the Complaint.[29] PAL claims that "(t)he only amount prayed for by PESALA in its complaint was the alleged damages of '₱3,840,000.00 monthly xxx reckoned from the time PAL starts applying the 40% maximum deductions on the PESALA deductions,' which is totally different from the amount of ₱44,480,716.41[30] that the lower court was ordering PAL to pay PESALA. The said amount asked for by PESALA in its complaint was supposedly for "damages," and **not** the undeducted amount insisted upon by both the lower court and the Court of Appeals."[31]

---

[29] *Id*. at 26; Petition.

[30] Should be ₱44,488,716.41.

[31] *Rollo,* p. 28; Petition.

Indeed, a perusal of the prayer in the Complaint shows that PESALA did not specifically pray for the amount of ₱44,488,716.41 or for any undeducted amount. But this is understandable because, at the time the Complaint was filed, PAL had yet to effect the maximum 40% deduction policy and as such, there were yet no undeducted amounts.

The records of the case show, on the other hand, that the undeducted amount of ₱44,488,716.41 came about because PAL failed to comply with the TRO and the injunctive writ issued by the RTC. As discussed earlier, the Complaint was filed on August 7, 1997 and as early as August 11, 1997, the RTC already issued a TRO enjoining PAL from implementing the maximum 40% deduction policy. PAL, however, failed to comply with the TRO. On September 3, 1997, the RTC issued a Writ of Preliminary Injunction (WPI) further enjoining PAL from implementing the maximum 40% deduction policy. Yet again, PAL failed to comply with the RTC's directive.

PAL cannot hope to gain anything beneficial from its deliberate refusal to comply with the orders and directives of the court. PAL's obstinate disobedience to the RTC's TRO and WPI led to the disruption of the *status quo* and to the exposure of PESALA to deficits and losses, for which it should be liable.

In *United Coconut Planters Bank v. United Alloy Phils. Corp.,*[32] the Court, quoting *Capitol Medical Center v. Court of Appeals,* explained that *"(t)he sole object of a preliminary injunction,* whether prohibitory or mandatory, *is to preserve the status quo until the merits of the case can be heard."* In *Buyco v. Baraquia,*[33] we further clarified that a preliminary injunction "is usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the *status quo* of the controversy **before a full hearing can be had on the merits of the case**."

---

[32] 490 Phil. 353, 363 (2005).

[33] 623 Phil. 596, 601 (2009).

Indeed, an injunction is granted by a court in order to prevent an injury or to stop the furtherance of an injury until the merits of the case can be fully adjudged. In the case at bar, PAL's defiance of the TRO and the WPI caused PESALA to incur a shortfall in the amount of ₱44,488,716.41. This shortfall could have been precluded if only PAL complied with the TRO and the WPI and preserved the *status quo*. Since such loss was brought about by PAL's non-compliance with the directives of the RTC, then fair play dictates that PAL should be held liable for its insolence.

In directing PAL to remit to PESALA the amount of ₱44,488,716.41, PAL additionally argues that the Court of Appeals unilaterally appointed PAL as a guarantor of the debts of PESALA' s members[34] because the amount of ₱44,488, 716.41 had not yet been deducted from the salaries of the PESALA members.[35]

Contrary to PAL's erroneous argument, however, it is liable, not because it is being made a guarantor of the debts of PESALA's members, but because of its failure to comply with the RTC's directives. Indeed the amount of ₱44,488,716.41 has not yet been deducted from the salaries of the PESALA members and, precisely, the reason why such amount has not been deducted is because PAL contravened the RTC's TRO and WPI. PAL is therefore liable, not because it is being made a guarantor of the debts of PESALA's members, but because its own actions brought forth the loss in the case at bar.

PAL also claims that the RTC erred in granting PESALA a relief not prayed for in the Complaint. It maintains that PESALA cannot be awarded the amount of ₱44,488,716.41 as it is not in the nature of damages, which is the only fiscal relief specifically prayed for in the Complaint.

Verily, it is a settled rule that a court cannot grant a relief not prayed for in the pleadings or in excess of that being

---

[34] *Rollo,* p. 31; Petition.

[35] *Id*. at 30; *id*.

sought. In *Bucal v. Bucal,*[36] the Court, reiterating the ruling in *DBP v. Teston,* explained:

> Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, **absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief**. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is **to prevent surprise** to the defendant. (Emphasis supplied.)

In the case at bar, the records show that PAL was afforded due notice and an opportunity to be heard with regard to PESALA's claim of ₱44,488,716.41. In fact, in explaining the foregoing balance, PAL adverted to the "zero net pay" status of their employees' respective accounts, thus concluding that "there is simply no legal or equitable basis in PESALA's demand for the remittance of the amount claimed to be undeducted."[37]

Moreover, the prayer in the Complaint did state that "(o)ther reliefs just and equitable in the premises are likewise prayed."[38] In *Sps. Gutierrez v. Sps. Valiente, et al.,*[39] the Court, echoing the ruling in *BPI Family Bank v. Buenaventura,* held that:

> **(T)he general prayer is broad enough to "justify extension of a remedy different from or together with the specific remedy sought**." Even without the prayer for a specific remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence introduced so warrant. **The court shall grant relief warranted by the allegations and the proof even if no such relief is prayed for**. The prayer in the complaint for other reliefs equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for. (Emphasis supplied.)

Undeniably, PESALA's claim of ₱44,488,716.41 is a necessary consequence of the action it filed against PAL. As said claim

---

[36] G.R. No. 206957, June 17, 2015.

[37] *Rollo,* pp. 230-231; Order dated March 11, 1998.

[38] *Id.* at 150; Complaint.

[39] 579 Phil. 486, 500 (2008).

was duly heard and proven during trial, with PAL being afforded the opportunity to contest it, the RTC and the Court of Appeals did not err in granting such claim.

It is also worth mentioning that PAL, through its then counsel Atty. Emmanuel Pena and then Labor Affairs OIC Atty. Jose C. Blanco, acknowledged its liability to PESALA in the amount of ₱44,488,716.41. In open court, during the hearing held on December 4, 1998, Atty. Pena and Atty. Blanco assured that: (1) PAL will regularly remit to PESALA the full amount per pay period that is due to the latter; and (2) PAL will likewise pay PESALA the balance of the previously undeducted amount of ₱44,488,716.41 by January 1999. These assurances are transcribed in the Order dated December 4, 1998 of the RTC.[40]

Even if viewed as an offer of compromise, which is generally inadmissible in evidence against the offeror in civil cases, PAL's acknowledgment of its liability to PESALA in the amount of ₱44,488,716.41 falls under one of the exceptions to the rule of exclusion of compromise negotiations.

In *Tan v. Rodil,*[41] the Court, citing the case of *Varadero de Manila v. Insular Lumber Co.,* held that if there is neither an expressed nor implied denial of liability, but during the course of negotiations the defendant expressed a willingness to pay the plaintiff, then such offer of the defendant can be taken in evidence against him.

In the case at bar, PAL admitted the amount of ₱44,488,716.41 without an expressed nor implied denial of liability. This admission, coupled with an assurance of payment, binds PAL.

In addition, the Court finds that an award of interest is in order. In *Nacar v. Gallery Frames,*[42] the Court clarified that:

When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded

---

[40] *Rollo,* p. 111; RTC Decision.

[41] 540 Phil. 183, 203-204 (2006).

[42] G.R. No. 189871, August 13, 2013, 703 SCRA 439, 454.

may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

As further elucidated by the Court in *Nacar,* when the judgment of the court awarding a sum of money becomes final and executory, a legal interest at the rate of 6% per annum shall be imposed, counted from the time of finality until full satisfaction of the judgment, as this interim period is deemed an equivalent to a forbearance of credit.

On a last note, we herein clarify that the Court's directive for PAL to remit to PESALA the amount of ₱44,488,716.41 does not preclude PAL from seeking due reimbursement from the members of PESALA whose accounts were not accordingly deducted. As explained earlier, the Court is not holding PAL as a guarantor of the debts of these PESALA members; thus, PAL can rightfully claim the principal amount of ₱44,488,716.41 from these concerned PESALA members.

This clarification is in consonance with the principle against unjust enrichment. In *Grandteq Industrial Steel Products, Inc., et al. v. Margallo,*[43] we defined unjust enrichment as follows:

> As can be gleaned from the foregoing, there is unjust enrichment when (1) a person is unjustly benefitted, and (2) such benefit is derived at the expense of or with damages to another. **The main objective of the principle of unjust enrichment is to prevent one from enriching oneself at the expense of another**. It is commonly

[43] 611 Phil. 613, 627 (2009).

accepted that this doctrine simply means that a person shall not be allowed to profit or enrich himself inequitably at another's expense. One condition for invoking this principle is that the aggrieved party has no other action based on a contract, quasi-contract, crime, quasi-delict, or any other provision of law. (Emphasis supplied.)

As the amount of ₱44,488,716.41 is actually comprised of loans of certain PESALA members which were not duly deducted from their respective salaries, then fair play dictates that these PESALA members should pay the remaining balances of their loans and reimburse PAL. The interests herein adjudged by the Court, however, are for the account of PAL, as it was PAL's disobedience of the RTC's directives that brought forth the said principal amount.

WHEREFORE, premises considered, the present petition is hereby **DENIED**. Petitioner Philippine Airlines, Inc. (PAL) is ordered to **REMIT** to PAL Employees Savings and Loan Association, Inc. (PESALA) the principal amount of ₱44,488,716.41, with interest at the rate of 6% per annum computed from March 11, 1998 until fully remitted, without prejudice to the right of PAL to be reimbursed the principal amount by the concerned PESALA members.

SO ORDERED.

Peralta[*] (*Acting Chairperson*), *del Castillo,*[**] *Reyes,* and *Jardeleza, JJ.,* concur.

---

[*] Designated as Acting Chairperson in lieu of Associate Justice Presbitero J. Velasco, Jr. per Raffle dated February 10, 2016.

[**] Designated as Additional Member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Raffle dated February 10, 2016.

THIRD DIVISION

[G.R. No. 202187. February 10, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ELISEO D. VILLAMOR,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; ELEMENTS.— [R]ape is qualified when certain circumstances are present in its commission, such as when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. Hence, for a conviction of qualified rape, the prosecution must allege and prove the ordinary elements of (1) sexual congress, (2) with a woman, (3) by force and without consent; and in order to warrant the imposition of the death penalty, the additional elements that (4) the victim is under eighteen years of age at the time of the rape, and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S CONCLUSIONS THEREON IN RAPE CASES ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT ON APPEAL.— Time and again, the Court has held that in resolving rape cases, primordial consideration is given to the credibility of the victim's testimony. Settled is the rule that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appears certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case. The Court, however, does not find any such circumstance here. Indeed, the trial judge is in the best position to assess whether the witness was telling the truth as he had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witnesses while testifying.

3. ID.; ID.; ID.; THE VOICE OF THE ACCUSED IS AN ACCEPTABLE MEANS OF IDENTIFICATION WHEN IT IS ESTABLISHED THAT THE WITNESS AND THE ACCUSED KNEW EACH OTHER PERSONALLY AND CLOSELY FOR A NUMBER OF YEARS.— That AAA' s credibility is doubtful due to the fact that she did not see the perpetrator's face, and only recognized him for his built, voice, and smell, is of no moment. As We have held before, a person may be identified by these factors for once a person has gained familiarity with another, identification is quite an easy task. Even though a witness may not have seen the accused at a particular incident for reasons such as the darkness of the night, hearing the sound of the voice of such accused is still an acceptable means of identification where it is established that the witness and the accused knew each other personally and closely for a number of years. Here, it cannot be denied that AAA personally knew appellant's built, voice, and smell, having lived with him her entire life.

4. ID.; ID.; ID.; NOT ADVERSELY AFFECTED BY THE RAPE VICTIM'S SILENCE ON THE INCIDENT.— Neither does AAA's silence on the incident nor failure to shout or wake up her siblings affect her credibility. The Court had consistently found that there is no uniform behavior that can be expected from those who had the misfortune of being sexually molested. While there are some who may have found the courage early on to reveal the abuse they experienced, there are those who have opted to initially keep the harrowing ordeal to themselves and attempted to move on with their lives. This is because a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. The perpetrator of the rape hopes to build a climate of extreme psychological terror, which would numb his victim into silence and submissiveness. In fact, incestuous rape further magnifies this terror for the perpetrator in these cases, such as the victim's father, is a person normally expected to give solace and protection to the victim. Moreover, in incest, access to the victim is guaranteed by the blood relationship, magnifying the sense of helplessness and the degree of fear.

5. ID.; ID.; ALIBI AND DENIAL; GENERALLY REJECTED FOR BEING INHERENTLY WEAK AND EASILY FABRICATED.— As to appellant's defenses of denial and

alibi, the Court agrees with the trial and appellate courts that the same deserve scant consideration. No jurisprudence in criminal law is more settled than that alibi and denial, the most common defenses in rape cases, are inherently weak and easily fabricated. As such, they are generally rejected. On the one hand, an accused's bare denial, when raised against the complainant's direct, positive and categorical testimony, cannot generally be held to prevail. On the other hand, unless the accused establishes his presence in another place at the time of the commission of the offense and the physical impossibility for him to be at the scene of the crime, his acquittal cannot be properly justified.

6. ID.; ID.; CREDIBILITY OF WITNESSES; YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH.— It is not uncommon for appellants accused of rape to shift the blame to another, particularly to the victim's suitor or boyfriend. But that AAA had a boyfriend at the time of the incidents is inconsequential and cannot be held to cast doubt on AAA's testimony. It has been consistently held that no sane girl would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape. Youth and immaturity are generally badges of truth and sincerity. While the weight of the victim's testimony may be countered by physical evidence to the contrary or indubitable proof that the accused could not have committed the rape, the testimony shall be accorded utmost value in the absence of such countervailing proof. The fact that AAA had a boyfriend does not necessarily exclude all possibilities of rape. In reality, it barely has anything to do with the charges she had filed against appellant.

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

PERALTA, *J.*:

Before the Court is an appeal from the Decision[1] dated September 27, 2011 of the Court Appeals (*CA*) in CA-G.R. CR. HC. No. 00970 which affirmed the Decision[2] dated October 22, 2008 of the Regional Trial Court *(RTC),* 8th Judicial Region, Branch 13, Carigara, Leyte, in Criminal Case Nos. 4679, 4680, 4681, 4682, and 4683 for rape.

The antecedent facts are as follows:

On April 27, 2006, several informations were filed against appellant Eliseo D. Villamor charging him with five (5) counts of the crime of rape, committed by having carnal knowledge of his own daughter, AAA,[3] a 15-year-old girl, against her will and to her damage and prejudice, the accusatory portions of which read:

Case No. 4679:

That on or about the 5th day of November 2005, in the municipality of Barugo, Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the victim, with deliberate intent and with lewd designs and by use of force and intimidation, did then and there wilfully, unlawfully and feloniously had a carnal knowledge with his own daughter, AAA, a 15-year-old girl, against her will to her damage and prejudice.

CONTRARY TO LAW.

---

[1] Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pampio A. Abarintos and Eduardo B. Peralta, Jr. concurring; *rollo,* pp. 3-13.

[2] Penned by Judge Crisostomo L. Garrido; CA *rollo,* pp. 34-50.

[3] In line with the Court's ruling in *People v. Cabalquinto,* G.R. No. 167693, September 19, 2006, 502 SCRA 419, 426, citing Rule on Violence Against Women and their Children, Sec. 40, Rules and Regulations Implementing Republic Act No. 9262, Rule XI, Sec. 63, otherwise known as the "Anti-Violence Against Women and their Children Act," the real name of the rape victim will not be disclosed.

Case No. 4680:

That on or about the 7th day of November 2005, in the municipality of Barugo, Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the victim, with deliberate intent and with lewd designs and by use of force and intimidation, did then and there wilfully, unlawfully and feloniously had a carnal knowledge with his own daughter, AAA, a 15-year-old girl, against her will to her damage and prejudice.

CONTRARY TO LAW.

Case No. 4681:

That on or about the 10th day of November 2005, in the municipality of Barugo, Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the victim, with deliberate intent and with lewd designs and by use of force and intimidation, did then and there wilfully, unlawfully and feloniously had a carnal knowledge with his own daughter, AAA, a 15-year-old girl, against her will to her damage and prejudice.

CONTRARY TO LAW.

Case No. 4682:

That on or about the 3rd day of December 2005, in the municipality of Barugo, Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the victim, with deliberate intent and with lewd designs and by use of force and intimidation, did then and there wilfully, unlawfully and feloniously had a carnal knowledge with his own daughter, AAA, a 15-year-old girl, against her will to her damage and prejudice.

CONTRARY TO LAW.

Case No. 4683:

That on or about the 15th day of December 2005, in the municipality of Barugo, Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, who is the father of the victim, with deliberate intent and with lewd designs and by use of force and intimidation, did then and there wilfully, unlawfully and feloniously had a carnal knowledge with his own daughter, AAA, a 15-year-old girl, against her will to her damage and prejudice.

CONTRARY TO LAW.[4]

Upon arraignment, appellant pleaded not guilty to the offense charged.[5] During trial, the prosecution presented the testimonies of the victim, AAA, the doctor who conducted her medical examination, the police officers who made entries of complaints made by AAA's mother on the police blotter, the local civil registrar, and the Municipal Social Welfare Officer who prepared the Child Study Report on AAA.[6]

According to the prosecution, at about 11:00 p.m. on November 5, 2005, while AAA was asleep beside her sister, brothers, and grandmother, at the second floor of their house in Barugo, Leyte, she was awakened by someone who was fondling her breasts and vagina. She instantly knew the man to be her father because of his built, smell, and voice. Sensing that she was awake, he threatened to kill her if she made noise or tell anybody about what he was doing to her. For fear of her life, AAA silently tried to resist and push her father away, but to no avail as he was much stronger than her. She could only cry while appellant mounted her, let his penis out of his loose short pants, took her underwear off, and inserted his penis inside her vagina by making a push-and-pull movement. AAA felt pain as her father penetrated her and then ejaculated inside her. During all of this, her siblings and grandmother were sound asleep.[7]

The same incident happened four (4) more times that year, particularly on November 7, November 10, December 3, and December 15. During those times, AAA did not open up to anyone for not only was she afraid of her father, she had no one to confide in as her mother was working as a domestic helper in Singapore. When, however, AAA became pregnant in February 2006, she finally told her mother, who angrily came

---

[4] *Rollo,* pp. 6-7.

[5] *Id.* at 7.

[6] CA *rollo,* pp. 36-40.

[7] *Rollo,* p. 4.

home in April 2006 and helped her file a complaint against her father.[8]

AAA's testimony was corroborated by the medical findings of Dr. Lourdes Calzita, the Municipal Health Officer who conducted the medical examination on AAA showing that since she was already 22 weeks pregnant in April 2006, it is possible that the rape victim had sexual intercourse in the middle of November or early December 2005. Also, Municipal Social Welfare Officer, Luz Raagas, who prepared the Child Study Report on AAA, testified that during her interviews with AAA, she observed how AAA cried and expressed her deep hate for her father. Further, as borne by the Birth Certificate presented by the Municipal Civil Registrar of Carigara, Leyte, AAA was born on April 24, 1990 to spouses appellant and AAA's mother, showing that AAA was indeed, a minor at the time of the alleged incidents.[9]

In contrast, the defense presented the lone testimony of appellant himself: who interposed a defense of denial and alibi. He contended that it was physically impossible for him to have committed the five (5) counts of rape on his daughter because during those times, he had not been sleeping in the bigger house where AAA, his mother, and his other children would normally sleep, but in a small hut situated at the back of their house. He added that from November 5 to December 15, 2005, he was busy looking for his wife, AAA's mother, who had left him for Manila with another man in July 2004. In fact, he intended on filing a complaint against his wife but was advised otherwise for she might be imprisoned.[10]

In addition, appellant denied that he impregnated his daughter, AAA, for in truth, it was actually her boyfriend who impregnated her. According to appellant, AAA and said boyfriend even got married in April 2006 with his blessing and upon the intercession

---

[8] *Id.* at 4-6.

[9] CA *rollo,* pp. 45-46.

[10] *Id.* at 46-47.

of the boyfriend's mother and the barangay chairman. Apart from this, appellant claims that the charges against him were merely the result of the manipulations of AAA's aunt, his wife's cousin, who had been against him ever since he and his wife were just sweethearts. Thus, AAA was simply maneuvered to file the fabricated charges against him.[11]

After the presentation of the appellant's testimony, the defense, having no other witness or documentary evidence to present, formally offered its evidence, consisting of said testimony without any documentary exhibits.[12]

On October 22, 2008, the RTC found appellant guilty beyond reasonable doubt of the five (5) counts of incestuous rape and rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the court found accused ELISEO VILLAMOR, GUILTY, beyond reasonable doubt for the crime of five (5) counts of incestuous rape of his daughter, AAA, and sentenced to suffer the maximum penalty of reclusion perpetua in Criminal Case No. 4679; reclusion perpetua in Criminal Case No. 4680; reclusion perpetua in Criminal Case No. 4681; reclusion perpetua in Criminal Case No. 4682; reclusion perpetua in Criminal Case No. 4683; and to pay civil indemnity in the total amount of Two Hundred Fifty Thousand (₱250,000.00), Fifty Thousand (₱50,000.99) for each count of rape), moral damages in the amount of Two Hundred Fifty Thousand (₱250,000.00) (₱50,000.00 for each count of rape), and exemplary damages in the amount of One Hundred Twenty-Five Thousand (₱l25,000.00) Pesos (₱25,000.00 for each count of rape) to AAA; and
>
> Pay the Cost.
>
> SO ORDERED.

On the one hand, the trial court found appellant's defense weak and unconvincing. While appellant completely denies the charges against him, he failed to produce any competent evidence to controvert the same. Neither did he present a single

---

[11] *Id.* at 47.

[12] *Id.* at 42.

witness to stand in his favor. The trial court also found that appellant similarly failed to substantiate his defense of alibi. It noted that alibi, like denial, is inherently weak and can easily be fabricated.[13] For this defense to justify an acquittal, the following must be established: the presence of the accused in another place at the time of the commission of the offense and the physical impossibility for him to be at the scene of the crime. The trial court, however, found that the defense failed to establish his presence at the small hut at the back of his house as well as the impossibility for him to be at the second floor of his house where his children normally slept.[14]

On the other hand, the RTC found that the vivid portrayal by AAA of the horrible sexual molestations she experienced from her own father is beyond comprehension. AAA, in her minor and innocent mind, was able to chronicle every detail of the five (5) counts of sexual molestation against her by her own father. Notwithstanding the gruelling and rigid cross-examination by the defense, she maintained her composure and was able to withstand the same, although at times, she had to shed tears. Her testimony was steadfast, clear and straightforward in every detail of her harrowing experience.[15] Thus, the trial court observed that an innocent child could not have possibly fabricated such a tale and accused her own father of a crime as heinous as incestuous rape had she really not been abused.

Thus, the trial court convicted appellant on the settled jurisprudence that a categorical and consistent positive identification, absent any showing of ill-motive on the part of the eyewitness testifying thereon, prevails over the defenses of denial and alibi, which if not substantiated by clear and convincing proof, constitute self-serving evidence undeserving of weight in law.[16]

---

[13] *Id.* at 47.

[14] *Id.*

[15] *Id.* at 48.

[16] CA *rollo*, p. 44.

On appeal, the CA affirmed the RTC Decision in its entirety, absent any clear showing that some fact or circumstance of weight or substance had been overlooked, misunderstood or misapplied by the trial court. Contrary to appellant's contention that AAA's testimony is not credible because it was characterized by glaring inconsistencies, the CA upheld the accepted rule that the credibility of a rape victim is not impaired by some inconsistencies in her testimony. Minor inconsistencies tend to bolster, rather than weaken, the rape victim's credibility since one could hardly doubt that her testimony was not contrived and the court cannot expect a rape victim to remember every ugly detail of the appalling outrage.[17]

Moreover, the fact that the incidents of rape happened while the other members of the family were asleep beside AAA does not detract from her credibility. According to the CA, it is common judicial experience that rapists are not deterred by the presence of other people nearby, such as the members of their own family inside the same room, with the likelihood of being discovered, since lust respects no time, locale, or circumstance.[18] Where the accused was positively identified by the victim of rape herself who harboured no ill motive against the accused, the defense of alibi must fail. From the evidence on record, it is indeed abundantly clear that accused-appellant raped his own daughter, his defense of denial is inherently weak. It cannot outweigh the positive and unequivocal narration by the victim on how she was ravished by her own father.[19]

Consequently, appellant filed a Notice of Appeal[20] on October 14, 2011. Thereafter, in a Resolution[21] dated July 30, 2012, the Court notified the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice. Both parties, however, manifested that they are

---

[17] *Rollo,* p. 11.

[18] *Id.*

[19] *Id.* at 12.

[20] *Id.* at 14.

[21] *Id.* at 20.

adopting their respective briefs filed before the CA as their supplemental briefs, their issues and arguments having been thoroughly discussed therein. Thereafter, the case was deemed submitted for decision.

In his Brief, appellant assigned the following error:

I.

THE COURT OF APPEALS ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME CHARGED DESPITE THE FACT THAT THE PROSECUTION FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[22]

First, appellant alleged that the courts below should not have convicted him of the offense charged for the prosecution failed to prove his guilt beyond reasonable doubt. He maintained that AAA's credibility is doubtful for as she admitted, she did not see the perpetrator's face. She only identified him from his voice. He also questions why AAA allowed the incident to be repeated multiple times before she decided to tell her mother as well as why, amidst the raping, AAA did not shout or wake up her siblings who were sleeping right beside her. *Second,* he asserted that during the months when he allegedly raped his daughter AAA, they did not sleep in the same place for she usually slept inside their house together with his mother and his other children while he slept in a small hut at the back of said house. *Third,* appellant claimed that since his relationship with his wife, AAA's mother, had not been harmonious since 2004, the rape charges filed against him were only meant to torment. In reality, he should be the one to file charges against his wife for running off with another man. *Fourth,* appellant maintained that the trial court should have considered the fact that AAA had a boyfriend, whom she wed in April 2006, a few months after the alleged incidents. *Fifth,* he argued that the fact that AAA got pregnant and bore a child on July 17, 2006 should not be considered as conclusive proof that it was he who raped her. He stressed that months after AAA found out she was pregnant, her boyfriend offered to marry her. *Sixth,* appellant attacked the testimonies

[22] CA *rollo,* p. 26.

of the doctor who conducted her medical examination and the social worker for being hearsay evidence.

The appeal must fail.

Article 266-A, paragraph 1 of the Revised Penal Code *(RPC)* provides the elements of the crime of rape:

> Article 266-A. *Rape: When And How Committed. - Rape is committed:*
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
>
> 2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.[23]

Moreover, Article 266-B of the same Code provides that rape is qualified when certain circumstances are present in its commission, such as when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.[24] Hence, for a conviction of qualified rape, the prosecution must allege and prove the ordinary elements of (1) sexual congress, (2) with a woman, (3) by force and without consent; and in

---

[23] Article 266-A of the Revised Penal Code (1930), as amended by Republic Act No. 8353 (1997).

[24] Article 266-B of the Revised Penal Code (1930), as amended by Republic Act No. 8353 (1997).

order to warrant the imposition of the death penalty, the additional elements that (4) the victim is under eighteen years of age at the time of the rape, and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.[25]

The Court, in this case, does not find any reason to depart from the finding of the courts below that the prosecution was able to establish all the elements of the crime beyond reasonable doubt. As borne by the records, the fourth and fifth elements of minority and relationship were sufficiently proven by the Birth Certificate presented by the Municipal Civil Registrar of Carigara, Leyte, showing that AAA was born on April 24, 1990 to spouses appellant and AAA's mother.[26] As for the first three (3) elements, the Court is in agreement with the courts below that the testimony of AAA deserves full faith and credence. As aptly observed by the trial court, the vivid portrayal by AAA of the horrible sexual molestations she experienced from her own father is beyond comprehension. AAA, in her minor and innocent mind, was able to chronicle every detail of the five (5) counts of sexual molestation against her by her own father. She maintained her composure, her testimony being steadfast, clear and straightforward in every detail of her harrowing experience.

Time and again, the Court has held that in resolving rape cases, primordial consideration is given to the credibility of the victim's testimony. Settled is the rule that the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appears certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case.[27] The Court, however, does not find any such circumstance here. Indeed, the trial judge is in the best position to assess whether the witness was telling the truth as

---

[25] *People v. Buclao,* G.R. No. 208173, June 11, 2014, citing *People v. Candellada,* G.R. No. 189293, July 10, 2013,701 SCRA 19, 30.

[26] *Supra* note 9.

[27] *People v. Padilla,* 617 Phil. 170, 183 (2009), citing *People v. Noveras,* 550 Phil. 871, 881 (2007).

he had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witnesses while testifying.[28]

That AAA's credibility is doubtful due to the fact that she did not see the perpetrator's face, and only recognized him for his built, voice, and smell, is of no moment. As We have held before, a person may be identified by these factors for once a person has gained familiarity with another, identification is quite an easy task.[29] Even though a witness may not have seen the accused at a particular incident for reasons such as the darkness of the night, hearing the sound of the voice of such accused is still an acceptable means of identification where it is established that the witness and the accused knew each other personally and closely for a number of years.[30] Here, it cannot be denied that AAA personally knew appellant's built, voice, and smell, having lived with him her entire life.

Neither does AAA's silence on the incident nor failure to shout or wake up her siblings affect her credibility. The Court had consistently found that there is no uniform behavior that can be expected from those who had the misfortune of being sexually molested. While there are some who may have found the courage early on to reveal the abuse they experienced, there are those who have opted to initially keep the harrowing ordeal to themselves and attempted to move on with their lives.[31] This is because a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. The perpetrator of the rape hopes to build a climate of extreme psychological terror, which would numb his victim into silence and submissiveness. In fact,

---

[28] *People v. Dollano, Jr.,* 675 Phil. 827, 840 (2011), citing *People v. Lopez,* 617 Phil. 733, 744 (2009).

[29] *People v. Cañete,* 448 Phil. 127, 142 (2003), citing *People v. Reyes,* 369 Phil. 61, 76 (1999).

[30] *People v. Nuevo,* G.R. No. 132169, October 26, 2001, citing *People vs. Gayomma,* 374 Phil. 249, 257 (1999); *People vs. Enad, et al.,* 402 Phil. 1 (2001), citing *People vs. Avillano,* 336 Phil. 534, 542 (1997).

[31] *People v. Ortoa,* 556 Phil. 367, 386 (2007), citing *People v. Mendoza,* 432 Phil. 666, 682 (2002).

incestuous rape further magnifies this terror for the perpetrator in these cases, such as the victim's father, is a person normally expected to give solace and protection to the victim. Moreover, in incest, access to the victim is guaranteed by the blood relationship, magnifying the sense of helplessness and the degree of fear.[32]

As to appellant's defenses of denial and alibi, the Court agrees with the trial and appellate courts that the same deserve scant consideration. No jurisprudence in criminal law is more settled than that alibi and denial, the most common defenses in rape cases, are inherently weak and easily fabricated. As such, they are generally rejected. On the one hand, an accused's bare denial, when raised against the complainant's direct, positive and categorical testimony, cannot generally be held to prevail.[33] On the other hand, unless the accused establishes his presence in another place at the time of the commission of the offense and the physical impossibility for him to be at the scene of the crime, his acquittal cannot be properly justified.[34]

As the trial court found, however, appellant's defenses are weak and unconvincing. While appellant completely denies the charges against him, he failed to produce any competent evidence to controvert the same. Neither did he present a single witness to stand in his favor. Moreover, while appellant consistently claimed that he could not have raped his daughter for during those nights, he would always sleep in a small hut at the back of the house where his daughter normally slept, he barely substantiated such claim. As he mentioned, the small hut was just at the back of the house. Clearly, it was not impossible for him to be at the scene of the crime for he could have easily walked thereto.

Apart from his weak and unconvincing defences of denial and alibi, appellant further claimed that the courts below should have considered the fact that AAA had a boyfriend during those times of the alleged rape. The Court, however, finds such claim unmeritorious. It is not uncommon for appellants accused of

---

[32] *Id.* citing *People v. Melivo,* 323 Phil. 412, 422 (1996).

[33] *People v. Candellada, supra* note 25.

[34] *People v. Payot, Jr.,* 581 Phil. 575, 587 (2008).

rape to shift the blame to another, particularly to the victim's suitor or boyfriend.[35] But that AAA had a boyfriend at the time of the incidents is inconsequential and cannot be held to cast doubt on AAA's testimony. It has been consistently held that no sane girl would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape. Youth and immaturity are generally badges of truth and sincerity. While the weight of the victim's testimony may be countered by physical evidence to the contrary or indubitable proof that the accused could not have committed the rape, the testimony shall be accorded utmost value in the absence of such countervailing proof.[36] The fact that AAA had a boyfriend, does not necessarily exclude all possibilities of rape. In reality, it barely has anything to do with the charges she had filed against appellant.

In fine, the Court finds no reason to disturb the findings of the courts below, upholding AAA's credibility, which, by well-established precedents is given great weight and accorded high respect. Indeed, a categorical and consistent positive identification, absent any showing of ill-motive on the part of the eyewitness testifying thereon, prevails over the defenses of denial and alibi, which if not substantiated by clear and convincing proof constitute self-serving evidence undeserving of weight in law. In view, therefore, of the fact that the prosecution was able to convincingly establish that on five (5) separate occasions, appellant had carnal knowledge of his daughter AAA, who was then 15 years old, by force and without her consent, the Court affirms his conviction for qualified rape, sentencing him to suffer the penalty of *reclusion perpetua* without eligibility for parole, in accordance with Section 3 of RA 9346.[37]

---

[35] *People v. Ramos,* 577 Phil. 297, 308 (2008).

[36] *People v. Alhambra,* G.R. *No.* 207774, June 30, 2014, citing *People v. Bon,* 536 Phil. 897, 915 (2006).

[37] Section 3 of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," provides:

SEC. 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of

With respect, however, to the damages awarded, there is a need to modify the same. The trial court, which was affirmed by the CA, ordered appellant to pay AAA, for each count of rape, civil indemnity in the amount of ₱50,000.00, moral damages in the amount of ₱50,000.00, and exemplary damages in the amount of ₱25,000.00. But pursuant to prevailing jurisprudence, the civil indemnity and moral damages should both be increased to ₱75,000.00, while exemplary damages should likewise be increased to ₱30,000.00.[38] In addition, a six percent (6%) interest per annum must be imposed on all the damages awarded from the date of finality of this decision until fully paid.[39]

WHEREFORE, premises considered, the Court **ADOPTS** the findings and conclusions of law in the Decision dated September 27, 2011 of the Court of Appeals in CA-G.R. CR. H.C. No. 00970 and **AFFIRMS** said Decision finding accused-appellant Eliseo D. Villamor guilty beyond reasonable doubt of five (5) counts of rape sentencing him to suffer the penalty of *reclusion perpetua,* without eligibility of parole, **WITH MODIFICATION** as to the following amounts for each count of rape: (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as moral damages; and (c) ₱30,000.00 as exemplary damages, plus six percent (6%) interest per annum of all the damages awarded from finality of decision until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *del Castillo,*[*] *Perez,* and *Reyes, JJ.,* concur.

---

this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

[38] *People v. Bandril,* G.R. No. 212205, July 6, 2015, citing *People v. Santos,* G.R. No. 205308, February 11, 2015.

[39] *Id.*

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 10, 2014.

THIRD DIVISION

[G.R. No. 207535. February 10, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-apppellee, vs.* **RICARDO LAGBO *a.k.a* RICARDO LABONG *y* MENDOZA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; ELEMENTS.—** [T]he elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen years of age at the time of the rape; (5) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FINDINGS AND ITS CALIBRATION OF THE TESTIMONIES OF THE WITNESSES, WHEN AFFIRMED BY THE APPELLATE COURT, ARE GENERALLY BINDING UPON THE SUPREME COURT.—** The rule is that the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.

3. **ID.; ID.; ID.; NOT IMPAIRED BY A MINOR INCONSISTENCY IN THE TESTIMONY WHICH DOES NOT RELATE TO THE ELEMENTS OF THE CRIME CHARGED.—** [T]he Court does not agree with accused-appellant's contention that AAA's inconsistent testimony with respect to the places where she was raped in 2000 and 2002 bears heavily against her credibility. x x x This Court has ruled that since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in

testing the credibility of a witness. Moreover, the Court considers AAA's alleged inconsistency in testifying, with respect to the place where the first and third rapes were committed, as a minor inconsistency which should generally be given liberal appreciation considering that the place of the commission of the crime in rape cases is after all not an essential element thereof. What is decisive is that accused-appellant's commission of the crime charged has been sufficiently proved. x x x In any case, Courts expect minor inconsistencies when a child-victim narrates the details of a harrowing experience like rape. Such inconsistencies on minor details are in fact badges of truth, candidness and the fact that the witness is unrehearsed. These discrepancies as to minor matters, irrelevant to the elements of the crime, cannot, thus, be considered a ground for acquittal. In this case, the alleged inconsistency in AAA's testimony regarding the exact place of the commission of rape does not make her otherwise straightforward and coherent testimony, on material points, less worthy of belief.

4. CRIMINAL LAW; REVISED PENAL CODE; RAPE; A MEDICAL EXAMINATION AND A MEDICAL CERTIFICATE ARE NOT INDISPENSABLE TO A SUCCESSFUL PROSECUTION FOR RAPE.— This Court, in a number of cases, has affirmed the conviction of the accused for rape despite the absence of laceration on the victim's hymen, since medical findings suggest that it is possible for the victim's hymen to remain intact despite repeated sexual intercourse. It has been elucidated that the strength and dilatability of the hymen varies from one woman to another, such that it may be so elastic as to stretch without laceration during intercourse. In any case, this Court has previously stated that a medical examination and a medical certificate, albeit corroborative of the commission of rape, are not indispensable to a successful prosecution for rape. Moreover, it is settled that the absence or physical injuries or fresh lacerations does not negate rape, and although medical results may not indicate physical abuse or hymenal lacerations, rape can still be established since medical findings or proof of injuries are not among the essential elements in the prosecution for rape.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE OFFENDED PARTY IN A RAPE CASE IS OF TENDER AGE AND IMMATURE,

COURTS ARE INCLINED TO GIVE CREDIT TO HER ACCOUNT OF WHAT TRANSPIRED, AS YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH AND SINCERITY.— In the present case, the credible disclosure of AAA that accused-appellant raped her is the most important proof of the commission of the crime. Indeed, the testimony of a single witness may be sufficient to produce a conviction, if the same appears to be trustworthy and reliable. If credible and convincing, that alone would be sufficient to convict the accused. Moreover, testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has, in fact, been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. In the instant case, the Court finds no cogent reason to depart from the findings of both the RTC and the CA as to the credibility of the victim and her testimony.

6. **ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE POSITIVE AND CREDIBLE TESTIMONY OF THE PROSECUTION WITNESS THAT THE ACCUSED COMMITTED THE CRIME.—** The settled rule is that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail. In the case at bar, the Court finds no compelling reason to depart from the findings of the trial court that, in light of the positive and categorical testimony of AAA that accused-appellant raped her, the mere denial of accused-appellant, without any corroborative evidence leaves the court with no option but to pronounce a judgment of conviction.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *J.*:

Before the Court is an ordinary appeal filed by accused-appellant Ricardo Lagbo *(Lagbo)* assailing the Decision[1] of the Court of Appeals *(CA),* dated June 15, 2012, in CA-G.R. CR-HC No. 04060, which affirmed with modification the Decision[2] of the Regional Trial Court *(RTC)* of Malabon City, Branch 169, in Criminal Case Nos. 28711-MN, 28712-MN and 28713-MN, finding Lagbo guilty of three counts of qualified rape.

The antecedents are as follows:

The eldest of six (6) children, AAA,[3] was born on February 17, 1988, as evidenced by her certificate of live birth.[4] She was 12 years old when her father, accused-appellant, first raped her.

One afternoon in October 2000, AAA was washing dishes inside their house. She was alone with her father, as her mother was at the marketplace selling vegetables while her siblings were playing outside the house. All of a sudden, accused-appellant grabbed her and forcibly removed her short pants and her panty. After removing his short pants, accused appellant pushed

---

[1] Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Noel G. Tijam and Romeo F. Barza, concurring.

[2] Penned by Judge Emmanuel D. Laurea.

[3] The initials AAA represent the private offended party, whose name is withheld to protect her privacy. Under Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), name, address, and other identifying information of the victim are made confidential to protect and respect the right to privacy of the victim.

[4] Exhibit "D", folder of exhibits.

AAA and made her lie down on their "papag". Thereafter, he boxed AAA's face twice and threatened to kill her mother and siblings. He then placed himself on top of AAA and made pumping motions while covering her mouth and pulling her hair. AAA felt pain and cried as accused-appellant's sex organ penetrated hers. After gratifying himself, accused-appellant put on his clothes, sat beside AAA and told her to stop crying. AAA did not relate this incident to her mother for fear that accused-appellant would make good his threat to harm her mother and siblings.

In March 2001, accused-appellant, again, violated AAA's womanhood. Reminiscent of the first rape, while she and accused-appellant were alone inside their house, the latter again boxed AAA's face, forced her to lie down on the "papag", undressed her, threatened her, placed himself on top of her, covered her mouth and pulled her hair while repeatedly making pumping motions. This time, however, AAA mustered the courage to relate the incident to her mother when the latter arrived. To AAA's disappointment, though, her mother refused to believe her.

Accused-appellant committed the third rape on February 14, 2002. He and AAA were again left alone inside their house. She was made to lie down on the kitchen floor where accused-appellant succeeded in sexually defiling her.

AAA was finally able to report her rape to the police when her mother filed a complaint against accused-appellant, on April 3, 2003, for allegedly mauling her. Taking advantage of this opportunity, AAA related her misfortune to the authorities.

Thus, in three (3) separate Informations,[5] all dated April 4, 2003, accused-appellant was indicted for rape qualified by his relationship with, and the minority of, AAA. Pertinent portions of the Information in Criminal Case No. 28712-MN read as follows:

That sometime in the month of October, 2000 in the Municipality of Navotas, Metro Manila, Philippines and within the jurisdiction

[5] Records, pp. 2, 9 and 18.

of this Honorable Court, the above-named accused, being the father of [AAA] exercising moral ascendancy and overwhelming influence over the latter, with lewd design and by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously have sexual intercourse with the said [AAA], a minor of 12 years old, by then and there inserting his organ at the victim's vagina against her will and without her consent, which act debases, degrade[s] or demeans the instrinsic worth and dignity of a child as a human being thereby endangering her youth, normal growth and development.[6]

The two other Informations, which were docketed as Crim. Case Nos. 28711-MN and 28713-MN, are similarly worded as to place, the elements of the crime charged, and the persons involved, except for date of the commission of the crime and the age of the victim. In Crim. Case No. 28711-MN, the crime was alleged to have been committed in March, 2001 when AAA was already fifteen (15) years old, while in Crim. Case No. 28713-MN, AAA was also fifteen (15) years old but the crime was allegedly committed on February 14, 2002.

On July 9, 2003, accused-appellant was arraigned and pleaded not guilty to the charges.[7] The cases were jointly tried after accused-appellant waived his right to pre-trial.[8]

On March 2, 2009, the RTC rendered its Decision finding accused-appellant guilty as charged, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, accused **RICARDO LAGBO A.K.A. RICARDO LABONG,** is hereby found **GUILTY** beyond reasonable doubt of three (3) counts of Qualified Rape. For each count, he is sentenced to suffer the penalty of *RECLUSION PERPETUA* without eligibility for parole, and he is further ordered to pay the victim in the amount of SEVENTY-FIVE THOUSAND PESOS (₱75,000.00) as civil indemnity; SEVENTY-FIVE THOUSAND PESOS (₱75,000.00) as moral damages; and TWENTY-FIVE

---

[6] *Id.* at 17-18.

[7] See records, p. 34.

[8] *Id.*

THOUSAND PESOS (₱25,000.00) as exemplary damages, plus costs.

SO ORDERED.[9]

The RTC gave full faith and credence to the testimony of AAA and held that accused-appellant's mere denial without any corroborative evidence leaves the court without any option but to convict him.

Accused-appellant appealed the RTC Decision with the CA.

On June 15, 2012, the CA promulgated its assailed Decision affirming, with modification, the judgment of the RTC. The dispositive portion of the CA Decision reads, thus:

WHEREFORE, the foregoing premises considered, the instant appeal is DENIED and the assailed Judgment dated March 2, 2009 of the Regional Trial Court, Branch 169, Malabon City in Criminal Cases No. 28711-MN, 28712-MN and 28713-MN are hereby AFFIRMED with MODIFICATION as to the award of exemplary damages which is hereby increased to Thirty Thousand Pesos (Php30,000.00).

SO ORDERED.[10]

On July 5, 2012, accused-appellant, through counsel, filed a Notice of Appeal[11] manifesting his intention to appeal the CA Decision to this Court.

In its Resolution[12] dated August 16, 2012, the CA gave due course to accused-appellant's Notice of Appeal and directed its Judicial Records Division to elevate the records of the case to this Court.

Hence, this appeal was instituted.

---

[9] *Id* at 98.

[10] *Rollo,* p. 10.

[11] *CA rollo,* pp. 129-130.

[12] *Id.* at 134.

In a Resolution[13] dated July 29, 2013, this Court, among others, notified the parties that they may file their respective supplemental briefs, if they so desire.

In its Manifestation and Motion,[14] the Office of the Solicitor General (*OSG)* informed this Court that it will no longer file a supplemental brief because it had already fully discussed and refuted all the arguments of the accused-appellant in its brief filed before the CA.

In the same manner, accused-appellant filed a Manifestation In Lieu of Supplemental Brief[15] indicating that he no longer intends to file a supplemental brief and is adopting his brief which was filed with the CA.

The primary issue to be resolved by this Court, in the instant case, is whether or not the accused-appellant's guilt has been proven beyond reasonable doubt.

The Court rules in the affirmative.

Rape under paragraph 1, Article 266-A of the Revised Penal Code *(RPC)* is committed as follows:

ART. 266-A. *Rape, When and How Committed.*– Rape is committed—

l. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or is otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority;

---

[13] *Rollo,* p. 17.

[14] *Id.* at 19-20

[15] *Id.* at 26-27.

> d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

If committed by a parent against his child under eighteen (18) years of age, the rape is qualified under paragraph 1, Article 266-B of the same Code, *viz.*:

> ART. 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*
>
> xxx xxx xxx
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.
>
> xxx xxx xxx

Thus, the elements of qualified rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen years of age at the time of the rape; (5) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.[16]

In this case, both the RTC and the CA found that the prosecution has alleged and proved beyond reasonable doubt all the elements of qualified rape. This court sees no reason to depart from the findings of the lower courts. As correctly held by the CA, AAA's recollection of the heinous acts of her father was vivid and straightforward. She was able to positively identify the accused-appellant as her sexual assailant. While there are minor inconsistencies, her testimony was given in a categorical, straightforward, spontaneous and candid manner.

---

[16] *People v. Nilo Colentava,* G.R. No. 190348, February 9, 2015; *People v. Candellada,* G.R. No.189293, July 10, 2013,701 SCRA 19, 30.

The rule is that the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect.[17] This is more true if such findings were affirmed by the appellate court.[18] When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.[19]

Indeed, upon review, the Court finds that accused-appellant's appeal is bereft of merit and there is, thus, no cogent reason to reverse his conviction.

First, the Court does not agree with accused-appellant's contention that AAA's inconsistent testimony with respect to the places where she was raped in 2000 and 2002 bears heavily against her credibility. With respect to the first rape, accused-appellant argues that AAA's testimony that the crime was committed in 2000 in their house in Bacog, Navotas could not be true because, during that time, they were still residing somewhere in Kadiwa, Navotas, a place which is far from Bacog. In a similar manner, accused-appellant contends that AAA's claim that she was raped on February 14, 2002 inside their house in Kadiwa, Navotas is also not true because at that time, they were already residing in Bacog, Navotas.

This Court has ruled that since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness.[20] Moreover, the Court considers AAA's alleged inconsistency in testifying, with respect to the place where the first and third rapes were committed, as a minor inconsistency which should generally be given liberal appreciation considering

---

[17] *People v. Dela Cruz,* 570 Phil. 287, 305 (2008).

[18] *Id.*

[19] *Id.*

[20] *People v. Zafra,* G.R. No. 197363, June 26, 2013, 700 SCRA 106, 115.

that the place of the commission of the crime in rape cases is after all not an essential element thereof. What is decisive is that accused- appellant's commission of the crime charged has been sufficiently proved.[21] The alleged disparity in the victim's testimony may also be attributed to the fact that, during her direct examination, AAA was first questioned regarding her third rape in 2002, while questions with respect to her first rape in 2000 were the last to be asked. In any case, Courts expect minor inconsistencies when a child-victim narrates the details of a harrowing experience like rape.[22] Such inconsistencies on minor details are in fact badges of truth, candidness and the fact that the witness is unrehearsed.[23] These discrepancies as to minor matters, irrelevant to the elements of the crime, cannot, thus, be considered a ground for acquittal.[24] In this case, the alleged inconsistency in AAA's testimony regarding the exact place of the commission of rape does not make her otherwise straightforward and coherent testimony, on material points, less worthy of belief.

Second, accused-appellant attributes ill motive against AAA and claims that she may have concocted a story against him as she never had a harmonious relationship with accused-appellant by reason of his constant mauling of her mother and siblings.

However, this Court has held that it takes much more for a young lass to fabricate a story of rape, have her private parts examined, subject herself to the indignity of a public trial and endure a lifetime of ridicule.[25] Even when consumed with revenge, it takes a certain amount of psychological depravity for a young woman, like AAA, to concoct a story which would

---

[21] *People v. Vergara,* G.R. No. 199226, January 15, 2014, 714 SCRA 64, 74; *People v. Linsie,* G.R. No. 199494, November 27, 2013, 711 SCRA 125, 137.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *People v. Zafra, supra* note 20.

put her own father for the most of his remaining life to jail and drag herself and the rest of her family to a lifetime of shame.[26]

Third, the Court is neither persuaded by accused-appellant's argument that the physical evidence on record does not support AAA's allegation of rape considering that the examination made by the physician showed that there was no laceration in the hymen and there was no evident injury found at the time of the examination.

Contrary to accused-appellant's assertions, there was no definitive statement in the medico-legal report of Dr. Punongbayan, the physician who examined AAA, that the victim could not have been subjected to sexual abuse. On the contrary, the said report stated that the "[g]enital findings **do not exclude sexual abuse** and may still be compatible with the patient's disclosure [of physical and sexual abuse]."[27] In her direct examination, Dr. Punongbayan explained that AAA's hymen was estrogenized, making it elastic, such that a fully erect male sex organ can penetrate AAA's vagina without causing hymenal injury.[28] This Court, in a number of cases, has affirmed the conviction of the accused for rape despite the absence of laceration on the victim's hymen, since medical findings suggest that it is possible for the victim's hymen to remain intact despite repeated sexual intercourse.[29] It has been elucidated that the strength and dilatability of the hymen varies from one woman to another, such that it may be so elastic as to stretch without laceration during intercourse. In any case, this Court has previously stated that a medical examination and a medical certificate, albeit corroborative of the commission of rape, are not indispensable to a successful prosecution for rape.[30] Moreover, it is settled

---

[26] *Id.*

[27] See Exhibit "B-1", folder of exhibits. (Emphasis supplied.)

[28] See TSN, April 29, 2004, p. 6.

[29] *People v. Pamintuan,* G.R. No. 192239, June 5, 2013; *People v. Opong,* 577 Phil. 571 (2008).

[30] *People v. Lucena,* G.R. No. 190632, February 6, 2014, 717 SCRA 389, 404.

that the absence of physical injuries or fresh lacerations does not negate rape, and although medical results may not indicate physical abuse or hymenal lacerations, rape can still be established since medical findings or proof of injuries are not among the essential elements in the prosecution for rape.[31] In the present case, the credible disclosure of AAA that accused-appellant raped her is the most important proof of the commission of the crime. Indeed, the testimony of a single witness may be sufficient to produce a conviction, if the same appears to be trustworthy and reliable.[32] If credible and convincing, that alone would be sufficient to convict the accused.[33] Moreover, testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has, in fact, been committed.[34] When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true.[35] Youth and immaturity are generally badges of truth and sincerity.[36] In the instant case, the Court finds no cogent reason to depart from the findings of both the RTC and the CA as to the credibility of the victim and her testimony.

Lastly, accused-appellant contends that his defense of denial and alibi should not have been outrightly discounted in light of the failure of the prosecution to prove his guilt beyond reasonable doubt.

---

[31] *People v. Ronald Nical y Alminario,* G.R. No. 210430, February 18, 2015.

[32] *People v. Pareja,* G.R. No. 202122, January 15, 2014, 714 SCRA 131, 151.

[33] *Id.*

[34] *People v. Piosang,* G.R. No. 200329, June 5, 2013, 697 SCRA 587, 593.

[35] *Id.*

[36] *Id.*

The settled rule is that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime.[37] Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail.[38] In the case at bar, the Court finds no compelling reason to depart from the findings of the trial court that, in light of the positive and categorical testimony of AAA that accused-appellant raped her, the mere denial of accused-appellant, without any corroborative evidence leaves the court with no option but to pronounce a judgment of conviction.

As to the penalty, Article 266-B of the RPC, as amended, provides that the death penalty shall be imposed if the victim is under eighteen (18) years of age and the offender, among others, is the victim's parent. However, following Republic Act No. 9346,[39] the RTC, as affirmed by the CA, correctly imposed upon accused-appellant the penalty of *reclusion perpetua* in lieu of death, without eligibility for parole. Likewise, the RTC correctly awarded in AAA's favor the amounts of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages. An award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, and moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering.[40] The CA, in turn, correctly modified the RTC ruling by increasing the award of exemplary damages from ₱25,000.00 to ₱30,000.00. Exemplary damages are also called for, by way of public example, and to protect the young from sexual abuse.[41]

However, the assailed CA Decision should be modified by ordering accused-appellant to pay interest at the rate of six percent

---

[37] *People v. Linsie, supra* note 21 at 138.

[38] *Id.*

[39] *An Act Prohibiting the Imposition of Death Penalty in the Philippines.*

[40] *People v. Piosang, supra* note 34, at 599.

[41] *Id.*

(6%) *per annum* from the finality of this judgment until all the monetary awards for damages are fully paid, in accordance with prevailing jurisprudence.[42]

WHEREFORE, the instant appeal is **DISMISSED.** The Decision dated June 15, 2012 of the Court of Appeals in CA-G.R. CR-HC No. 04060 is hereby **AFFIRMED** with the **MODIFICATION** that accused-appellant RICARDO LAGBO is further **ORDERED** to pay the victim interest, at the rate of six percent (6%) *per annum,* on all damages awarded, from the date of finality of this Decision until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *del Castillo,*[*] *Perez,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 209212. February 10, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff and appellee, vs.* **ROMEL SAPITULA *y* PACULAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF *SHABU*; ELEMENTS.— In every prosecution for illegal sale of *shabu,* the following

---

[42] *Id.; People v. Obaldo Bandril y Tabling,* G.R. No. 212205, July 6, 2015.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 1, 2014.

elements must be sufficiently proved: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor. The Court finds that all elements for illegal sale were duly established with accused-appellant having been caught *in flagrante delicto* selling *shabu* through a buy-bust operation x x x The delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESS; FACTUAL FINDINGS OF THE TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.— This Court has, time and again, deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation.

3. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF *SHABU*; CHAIN OF CUSTODY IN A BUY BUST OPERATION.— The Court has ruled in *People v. Enriquez,* that the links that must be established in the chain of custody in a buy-bust situation are: 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.

4. ID.; ID.; ID.; PENALTY OF LIFE IMPRISONMENT AND A FINE OF ₱500,000 CORRECTLY IMPOSED.— All told, it has been established by proof beyond reasonable doubt that accused-appellant sold *shabu.* Section 5, Article II of R.A. No. 9165, states that the penalty of life imprisonment to death and fine ranging from ₱500,000.00 to ₱1,000,000.00 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. Thus, the CA correctly imposed the penalty of life imprisonment and the fine of ₱500,000.00.

APPEARANCES OF COUNSEL

Office of 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 for review is the Decision[1] of the Court of Appeals (CA) in CA G.R. CR.-H.C. No. 05186 dated 19 February 2013 which dismissed the appeal of accused-appellant Romel Sapitula y Paculan and affirmed with modification the Judgment[2] of the Regional Trial Court (RTC) of Agoo, La Union, Branch 31, in Criminal Case No. A-6013 finding accused-appellant guilty beyond reasonable doubt of attempted sale of a dangerous drug in violation of Section 5 in relation to Section 26 of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant was charged with violation of Section 5, Article II of R.A. No. 9165. The accusatory portion of the Information reads as follows:

That on or about the 16th day of June 2011, in the Municipality of Sto. Tomas, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above named accused, without authority or law, did then and there, wilfully, unlawfully and knowingly, for and in consideration of the amount of Three

---

[1] *Rollo,* pp. 2-25; Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Francisco P. Acosta and Angelita A. Gacutan concurring.

[2] Records, pp. 76-122; Presided by Presiding Judge Clifton U. Ganay.

Hundred (Php 300.00) Pesos, sell, convey, deliver and give away to a PO3 Ardie Gayo Palabay one (1) heat sealed plastic sachet containing shabu with a weight of zero point zero nine hundred forty six (0.0946) gram, a dangerous and prohibited drug.

Contrary to the provision of Section 5, Art. 2 of R.A. 9165.[3]

At his arraignment, accused-appellant pleaded not guilty. Trial ensued.

The prosecution presented as witnesses Police Senior Inspector Diosdado Gagaoin (PSI Gagaoin), Police Officer 3 Ardie Palabay (PO3 Palabay), Police Inspector Maria Theresa Amor Manuel (PI Manuel), PO3 Emmanuel Pimentel, Jr., and PSI Bedalyn Antonio (PSI Antonio), whose testimonies sought to establish the following facts:

Acting on a tip from a confidential informant that accused-appellant sells *shabu,* PSI Gagaoin instructed PO3 Palabay to conduct a surveillance and casing operation on him. Upon verification of accused-appellant's involvement in illegal drug activities, PO3 Palabay and his drug asset made a test-buy operation on 14 June 2011, which yielded a purchase of Three Hundred Peso (₱300.00) worth of *shabu* from accused-appellant. Thereafter, PSI Gagaoin headed and organized a buy-bust team composed of PO3 Palabay as *poseur*-buyer, PO3 Arnel Gravidez as one of the arresting officers and SPO3 Armando Eisma and PO2 Roger Malag as perimeter security. Six (6) pieces of ₱50.00 bills were prepared as marked money on which PO3 Palabay placed a marking of "A."[4]

At four o' clock in the afternoon of 16 June 2011, the buy-bust team proceeded to Barangay Ambitacay. PO3 Palabay had already been in communication via short message system (SMS) with accused-appellant regarding the amount of *shabu* to be purchased. It had also been agreed via SMS that they

---

[3] *Id*. at 1.

[4] TSN, 20 July 2011, pp. 4-13: TSN, 21 July 2011, pp. 3-13: TSN, 26 July 2011, p. 4.

would meet at Ambitacay crossing at six o' clock in the evening.[5]

At the crossing, at half past five o'clock in the afternoon when PO3 Palabay noticed accused-appellant coming his way, he disembarked from the tricycle in which he had been waiting. He approached accused-appellant who immediately handed to him a heat-sealed plastic sachet containing a white crystalline substance; and PO3 Palabay, in exchange, gave accused-appellant the marked money. Accused-appellant then counted the money while PO3 Palabay placed the sachet in his pocket and removed his cap to signal the arrest to the other police officers. Accused-appellant attempted to flee but was subsequently overcome and handcuffed by the other officers. PO3 Palabay informed accused-appellant of his constitutional rights; took a photograph of the latter as well as the area and the plastic sachet which he marked "AJP-1-11." He also made an inventory of the marked money and the seized plastic sachet in the presence of the Barangay Captain and another witness.[6]

Accused-appellant was thereafter brought to the police station. There, PO3 Palabay executed an affidavit of arrest, an affidavit of *poseur*-buyer and a request for laboratory examination. Then, he brought accused-appellant and the seized items to the crime laboratory, received by PSI Antonio.[7] Chemistry Report No. D-030-2011 signed by PI Manuel as Forensic Chemist found the seized plastic sachet positive for the presence of *Methamphetamine hydrochloride* or *shabu*.[8]

Accused-appellant, as the lone witness for the defense, testified that on 16 June 2011, on his way home with his wife and child after a day of ferrying passengers in his tricycle,

---

[5] TSN, 21 July 2011, pp. 13-18.

[6] *Id*. at 18-28.

[7] *Id*. at 29-30; TSN, 26 July 2011, p. 8; Records, pp. 1 and 8; Exhibit "I-1" and "B-1".

[8] Records, p. 49; Exhibit "B".

a male person and his companion flagged him down. The man asked accused-appellant to get down from his tricycle and thereafter, drew out a gun and introduced himself as a policeman. Accused-appellant tried to run away from him but two (2) other persons blocked his way and handcuffed him. These two forced him to hold something and when accused-appellant refused, they rubbed it onto his hands. Thereafter, a patrol car arrived and he was brought to the police station.[9]

On 5 August 2011, the RTC rendered judgment finding accused-appellant guilty of attempted sale of a dangerous drug. The dispositive portion of the RTC Decision reads:

> The accused is found to have attempted to sell .0946 gram of methamphetamine hydrochloride beyond reasonable doubt. The court only found that he attempted to sell.
>
> However, there is a catch provided in Section 26 of R.A. 9165 which prescribes the same penalty as that provided in Section 5 in case of unlawful acts that are enumerated in the aforesaid Section 26, thus the penalty for attempt or conspiracy to commit violations thereof as provided in Section 26 is the same as that provided in Section 5. HOC QUIDEM PER QUAM DURUM EST, SED ITA LEX ESCRIPTA EST or DURA LEX SED LEX is invoked.
>
> Hence, accused Romel Sapitula is sentenced to life imprisonment and is ordered to pay a fine of Five Hundred Thousand Pesos (Php500.000.00) for attempting to sell less than one gram of methamphetamine hydrochloride "shabu."
>
> The penalty is harsh but that is the law on the matter. Less than one gram of "shabu" and wham! One has to spend one's life in prison.
>
> But that is the reality. Not an illusion.
>
> So it is best to avoid drugs everytime.
>
> The drug subject of this case is confiscated in favor of the government.[10]

---

[9] TSN, 2 August 2011, pp. 3-9.

[10] Records, pp. 120-122.

Accused-appellant filed a Notice of Appeal on 10 August 2011.[11] On 19 February 2013, the CA rendered the assailed judgment affirming with modification the trial court's decision. The CA found accused-appellant guilty of the crime charged, or violation of Section 5, Article II of R.A. 9165. The CA ruled that the sale of a dangerous drug was consummated as there had been an exchange of money and the sachet of *shabu* between PO3 Palabay and accused-appellant.

Accused-appellant appealed his convection before this Court. In a Resolution[12] dated 04 December 2013, accused-appellant and the Office of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. Both parties manifested that they will no longer file supplemental briefs as their arguments in their respective briefs are already sufficient.[13]

Upon review of the records, the Court affirms the conviction of accused-appellant.

The Court agrees with the CA finding that, contrary to the accused-appellant's assertion, the trial court sufficiently stated the factual and legal bases for its disposition of the case. In convicting accused-appellant, the trial court explained that it gave credence to the testimonies of the police officers pursuant to the presumption of regularity in the performance of their official duties and absent any showing of ill-motive to plant evidence against accused-appellant.[14] The trial court also stated that it found accused- appellant's testimony partly incredulous.[15]

The Court, however, upholds the CA's ruling that the crime of sale of a dangerous drug, in this case *shabu,* was consummated; different from the trial court's ruling that the crime had been

---

[11] *Id*. at 123-124.

[12] *Rollo,* p. 31.

[13] *Id.* at 104.

[14] Records, pp. 116-117.

[15] *Id.* at 99.

committed only at its attempted stage. In so holding, the trial court stated that "[w]hen he realized the trap he was about to backout in the sale. Nevertheless, the penalty is the same."[16] This Court disagrees.

In every prosecution for illegal sale of *shabu,* the following elements must be sufficiently proved: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor.[17]

The Court finds that all elements for illegal sale were duly established with accused-appellant having been caught *in flagrante delicto* selling *shabu* through a buy-bust operation conducted by the buy-bust team of PO3 Palabay.

PO3 Palabay, who acted as the *poseur* buyer, testified that accused-appellant handed to him the plastic sachet containing the prohibited drug in exchange for Three Hundred Pesos (₱300.00), thus:

Q: And at about what time was that when you waited at that waiting shed?
A: Around 5:30 in the afternoon,sir.

Q: And what happened after that?
A: While waiting I noticed the suspect approaching, sir.

Q: So from where did he come home (sic)?
A: From the road leading to barangay Pongpong, sir.

Q: And when you saw him approaching what did you do if any?
A: I immediately disembark from the tricycle, sir.

xxx xxx xxx

Q: When You alighted from the tricycle where did you go?
A: I immediately approached him also, sir.

Q: And what happened when you approached him, what did you tell him or what happened?

---

[16] *Id*. at 117.

[17] *People v. Buenaventura,* 677 Phil. 230, 238 (2011).

A: He immediately handed to me the heat sealed plastic sachet containing white crystalline substance and then afterwards I in hand also the marked money, sir.

Q: He did not ask how much are you buying?
A: He asked already through text, sir.

Q: And where did you put the sachet that was handed to you?
A: I put in my pocket, sir.

Q: You mentioned you handed the money to the subject, what did the subject do if any?
A: After he received the money, he counted the money, sir.

Q: And while he was counting the money what did you do next?
A: After counting the money, I frisked him, I said stop and I showed my badge as an identification that I am a police but then he tried to run towards east direction, sir.

Q: By the way was there any a pre-arranged signal made by you with your Chief of Police?
A: Yes, sir.

Q: What is your pre-arranged signal?
A: When I removed my bull cup, sir.

Q: What does that indicate?
A: As a sign that the arrest shall be made by the arresting officers, sir.[18]

This testimony was corroborated by PSI Gagaoin who was strategically posted within the perimeter of the target area.[19] The result of the laboratory examination confirmed the presence of *methamphetamine hydrochloride,* or *shabu* on the white crystalline substance inside the plastic sachet received from the accused-appellant. The delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction.[20]

---

[18] TSN, 21 JuIy 2011, pp. 19-20.

[19] TSN, 20 July 2011, pp. 15-21.

[20] *People v. Montevirgen,* G.R. No. 189840, 11 December 2013, 712 SCRA 459, 468.

Accused-appellant's denial of the charges and assertion of a frame-up, uncorroborated by any positive testimony of the people who were allegedly with him during the incident, are indeed incredulous juxtaposed with the positive evidence for his prosecution. Besides, as adequately explained by PSI Antonio, the absence of ultraviolet (UV) powder on accused-appellant's palms (although the dorsal parts of accused-appellant's hands tested positive for UV powder presence) may have been a result of perspiration, wiping or rubbing the hand on a hard object.[21] Thus, this matter does not completely negate accused-appellant's culpability as he so asserts.

This Court has, time and again, deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation. The trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination; the trial court is in a unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.[22] And in the instant case, accused-appellant has not projected any strong and compelling reasons to sway the Court into rejecting or revising such factual findings and evaluation in his favor.

We now come to accused-appellant's contention that the procedure for the custody and disposition of confiscated drugs as provided in Section 21 of R.A. No. 9165, was not complied with as the police officers had not conducted an inventory of the plastic sachet of *shabu* and the same had not been photographed in the presence of accused-appellant and representatives from the media and the Department of Justice.[23]

---

[21] TSN, 26 July 2011, pp. 4-6.

[22] *Medina, Jr. v. People,* G.R. No. 161308, 15 January 2014, 713 SCRA 311, 320.

[23] CA *rollo,* pp. 96-97.

First, it must be underscored that this issue was only brought up on appeal and was never raised before the trial court. Nevertheless, a review of PO3 Palabay's testimony shows that the inventory and photograph requirements had been met, thus:

> Q: And after the subject was handcuff, what transpired next?
>
> A: After we handcuff the subject, we photographed the suspect, we photographed the area, we photographed also the evidence and I marked there with the presence of the Barangay Chairman and the concerned citizens in the area and then I prepared also the inventory in their presence, sir.[24]

More importantly, the integrity and evidentiary value of the seized items were duly preserved as the chain of custody remained intact.

The Court has ruled in *People v. Enriquez,*[25] that the links that must be established in the chain of custody in a buy-bust situation are: 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.

In the case at bar, PO3 Palabay, the *poseur* buyer, positively testified that he placed in his pocket the plastic sachet of *shabu* handed to him by accused-appellant. At the time of arrest, he photographed accused-appellant, the area and the sachet of *shabu,* marked the same and conducted the inventory before the Barangay Chairman and another witness. PO3 Palabay further testified that he brought accused-appellant and the sachet of *shabu* to the police station, and there, executed affidavits of arrest and

---

[24] TSN, 21 July 2011, p. 22.

[25] G.R. No. 197550, 25 September 2013, 706 SCRA 337, 353 citing *People v. Magno,* 20 October, 2010, 634 SCRA 441, 451.

of the *poseur* buyer and made a request for laboratory examination. PO3 Palabay then took accused-appellant and the. sachet of *shabu* to the crime laboratory and the latter was received by PSI Antonio. Chemistry Report No. D-030-2011 signed by PI Manuel as Forensic Chemist and PSI Antonio as Administering Officer confirmed that the sachet is positive for the presence of *methamphetamine hydrochloride*.[26] And finally, in open court, PO3 Palabay opened the envelope from the Forensic Chemist and identified its contents as the same sachet of *shabu* he had purchased from accused-appellant.[27] The same was offered and marked as Exhibit "A".[28]

All told, it has been established by proof beyond reasonable doubt that accused-appellant sold *shabu.* Section 5, Article II of R.A. No. 9165, states that the penalty of life imprisonment to death and fine ranging from ₱500,000.00 to ₱1,000,000.00 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. Thus, the CA correctly imposed the penalty of life imprisonment and the fine of ₱500,000.00.

WHEREFORE, the Decision dated 19 February 2013 of the Court of Appeals in CA G.R. CR.-H.C. No. 05186, affirming with modification the conviction of accused-appellant Romel Sapitula y Paculan by the Regional Trial Court of Agoo, La Union, Branch 31, for violation of Section 5, Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 is hereby **AFFIRMED.**

---

[26] Records, p. 9.

[27] TSN, 21 July 2011, pp. 25-26.

[28] Records, p. 48.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Mendoza,*[*] *Reyes,* and *Perlas-Bernabe,*[**] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 214230. February 10, 2016]

SECURITY BANK SAVINGS CORPORATION (formerly PREMIERE DEVELOPMENT BANK)/HERMINIO M. FAMATIGAN, JR., *petitioners, vs.* **CHARLES M. SINGSON,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; SEPARATION PAY; WARRANTED FOR TERMINATION NOT ATTRIBUTABLE TO EMPLOYEE'S FAULT AND IN CASES OF ILLEGAL DISMISSAL; NOT APPROPRIATE IN CASE OF GROSS AND HABITUAL NEGLECT OF DUTIES REGARDLESS OF LENGTH OF SERVICE AND EMPLOYMENT RECORD.— Separation pay is warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 298 and 299 of the Labor Code, as well as in cases of illegal dismissal where reinstatement is no longer feasible. On the other hand, an employee dismissed for any of the just causes enumerated under Article 297 of the same Code, being causes attributable to the employee's fault, is not, as a general rule, entitled to separation pay. x x x As

---

[*] Additional Member per Raffle dated 25 January 2016.

[**] Additional Member per Raffle dated 25 January 2016.

> an exception, case law instructs that in certain circumstances, the grant of separation pay or financial assistance to a legally dismissed employee has been allowed as a measure of social justice or on grounds of equity. x x x [I]n the later case of *Toyota Motor Philippines Corporation Workers Association v. NLRC (Toyota)*, the Court further excluded from the grant of separation pay based on social justice the other instances listed under Article 282 (now 296) of the Labor Code, namely, 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. x x x [Here] respondent's long years of service and clean employment record will not justify the award of separation pay in view of the gravity of the infractions. Length of service is not a bargaining chip that can simply be stacked against the employer.

APPEARANCES OF COUNSEL

Lariba Perez Mangrobang Miralles Dumbrique & Avila for petitioners.

The Law Firm of Ferrer 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 May 21, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 121053, which affirmed the Decision[3] dated April 25, 2011 and the Resolution[4] dated June 17, 2011 of the

---

[1] *Rollo,* pp. 20-30.

[2] *Id*. at 7-16. Penned by Associate Justice Edwin D. Sorongon with Associate Justices Rosmari D. Carandang and Marlene Gonzales-Sison concurring.

[3] *Id*. at 51-58. Penned by Commissioner Mercedes R. Posada-Lacap with Presiding Commissioner Leonardo L. Leonida and Commissioner Dolores M. Peralta-Beley concurring.

[4] *Id*. at 75-76.

National Labor Relations Commission (NLRC) in NLRC LAC Case No. 08-001972-10, sustaining the award of separation pay by way of financial assistance to respondent Charles M. Singson (respondent) despite having been dismissed for just cause.

The Facts

On November 25, 1985, respondent was initially employed by petitioner Premiere Development Bank (now Security Bank Savings Corporation [SBSC]) as messenger until his promotion as loans processor at its Sangandaan Branch. Thereafter, he was appointed as Acting Branch Accountant and, in June 2007, as acting Branch Manager. On March 26, 2008, he was assigned to its Quezon Avenue Branch under the supervision of Branch Manager Corazon Pinero (Pinero) and held the position of Customer Service Operations Head (CSOH) tasked with the safekeeping of its checkbooks and other bank forms.[5]

On July 22, 2008, respondent received a show-cause memorandum[6] from Ms. Ruby O. Go, head of West Regional Operations, charging him of violating the bank's Code of Conduct when he mishandled various checkbooks under his custody. The matter was referred to SBSC's Investigation Committee which discovered, among others, that as of July 11, 2008, forty-one (41) pre-encoded checkbooks of the Quezon Avenue Branch were missing.[7]

At the scheduled conference before the Investigating Committee, respondent readily admitted having allowed the Branch Manager *(i.e.,* Pinero) to bring out of the bank's premises the missing checkbooks and other bank forms on the justification that the latter was a senior officer with lengthy tenure and good reputation. He claimed that it was part of Pinero's marketing strategy to procure more clients for the bank and that he did not receive any consideration for consenting to such practice.

---

[5] *Id*. at 8 and 44.

[6] NLRC records, p. 71.

[7] *Rollo,* pp. 8-9 and 44-45. See also NLRC records, p. 73.

He added that the reported missing checkbooks had been returned by Pinero to his custody after the inventory.[8]

Pending investigation, respondent was transferred to SBSC's Pedro Gil Branch. On September 30, 2008, he was again issued a memorandum[9] directing him to explain his inaccurate reporting of some Returned Checks and Other Cash Items (RCOCI) which amounted to ₱46,279.33. The said uncovered amount was treated as an account receivable for his account.[10]

A month thereafter, respondent was again transferred and reassigned to another branch in Sampaloc, Manila.[11] Dismayed by his frequent transfer to different branches, respondent tendered his resignation[12] on November 10, 2008, effective thirty (30) days from submission. However, SBSC rejected the same in view of its decision to terminate his employment on November 11, 2008 on the ground of habitual neglect of duties.[13]

Consequently, respondent instituted a complaint for illegal dismissal with prayer for backwages, damages, and attorney's fees against SBSC and its President, Herminio M. Famatigan, Jr. (petitioners), before the NLRC, docketed as NLRC-NCR Case No. 10-14683-09.[14]

For their part,[15] petitioners maintained that respondent was validly dismissed for cause on the ground of gross negligence in the performance of his duties when he repeatedly allowed Pinero to bring outside the bank premises its pre-encoded checks and accountable forms in flagrant violation of the bank's policies and procedures, and in failing to call Pinero's attention on the

---

[8] *Rollo,* pp. 9-10.

[9] NLRC records, p. 72.

[10] *Rollo,* p. 10.

[11] *Id*. at 10.

[12] NLRC records, p. 74.

[13] *Rollo,* pp. 10 and 46.

[14] *Id*. at 10.

[15] See Position Paper dated January 2, 2008; NLRC records, pp. 22-55.

matter which was tantamount to complicity and consent to the commission of said irregularity.[16]

The LA Ruling

In a Decision[17] dated July 26, 2010, the Labor Arbiter (LA) dismissed the complaint and accordingly, declared respondent to have been terminated from employment for a valid cause. The LA found that respondent not only committed a violation of SBSC's Code of Conduct but also gross and habitual neglect of duties when he repeatedly allowed Pinero to bring outside the bank premises the checkbooks and bank forms despite knowledge of the bank's prohibition on the matter. According to the LA, the fact that SBSC suffered no actual loss or damage did not in any way affect the validity of his termination. This notwithstanding, the LA awarded respondent separation pay by way of financial assistance in the amount of ₱218,500.00.

Aggrieved, petitioners appealed[18] to the NLRC, docketed as NLRC NCR Case No. 10-14683-09, assailing the grant of financial assistance to respondent despite a finding that he was validly dismissed.

The NLRC Ruling

In a Decision[19] dated April 25, 2011, the NLRC affirmed the LA decision, ruling that the grant of separation pay was justified on equitable grounds such as respondent's length of service, and that the cause of his dismissal was not due to gross misconduct or that reflecting on his moral character but rather, a weakness of disposition and grievous error in judgment.[20] It likewise observed that respondent never repeated the act complained of when he was transferred to other branches. Thus,

---

[16] *Rollo,* p. 47.

[17] *Id*. at 44-49. Penned by Labor Arbiter Jose G. De Vera.

[18] See Notice of Appeal and Memorandum of Appeal dated August 20, 2010; NLRC records, pp. 149-174.

[19] *Rollo,* pp. 51-58.

[20] *Id*. at 57.

it found the award of separation pay of one-half (½) month pay for every year of service to be reasonable.

Petitioners moved for reconsideration[21] which was likewise denied in a Resolution[22] dated June 17, 2011, prompting them to elevate the matter to the CA on *certiorari,* docketed as CA-G.R. SP No. 121053.[23]

The CA Ruling

In a Decision[24] dated May 21, 2014, the CA denied the petition and sustained the award of separation pay.

The CA pointed out that separation pay may be allowed as a measure of social justice where an employee was validly dismissed for causes other than serious misconduct or those reflecting on his moral character. It held that since respondent's infractions involved violations of company policy and habitual neglect of duties and not serious misconduct, and that his dismissal from work was not reflective of his moral character, the NLRC committed no grave abuse of discretion in sustaining the award of separation pay by way of financial assistance. It further concluded that respondent did not commit a dishonest act since he readily admitted to the petitioners that he allowed the Branch Manager to bring out the subject checkbooks. Moreover, it ruled that while respondent acquiesced to the latter's marketing strategy that was contrary to the bank's rules and regulations, there was no showing that his conduct was perpetrated with self-interest or for an unlawful purpose.

Hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in upholding the award of separation pay as

---

[21] See motion for reconsideration dated May 18, 2011; *id*. at 59-73.

[22] *Id*. at 75-76.

[23] *Id*. at 77-114.

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

financial assistance to respondent despite having been validly dismissed.

The Court's Ruling

The petition is meritorious.

Separation pay is warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 298[25] and 299[26] of the Labor Code, as well as in cases of illegal dismissal where reinstatement is no longer feasible.[27] On the other hand, an employee dismissed for any of

---

[25] As renumbered pursuant to Department Advisory No. 01, Series of 2015.

Formerly Article 283. **Closure of Establishment and Reduction of Personnel**.— The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[26] Formerly Article 284. **Disease as Ground for Termination**.– An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co- employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to (½) one-half month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[27] *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM)–Katipunan,* 629 Phil. 247, 257 (2010).

the just causes enumerated under Article 297[28] of the same Code, being causes attributable to the employee's fault, is not, as a general rule, entitled to separation pay. The non-grant of such right to separation pay is premised on the reason that an erring employee should not benefit from their wrongful acts.[29] Under Section 7,[30] Rule I, Book VI of the Omnibus Rules Implementing the Labor Code, such dismissed employee is nonetheless entitled 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.

As an exception, case law instructs that in certain circumstances, the grant of separation pay or financial assistance to a legally dismissed employee has been allowed as a measure of social justice or on grounds of equity. In *Philippine Long Distance Telephone Co. v. NLRC (PLDT),*[31] the Court laid down

---

[28] Formerly Article 282. **Termination by Employer**. – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or wilful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

[29] See *Solidbank Corporation v. NLRC,* 631 Phil. 158, 168-175 (2010); and *Toyota Motor Philippines Corporation Workers Association (TMPCWA) v. NLRC,* 562 Phil. 759, 808-817 (2007).

[30] Section 7. *Termination of employment by employer.*– The just causes for terminating the services of an employee shall be those provided in Article 283 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.

[31] 247 Phil. 641 (1988).

the parameters in awarding separation pay to dismissed employees based on social justice:

> There should be no question that where it comes to such valid but not iniquitous causes as failure to comply with work standards, the grant of separation pay to the dismissed employee may be both just and compassionate, particularly if he has worked for some time with the company. x x x It is not the employee's fault if he does not have the necessary aptitude for his work but on the other hand the company cannot be required to maintain him just the same at the expense of the efficiency of its operations. He too may be validly replaced. Under these and similar circumstances, however, the award to the employee of separation pay would be sustainable under the social justice policy even if the separation is for cause.
>
> But where the cause of the separation is more serious than mere inefficiency, the generosity of the law must be more discerning. There is no doubt it is compassionate to give separation pay to a salesman if he is dismissed for his inability to fill his quota but surely he does not deserve such generosity if his offense is misappropriation of the receipts of his sales. This is no longer mere incompetence but clear dishonesty. x x x.
>
> **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.
>
> A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a little leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will

encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.[32] (Emphasis supplied)

Thus, in the *PLDT* case, the Court required that the grant of separation pay as financial assistance given in light of social justice be allowed only when the dismissal: *(a)* was not for serious misconduct; and *(b)* does not reflect on the moral character of the employee or would involve moral turpitude.

However, in the later case of *Toyota Motor Philippines Corporation Workers Association v. NLRC (Toyota),*[33] the Court further excluded from the grant of separation pay based on social justice the other instances listed under Article 282 (now 296) of the Labor Code, namely, 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. But with respect to analogous cases for termination like inefficiency, drug use, and others, the social justice exception could be made to apply depending on certain considerations, such as 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.[34]

Thus, in *Central Philippines Bandag Retreaders, Inc. v. Diasnes*[35] citing *Toyota,* the Court set aside the award of separation pay as financial assistance to the dismissed employee in view of the gross and habitual neglect of his duties, pointing out that the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers:

To reiterate our ruling in *Toyota,* labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or

---

[32] *Id*. at 648-649.

[33] *Supra* note 29, at 812.

[34] *Id.*

[35] 580 Phil. 177 (2008).

willful breach of trust; or commission of a crime against the person of the employer or his immediate family – grounds under Article 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.[36]

Guided by the foregoing, the Court finds the CA to have erred in awarding separation pay.

To reiterate, the grant of separation pay to a dismissed employee is primarily determined by the cause of the dismissal. In the case at bar, respondent's established act of repeatedly allowing Branch Manager Pinero to bring the checkbooks and bank forms outside of the bank's premises in violation of the company's rules and regulations had already been declared by the LA to be gross and habitual neglect of duty under Article 282 of the Labor Code, which finding was not contested on appeal by respondent. It was petitioners who interposed an appeal solely with respect to the award of separation pay as financial assistance. As they aptly pointed out, the infractions, while not clearly indicative of any wrongful intent, is, nonetheless, serious in nature when one considers the employee's functions, rendering it inequitable to award separation pay based on social justice. As the records show, respondent was the custodian of accountable bank forms in his assigned branch and as such, was mandated to strictly comply with the monitoring procedure and disposition thereof as a security measure to avoid the attendant high risk to the bank. Indeed, it is true that the failure to observe the processes and risk preventive measures and worse, to take action and address its violation, may subject the bank to regulatory sanction. It bears stressing that the banking industry is imbued with public interest. Banks are required to possess not only

[36] *Id*. at 189.

ordinary diligence in the conduct of its business but extraordinary diligence in the care of its accounts and the interests of its stakeholders. The banking business is highly sensitive with a fiduciary duty towards its client and the public in general, such that central measures must be strictly observed.[37] It is undisputed that respondent failed to perform his duties diligently, and therefore, not only violated established company policy but also put the bank's credibility and business at risk. The excuse that his Branch Manager, Pinero, merely prompted him towards such ineptitude is of no moment. He readily admitted that he violated established company policy against bringing out checkbooks and bank forms,[38] which means that he was well aware of the fact that the same was prohibited. Nevertheless, he still chose to, regardless of his superior's influence, disobey the same not only once, but on numerous occasions. All throughout, there is no showing that he questioned the acts of Branch Manager Pinero; neither did he take it upon himself to report said irregularities to a higher authority. Hence, under these circumstances, the award of separation pay based on social justice would be improper.

A similar ruling was reached in the case of *Philippine National Bank v. Padao*[39] where the Court disallowed the payment of separation pay as financial assistance to an employee, *i.e.,* a credit investigator in a bank, who has repeatedly failed to perform his duties which amounted to gross and habitual neglect of duties under Article 282 (now 296) of the Labor Code:

> The role that a credit investigator plays in the conduct of a bank's business cannot be overestimated. The amount of loans to be extended by a bank depends upon the report of the credit investigator on the collateral being offered. If a loan is not fairly secured, the bank is at the mercy of the borrower who may just opt to have the collateral foreclosed. If the scheme is repeated a hundredfold, it may lead to the collapse of the bank.

---

[37] See *rollo,* pp. 26-27.

[38] *Id*. at 47.

[39] 676 Phil. 290 (2011).

xxx xxx xxx

Padao's repeated failure to discharge his duties as a credit investigator of the bank amounted to gross and habitual neglect of duties under Article 282 (b) of the Labor Code. He not only failed to perform what he was employed to do, but also did so repetitively and habitually, causing millions of pesos in damage to PNB. Thus, PNB acted within the bounds of the law by meting out the penalty of dismissal, which it deemed appropriate given the circumstances.

xxx xxx xxx

However, Padao is not entitled to financial assistance. In *Toyota Motor Phils. Corp. Workers Association v. NLRC,* the Court reaffirmed the general rule that separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed or causes **other than serious misconduct, willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, commission of a crime against the employer or his family, or those reflecting on his moral character.** These five grounds are just causes for dismissal as provided in Article 282 of the Labor Code.[40]

Notably, respondent's long years of service and clean employment record will not justify the award of separation pay in view of the gravity of the foregoing infractions.[41] Length of service is not a bargaining chip that can simply be stacked against the employer.[42] As ruled in *Central Pangasinan Electric Cooperative, Inc. v. NLRC:*[43]

Although long years of service might generally be considered for the award of separation benefits or some form of financial assistance to mitigate the effects of termination, this case is not the appropriate instance for generosity under the Labor Code nor under our prior

---

[40] *Id*. at 306-307 and 311.

[41] *Immaculate Conception Academy v. Camilon,* G.R. No. 188035, July 2, 2014, 728 SCRA 689,704.

[42] *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa-Katipunan, supra* note 27, at 260.

[43] 555 Phil. 134 (2007).

decisions. The fact that private respondent served petitioner for more than twenty years with no negative record prior to his dismissal, in our view of this case, does not call for such award of benefits, since his violation reflects a regrettable lack of loyalty and worse, betrayal of the company. If an employee's length of service is to be regarded as a justification for moderating the penalty of dismissal, such gesture will actually become a prize for disloyalty, distorting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of undesirables.[44]

All told, the Court finds that the award of separation pay to respondent as a measure of social justice is not warranted in this case. A contrary ruling would effectively reward respondent for his negligent acts instead of punishing him for his offense, in observation of the principle of equity.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 21, 2014 of the Court of Appeals in CA-G.R. SP No. 121053 is hereby **REVERSED** and **SET ASIDE** deleting the award of separation pay in favor of Charles M. Singson.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Jardeleza, JJ.,* concur.

---

[44] *Id*. at 139-140.

THIRD DIVISION

[G.R. No. 218396. February 10, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NESTOR ROXAS *y* CASTRO,**[1] *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; WHERE THE ACCUSED CLAIMS SELF-DEFENSE, THE PROSECUTORIAL BURDEN IS SHIFTED TO HIM TO PROVE ALL THE INDISPENSABLE INGREDIENTS OF THE DEFENSE.— Basic is the rule that in every criminal case, the burden of proving the guilt of the accused falls upon the prosecution which has the duty of establishing all the essential elements of the crime. However, in cases where the accused interposes the justifying circumstance of self-defense, this prosecutorial burden is shifted to the accused who himself must prove all the indispensable ingredients of such defense, to wit: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. The presence or absence of these essential elements deals with factual matters which are best left to the discretion of the trial court to ascertain.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE REVIEWING COURT IS GENERALLY BOUND BY THE TRIAL COURT'S FINDINGS THEREON.— As the Court has repeatedly emphasized in many cases, the trial court is in a better position to determine the credibility of witnesses having heard and observed firsthand their behavior and manner of testifying during trial. Thus, the reviewing court is generally bound by the trial court's

---

[1] A perusal of the trial court's records reveals that except for the dispositive portion of the RTC Decision, the accused-appellant's name is stated as Nestor Roxas *y* Castro. The name Nestor Roxas *y* Castor first appeared in the said portion which was apparently carried over when the case was elevated to the CA.

findings where no substantial reason exists that would justify a reversal of the assessments and conclusions drawn by the latter. Following a meticulous review of the records of the instant case, the Court sees no compelling reason to deviate from this well-settled rule.

3. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; THE CLAIM OF SELF-DEFENSE DESERVES NO CONSIDERATION WHEN THE LOCATION AND THE NUMBER OF STAB WOUNDS INFLICTED ARE DEMONSTRATIVE OF DELIBERATE AND CRIMINAL INTENT TO END THE LIFE OF THE VICTIM.—** [W]eighed against the unshaken, straightforward and positive declaration of eyewitness Vicente that the victim was suddenly stabbed thrice without any provocation, the self-serving, uncorroborated and doubtful accused-appellant's claim of self-defense deserves no consideration. After taking into account the location and the number of stab wounds sustained by the victim, the accused-appellant's claim of self-defense further crumbles. To reiterate, the first stab blow hit Severino's back jibing with Vicente's assertion that the former was stabbed from behind. Then, when the victim was totally caught by surprise with the initial attack, the second and third stab blows were delivered. Additionally, the number of wounds suffered by Severino invalidates the accused-appellant's allegation that he was only defending himself for the number of wounds inflicted are rather demonstrative of deliberate and criminal intent to end the life of the victim.

4. **ID.; ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; APPRECIATED WHEN THE ATTACK IS DELIBERATE AND WITHOUT WARNING, DONE IN A SWIFT AND UNEXPECTED MANNER, AFFORDING THE HAPLESS, UNARMED AND UNSUSPECTING VICTIM NO CHANCE TO RESIST OR ESCAPE.—** Treachery exists when the offender commits any of the crimes against persons, employing means, methods or forms in its execution which tend directly and especially to ensure its execution, without risk to himself arising from any defense which the offended party might make. At this point, it bears to emphasize that the stabbing was not preceded by any argument between the victim and the accused-appellant. So, when the accused-appellant surreptitiously

approached the victim from behind, the latter had no inkling nor reason to believe that his life was in danger. On account of the fact that Severino was just casually conversing with Vicente at that time, his defenses were down. Naturally, Severino was too stunned by the suddenness of the first stab blow at his back. As a result, the victim could no longer recover from the initial attack and the other two stab blows inflicted made it more difficult for Severino to defend himself or retaliate. This is precisely the essence of treachery wherein the attack must be deliberate and without warning, done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape. Further, the strategy employed by the accused-appellant in carrying out the attack guaranteed that he will not be exposed to any risk which may arise from the defense the victim might make.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

This case is a classic illustration of the time-honored principle in criminal law that while the prosecution has the burden of proving the guilt of the accused beyond reasonable doubt, the burden is shifted to the accused when he admits the commission of the crime but interposes self-defense to justify his act.

For review is the July 31, 2014 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05508 which affirmed *in toto* the February 13, 2012 Decision[3] of the Regional Trial Court (RTC) of Pallocan West, Batangas City, Branch 3,

[2] *Rollo,* pp. 2-10; penned by CA Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Marlene Gonzales-Sison.

[3] Records pp. 84-98; penned by Judge Ruben A. Galvez.

convicting Nestor Roxas *y* Castro (accused- appellant) of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua.*

The Facts

In an Information[4] dated November 27, 1995, Nestor Roxas *y* Castro was charged with the crime of murder committed as follows:

> "That on or about October 25, 1995 at around 8:30 o'clock in the evening at Brgy. Dela Paz Proper, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, while armed with a knife, with intent to kill and with the qualifying circumstance of treachery or evident premeditation, did then and there, wilfully, unlawfully and feloniously attack, assault and stab with said deadly weapon, suddenly and without warning, one Severino Manalo *y* Atienza, while the latter was unarmed and completely defenseless, thereby hitting him at the different parts of his body, which directly caused the victim's death.
>
> CONTRARY TO LAW."

A warrant of arrest was issued on December 7, 1995 for the arrest of the accused-appellant. Because the accused-appellant could not be apprehended by the police, the case was archived on February 10, 1997. It was only on September 18, 2010 that the accused-appellant was arrested by virtue of an alias warrant of arrest issued by the RTC. As a result, the case was revived.

Upon arraignment, the accused-appellant, duly assisted by counsel, pleaded not guilty to the crime charged.[5] After pre-trial was terminated, trial on the merits ensued.

Based on the testimonies of eyewitness Vicente Dimalibot (Vicente); Police Inspector Danilo Magtibay (P/Insp. Magtibay) and SP04 Nelio Lopez (SP04 Lopez), the police investigators in the case against accused-appellant; Serapio Manalo (Serapio), brother of the victim; and Dr. Ma. Josefina Arguelles (Dr.

---

[4] *Id*. at 1.

[5] *Id*. at 18.

Arguelles), the physician who conducted the post mortem examination of the victim's cadaver, the facts as found by the trial court and established by the prosecution are as follows:

In the evemng of October 25, 1995, Severino Manalo (Severino/victim) and Vicente were talking to each other in front of the house of Alfredo Asi (Alfredo). Then, Vicente saw the accused-appellant approach Severino from behind and suddenly stab the latter thrice with a white sharp bladed weapon. The three successive stab blows landed on Severino's back, his stomach and on his side. Vicente testified that Severino was caught off guard when he was stabbed by the accused-appellant as the victim was facing the former while they were talking. Immediately after Severino was stabbed, the accused-appellant fled from the place of the incident. For fear that he might also be attacked, Vicente scampered away to a safer distance until he reached his place where he called for help. Vicente, together with some people, returned to the crime scene where they found Severino sprawled on the ground already dead.

After receiving the report on the stabbing incident, P/Insp. Magtibay and SPO4 Lopez arrived at the crime scene and conducted an investigation. They took pictures of the crime scene and the body of the victim.[6] Vicente volunteered to the responding officers that he witnessed the accused- appellant stab the victim three times with a bladed weapon. Acting on this information, the police officers looked for the accused-appellant at his house as well as the residence of his relatives but he was nowhere to be found.[7]

Serapio testified that the victim was his brother and that he learned of his brother's death from Vicente. He witnessed the police investigators take pictures of the crime scene, make measurements of the cadaver and note the wounds inflicted on the body of the victim.[8] He admitted that he was the one who

---

[6] TSN, March 28, 2011, pp. 10-11: Testimony of SPO4 Nelio Lopez.

[7] *Id*. at 7.

[8] TSN, January 31, 2011, pp. 6-8; Testimony of Serapio Manalo.

went to the police station to file the complaint against the accused-appellant.

Per the post mortem examination on the victim's cadaver performed by Dr. Arguelles, the cause of death was massive hemorrhage secondary to multiple stab wounds.[9] Dr. Arguelles also signed the victim's Certificate of Death which was formally offered in evidence by the prosecution in the trial court.[10]

The following is the defense's version of the incident:

For his part, the accused-appellant invoked self-defense. The accused-appellant recalled that at around 6:00 o'clock in the evening of October 25, 1995, he was on the road in front of his house located in Barangay Dela Paz Proper, Batangas City when Severino, Vicente and Alfredo arrived. Without warning, Severino punched the accused-appellant, hitting him on the lower eyelid portion.[11] In reaction, the accused-appellant uttered the following words to Severino: *"Huwag pare bakit mo aka sinuntok wala naman akong ginagawang masama sa iyo"* to which the latter replied: *"Uubusin ko kayong mag-anak."*[12] The accused-appellant again asked Severino why he was behaving that way as he had done nothing wrong to him. Severino's answer was to pull a knife, and poke it at the accused-appellant. This prompted the accused-appellant to grab the knife and while they grappled for its possession, both Severino and the accused-appellant fell and rolled on the ground. It was only when he stood up that the accused-appellant noticed that he sustained stab wounds on his left hand and saw Severino lying on the ground.[13] The accused-appellant claimed that while all these were happening, Vicente and Alfredo were just looking and laughing at them as if they were drunk. Fearing retaliation

---

[9] Records, p. 63.

[10] *Id*. at 66.

[11] TSN, August 2, 2011, p. 6; Testimony of Nestor Roxas *y* Castro.

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

[13] *Id.* at 7.

from the family of Severino, the accused-appellant immediately proceeded to his sister's place in San Pascual, Batangas and later escaped to Bicol. The accused-appellant went into hiding for fifteen (15) years and was apprehended only on September 18, 2010.[14]

The RTC's Ruling

After trial, the RTC convicted the accused-appellant. The dispositive portion of its decision reads:

> **WHEREFORE,** after a careful and circumspect evaluation of the evidence on hand, the Court finds accused **NESTOR ROXAS *Y* CASTOR**[15] **GUILTY** beyond reasonable doubt of the crime of Murder and this Court hereby sentences herein accused to suffer the penalty of ***RECLUSION PERPETUA.***
>
> Accordingly, he is likewise ordered to pay the offended party the following amounts, to wit:
>
> (a) Php 50,000.00 Civil Indemnity to the heirs of the victim;
>
> (b) Php 50,000.00 Moral Damages; and
>
> (c) Php 30,000.00 Exemplary Damages
>
> **SO ORDERED.**[16]

The RTC gave full credence to the positive and categorical declaration of Vicente identifying the accused-appellant as the perpetrator of the crime. Similarly, the trial court believed that the testimonies of the other prosecution witnesses corroborated Vicente's declaration. On the other hand, the RTC rejected the accused-appellant's theory of self-defense for failure to show unlawful aggression on the part of the victim. Moreover, the trial court declared that the killing was attended by treachery as the attack made on the victim was sudden, unexpected and unforeseen.

---

[14] *Id.* at 15.

[15] *Supra* note 1.

[16] Records, p. 98.

The CA's Ruling

On appeal, the CA affirmed *in toto* the RTC Decision. The CA agreed with the trial court's finding that the absence of the essential element of unlawful aggression negates the accused-appellant's claim of self-defense. The CA also sustained the finding of treachery by the trial court. Further, the appellate court ruled that the accused-appellant's self-serving testimony must fail when weighed against the positive, straightforward and overwhelming evidence of the prosecution. The CA noted the flight of the accused- appellant from the place of the incident and construed the same as indicative of his guilt.

Hence, this appeal.

The Issues

The two issues to be resolved by this Court are: (1) whether the court *a quo* gravely erred in convicting the accused-appellant of murder despite his plea of self-defense; and (2) whether the court *a quo* gravely erred in appreciating the qualifying circumstance of treachery.

The Court's Ruling

The Court affirms the conviction of the accused-appellant.

Basic is the rule that in every criminal case, the burden of proving the guilt of the accused falls upon the prosecution which has the duty of establishing all the essential elements of the crime.[17] However, in cases where the accused interposes the justifying circumstance of self-defense, this prosecutorial burden is shifted to the accused who himself must prove all the indispensable ingredients of such defense, to wit: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[18]

---

[17] *Sierra v. People,* 609 Phil. 446 (2009).

[18] *People v. Herrera,* 422 Phil. 830, 850 (2001).

The presence or absence of these essential elements deals with factual matters which are best left to the discretion of the trial court to ascertain. As the Court has repeatedly emphasized in many cases, the trial court is in a better position to determine the credibility of witnesses having heard and observed firsthand their behavior and manner of testifying during trial.[19] Thus, the reviewing court is generally bound by the trial court's findings where no substantial reason exists that would justify a reversal of the assessments and conclusions drawn by the latter.[20]

Following a meticulous review of the records of the instant case, the Court sees no compelling reason to deviate from this well-settled rule. Confronted with two conflicting versions, the Court is convinced that the trial court was correct in giving great weight and respect to Vicente's testimony detailing who, when, where and how the crime was committed in this case. As such, the Court agrees with the trial court's ruling that there was no unlawful aggression on the part of the victim. This can be gleaned from Vicente's vivid narration of the stabbing incident during the direct- examination conducted by Prosecutor Bien Patulay, viz.:

xxx xxx xxx

Q: Do you know a person name Severino Manalo?
A: Yes, sir.

Q: Do you know where is he now?
A: He is already dead, sir.

Q: Do you know the reason of his death?
A: Yes, sir.

Q: What was the cause of his death?
A: He was stabbed, sir.

Q: By whom?
A: By Nestor Roxas, sir.

---

[19] *People v. Requiz,* 376 PhiL 750, 755 (1999).

[20] *People v. Resuma,* 570 Phil. 313, 322-323 (2008).

Q: Is this Nestor Roxas present in court today?
A: Yes, sir.

Q: Can you kindly point to him?
A: There he is, sir. (Witness pointing to a person seated on the bench for the accused and when asked his name identified himself as Nestor Roxas).

Q: You said that Severino Manalo was stabbed by Nestor Roxas, do you recall when was that?
A: October 25, 1995, sir.

Q: Why do you know that Nestor Roxas stabbed Severino Manalo on October 25, 1995?
A: Because we were talking with each other in front of the house of Alfredo Asi, sir.

Q: To whom were you talking to?
A: To Severino Manalo, sir.

Q: On October 25, 1995, do you remember where you were?
A: In front of the house of Alfredo Asi, sir.

xxx xxx xxx

Q: While you were talking to this Severino Manalo in front of the house of Alfredo Asi, what happened?
A: I noticed Nestor Roxas approach[ed] Severino Manalo and suddenly st[a]bbed him, sir.

Q: What was the position of Severino Manalo in relation to Nestor Roxas when he was suddenly st[a]bbed by Nestor Roxas?
A: We were talking with each other and he was standing, sir.

xxx xxx xxx

Q: Who was he facing when he was talking to you?
A: He was facing me, sir.

Q: How about Nestor Roxas, where did he come from?
A: As what I saw, he came from the back, sir.

Q: Whose back?
A: At the back of Severino Manalo, sir.

Q: And you said also that you saw him stab[bed] Severino Manalo?
A: Yes, sir.

Q: What weapon did he use in stabbing Severino Manalo?
A: What I saw is a white sharp weapon, sir.

Q: Do you know how many stab blows was done by Nestor Roxas on the body of Severino Manalo?
A: Yes, sir.

Q: How many?
A: Three, sir.

Q: Did you see at first where Severino was hit by the first stab blow?
A: Yes, sir.

Q: In what part of the body was he hit?
A: The first was at the back, the second was at the stomach and the third was on his side, sir.

Q: Between the first and the second blow, did you recall the interval?
A: Yes, sir.

Q: What was the interval?
A: I cannot recall because what I saw, it was delivered in succession, Sir.

Q: When Severino Manalo was stabbed by Nestor Roxas, do you know if this Severino Manalo was aware that he was about to be stabbed by Nestor Roxas?
A: No, sir.

Q: Why?
A: Because he was facing me, sir.

xxx xxx xxx.[21]

In sharp contrast, the accused-appellant fails to establish the requisites of self-defense. Only the accused-appellant himself testified regarding his allegation that the incident started with a sudden punch thrown at him by the victim. No other witnesses

---

[21] TSN, December 7, 2010, pp. 4-9; Testimony of Vicente Dimalibot.

were presented by the defense to bolster their theory of self-defense. Aside from being uncorroborated, the trial court observed that the version of the accused-appellant is doubtful. This much can be gathered from the foregoing RTC Decision:

"Obviously, the Court is not convinced that accused had successfully pointed out the unlawful aggression effected by the victim when he claimed that he was suddenly boxed by Manalo when they met and that he even cautioned him and asked the reason why he did that to him, but a knife was poked by Manalo. Accused would have this Court to believe, that the aggression was initially committed by Manalo and that accused was under the belief that Manalo will stab him so he was forced to defend himself by grappling for the possession of the knife from Manalo and in course of it, he unintentionally stabbed him trice and that without knowing that Manalo was hit, accused left the place. To the mind of the court, this is not the kind of evidence that will substantiate the claim of self-defense. Accused failed to present any evidence that would at least give a semblance of truth to his narration of the incident. He claimed that he was also hit but he failed to show any medical certificate or other evidence that would prove that he indeed was injured. Moreover, the Court can see its way clear in saying that Manalo's action of pointing the knife to him if true was at best, only an attempt to attack him and that the same does not pose a danger to accused's life."[22]

Consequently, weighed against the unshaken, straightforward and positive declaration of eyewitness Vicente that the victim was suddenly stabbed thrice without any provocation, the self-serving, uncorroborated and doubtful accused-appellant's claim of self-defense deserves no consideration.

After taking into account the location and the number of stab wounds sustained by the victim, the accused-appellant's claim of self-defense further crumbles. To reiterate, the first stab blow hit Severino's back jibing with Vicente's assertion that the former was stabbed from behind. Then, when the victim was totally caught by surprise with the initial attack, the second and third stab blows were delivered. Additionally, the number of wounds suffered by Severino invalidates the accused-appellant's

---

[22] Records, pp. 94-95.

allegation that he was only defending himself for the number of wounds inflicted are rather demonstrative of deliberate and criminal intent to end the life of the victim.[23]

Likewise weakening accused-appellant's contention that he acted in self-defense was his behavior immediately after the incident. In the case at bar, the accused-appellant himself admitted that upon seeing the victim lying on the ground, he boarded a jeep to go to his sister's place in San Pascual, Batangas before moving to Bicol where he hid from the authorities for several years. The accused-appellant's flight negates his plea of self-defense and indicates his guilt.[24]

Having settled that the accused-appellant is not entitled to the justifying circumstance of self-defense, the next issue to be resolved is whether treachery attended the commission of the crime.

Treachery exists when the offender commits any of the crimes against persons, employing means, methods or forms in its execution which tend directly and especially to ensure its execution, without risk to himself arising from any defense which the offended party might make.[25]

At this point, it bears to emphasize that the stabbing was not preceded by any argument between the victim and the accused-appellant. So, when the accused-appellant surreptitiously approached the victim from behind, the latter had no inkling nor reason to believe that his life was in danger.

On account of the fact that Severino was just casually conversing with Vicente at that time, his defenses were down. Naturally, Severino was too stunned by the suddenness of the first stab blow at his back. As a result, the victim could no longer recover from the initial attack and the other two stab blows inflicted made it more difficult for Severino to defend

---

[23] *People v. Pacantara,* 431 Phil. 496, 508 (2002).

[24] *People v. Pansensoy,* 437 Phil. 499 (2002).

[25] *Peoplev. Torres, Sr.,* 671 Phil. 482, 491 (2011).

himself or retaliate. This is precisely the essence of treachery wherein the attack must be deliberate and without warning, done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.[26] Further, the strategy employed by the accused-appellant in carrying out the attack guaranteed that he will not be exposed to any risk which may arise from the defense the victim might make.[27]

All told, the Court finds that the trial court and appellate courts committed no reversible error in appreciating the qualifying circumstance of treachery in the present case.

Penalty and Pecuniary Liability

Under Article 248 of the Revised Penal Code,[28] as amended, the penalty for the crime of murder qualified by treachery is *reclusion perpetua* to death. Since there were no aggravating or mitigating circumstances that attended the commission of the crime, the penalty of *reclusion perpetua* is imposed on the accused-appellant in accordance with Article 63, paragraph 2 of the same Code.[29] Therefore, the Court affirms the penalty imposed by the RTC and the CA.

With respect to the award of damages, while the Court sustains the grant of civil indemnity, moral damages and exemplary damages to the heirs of the victim by the trial and appellate

---

[26] *People v. Borreros,* 366 Phil. 360, 372-373 (1999).

[27] *People v. Estrada,* 654 Phil. 467 (2011).

[28] Art. 248. *Murder.* – Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua,* to death if committed with any of the following attendant circumstances:

1. With treachery, xxx.

[29] Art. 63. *Rules for the application of indivisible penalties.*– xxxx.

xxx xxx xxx

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

xxx xxx xxx

courts, the Court finds it necessary to modify the amounts of civil indemnity and moral damages.

Prevailing jurisprudence pegs civil indemnity and moral damages in the amount of ₱75,000.00 each. As such, the civil indemnity and moral damages awarded by the RTC and the CA in the amount of ₱50,000.00 are both increased to ₱75,000.00. Civil indemnity and moral damages are automatically awarded to the victim's heirs in murder and homicide cases upon proof of the fact of death of the victim.[30]

The exemplary damages of ₱30,000.00 awarded by the RTC and CA is maintained as it conforms to the latest rulings of the Court. Given the presence of treachery which qualified the killing of the victim to murder, the award of exemplary damages is justified.

WHEREFORE, the Court of Appeals Decision dated July 31, 2014 in CA-G.R. CR-HC No. 05508, finding accused-appellant, Nestor Roxas *y* Castro, guilty beyond reasonable doubt of the crime of Murder, is hereby **AFFIRMED** with **MODIFICATIONS.** Accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim, Severino Manalo, the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Mendoza,* and *Reyes, JJ.,* concur.

---

[30] *Supra* note 24.

INDEX

INDEX

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS
(Local)

Page

II. FOREIGN AUTHORITIES

BOOKS