PHILIPPINE REPORTS

VOL. 784

APRIL 6, 2016 TO APRIL 18, 2016

VOLUME 784

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

APRIL 6, 2016 TO APRIL 18, 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 V

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

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY II

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. 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
HON. ALFREDO BENJAMIN S. CAGUIOA, 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. Bienvenido L. Reyes
Hon. Alfredo Benjamin S. Caguioa

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

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 6934. April 6, 2016]

HELEN CHANG, *complainant, vs.* **ATTY. JOSE R. HIDALGO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE CHARGES; IN AN ADMINISTRATIVE CASE AGAINST A LAWYER, THE COMPLAINANT HAS THE BURDEN OF PROOF TO SHOW BY PREPONDERANCE OF EVIDENCE THAT THE RESPONDENT LAWYER WAS REMISS OF HIS OR HER DUTIES AND HAS VIOLATED THE PROVISIONS OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— In an administrative case against a lawyer, the complainant has the burden of proof to show by preponderance of evidence that the respondent lawyer was remiss of his or her duties and has violated the provisions of the Code of Professional Responsibility. Here, it is established that respondent was engaged as counsel for complainant to represent her in various collection cases and that he received ₱61,500.00 from her as attorney's fees. Respondent also admitted withdrawing from the cases allegedly due to complainant's uncooperative demeanor. However, there is no showing that complainant agreed to the withdrawal, or that respondent filed the proper motion before the courts where the cases were pending.

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; FAILURE TO RENDER LEGAL SERVICES DESPITE RECEIPT OF PAYMENT OF LEGAL FEES CONSTITUTES VIOLATION OF CANONS 17 AND 18, RULE 18.03 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— Respondent failed to present proof that he performed any act in relation to complainant's collection cases or attended the hearings for the collection cases. x x x. We find respondent remiss of his duties as complainant's counsel. Respondent's acts constitute violations of Canon 17 and Canon 18, Rule 18.03 of the Code of Professional Responsibility, which state: CANON 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him. CANON 18 – A lawyer shall serve his client with competence and diligence. …. Rule 18.03 A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

3. ID.; ID.; ID.; LAWYER'S ACTIONS, OMISSIONS, OR NONFEASANCE ARE BINDING UPON HIS OR HER CLIENT. — In *Layos v. Villanueva*, this Court reiterated that a "lawyer must constantly keep in mind that his [or her] actions, omissions, or nonfeasance would be binding upon his [or her] client." Due to respondent's withdrawal as complainant's counsel for the cases, he did not anymore attend any of the hearings. Since the withdrawal was without the conformity of complainant, new counsel was not engaged. This necessarily resulted in the summary dismissal of the collection cases as alleged by complainant. Complainant could have obtained the services of another lawyer to represent her and handle her cases with the utmost zeal and diligence expected from officers of the court. However, respondent simply opted to withdraw from the cases without complying with the requirements under the Rules of Court and in complete disregard of his obligations towards his client.

4. ID.; ID.; ID.; THE OFFESIVE ATTITUDE OF A CLIENT IS NOT AN EXCUSE TO JUST DISAPPEAR AND WITHDRAW FROM A CASE WITHOUT NOTICE TO THE COURT AND TO THE CLIENT, ESPECIALLY WHEN ATTORNEY'S FEES HAVE ALREADY BEEN PAID. — Rule 138, Section 26 of the Rules of Court provides, in part: xxx. SECTION 26. *Change of attorneys*. — An attorney

may retire at anytime from any action or special proceeding, by the written consent of his client filed in court. xxx. Respondent admittedly withdrew from the cases but he failed to provide any evidence to show that complainant, his client, agreed to the withdrawal or, at the very least, knew about it. The offensive attitude of a client is not an excuse to just disappear and withdraw from a case without notice to the court and to the client, especially when attorney's fees have already been paid.

5. **ID.; ID.; ID.; PENALTY OF ONE (1) YEAR SUSPENSION FROM THE PRACTICE OF LAW IMPOSED FOR VIOLATION OF CANONS 17 AND 18 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.—** We sustain the Integrated Bar of the Philippines' recommended penalty of suspension from the practice of law for a period of one (1) year. In several cases, this Court has imposed the penalty of one (1) year suspension from the practice of law for violation of Canons 17 and 18 of the Code of Professional Responsibility.

6. **ID.; ID.; ID.; A LAWYER HAS NO REASON TO RETAIN THE PROFESSIONAL FEES PAID BY THE CLIENT WHEN THERE IS NO SHOWING THAT HE OR SHE PERFORMED ANY ACT IN FURTHERANCE OF THE CLIENT'S CASES.—** [R]estitution of acceptance fees to complainant is proper. Respondent failed to present any evidence to show his alleged efforts for the cases. He failed to attend any of the hearings before the Commission on Bar Discipline. There is no reason for respondent to retain the professional fees paid by complainant for her collection cases when there was no showing that respondent performed any act in furtherance of these cases.

R E S O L U T I O N

LEONEN, *J.*:

A lawyer cannot simply withdraw from a case without notice to the client and complying with the requirements in Rule 138, Section 26 of the Rules of Court. Otherwise, the lawyer will be held liable for violating Canons 17 and 18 of the Code of Professional Responsibility.

Complainant Helen Chang (Chang) filed this administrative Complaint[1] before the Office of the Bar Confidant of this Court on November 7, 2005. Chang prayed that this Court discipline respondent Atty. Jose R. Hidalgo (Atty. Hidalgo) for being remiss in his duties as her counsel and as an officer of the court.[2] She claimed that Atty. Hidalgo failed to "handle [her] cases to the best of his ability and to deal with [her] in all honesty and candor."[3]

In her Complaint, Chang alleged that she engaged the services of Atty. Hidalgo as legal counsel to represent her in several collection cases pending in various courts.[4] Pursuant to the contract they executed, Chang issued five (5) checks in favor of Atty. Hidalgo totaling ₱52,000.00.[5] Atty. Hidalgo also collected ₱9,500.00 as "hearing fee."[6] Chang claimed that despite receiving a total of ₱61,500.00, Atty. Hidalgo did not attend any of the hearings in the collection cases and, instead, sent another lawyer without her consent.[7] The other lawyer failed to attend all hearings, which resulted in the dismissal of the cases.[8] Chang prayed that Atty. Hidalgo be administratively disciplined by this Court.[9]

On December 12, 2005, Atty. Hidalgo was required to comment on the Complaint in the Resolution.[10] The Notice of Resolution sent to Atty. Hidalgo in the address provided by Chang was returned unserved with the notation that Atty. Hidalgo had moved out from the address.[11]

---

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

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

[3] *Id.* at 2.

[4] *Id.* at 1.

[5] *Id.*

[6] *Id.* at 2.

[7] *Id.*

[8] *Id.*

[9] *Id.* at 3.

[10] *Id.* at 4.

[11] *Id.* at 16, Supreme Court Resolution dated November 13, 2006.

Chang was then ordered to submit Atty. Hidalgo's correct and present address.[12] She filed her Compliance[13] and attached a Certification[14] from the Integrated Bar of the Philippines stating Atty. Hidalgo's known address. This Court also ordered the Office of the Bar Confidant to provide Atty. Hidalgo's address "as appearing in its files[.]"[15]

Still, notices of the Resolution dated December 12, 2005 sent to these addresses were returned unserved with the notation that the addressee, Atty. Hidalgo, had already moved out.[16]

Finally, on October 31, 2007, Atty. Hidalgo received the Notice of the Resolution requiring him to comment.[17] However, he still failed to do so.[18] Thus, in the Resolution[19] dated June 2, 2008, this Court considered the submission of the comment as waived and referred the case "to the Integrated Bar of the Philippines for investigation, report[,] and recommendation[.]"[20]

The Commission on Bar Discipline of the Integrated Bar of the Philippines then set a Mandatory Conference/Hearing on September 30, 2008.[21] During the mandatory conference, only Chang appeared.[22] The Investigating Commissioner noted that the notice for Atty. Hidalgo was returned and not served on him.[23] In the Order[24] dated September 30, 2008, the Investigating

---

[12] *Id.*

[13] *Id.* at 17.

[14] *Id.* at 18.

[15] *Id.* at 19, Supreme Court Resolution dated March 12, 2007.

[16] *Id.* at 22, Supreme Court Resolution dated June 18, 2007.

[17] *Id.* at 26, Supreme Court Resolution dated June 2, 2008.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 47.

[22] *Id.* at 48, Minutes of the Hearing dated September 30, 2008.

[23] *Id.* at 49, IBP Commission on Bar Discipline's Order dated September 30, 2008.

[24] *Id.* at 49-50.

Commissioner directed Atty. Hidalgo to file his Comment.[25] This Order was received by Atty. Hidalgo.[26]

On November 10, 2008, the Commission on Bar Discipline received a handwritten and unverified Comment[27] from Atty. Hidalgo.[28] In his Comment, Atty. Hidalgo admitted that Chang retained him as counsel but countered that he attended the hearings.[29] He denied allowing another lawyer to appear on his behalf.[30] Although he denied waiving his appearance fee, he claimed that he did not receive "such a sum [referring to the acceptance fee] from [Chang] mainly because of the length of time [that] passed."[31] Atty. Hidalgo insisted that due to the "transigient [sic] and uncooperative,"[32] attitude of Chang, he decided that he "could no longer perform [his job as Chang's counsel] adequately."[33] He reasoned that he could not put up an effective defense due to his illness and his impoverished state.[34] He prayed that the administrative case against him be dismissed.[35]

After receiving the Comment, the Investigating Commissioner noted that it was not verified, in violation of the Rules of Procedure of the Integrated Bar of the Philippines.[36] Thus, the Investigating

---

[25] *Id.* at 50.

[26] *Id.* at 51, Atty. Jose R. Hidalgo's unverified Comment.

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

[28] *Id.* at 55, IBP Commission on Bar Discipline's Order dated December 12, 2008.

[29] *Id.* at 51, Atty. Jose R. Hidalgo's unverified Comment.

[30] *Id.* at 52.

[31] *Id.* at 51.

[32] *Id.*

[33] *Id.*

[34] *Id.* at 52-53.

[35] *Id.* at 53.

[36] *Id.* at 55, IBP Commission on Bar Discipline's Order dated December 12, 2008.

Commissioner did not consider it.[37] Instead, he set another mandatory conference on January 13, 2009.[38]

This Order was again returned unserved.[39] The notation in the returned Order stated "RTS [Return to Sender], Refused to Accept[.]"[40] The Investigating Commissioner set another mandatory conference on February 11, 2009.[41] Chang appeared, but Atty. Hidalgo again failed to appear.[42]

On August 6, 2010, the Investigating Commissioner found Atty. Hidalgo guilty of gross misconduct and of violating Canons 17, 18, and 19 of the Code of Professional Responsibility.[43] Investigating Commissioner Albert R. Sordan discussed:

> While this Commission commiserates with the hard luck story and plight of the impecunious respondent, the indubitable fact remains that his misconduct runs afoul with the Code of Professional Responsibility. Further, it is incumbent upon respondent to meet the issue head-on and overcome the evidence against him. He must show proof that he still maintains that degree of morality and integrity which at all times is expected of him. These, respondent has failed miserably to do. The record is bereft of any evidence to show that respondent has presented any countervailing evidence to dispute the charges against him. In his unverified and belated answer, he has not even denied complainant's allegations. He has only prayed that the complaint be dismissed out of pity for a man of straw.[44]

---

[37] *Id.*

[38] *Id.* The Order dated December 12, 2008 mistakenly scheduled the mandatory conference on January 13, 2008 instead of January 13, 2009.

[39] *Id.* at 56, attached envelope.

[40] *Id.*

[41] *Id.* at 58, IBP Commission on Bar Discipline's Order dated January 13, 2009.

[42] *Id.* at 59, Minutes of the Hearing dated February 11, 2009.

[43] *Id.* at 66-68, IBP Commission on Bar Discipline's Report and Recommendation.

[44] *Id.* at 67-68.

The dispositive portion of the Investigating Commissioner's Report and Recommendation[45] reads:

> **WHEREFORE,** premised [*sic*] considered, respondent **Atty. Joel R. Hidalgo** has been found **GUILTY** of gross misconduct. Accordingly, it is hereby recommended that he be **SUSPENDED** for a period of **TWO (2) YEARS** from the practice of law, with a **STERN WARNING** that a repetition of the same or a similar act will be dealt with more severely.[46] (Emphasis in the original)

On December 14, 2012, the Board of Governors of the Integrated Bar of the Philippines passed the Resolution[47] adopting with modification the Report and Recommendation of the Investigating Commissioner. The Board of Governors recommended decreasing the penalty to one (1) year suspension from the practice of law and "[o]rdering [him] to [r]eturn the amount of Sixty One thousand (₱61,000.00) [sic] Pesos to complainant [Chang] within thirty (30) days from receipt of notice with legal interest reckoned from the time the demand was made."[48]

On April 11, 2013, Atty. Hidalgo moved for reconsideration.[49] This time, he admitted receiving money from Chang as agreed attorney's fees.[50] He reiterated that he attended the hearings set for the cases.[51] However, he claimed that he filed a Notice of Withdrawal as Counsel due to Chang's stubbornness and uncooperative behavior in the handling of the cases.[52] Since he transferred residence, he was not able to verify if the court granted

---

[45] *Id.* at 63-69.

[46] *Id.* at 68.

[47] *Id.* at 62.

[48] *Id.*

[49] *Id.* at 70-73.

[50] *Id.* at 70.

[51] *Id.*

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

his Notice of Withdrawal.[53] Nonetheless, Atty. Hidalgo alleged that he was entitled to the acceptance fees for exerting time and effort in the preparation of the cases and in the collation of evidence.[54] He maintained that the return of the fees, as ordered by the Board of Governors of the Integrated Bar of the Philippines, was not possible because his only means of income was the Social Security System pension he has been receiving, and even that was not enough for his health maintenance.[55]

On February 11, 2014, the Board of Governors denied[56] Atty. Hidalgo's Motion for Reconsideration.

We resolve whether respondent Atty. Jose R. Hidalgo is guilty of gross misconduct for failing to render legal services despite receipt of payment of legal fees.

In an administrative case against a lawyer, the complainant has the burden of proof to show by preponderance of evidence that the respondent lawyer was remiss of his or her duties and has violated the provisions of the Code of Professional Responsibility.[57]

Here, it is established that respondent was engaged as counsel for complainant to represent her in various collection cases and that he received ₱61,500.00 from her as attorney's fees. Respondent also admitted withdrawing from the cases allegedly due to complainant's uncooperative demeanor. However, there is no showing that complainant agreed to the withdrawal, or that respondent filed the proper motion before the courts where the cases were pending.

---

[53] *Id.* at 71.

[54] *Id.* at 72.

[55] *Id.*

[56] *Id.* at 83.

[57] *Penilla v. Atty. Alcid, Jr.*, A.C. No. 9149, September 4, 2013, 705 SCRA 1, 15 [Per *J.* Villarama, Jr., First Division].

During the mandatory conferences before the Integrated Bar of the Philippines, complainant appeared but respondent did not make any appearance despite receiving notice.

Respondent failed to present proof that he performed any act in relation to complainant's collection cases or attended the hearings for the collection cases. Instead, respondent merely claimed:

> Also, respondent [Atty. Hidalgo] devoted substantial time and energy in researching and preparing the case for trial, and he even attended hearings to that effect. He exerted his best efforts in collating their evidences [sic] and their defense. However, the complainant [Helen Chang] would not listen to respondent. Complainant has other matters and line of defense on her mind because she keeps on insisting they do things her way. Respondent felt that he could no longer work for the complainant as [sic]. Left without any recourse, respondent advised the complaint [sic] to seek the services of another lawyer as he could no longer perform adequately and this was done in good faith. And the actuations of the complainant apparently precipitated the respondent to file the withdrawal as counsel. The respondent is entitled to the acceptance fees he collected from the complainant, or at least a portion of it.[58]

The Investigating Commissioner found that respondent failed to refute complainant's allegations. Thus:

> Prescinding from the foregoing, Atty. Hidalgo acknowledged the special retainer he had with Helen Chang. Atty. Hidalgo failed to debunk claims of Helen Chang that he failed to perform his bounden duty despite receipt of the sixty-one thousand five hundred pesos (₱61,500.00). Worse, the cases were dismissed summarily.[59]

We find respondent remiss of his duties as complainant's counsel.

---

[58] *Rollo*, p. 72, Motion for Reconsideration filed before the Integrated Bar of the Philippines.

[59] *Id.* at 66, IBP Commission on Bar Discipline's Report and Recommendation.

Respondent's acts constitute violations of Canon 17 and Canon 18, Rule 18.03 of the Code of Professional Responsibility, which state:

> CANON 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.
>
> 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.

In *Layos v. Villanueva*,[60] this Court reiterated that a "lawyer must constantly keep in mind that his [or her] actions, omissions, or nonfeasance would be binding upon his [or her] client."[61]

Due to respondent's withdrawal as complainant's counsel for the cases, he did not anymore attend any of the hearings. Since the withdrawal was without the conformity of complainant, new counsel was not engaged. This necessarily resulted in the summary dismissal of the collection cases as alleged by complainant.

Complainant could have obtained the services of another lawyer to represent her and handle her cases with the utmost zeal and diligence expected from officers of the court. However, respondent simply opted to withdraw from the cases without complying with the requirements under the Rules of Court and in complete disregard of his obligations towards his client.

Rule 138, Section 26 of the Rules of Court provides, in part:

---

[60] A.C. No. 8085, December 1, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/december2014/8085.pdf> [Per *J.* Perlas-Bernabe, First Division].

[61] *Id.* at 4.

RULE 138

Attorneys and Admission to Bar

xxx xxx xxx

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 proceeding, 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 adverse party.

Respondent admittedly withdrew from the cases but he failed to provide any evidence to show that complainant, his client, agreed to the withdrawal or, at the very least, knew about it. The offensive attitude of a client is not an excuse to just disappear and withdraw from a case without notice to the court and to the client, especially when attorney's fees have already been paid.

In *Ramirez v. Buhayang-Margallo*:[62]

The relationship between a lawyer and a client is "imbued with utmost trust and confidence." Lawyers are expected to exercise the necessary diligence and competence in managing cases entrusted to them. They commit not only to review cases or give legal advice, but also to represent their clients to the best of their ability without need to be reminded by either the client or the court.[63] (Citations omitted)

Similarly, in *Nonato v. Fudolin, Jr.*:[64]

A lawyer is bound to protect his client's interests to the best of his ability and with utmost diligence. He should serve his client in

---

[62] A.C. No. 10537, February 3, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/10537.pdf> [Per *J.* Leonen, *En Banc*].

[63] *Id.* at 5.

[64] A.C. No. 10138, June 16, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/june2015/10138.pdf> [*Per Curiam*, *En Banc*].

a conscientious, diligent, and efficient manner; and provide the quality of service at least equal to that which he, himself, would expect from a competent lawyer in a similar situation. By consenting to be his client's counsel, a lawyer impliedly represents that he will exercise ordinary diligence or that reasonable degree of care and skill demanded by his profession, and his client may reasonably expect him to perform his obligations diligently. The failure to meet these standards warrants the imposition of disciplinary action.[65] (Citations omitted)

We sustain the Integrated Bar of the Philippines' recommended penalty of suspension from the practice of law for a period of one (1) year.

In several cases, this Court has imposed the penalty of one (1) year suspension from the practice of law for violation of Canons 17 and 18 of the Code of Professional Responsibility.[66]

Further, restitution of acceptance fees to complainant is proper. Respondent failed to present any evidence to show his alleged efforts for the cases. He failed to attend any of the hearings before the Commission on Bar Discipline. There is no reason for respondent to retain the professional fees paid by complainant for her collection cases when there was no showing that respondent performed any act in furtherance of these cases.[67]

WHEREFORE, respondent Atty. Jose R. Hidalgo is found guilty of violating Canon 17 and Canon 18, Rule 18.03 of the Code of Professional Responsibility. He is **SUSPENDED** from the practice of law for a period of one (1) year, with warning

---

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

[66] See *Nebreja v. Reonal*, A.C. No. 9896, March 19, 2014, 719 SCRA 385, 394 [Per *J.* Mendoza, Third Division]; *Dagala v. Quesada, Jr.*, A.C. No. 5044, December 2, 2013, 711 SCRA 206, 217-218 [Per *J.* Perlas-Bernabe, Second Division]; *Cabauatan v. Venida*, 721 Phil. 733, 739 (2013) [Per *J.* Del Castillo, Second Division]; *Dagohoy v. San Juan*, 710 Phil. 1, 9 (2013) [Per *J.* Brion, Second Division]; *Carandang v. Obmin*a, 604 Phil. 13, 23 (2009) [Per *J.* Carpio, First Division]; *Talento v. Paneda*, 623 Phil. 662, 672 (2009) [Per *J.* Leonardo-de Castro, First Division].

[67] See *Emiliano Court Townhouses Homeowners Association v. Atty. Dioneda*, 447 Phil. 408, 413-415 (2003) [Per *J.* Bellosillo, Second Division].

that repetition of the same or similar acts will merit a more severe penalty. Respondent is also **ORDERED** to return to complainant Helen Chang the amount of ₱61,500.00, with interest at 6% per annum from the date of promulgation of this Resolution until fully paid.

Let a copy of this Resolution be furnished to the Office of the Bar Confidant to be appended to respondent's personal record as attorney, to the Integrated Bar of the Philippines, and to the Office of the Court Administrator for dissemination to all courts throughout the country for their information and guidance.

SO ORDERED.

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

THIRD DIVISION

[A.C. No. 11128. April 6, 2016]

PEDRO RAMOS, *complainant, vs.* **ATTY. MARIA NYMPHA C. MANDAGAN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS ARE EXPECTED TO MAINTAIN AT ALL TIMES A HIGH STANDARD OF LEGAL PROFICIENCY, MORALITY, HONESTY, INTEGRITY AND FAIR DEALING, AND MUST PERFORM THEIR FOUR-FOLD DUTY TO SOCIETY, THE LEGAL PROFESSION, THE COURTS, AND THEIR CLIENTS, IN ACCORDANCE WITH THE VALUES AND NORMS EMBODIED IN THE CODE.— The practice of

law is considered a privilege bestowed by the State on those who show that they possess and continue to possess the legal qualifications for the profession. As such, lawyers are expected to maintain at all times a high standard of legal proficiency, morality, honesty, integrity and fair dealing, and must perform their four-fold duty to society, the legal profession, the courts, and their clients, in accordance with the values and norms embodied in the Code.

2. ID.; ID.; ID; CANON 16 THEREOF; A LAWYER HAS THE DUTY TO DELIVER HIS CLIENT'S FUNDS OR PROPERTIES AS THEY FALL DUE OR UPON DEMAND, AND HIS FAILURE TO RETURN THE CLIENT'S MONEY UPON DEMAND GIVES RISE TO THE PRESUMPTION THAT HE HAS MISAPPROPRIATED IT FOR HIS OWN USE TO THE PREJUDICE OF AND IN VIOLATION OF THE TRUST REPOSED IN HIM BY THE CLIENT. — [A]tty. Mandagan never denied receiving the amount of ₱300,000.00 from Ramos for the purpose of posting a bond to secure the latter's provisional liberty. When the petition for bail of Ramos, however, was denied by the Sandiganbayan, Atty. Mandagan failed to return the amount to Ramos. Worse, she unjustifiably refused to turn over the amount to Ramos despite demand from Ramos' counsel. Clearly, Atty. Mandagan failed to act in accordance with the rule stated in Canon 16 of the CPR x x x. In *Belleza v. Atty. Macasa*, this Court stated that: [A] lawyer has the duty to deliver his client's funds or properties as they fall due or upon demand. His failure to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice of and in violation of the trust reposed in him by the client. It is a gross violation of general morality as well as of professional ethics; it impairs public confidence in the legal profession and deserves punishment. Indeed, it may border on the criminal as it may constitute a *prima facie* case of swindling or estafa.

3. ID.; ID.; ID.; ID.; A LAWYER SHOULD BE SCRUPULOUSLY CAREFUL IN HANDLING MONEY ENTRUSTED TO HER IN HER PROFESSIONAL CAPACITY , AS THE CODE OF PROFESSIONAL RESPONSIBILITY EXACTS A HIGH DEGREE OF FIDELITY AND TRUST FROM MEMBERS

OF THE BAR.— This court cannot give credence to Atty. Mandagan's defense that the amount she received from Ramos was not for bail but merely for mobilization expenses. Records show that Atty. Mandagan failed to substantiate her claim. At any rate, as correctly observed by the IBP-CBD, "[Atty. Mandagan] should be forthright in stating what constitutes legal mobilization expenses if only to dispel any doubt as to its intended purpose." Atty. Mandagan's failure to make an accounting or to return the money to Ramos is a violation of the trust repose to her. As a lawyer, Atty. Mandagan should be scrupulously careful in handling money entrusted to her in her professional capacity because the CPR exacts a high degree of fidelity and trust from members of the bar.

R E S O L U T I O N

REYES, *J.*:

Before this Court is an administrative complaint[1] for disbarment filed by complainant Pedro Ramos (Ramos) against respondent Atty. Maria Nympha C. Mandagan (Atty. Mandagan) for gross misconduct in violation of the Code of Professional Responsibility (CPR).

In his Complaint, Ramos alleged that Atty. Mandagan demanded from him the amount of Three Hundred Thousand Pesos (₱300,000.00) in connection with the criminal case filed against him for murder before the Sandiganbayan. According to Ramos, the ₱300,000.00 shall be used as bail bond in the event that his petition for bail in the said criminal case is granted.[2] Also, Atty. Mandagan collected an additional amount of Ten Thousand Pesos (₱10,000.00) for operating expenses. In both instances, an Acknowledgment Receipt was issued in his favor as proof of payment.[3]

---

[1] *Rollo*, pp. 2-3.

[2] *Id.* at 8.

[3] *Id.* at 2.

Contrary to the assurance, however, of Atty. Mandagan, Ramos' petition for bail was denied by the Sandiganbayan. Moreover, Atty. Mandagan withdrew as his counsel without returning the amount of ₱300,000.00 despite the demand sent by Ramos' counsel.[4]

On December 19, 2012, the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) issued an Order[5] directing Atty. Mandagan to submit her Answer to Ramos' complaint within fifteen (15) days from receipt of the Order.

In her Answer,[6] Atty. Mandagan argued that the amount of ₱300,000.00 was not intended for payment of bail, but as mobilization expenses for preparation of witnesses, defenses, and other documentary exhibits for both Ramos and his co-accused Gary Silawon.[7] Atty. Mandagan likewise alleged that Ramos never paid her for acceptance, appearance fees, and legal services rendered in the entire course of the proceedings until her withdrawal as counsel.[8]

On April 26, 2013, the IBP-CBD issued a Notice of Mandatory Conference[9] directing the parties to appear for a mandatory conference. During the mandatory conference, however, only Atty. Joselito Frial appeared, as counsel for Ramos, while Atty. Mandagan was absent.

On August 29, 2013, the IBP-CBD issued an Order[10] terminating the mandatory conference and directed both parties to submit their respective position papers within a non-extendible period of ten (10) days upon receipt of the said order.

---

[4] *Id.*

[5] *Id.* at 9.

[6] *Id.* at 13-18.

[7] *Id.* at 15.

[8] *Id.* at 99.

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

[10] *Id.* at 34.

On December 18, 2013, the IBP-CBD issued a Report and Recommendation,[11] finding Atty. Mandagan liable for gross misconduct and for failure to render an accounting of funds, and recommended that Atty. Mandagan be suspended for a period of one (1) year. Subsequently, the Report and Recommendation of the IBP-CBD was adopted and approved by the IBP Board of Governors in a Resolution[12] dated October 11, 2014.

A Motion for Reconsideration was filed by Atty. Mandagan, but the same was denied by the IBP Board of Governors in a Resolution[13] dated June 5, 2015.

After a careful review of the records of the case, the Court finds the Report and Recommendation of the IBP-CBD, as adopted and approved by the IBP Board of Governors, to be proper under the circumstances.

The practice of law is considered a privilege bestowed by the State on those who show that they possess and continue to possess the legal qualifications for the profession. As such, lawyers are expected to maintain at all times a high standard of legal proficiency, morality, honesty, integrity and fair dealing, and must perform their four-fold duty to society, the legal profession, the courts, and their clients, in accordance with the values and norms embodied in the Code.[14]

In *Cruz-Villanueva v. Atty. Rivera*,[15] this Court held that:

> When a lawyer receives money from the client for a particular purpose, the lawyer must render an accounting to the client showing that the money was spent for the intended purpose. Consequently, if the lawyer does not use the money for the intended purpose, the lawyer must immediately return the money to the client.[16] (Citations omitted)

---

[11] *Id.* at 99-100.

[12] *Id.* at 98.

[13] *Id.* at 217-218.

[14] *Molina v. Atty. Magat*, 687 Phil. 1, 5 (2012).

[15] 537 Phil. 409 (2006).

[16] *Id.* at 416.

In the present case, Atty. Mandagan never denied receiving the amount of ₱300,000.00 from Ramos for the purpose of posting a bond to secure the latter's provisional liberty. When the petition for bail of Ramos, however, was denied by the Sandiganbayan, Atty. Mandagan failed to return the amount to Ramos. Worse, she unjustifiably refused to turn over the amount to Ramos despite demand from Ramos' counsel.

Clearly, Atty. Mandagan failed to act in accordance with the rule stated in Canon 16 of the CPR, to wit:

> Canon 16. A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.
>
> 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.

In *Belleza v. Atty. Macasa*,[17] this Court stated that:

> [A] lawyer has the duty to deliver his client's funds or properties as they fall due or upon demand. His failure to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice of and in violation of the trust reposed in him by the client. It is a gross violation of general morality as well as of professional ethics; it impairs public confidence in the legal profession and deserves punishment. Indeed, it may border on the criminal as it may constitute a *prima facie* case of swindling or estafa.[18] (Citations omitted)

This court cannot give credence to Atty. Mandagan's defense that the amount she received from Ramos was not for bail but merely for mobilization expenses. Records show that Atty. Mandagan failed to substantiate her claim. At any rate, as correctly observed by the IBP-CBD, "[Atty. Mandagan] should

---

[17] 611 Phil. 179 (2009).

[18] *Id.* at 191.

be forthright in stating what constitutes legal mobilization expenses if only to dispel any doubt as to its intended purpose."[19]

Atty. Mandagan's failure to make an accounting or to return the money to Ramos is a violation of the trust reposed on her. As a lawyer, Atty. Mandagan should be scrupulously careful in handling money entrusted to her in her professional capacity because the CPR exacts a high degree of fidelity and trust from members of the bar.

WHEREFORE, the Court finds respondent Atty. Maria Nympha C. Mandagan **GUILTY** of violating Canon 16, Rule 16.01 and Rule 16.03 of the Code of Professional Responsibility, and **SUSPENDS** her from the practice of law for a period of one (1) year effective upon receipt of this Resolution, with **WARNING** that a similar offense will be dealt with more severely.

Let copies of this Resolution be entered in the personal record of Atty. Maria Nympha C. Mandagan as a member of the Philippine Bar and furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

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

---

[19] *Rollo*, p. 222.

SECOND DIVISION

[G.R. No. 202756. April 6, 2016]

HEIRS OF CORAZON AFABLE SALUD, represented by DEOGRACIAS A. SALUD, NAPOLA Y. SALUD, JOSEPH Y. SALUD, and JOE VINCENT Y. SALUD, *petitioners, vs.* **RURAL BANK OF SALINAS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; GENUINENESS OF HANDWRITING, HOW PROVED.— Pursuant to Section 22, Rule 132 of the Rules of Court, "[t]he handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because **he has seen the person write,** or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge." Under the Rules of Court, the genuineness of a handwriting may be proved by the following: (1) A witness who actually saw the person writing the instrument; (2) A witness familiar with such handwriting and who can give his opinion thereon, such opinion being an exception to the opinion rule; (3) A comparison by the court of the questioned handwriting and admitted genuine specimen thereof; and (4) Expert evidence.

2. ID.; ID.; ID.; ID.; COURTS ARE NOT BOUND TO GIVE PROBATIVE VALUE OR EVIDENTIARY VALUE TO THE OPINIONS OF HANDWRITING EXPERTS, AS RESORT TO HANDWRITING EXPERTS IS NOT MANDATORY, AND THE SAME MAY NOT BE COMPELLED TO ADOPT THE FINDINGS OF HANDWRITING EXPERTS.— The law makes no preference, much less distinction among and between the different means

xxx in proving the handwriting of a person. It is likewise clear from the foregoing that courts are not bound to give probative value or evidentiary value to the opinions of handwriting experts, as resort to handwriting experts is not mandatory. While RBSI may have agreed to abide by the conclusions in the NBI report relative to Corazon's signature, the courts may not be compelled to adopt such findings. Besides, RBSI's evidence does not depend upon the NBI report and Dominguez's testimony; expert testimony is irrelevant to RBSI in view of positive testimony from its witnesses to the effect that Corazon appeared before them and signed the questioned August 20 SPA.

3. ID.; ID.; ID.; ID.; WHEN THERE IS A DEFECT IN THE NOTARIZATION OF A DOCUMENT, THE CLEAR AND CONVINCING EVIDENTIARY STANDARD NORMALLY ATTACHED TO A DULY-NOTARIZED DOCUMENT IS DISPENSED WITH, AND THE MEASURE TO TEST THE VALIDITY OF SUCH DOCUMENT IS PREPONDERANCE OF EVIDENCE.— Apart from being candid and credible, it may be said as well that Atty. Trias has no reason to fabricate his testimony in order to favor RBSI or Corazon. The little benefit he may obtain from doing so is not enough for him to gamble his vocation as a lawyer. His testimony forms part of a credible chain that extends to Teodoro's convincing account of Corazon's whereabouts and actions on August 20, 1996. Thus, while Atty. Trias was remiss in his duties as a notary, this does not affect the Court's conclusion; the preponderance of evidence still points toward the direction of RBSI. Atty. Trias should be reminded, however, not to repeat the same mistake, or else the corresponding sanctions shall be meted upon him. Indeed, care should be taken by notaries in the notarization process because at the extreme, "[a] defective notarization will strip the document of its public character and reduce it to a private instrument. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence."

4. ID.; ID.; ID.; ID.; THE OPINION OF HANDWRITING EXPERTS ARE NOT NECESSARILY BINDING UPON THE COURT, THE EXPERT'S FUNCTION BEING TO PLACE BEFORE THE COURT DATA UPON WHICH THE

COURT CAN FORM ITS OWN OPINION.— As for the NBI report and Dominguez's testimony, the Court agrees with the CA's pronouncement that with Dominguez's admission during cross-examination that the questioned signature on the August 20 SPA and Exhibit "5-A"/"S-D-2" could have been written by one and the same person, and that with the changing circumstances such as age and health of the individual whose signature is placed in issue, the handwriting or signature could change, but that such change does not necessarily equate with forgery. With these findings, the NBI report is consequently rendered inconclusive and thus unreliable. Resultantly as well, petitioners' main piece of evidence has been debunked and discredited; their cause of action has no leg to stand on. Even then, "[t]he opinion of handwriting experts are not necessarily binding upon the court, the expert's function being to place before the court data upon which the court can form its own opinion."

APPEARANCES OF COUNSEL

Rolando K. Javier for petitioners.
A.D. Corvera & Associates for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside: 1) the February 23, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 90854 which reversed and set aside the November 15, 2007 Order[3] of the Regional Trial Court (RTC) of Cavite City, Branch 16 in Civil Case No. N-7469, and reinstated the RTC's June 8, 2007 Decision;[4] and 2) the CA's

---

[1] *Rollo*, pp. 10-49.

[2] *Id.* at 51-64; penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio.

[3] *Id.* at 142-166; penned by Judge Manuel A. Mayo.

[4] *Id.* at 112-128.

July 12, 2012 Resolution[5] denying petitioners' Motion for Reconsideration.[6]

Factual Antecedents

Corazon Afable Salud (Corazon) was the registered owner of a parcel of land with building (the Silver Coin Bldg.) in Marseilla Street, Rosario, Cavite (the subject property), covered by Transfer Certificate of Title No. RT-19394 (TCT RT-19394).[7] On May 30, 1998 or at the age of 80, she passed away leaving behind as her heirs her two adopted children, petitioner Deogracias A. Salud (Deogracias) and Carmencita Salud Condol (Carmencita). Deogracias is married to Napola Y. Salud (Napola); Joseph Y. Salud (Joseph) and Joe Vincent Y. Salud (Vincent) are their children.

On January 8, 2004, Deogracias, Napola, Joseph and Vincent instituted Civil Case No. N-7469 against respondent Rural Bank of Salinas, Inc. (RBSI), Carmencita, the Clerk of Court and Ex-Officio Sheriff of the RTC-Cavite City, and the Cavite Register of Deeds. In their Complaint[8] for Declaration of Nullity of Deeds of Mortgage, Special Power of Attorney, Extrajudicial Foreclosure Sale, Certificate of Sale and Damages, with injunctive relief, they essentially claimed that in 2000, Deogracias and Napola learned that Carmencita obtained a ₱2 million loan from RBSI secured by three Deeds of Mortgage[9] over the subject property executed by Carmencita on August 20, October 8 and October 31, 1996; that RBSI granted the loan on the basis of a *pro forma* bank Special Power of Attorney[10] (August 20 SPA) purportedly executed and signed by Corazon on August 20, 1996, specifically authorizing Carmencita to utilize the subject property as security for any loan/s obtained by the latter from

---

[5] *Id.* at 66.

[6] *Id.* at 167-190.

[7] *Id.* at 87-91.

[8] *Id.* at 73-85.

[9] *Id.* at 95-100.

[10] *Id.* at 101.

RBSI; that they immediately informed RBSI President and Manager Teodoro G. Salud (Teodoro) who is their close relative that Corazon never authorized Carmencita to mortgage the subject property, and that Corazon's signature on the August 20 SPA was a forgery; that they showed Teodoro another special power of attorney (SPA) dated August 23, 1996[11] executed by Corazon which contained her true and genuine signature, and which authorized Deogracias to 1) specifically collect the rentals from tenants of the Silver Coin Bldg. and another building, 2) represent Corazon in any transaction with said tenants and the utility companies, and 3) execute and sign any paper or document relating to the tenants and utility companies; that in 1990, the subject property was duly constituted as their family home as inscribed in TCT RT-19394;[12] that for Carmencita's failure to pay her loan obligation, the subject property was unduly foreclosed upon and sold to RBSI in 2002; that the foreclosure process was defective in that a) notice of extrajudicial sale was not given to Corazon, b) the notice of sale was not posted in a conspicuous place, and c) the certificate of posting was executed only after the auction sale,[13] that it is evident from the Promissory Notes[14] executed by Carmencita that the loan she secured from RBSI is her sole obligation and responsibility, and Corazon did not obtain any benefit or advantage therefrom; that RBSI is in possession of the certificate of title to the subject property, and refused to surrender the same despite demand; and that the defendants were acting with malice and bad faith in committing and perpetrating a forgery. Petitioners thus prayed that injunctive relief be issued to enjoin RBSI from consolidating title; that the mortgage deeds, August 20 SPA, and foreclosure and sale proceedings be nullified and voided; that RBSI be ordered to surrender TCT RT-19394 to them; and that ₱1 million as moral damages, ₱250,000.00 as exemplary damages, ₱300,000.00 as

---

[11] *Id.* at 102.

[12] *Id.* at 90.

[13] *Id.* at 103-111.

[14] *Id.* at 93-94.

attorney's fees plus appearance fees, ₱50,000.00 as litigation expenses, and costs be awarded to them.

In its Answer, RBSI essentially alleged that Carmencita was duly authorized by Corazon to secure a loan and mortgage the subject property in August 1996; that the proceeds of the loan was used to repair Corazon's 10-door apartment building in Makati and to pay for her medical and hospital expenses; and that Corazon's signature on the questioned August 20 SPA was genuine and true.

On January 8, 2004, or after the filing of the Complaint, a 72-hour Temporary Restraining Order (TRO) was issued enjoining the Cavite Register of Deeds from acting on RBSI's application for consolidation of ownership and from canceling TCT RT-19394. The TRO was extended until January 28, 2004.

After Civil Case No. N-7469 was raffled to Branch 16, the application for injunctive relief was heard. On January 27, 2004, the RTC issued a Writ of Preliminary Injunction.

At the pre-trial conference, the parties agreed that the only issue to be resolved in the case is whether the signature of Corazon appearing on the August 20 SPA was genuine, and that the August 20 SPA shall be subjected to examination by a National Bureau of Investigation (NBI) handwriting expert whose finding shall be binding upon them.[15]

On April 29, 2005, the designated NBI Documents Examiner, Jennifer Dominguez (Dominguez), issued Questioned Document Report No. 231-405 (NBI report) with the conclusion that the questioned signature of Corazon on the August 20 SPA and her standard signatures on sample documents submitted for comparison "were not written by one and the same person."[16] The NBI report was based on 19 sample signatures submitted

---

[15] *Id.* at 54; 204-208, April 5, 2004 Pre-Trial Order in Civil Case No. N-7469.

[16] *Id.* at 56; 121; 150; 210.

by petitioners, but one of the two that were submitted by RBSI was disregarded by Dominguez.[17]

During trial, Deogracias admitted that the signature appearing on one of the sample documents submitted by RBSI tagged as sample "S-D-2" and also marked as Exhibit "5-A" for RBSI was affixed by Corazon.[18]

Napola testified on the issue of damages and attorney's fees.[19]

For the defense, Teodoro testified among others that Corazon has been a borrower of RBSI even prior to 1996; that in 1996, he was approached by Corazon and Carmencita who indicated their desire to apply for another loan with the subject property as collateral; that Corazon asked him if she can allow Carmencita to be the borrower so that she would not have to keep going to the bank; that he later informed Corazon that the RBSI board of directors agreed to approve her loan application; that one week thereafter or on August 20, 1996, Corazon and Carmencita returned and filled out a P1 million loan application; that Corazon signed the August 20 SPA in his presence; that thereafter, he directed the bank's loan supervisor to process the necessary loan documents and have the same notarized; that later on, Deogracias approached him on several occasions and signified his intention to pay the loan but he was unable to do so and instead, Deogracias filed the instant case; and that RBSI was compelled to hire legal counsel to prosecute Civil Case No. N-7469.[20]

Atty. Gregorio M. Trias (Atty. Trias), the notary public who notarized the August 20 SPA, testified that on August 20, 1996, Corazon appeared before him to have the August 20 SPA notarized although when the said document was brought to him the same was already signed by Corazon; that he knew Corazon because in the past he notarized documents signed by her; and

---

[17] *Id.* at 32-33; 59; 218-220; 274; 277.

[18] *Id.* at 60; 273-274.

[19] *Id.* at 117-118; 122-124.

[20] *Id.* at 118-119; 226-228.

that when he notarized the August 20 SPA, he did not inquire whether the signature thereon was Corazon's nor did he ask whether she understood what the document meant.[21]

Dominguez, the NBI Document Examiner, testified and essentially reiterated her original finding that there exist significant differences between Corazon's questioned signature on the August 20 SPA and the standard sample signatures submitted for comparison, and that her signature on the August 20 SPA and the sample documents submitted were not written by one and the same person.[22] At the same time, she also admitted that the signature on RBSI's "S-D-2" or Exhibit "5-A" and that appearing on the questioned August 20 SPA could have been written by one and the same person.[23]

Ruling of the Regional Trial Court

On June 8, 2007, the RTC issued its Decision, dismissing the complaint, *viz*.:

> As a general rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence. The burden of proof lies on the party alleging forgery. In the examination of forged documents, the expertise of questioned documents examiners is not mandatory and while probably useful, they are indispensable [sic][24] in examining or comparing handwriting. Hence, a finding of forgery does not depend entirely on the testimony of handwriting experts. x x x
>
> In the instant case, the presumption of validity and regularity prevails over allegations of forgery and fraud. As against direct evidence consisting of the testimony of a witness who was physically present at the signing of the contract and who had personal knowledge thereof, the testimony of Dominguez constitutes indirect or circumstantial evidence at best. x x x Teodoro Salud, the witness to the special power of attorney confirmed the genuineness,

---

[21] *Id.* at 37; 119-120; 126; 229-231.

[22] *Id.* at 209-223.

[23] *Id.* at 59-60; 275-276.

[24] Should be "**not** indispensable."

authenticity and due execution thereof. Said witness having been physically present to see the decedent Corazon x x x affix her signature to the questioned document, the weight of evidence preponderates in favor of defendants.

xxx xxx xxx

It is emphasized that it was never denied by the plaintiffs that the subject Special Power of Attorney was in fact notarized by Atty. Gregorio M. Trias, a Notary Public, and the same was registered in his notarial book. As Atty. Trias had testified, Corazon Salud appeared before him on August 20, 1996, the date of the special power of attorney x x x.

xxx xxx xxx

WHEREFORE, premises considered, the instant complaint for declaration of nullity of deeds of mortgage, special power of attorney, extrajudicial foreclosure sale, certificate of sale and damages is, as it is hereby, ordered DISMISSED. The writ of preliminary injunction is likewise DISSOLVED.

SO ORDERED.[25]

Petitioners filed a Motion for Reconsideration[26] which was granted by the RTC in its November 15, 2007 Order. The trial court held that since the parties agreed to abide by, and submit the case for decision based on, the NBI findings, then the resolution of this case should hinge on the NBI findings. The RTC recalled that based on the NBI report, the questioned signature in the August 20 SPA and the standard/sample signatures of Corazon were not written by one and the same person. As regards Dominguez's failure to include Exhibit "5" and "S-D-2" in her examination, the RTC brushed aside the same for being inconsequential.

In addition, the RTC ruled that based on its own examination there were indeed striking differences in the August 20 SPA signature vis-à-vis Corazon's standard signatures. Thus, it

---

[25] *Rollo*, pp. 125-128.

[26] *Id.* at 129-141.

concluded that Corazon's signature in the August 20 SPA was a forgery.

Moreover, the RTC ruled as follows:

> Since the Court has already found that the SPA is a forged document, it is useless to further ventilate on the invalidity of the notarization made by Atty. Trias. It must be stated, nonetheless, that by notarizing this forged document, Atty. Trias committed falsehood and misled or allowed the Court to be misled by an artifice.
>
> xxx xxx xxx
>
> Moreover, the Court doubts the impartiality of Atty. Trias. When he notarized the forged SPA, he was working for defendant bank and was holding office at defendant bank's premises for more than ten (10) years x x x His testimony is therefore tainted with manifest bias and partiality. x x x
>
> While Teodoro maintained that the SPA was signed by Corazon in his presence, save from this bare allegation, however, there is no iota of proof to support his claim. It has not been shown that he affixed his signature as witness to the execution of the SPA and no one among the attesting witnesses came forward to corroborate his claim. Even Carmencita, who was allegedly present when the SPA was signed by Corazon, failed to appear to substantiate Teodoro's claim. The Court notes that Carmencita was impleaded as defendant in this case, but she neither filed her Answer nor came forward to refute plaintiffs' charges. As it were, Teodoro's testimony should be taken with utmost circumspection. x x x
>
> xxx xxx xxx
>
> More importantly, the act of requiring Corazon to execute an SPA in favor of Carmencita for a loan that would be processed and released on the same day defies reason and common sense. x x x
>
> xxx xxx xxx
>
> All told, although the special power of attorney was a public document having in its favor the presumption of regularity, such presumption was adequately refuted by competent witnesses and this Court's visual analysis of the documents. Due to its knowledge of the defect of the questioned document which it did not question, defendant bank could not be considered a mortgagee in good faith.

Though it is not expected to conduct an exhaustive investigation on the history of the mortgagor's title, it cannot be excused from the duty of exercising the due diligence required of a banking institution. Banks are expected to exercise more care and prudence than private individuals in their dealings, even those that involve registered lands, for their business is affected with public interest.

xxx xxx xxx

WHEREFORE, as prayed for by plaintiffs, the *Decision* dated June 8, 2007 is reconsidered and set aside. x x x

xxx xxx xxx

SO ORDERED.[27]

Ruling of the Court of Appeals

In an appeal to the CA, RBSI asserted that the RTC erred in reconsidering its original Decision; that the trial court disregarded the sample signatures it submitted (Exhibits "5" and "S-D-2"); that the NBI's Dominguez herself admitted that the questioned signature and its Exhibits "5" and "S-D-2" could have been written by one and the same person; and that as a public document and with the testimonies of Teodoro and Atty. Trias, the August 20 SPA must be presumed to be regular.

On February 23, 2012, the CA issued the assailed Decision finding merit in the appeal. It held that the opinions of handwriting experts are merely persuasive and not conclusive hence not binding on the courts.

Based on its own assessment, the CA found that petitioners failed to overcome the presumption that Corazon's signature in the August 20 SPA was genuine and not forged. The CA observed that petitioners submitted 19 sample signatures of Corazon, denominated as "S-1" through "S-19," while the respondent presented two signatures tagged as "S-D-1" and "S-D-2." However, Dominguez failed to include in her examination "S-D-2." The CA observed that the RTC failed to take into account that during her cross-examination, Dominguez admitted

[27] *Id.* at 158-166.

that the signatures appearing on "S-D-2" and the August 20 SPA could be written by one and the same person. More important, even Deogracias admitted that the signature on "S-D-2" was Corazon's.

In addition, the CA held that the NBI handwriting expert herself admitted that age and health conditions could affect one's handwriting. In fact, in her February 21, 1995 letter, Corazon expressed that she had difficulty in writing because she was suffering from tremors. The CA pointed out that Corazon was 77 years old when she wrote the letter, or one year before the execution of the questioned August 20 SPA. According to the CA, slight dissimilarities in handwriting are only natural and not indicative of forgery.

Moreover, the CA declared that the case should not be resolved based solely on the NBI report. It noted that petitioner's claim of forgery hinged exclusively on the NBI report whereas RSBI erected its case not only on the sample signatures of Corazon but also on the testimonies of Teodoro, who testified that Corazon signed the August 20 SPA in his presence, and of Atty. Trias who claimed that Corazon and Carmencita appeared before him when he notarized the documents. As a notarized document, the August 20 SPA is presumed valid and regular; petitioners failed to submit convincing proof of its falsity or nullity.

Finally, the appellate court took note of Deogracias's admissions that Corazon had on previous occasion constituted Carmencita as her attorney-in-fact in selling her property; that Carmencita took care of Corazon during her hospital confinement in late 1996 until her death in 1998; and that Carmencita paid Corazon's hospital bills amounting to more than ₱5 million. The CA concluded that based on the foregoing, the likelihood that Corazon executed the August 20 SPA in favor of Carmencita, is not remote.

The dispositive portion of the CA Decision reads as follows:

WHEREFORE, the appeal is GRANTED. The Order dated November 15, 2007 of the Regional Trial Court of Cavite City, Branch 16 in Civil Case No. N-7469 is hereby REVERSED and SET ASIDE.

The Decision dated June 8, 2007 of the same court is hereby REINSTATED.

SO ORDERED.[28]

Petitioners moved for reconsideration, but in its July 12, 2012 Resolution, the CA stood its ground. Hence, the instant Petition.

Issues

Petitioners raise the following issues in this Petition:

22. The Court of Appeals erred in setting aside the pre-trial agreement that the petitioners and respondent Bank are bound by the result of the NBI's document examination.

23. The Court of Appeals erred in concluding that petitioners as plaintiffs below failed to adduce preponderant evidence to prove that the signature on the Special Power of Attorney purportedly belonging to Corazon Afable Salud was forged. Particularly:

a. NBI Document Examiner Jennifer Dominguez was not categorical in her finding that the subject signature was forged, all because it was "possible" that an alleged standard signature of Corazon Afable Salud (Exhibit "5" or Exhibit "S-D-2") and the subject signature were written by one and the same person.

b. The NBI Document Examiner did not rule out that several factors could affect an individual's handwriting.

c. The testimony of respondent Bank's Manager, Teodoro Salud, that he saw Corazon Afable Salud signing the Special Power of Attorney is a credible direct evidence of the authenticity of the subject signature.

d. The Special Power of Attorney is a notarized document and is therefore presumed regular and genuine.

e. Petitioner Deogracias Salud admitted that Corazon Afable Salud appointed in the past Carmencita Salud Condol as her attorney-in-fact and thus it was not improbable that she appointed her for this particular transaction.

---

[28] *Id.* at 64.

f. Petitioner Deogracias Salud admitted that Carmencita Salud Condol paid for Corazon Afable Salud's hospital expenses, the funding for which could not have been but the proceeds of the transaction involved in this case.[29]

Petitioners' Arguments

In their Petition and Reply,[30] petitioners seek a reversal of the assailed CA dispositions and reinstatement of the RTC's November 15, 2007 Order, arguing that RBSI is estopped from questioning or rejecting the NBI report since it agreed during the pre-trial proceedings to abide by the results of the NBI examination; that RBSI is bound by such stipulation and agreement made during pre-trial which thus constitutes a judicial admission of the findings contained in the NBI report. Petitioners also argue that the NBI report deserves great weight and probative value; that Dominguez's admission that there is a possibility that Exhibit "5-A" and the August 20 SPA could have been signed by one and the same person should be disregarded, because the preponderance of evidence points to the fact that Carmencita forged Corazon's signature in the August 20 SPA in order to offer the subject property as collateral, thus insuring that her personal loan application would be approved; that Deogracias's testimony to the effect that Corazon "got mad" when she learned that Carmencita forged her signature and mortgaged the subject property for a personal loan, and that Corazon did not need to secure a loan to pay off her hospital bills since she had ₱14 million, and that it was Carmencita who actually paid for the RBSI loans, cannot simply be ignored.

Petitioners add that it was erroneous for the CA to have considered RBSI's Exhibit "5-A" or "S-D-2" since Dominguez herself did not utilize the same in her examination of Corazon's signature as it was already doubtful in the first place; that even if Deogracias admitted that the signature (RBSI's Exhibit "5-A") was Corazon's, his opinion does not count as against that of

---

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

[30] *Id.* at 303-316.

Dominguez's, which is scientific and more credible; that Teodoro's testimony is doubtful; that it made no sense that while Corazon's property was being mortgaged, she was not named as one of the principal debtors; that if Teodoro wanted to spare Corazon the trouble of having to come to the bank since she was then already old, then he should have asked her to execute a SPA when she and Carmencita first came to the bank, instead of asking her to return as she did one week later or on August 20, 1996; and that the presumption of regularity attached to a notarized document is not absolute, as such document may be shown to be a forgery instead.

Petitioners further contend that Atty. Trias's testimony is suspect, since he was negligent in his duties as a notary public in failing to check the veracity of the entries in the bank documents submitted to him for notarization and in not verifying Corazon's signature on the August 20 SPA when she appeared before him; that Atty. Trias's impartiality is questionable considering that he was connected with RBSI and held office at the bank; and that as against the accounts of Teodoro and Atty. Trias, Dominguez's is more credible as she is a disinterested witness, while the two work for RBSI and are interested in securing a favorable judgment for the bank.

Petitioners add that the circumstances surrounding Carmencita's loan application are suspicious in that her loan was granted and released in just one day: when Corazon and Carmencita returned to the bank on August 20, 1996 and submitted the required documents, the promissory note, real estate mortgage and SPA were simultaneously executed and notarized, and the loan proceeds were released. Corazon was not made a co-debtor and the proceeds were released to Carmencita instead of Corazon who is supposedly the beneficiary of the loan.

Finally, petitioners observed that since the CA did not make its own independent assessment of the signatures in question, it was not in a position to reverse the RTC's findings thereon.

Respondent's Arguments

On the other hand, respondent argues in its Comment[31] that while it was agreed during pre-trial that the parties shall abide by the findings of the NBI, still, forgery cannot be presumed, and it must be proved by clear and convincing evidence during trial; that the opinions of handwriting experts are not binding upon the courts since they are not conclusive and are merely persuasive; that the CA correctly relied on Exhibit "5-A"/ "S-D-2" which is genuine and authentic as it was confirmed by Deogracias himself to be Corazon's signature; that the NBI report cannot be relied upon completely in view of the fact that the signature (Exhibit "5-A") in one of the sample documents (Exhibit "5") was intentionally disregarded, and yet Dominguez later testified and admitted that the signature thereon and that on the questioned August 20 SPA could have been affixed by one and the same person; that the NBI report was defective in that it utilized an erroneous methodology since Dominguez disregarded the sample signatures submitted by RBSI; and that if Dominguez did not disregard Exhibit "5-A"/"S-D-2," the conclusion in the NBI report would have been different; instead, the only and inevitable conclusion would have been that the questioned signature of Corazon in the August 20 SPA is genuine and not a forgery.

Respondent adds that in arriving at its conclusions, the CA carefully considered: a) the applicable provisions of law; b) the inaccurate, inconclusive and unreliable findings of the NBI; c) the apparent conflict between the conclusion in the NBI report and Dominguez's admission on the witness stand; and d) that petitioners' evidence failed to defeat the August 20 SPA, a notarized public document which enjoys the presumption of regularity. It further contends that the issue of Corazon's signature may not be the subject of stipulation and instead, the parties should be allowed to test the NBI report and Dominguez's competence.

---

[31] *Id.* at 269-290.

Consequently, respondent prays for the denial of the instant Petition and affirmance of the assailed CA dispositions.

Our Ruling

The Court denies the Petition.

Considering that the trial and appellate courts rendered diametrically opposed opinions, the Court must examine the case at length.

Pursuant to Section 22, Rule 132 of the Rules of Court, "[t]he handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because **he has seen the person write**, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge."[32]

Under the Rules of Court, the genuineness of a handwriting may be proved by the following:

(1) A witness who actually saw the person writing the instrument;

(2) A witness familiar with such handwriting and who can give his opinion thereon, such opinion being an exception to the opinion rule;

(3) A comparison by the court of the questioned handwriting and admitted genuine specimen thereof; and

(4) Expert evidence.

The law makes no preference, much less distinction among and between the different means stated above in proving the handwriting of a person. It is likewise clear from the foregoing that courts are not bound to give probative value or evidentiary value to the opinions

---

[32] Emphasis supplied.

of handwriting experts, as resort to handwriting experts is not mandatory.[33]

While RBSI may have agreed to abide by the conclusions in the NBI report relative to Corazon's signature, the courts may not be compelled to adopt such findings. Besides, RBSI's evidence does not depend upon the NBI report and Dominguez's testimony; expert testimony is irrelevant to RBSI in view of positive testimony from its witnesses to the effect that Corazon appeared before them and signed the questioned August 20 SPA. Besides, the questioned August 20 SPA is a notarized document. Only petitioners are entirely dependent on the NBI report and Dominguez's testimony, since they have no other way of proving that Corazon did not sign the questioned SPA.

Essentially, petitioners' evidence relative to Corazon's handwriting consists of: a) Deogracias' testimony to the effect that Corazon "got mad" when she learned that Carmencita forged her signature, that Corazon did not need to secure a loan to pay off her hospital bills since she had ₱14 million, and that it was Carmencita who actually paid for the RBSI loan; b) the NBI report which concludes that the questioned signature of Corazon on the August 20 SPA and her standard signatures on sample documents submitted for comparison "were not written by one and the same person"; and c) Dominguez's testimony.

For respondent, evidence consists primarily of the testimonies of Teodoro and Atty. Trias.

After due consideration of the evidence, this Court finds that on August 20, 1996, Corazon was present at the RBSI premises with Carmencita who applied for a loan. It is also established that prior to the transaction in question, Corazon has been a borrower of RBSI and was not a stranger to the bank and its loan arrangements; and annotations on TCT RT-19394 reveal that the subject property was mortgaged twice in 1992 and 1993 to secure loans obtained by her from RBSI.[34] It likewise appears

---

[33] *Domingo v. Domingo*, 495 Phil. 213, 219-220 (2005).

[34] *Rollo*, pp. 89-90.

that one week prior to August 20, 1996 Corazon and Carmencita met with Teodoro to explore the possibility of Corazon taking out another loan which thus prompted Teodoro to seek prior approval from the bank's board of directors. Since Corazon was not a first-time borrower or client of the bank, Teodoro who is also a close relative of the family as admitted by Deogracias himself in his Complaint was able to secure prior board approval of a credit accommodation for her, such that when Corazon and Carmencita returned to the RBSI on August 20, 1996, the bank was able to complete all the loan documentation and release the proceeds that same day. During the documentation process, Corazon executed and signed the questioned August 20 SPA in Teodoro's presence. Thereafter, the said document and other loan documents were submitted to Atty. Trias for notarization. Corazon appeared before Atty. Trias who then notarized the August 20 SPA and other loan documents without inquiring whether the signature affixed on the SPA was hers indeed or that the said document was her free act and deed, although he knew her very well as he has dealt with her in the past when he notarized the loan, mortgage, and mortgage cancellation documents relative to the two previous loan and mortgage transactions executed by Corazon in 1992 and 1993.[35]

There is no reason to doubt the testimonies of Teodoro and Atty. Trias. They are straightforward, candid, and in some respects, they are supported by admissions made by petitioners themselves. Notable is the undisputed fact and fundamental premise that Corazon was physically present at RBSI on August 20, 1996, when the questioned August 20 SPA was purportedly executed. Since she was at the bank premises on said date, there is no reason to doubt RBSI's claim that she executed and signed the August 20 SPA and in Teodoro's presence, and that thereafter the said document was notarized by Atty. Trias in the presence of Corazon; there was no need for Carmencita to forge her signature because Corazon was already there. It is more in accord with experience and logic to conclude that since Corazon was

[35] *Id.*

already inside the bank, then she voluntarily executed and signed the August 20 SPA in Teodoro and Carmencita's presence; any supposition that Carmencita had to forge her signature on such document becomes unnecessary and absurd.

As petitioners themselves claim in their Complaint, Teodoro is a close relative; as such, he is more inclined toward telling the truth rather than fabricate lies to prejudice petitioners. His loyalty is foremost to his family and to his employer or business merely secondary. Either way, his actions on August 20, 1996 betray his fidelity to his clients who are also his relatives and to RBSI his employer. It may be added that contrary to petitioners' assertions, there is nothing unusual in the procedure taken by the bank in approving and releasing the loan posthaste. Quite the contrary, from a business point of view, Teodoro's actions in performing service to a valued client with alacrity were laudable; at the same time he created good business for RBSI at record speed. As Corazon was a valued client and with her valuable property put up as sufficient collateral, there is no reason to delay Carmencita's loan application.

For his part, Atty. Trias was equally candid in his testimony. Against his own interest, he admitted that he failed to inquire if the signature appearing on the August 20 SPA was Corazon's but that this was so because he already knew Corazon very well for having dealt with her in the past. Indeed, what matters is that the party who executed these documents appeared before him and that the person acknowledging the instrument or document is known to him and that he/she is the same person who executed it and acknowledged that the same is his/her free act and deed. Thus, while Atty. Trias did not verify Corazon's identity and signature, he already knew her well as he had dealt with her in the past; and from an examination of the loan documents, he would have known that the party involved therein was Corazon who was then present in person before him. Indeed, Corazon was a valued RBSI client who was well-known by the bank officers and staff. The fact that she is a prominent businessperson and individual in the community; that Teodoro was her close relative; and that her million-peso loan was pre-approved by

the RBSI board even before she could submit a loan application betray her stature as such.

Apart from being candid and credible, it may be said as well that Atty. Trias has no reason to fabricate his testimony in order to favor RBSI or Corazon. The little benefit he may obtain from doing so is not enough for him to gamble his vocation as a lawyer. His testimony forms part of a credible chain that extends to Teodoro's convincing account of Corazon's whereabouts and actions on August 20, 1996. Thus, while Atty. Trias was remiss in his duties as a notary, this does not affect the Court's conclusion; the preponderance of evidence still points toward the direction of RBSI. Atty. Trias should be reminded, however, not to repeat the same mistake, or else the corresponding sanctions shall be meted upon him. Indeed, care should be taken by notaries in the notarization process because at the extreme, "[a] defective notarization will strip the document of its public character and reduce it to a private instrument. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence."[36]

Petitioners argue that it was more in keeping with logic and common sense that Corazon should have made herself a co-maker in the loan transaction. They cite in the instant Petition that the "Special Power of Attorney was unnecessary in the perfection and consummation of the (loan) transaction because all it took for respondent Bank to release the loan proceeds was just a day from the time the loan was applied for and allegedly Corazon x x x was in the Bank's premises when the entire transaction, from start to finish, was being done."[37] The opposite, however, is true. Since Corazon permitted the subject property to be put up as collateral through a special power of attorney issued to Carmencita, there was no need to make her a co-maker

---

[36] *Meneses v. Venturozo*, 675 Phil. 641, 652 (2011), citing *Fuentes v. Roca*, 633 Phil. 9 (2010), and *Dela Rama v. Papa*, 597 Phil. 227 (2009).

[37] *Rollo*, p. 21.

of the loan. Petitioners concede that Teodoro wanted to spare Corazon the trouble of having to personally appear at the bank each time a loan is applied for and processed, since she was then already old.[38] If this is the case, then making her a co-maker of the loan defeats the declared purpose.

Also, the fact that Carmencita was the sole beneficiary of the loan suggests nothing. Three days after the August 20 SPA was executed and loan proceeds were released to Carmencita, or on August 23, 1996, Deogracias was himself granted a SPA by Corazon authorizing him to collect the rentals due from tenants of the Silver Coin Bldg. and another building that his mother owned. If there is anything that may be seen from these circumstances, it is that Corazon loved her adopted children dearly and gave to them generously. Besides, the fact that Deogracias himself was issued a SPA by Corazon lends credence to the fact that Carmencita was herself granted one just three days before.

While Deogracias testified that Corazon "got mad" when she learned that Carmencita forged her signature, that Corazon did not need to secure a loan to pay off her hospital bills since she had ₱14 million, and that it was Carmencita who actually paid for the RBSI loan, his testimony cannot thwart the accounts of Teodoro and Atty. Trias. Their testimonies are credible while that of Deogracias is uncorroborated and self-serving. The fact remains that Corazon freely and voluntarily accompanied Carmencita to RBSI with the intention of assisting the latter in securing a loan by offering her property as collateral. The motive for securing the loan is irrelevant.

As for the NBI report and Dominguez's testimony, the Court agrees with the CA's pronouncement that with Dominguez's admission during cross-examination that the questioned signature on the August 20 SPA and Exhibit "5-A"/"S-D-2" could have been written by one and the same person, and that with the changing circumstances such as age and health of the individual

---

[38] *Id.* at 35.

whose signature is placed in issue, the handwriting or signature could change, but that such change does not necessarily equate with forgery. With these findings, the NBI report is consequently rendered inconclusive and thus unreliable. Resultantly as well, petitioners' main piece of evidence has been debunked and discredited; their cause of action has no leg to stand on. Even then, "[t]he opinion of handwriting experts are not necessarily binding upon the court, the expert's function being to place before the court data upon which the court can form its own opinion."[39]

Finally, since the Court has found that Corazon was then physically present at RBSI on August 20, 1996, where she voluntarily executed and signed the August 20 SPA in favor of Carmencita and in the presence of the bank's President and Manager, and thereafter she personally caused the same to be notarized before the bank's notary public, then there is no need to further examine and analyze her signature. The issue of the CA's failure to conduct its own independent examination of Corazon's questioned signature is rendered moot and academic.

WHEREFORE, the Petition is **DENIED**. The February 23, 2012 Decision and July 12, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 90854 are **AFFIRMED**.

SO ORDERED.

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

---

[39] *Gepulle-Garbo v. Garabato*, G.R. No. 200013, January 14, 2015.

THIRD DIVISION

[G.R. No. 203949. April 6, 2016]

SPOUSES GEORGE A. GALLENT, SR. and MERCEDES M. GALLENT, *petitioners, vs.* **JUAN G. VELASQUEZ,** *respondent.*

[G.R. No. 205071. April 6, 2016]

JUAN G. VELASQUEZ, *petitioner, vs.* **SPOUSES GEORGE A. GALLENT, SR. and MERCEDES M. GALLENT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; THE PURCHASER IN AN EXTRAJUDICIAL FORECLOSURE OF REAL PROPERTY BECOMES THE ABSOLUTE OWNER OF THE PROPERTY ENTITLED TO ALL THE RIGHTS OF OWNERSHIP IF NO REDEMPTION IS MADE WITHIN ONE YEAR FROM THE REGISTRATION OF THE CERTIFICATE OF SALE BY THOSE ENTITLED TO REDEEM.— It is well-settled that the purchaser in an extrajudicial foreclosure of real property becomes the *absolute* owner of the property if no redemption is made within one year from the registration of the certificate of sale by those entitled to redeem. As absolute owner, he is entitled to all the rights of ownership over a property recognized in Article 428 of the New Civil Code, not least of which is possession, or *jus possidendi.* A torrens title recognizes the owner whose name appears in the certificate as entitled to all the rights of ownership under the *civil law.* The Civil Code of the Philippines defines ownership in Articles 427, 428 and 429. This concept is based on Roman Law which the Spaniards introduced to the Philippines through the Civil Code of 1889. Ownership, under Roman Law, may be exercised over things or rights. It primarily includes the right of the owner to enjoy and dispose of the thing owned. And the right to enjoy and dispose of the thing

includes the right to receive from the thing what it produces, [*jus utendi; jus fruendi*] the right to consume the thing by its use, [*jus abutendi*] the right to alienate, encumber, transform or even destroy the thing owned, [*jus disponendi*] and the right to exclude from the possession of the thing owned by any other person to whom the owner has not transmitted such thing [*jus vindicandi*].

2. ID.; ID.; ID.; AFTER CONSOLIDATION OF TITLE, THE PURCHASER IN A FORECLOSURE SALE MAY DEMAND POSSESSION AS A MATTER OF RIGHT, AND IT IS THE MINISTERIAL DUTY OF THE REGIONAL TRIAL COURT (RTC) TO ISSUE A WRIT OF POSSESSION UPON AN *EX PARTE* MOTION BY THE NEW OWNER, AND NO BOND IS REQUIRED. — Possession being an essential right of the owner with which he is able to exercise the other attendant rights of ownership, after consolidation of title the purchaser in a foreclosure sale may demand possession as a matter of right. This is why Section 7 of Act No. 3135, as amended by Act No. 4118, imposes upon the RTC a ministerial duty to issue a writ of possession to the new owner upon a mere *ex parte* motion. xxx. In *Spouses Arquiza v. CA*, it is reiterated that simply on the basis of the purchaser's ownership of the foreclosed property there is no need for an ordinary action to gain possession thereof: Indeed, it is well-settled that an ordinary action to acquire possession in favor of the purchaser at an extrajudicial foreclosure of real property is not necessary. There is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the one-year period of redemption has expired and after he has obtained the sheriff's final certificate of sale. The basis of this right to possession is the purchaser's ownership of the property. The mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and no bond is required.

3. ID.; ID.; ID.; THE *EX PARTE* APPLICATION FOR WRIT OF POSSESSION IS AN NON-LITIGIOUS SUMMARY PROCEEDING WITHOUT NEED TO POST A BOND, EXCEPT WHEN POSSESSION IS BEING SOUGHT EVEN DURING THE REDEMPTION PERIOD, AND A PENDING ACTION TO ANNUL THE MORTGAGE OR THE FORECLOSURE SALE WILL NOT BY ITSELF STAY

THE ISSUANCE OF THE WRIT OF POSSESSION. — As also explained in *Asia United Bank v. Goodland Company, Inc.,* the *ex parte* application for writ of possession is a non-litigious summary proceeding without need to post a bond, except when possession is being sought even during the redemption period: It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title. To accentuate the writ's ministerial character, the Court has consistently disallowed injunction to prohibit its issuance despite a pending action for annulment of mortgage or the foreclosure itself.

4. ID.; ID.; ID.; WHEN THE THING PURCHASED AT A FORECLOSURE SALE IS IN TURN SOLD OR TRANSFERRED, THE RIGHT TO THE POSSESSION THEREOF, ALONG WITH ALL OTHER RIGHTS OF OWNERSHIP, FOLLOWS THE THING SOLD TO ITS NEW OWNER.— In *Laureano v. Bormaheco*, the mortgagee-purchaser, Philippine National Cooperative Bank (PNCB), sold the foreclosed lots located in Bel-Air, Makati City to Bormaheco, Inc. without first seeking its possession. The latter filed an *ex parte* petition for a writ of possession, but the RTC of Makati City ordered the service of a copy of the petition upon the former owners, the Spouses Laureano, who as in the case before the Court, opposed the *ex parte* petition and moved to dismiss the same on the ground of the RTC's lack of jurisdiction. The RTC denied the said motion, which was upheld by the CA in a *certiorari* action. When the case reached the Court, it was held that, by the nature of an *ex parte* petition for writ of possession, no notice is needed to be served upon the Spouses Laureano, the mortgagors-debtors of PNCB, since they already lost all their interests in the properties when they failed to redeem them. By virtue of the sale, Bormaheco, Inc. became the new owner of the lots, entitled to all rights and interests that its predecessor PNCB acquired, including the right to a writ of possession.

5. ID.; ID.; ID.; IN AN EXTRAJUDICIAL FORECLOSURE OF REAL PROPERTY, WHEN THE FORECLOSED PROPERTY IS IN THE POSSESSION OF A THIRD PARTY HOLDING THE SAME ADVERSELY TO THE DEFAULTING DEBTOR/MORTGAGOR, THE ISSUANCE BY THE RTC OF A WRIT OF POSSESSION IN FAVOR OF THE PURCHASER OF THE SAID REAL PROPERTY CEASES TO BE MINISTERIAL AND MAY NO LONGER BE DONE *EX PARTE*.— Section 33 of Rule 39 of the Rules of Court provides that in an execution sale, the possession of the property shall be given to the purchaser or last redemptioner, **unless a third party is actually holding the property adversely to the judgment obligor.** x x x. Pursuant to Section 6 of Act No. 3135, the application of Section 33, Rule 39 of the Rules of Court has been extended to *extrajudicial foreclosure sales,* x x x. In *China Banking Corporation v. Spouses Lozada*, it was held that for the court's ministerial duty to issue a writ of possession to cease, it is not enough that the property be held by a third party, but rather the said possessor must have a claim thereto adverse to the debtor/mortgagor: Where a parcel levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession. Similarly, in an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done *ex parte*. For the exception to apply, however, the property need not only be possessed by a third party, but also held by the third party adversely to the debtor/ mortgagor.

6. ID.; ID.; ID.; ID.; TO BE CONSIDERED IN ADVERSE POSSESSION, THE THIRD PARTY POSSESSOR MUST HAVE DONE SO IN HIS OWN RIGHT SUCH AS A CO-OWNER, TENANT OR USUFRUCTUARY, AND NOT MERELY AS A SUCCESSOR OR TRANSFEREE OF THE DEBTOR OR MORTGAGOR.— [T]he Court held that to be considered in adverse possession, the third party possessor must have done so in his own right and not merely as a successor or transferee of the debtor or mortgagor: The exception provided

under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property.

7. ID.; ID.; ID.; IT WAS AN ERROR TO ISSUE AN *EX PARTE* WRIT OF POSSESSION TO THE PURCHASER IN AN EXTRAJUDICIAL FORECLOSURE, OR TO REFUSE TO ABATE ONE ALREADY GRANTED, WHERE A THIRD PARTY HAS RAISED IN AN OPPOSITION TO THE WRIT OR IN A MOTION TO QUASH THE SAME, HIS ACTUAL POSSESSION THEREOF UPON A CLAIM OF OWNERSHIP OR A RIGHT ADVERSE TO THAT OF THE DEBTOR OR MORTGAGOR; PROPER PROCEDURE.— [I]n *BPI Family,* the Court held that it was an error to issue an *ex parte* writ of possession to the purchaser in an extrajudicial foreclosure, or to refuse to abate one already granted, where a third party has raised in an opposition to the writ or in a motion to quash the same, his actual possession thereof upon a claim of ownership or a right adverse to that of the debtor or mortgagor. The procedure, according to *Unchuan v. CA*, is for the trial court to order a hearing to determine the nature of the adverse possession, conformably with the time-honored principle of due process. In *Okabe v. Saturnino,* the Court made a definite ruling on the matter, to wit: The remedy of a writ of possession, a remedy that is available to the mortgagee-purchaser to acquire possession of the foreclosed property from the mortgagor, is made available to a subsequent purchaser, *but* only after hearing and after determining that the subject property is still in the possession of the mortgagor. *Unlike if the purchaser is the mortgagee or a third party during the redemption period, a writ of possession may issue ex parte or without hearing.* In other words, if the purchaser is a third party who acquired the property after the redemption period, a hearing must be conducted to determine whether possession over the subject property is still with the mortgagor or is already in the possession of a third party holding the same adversely to the defaulting debtor or mortgagor. If the property is in the possession of the mortgagor, a writ of possession could thus

be issued. Otherwise, the remedy of a writ of possession is no longer available to such purchaser, but he can wrest possession over the property through an ordinary action of ejectment.

8. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SALES; EQUITABLE MORTGAGE, DEFINED; WHEN THE VENDOR REMAINS IN POSSESSION OF THE PROPERTY SOLD AS LESSEE OR OTHERWISE, OR THE PRICE OF THE SALE IS UNUSUALLY INADEQUATE, THE LAW DEEMS THE CONTRACT AS AN EQUITABLE MORTGAGE.— An equitable mortgage has been defined as one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, there being no impossibility nor anything contrary to law in this intent. A contract where the vendor/mortgagor remains in physical possession as lessee or otherwise has been held to be an equitable mortgage. In determining the nature of a contract, the Court is not bound by the title or name given to it by the parties, but by their intention, as shown not necessarily by the terminology used in the contract but by their conduct, words, actions and deeds *prior to, during* and *immediately after* executing the agreement. x x x The substantial payment for the repurchase from Allied Bank of the subject property, ₱3,790,500.00 out of the price of ₱4 Million, as against Velasquez's assumption of the remaining balance of ₱216,635.97, entitles the Spouses Gallent to the legal presumption that their assignment to Velasquez of all their interest under their Contract to Sell with Allied Bank was an equitable mortgage. In a contract of mortgage, the mortgagor retains possession of the property given as security for the payment of the sum borrowed from the mortgagee. By the clear dictate of equity, and as held in *Rockville Excel International Exim Corporation v. Spouses Culla and Miranda,* when the vendor remains in possession of the property sold as lessee or otherwise, or the price of the sale is unusually inadequate, as in this case, the law deems the contract as an equitable mortgage.

9. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE ; THIRD PARTY OCCUPANTS, WHO ARE NOT PARTIES TO THE FORGERY, SHOULD NOT BE ADVERSELY AFFECTED BY AN *EX PARTE* MOTION FOR ISSUANCE OF A WRIT

OF POSSESSION; THUS, THEY CANNOT BE SUMMARILY EJECTED WITHOUT DUE PROCESS.— If there was a forgery in the sale to Velasquez by Allied Bank, it was obviously a mere ploy to reduce the taxes and fees due on the said transaction, and not the cause of the transfer of the title of Allied Bank to Velasquez. The consent of the Spouses Gallent to the said transfer, for the probable reasons already expounded, is clear from the fact that George himself signed in the first deed of sale with Velasquez as an instrumental witness. But even if it is eventually shown that there was in fact forgery for the purpose of committing fraud against the Spouses Gallent, as held in *Capital Credit Dimension, Inc. v. Chua,* they, as third party occupants, should not be adversely affected by the *ex parte* writ of possession sought by Velasquez, for not being parties to the forgery. Thus, they cannot be summarily ejected without due process.

APPEARANCES OF COUNSEL

Fornier Fornier Sano & Lagumbay for Sps. Gallent.
Reyes Rojas & Associates for Juan G. Velasquez.

D E C I S I O N

REYES, *J.*:

Before this Court are two conflicting decisions rendered by two different divisions of the Court of Appeals (CA) on the same question of whether the Regional Trial Court (RTC) may validly issue an *ex parte* writ of possession to the transferee of the winning bidder at the extrajudicial foreclosure sale of mortgaged real property.

Antecedent Facts

George A. Gallent, Sr. (George) was the registered owner of a 761-square-meter residential property covered by Transfer Certificate of Title (TCT) No. S-99286,[1] located at No. 3, Angeles Street, Alabang Hills Village, Muntinlupa City, with

[1] *Rollo* (G.R. No. 203949), pp. 79-83.

improvements thereon consisting of a two-storey house and a swimming pool. On December 20, 1996, the Spouses George and Mercedes Gallent (Spouses Gallent) mortgaged the said property to Allied Banking Corporation (Allied Bank) as security for a loan of ₱1.5 Million. The Spouses Gallent failed to pay their loan, which had ballooned to ₱4,631,974.66; thus, Allied Bank extrajudicially foreclosed the mortgaged property. At the public auction, Allied Bank emerged as the highest bidder and was issued a corresponding certificate of sale[2] dated September 25, 2000. Since the Spouses Gallent failed to redeem the subject property after one year, Allied Bank consolidated its ownership over the subject property. Accordingly, TCT No. S-99286 was cancelled and replaced with TCT No. 8460[3] in the name of Allied Bank.[4]

On June 11, 2003, Allied Bank agreed to sell back the foreclosed property to the Spouses Gallent for ₱4 Million, as evidenced by an Agreement to Sell,[5] wherein the Spouses Gallent paid a down payment of ₱3.5 Million, evidenced by an Official Receipt (O.R.) No. 0990687-A[6] dated March 12, 2003, and the balance thereof was payable in 12 monthly amortizations. It was also stipulated that the Spouses Gallent would be allowed to keep the possession of the subject property as tenants or lessees of Allied Bank.[7]

Due to financial difficulties, sometime in October 2003, the Spouses Gallent sought the help of their close family friend, Juan Velasquez (Velasquez), to help them settle their remaining monthly amortizations. As an inducement, they agreed that Velasquez would have the subject property registered under his name until they have repaid him.[8]

---

[2] *Id.* at 85-86.

[3] *Id.* at 88-90.

[4] *Id.* at 158-159.

[5] *Id.* at 92-96.

[6] *Id.* at 98

[7] *Id.* at 159.

[8] *Id.* at 19.

On October 24, 2003, the Spouses Gallent executed a Deed of Assignment of Rights[9] whereby they assigned to Velasquez all their rights, interests, and obligations under their Agreement to Sell with Allied Bank. Velasquez paid Allied Bank the remaining balance amounting to ₱216,635.97, evidenced by O.R. No. 0006352.[10]

On November 5, 2003, Allied Bank and Velasquez executed a Deed of Absolute Sale[11] over the subject property for the price of ₱4 Million, wherein George himself signed as an instrumental witness.[12] However, the said instrument was not registered. Subsequently, Velasquez caused another Deed of Sale[13] dated November 19, 2003, over the subject property which showed a lower selling price of ₱1.2 Million to be registered, purportedly for tax purposes.

On November 28, 2003, TCT No. 11814[14] was issued under the name of Velasquez to replace TCT No. 8460.

After more than four years, or on June 27, 2008, Velasquez sent a demand letter[15] to the Spouses Gallent to vacate the subject property, but the latter refused to do so. On July 6, 2009, Velasquez filed an *ex parte* petition for issuance of a writ of possession, docketed as LRC Case No. 09-055, in the RTC of Muntinlupa City.[16] The Spouses Gallent sought to dismiss the petition by filing Consolidated Motions for Leave to Intervene and to Dismiss Petition[17] on January 14, 2010.

---

[9] *Id.* at 100-101.

[10] *Id.* at 103.

[11] *Id.* at 105-107.

[12] *Id.* at 106.

[13] *Id.* at 147-149.

[14] *Id.* at 113-115.

[15] *Id.* at 117.

[16] *Id.* at 120-125.

[17] *Rollo* (G.R. No. 205071), pp. 159-170.

On February 12, 2010, the RTC of Muntinlupa City, Branch 256, issued an Order[18] denying the Spouses Gallent's consolidated motions, *viz*.:

The issuance of the writ of possession is a ministerial duty of the court upon filing of the proper application and proof of title and by its nature does not require notice upon persons interested in the subject properties. By virtue of the sale of the properties involved, [Velasquez] became the new owner of the lots entitled to all rights and interests its predecessor [Allied Bank] had therein, including the right to file an application for writ of possession. The court therefore finds the petition to be sufficient in form and substance.

As to the motion for leave to intervene filed by [Spouses Gallent], the same will be treated by this court as their opposition to the petition and they will be considered an oppositor.

Wherefore premises considered, the motions are hereby denied for lack of merit.

xxx xxx xxx

SO ORDERED.[19] (Emphasis ours)

The Spouses Gallent filed a motion for reconsideration but it was denied by the RTC in an Order[20] dated April 13, 2010, reasoning as follows:

The instant motion deserves a scant consideration considering that the issues and arguments raised by the oppositors are mere rehashed which were already passed upon by this court in the order sought to be reconsidered. To reiterate, it is a ministerial duty on the part of this court to act on cases of this nature, particularly if the twelve-month period for redemption had already lapsed. Should the oppositors intend to recover title over the subject property, the same should be ventilated in a separate proceeding and proceed independently of this petition.

Wherefore premises considered, the motion for reconsideration is hereby denied for lack of merit. Accordingly, the reception of ex

---

[18] *Rollo* (G.R. No. 203949), p. 153.

[19] *Id.*

[20] *Id.* at 155.

parte evidence is hereby assigned to the Branch Clerk of Court to act as Commissioner and to make a report to this Court ten (10) days upon completion thereof.

xxx xxx xxx

SO ORDERED.[21]

On July 2, 2010, the Spouses Gallent filed a petition for *certiorari* [22] before the CA, docketed as **CA-G.R. SP No. 114527**, raffled to the Special 4th Division, seeking to annul the RTC Orders dated February 12, 2010 and April 13, 2010. Invoking *Mendoza v. Salinas*,[23] the Spouses Gallent argued that: (1) the RTC has no jurisdiction to issue an *ex parte* writ of possession to Velasquez since he did not acquire the property at a foreclosure sale, but purchased the same from the mortgagee, winning bidder and purchaser, Allied Bank, and only after it had consolidated its title thereto;[24] (2) in their Agreement to Sell, Allied Bank and the Spouses Gallent entered into new contractual relations as vendees-lessees and vendor-lessor, and ceased to be mortgagors and mortgagee;[25] (3) Velasquez should have filed an action for ejectment or for recovery of ownership or possession, not an *ex parte* petition for writ of possession;[26] and (4) the RTC's duty to issue the writ has ceased to be ministerial in view of the Spouses Gallent's adverse claim upon the property based on their substantial payment of its purchase price, in addition to the fact that Velasquez and Allied Bank executed a forged deed of sale.[27]

Meanwhile, on July 7, 2010, the RTC rendered its Decision[28] in LRC Case No. 09-055, the dispositive portion of which reads:

---

[21] *Id.*

[22] *Rollo* (G.R. No. 205071), pp. 82-124.

[23]. 543 Phil. 380 (2007).

[24] *Rollo* (G.R. No. 205071), pp. 97-101.

[25] *Id.* at 101-103.

[26] *Id.* at 103-107.

[27] *Id.* at 107-110.

[28] *Rollo* (G.R. No. 203949), pp. 72-73.

WHEREFORE, in view of the foregoing and considering that it is a ministerial duty of the court to issue writ of possession, the redemption period having been expired without the subject property being redeemed by the mortgagors, the petition is hereby granted. Accordingly, let a writ of possession be issued in favor of [Velasquez] and against the oppositors and all persons claiming rights under them, to place [Velasquez] in possession of the subject property and for the oppositors and all persons claiming rights under them to vacate the land covered by TCT No. 11814 of the Register of Deeds of Muntinlupa City.

SO ORDERED.[29]

On September 24, 2010, the Spouses Gallent filed another petition for *certiorari*[30] before the CA, docketed as **CA-G.R. SP No. 116097** and raffled to the 10th Division, arguing that the deed of sale between Velasquez and Allied Bank was a forgery. In their certification of non-forum shopping,[31] they mentioned the pendency of **CA-G.R. SP No. 114527** in the CA. Surprisingly, neither of the parties nor the CA 10th Division moved for the consolidation of CA-G.R. SP No. 116097 with CA-G.R. SP No. 114527.

Meanwhile, on October 21, 2010, the Spouses Gallent also filed before the RTC of Muntinlupa City a complaint for "Reformation of Instruments, Consignation, Annulment of TCT No. 11814 of the Registry of Deeds for the City of Muntinlupa and Damages with Application for Immediate Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction," docketed as Civil **Case No. 10-102**. In this action, the Spouses Gallent sought to annul the deed of assignment they executed in favor of Velasquez allegedly because their true intent was an equitable mortgage. They thus prayed to declare void the sale between Velasquez and Allied Bank on account of forgery, to order the judicial consignment of the amount of ₱216,635.97 to settle their "loan" from Velasquez, and to enjoin him from taking possession of the property.[32]

---

[29] *Id.* at 73.

[30] *Id.* at 303-360.

[31] *Id.* at 358-359.

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

Rulings of the CA

CA-G.R. SP No. 116097

The CA 10th Division rendered its Decision[33] on May 23, 2012 finding that since Allied Bank, the mortgagee-purchaser at the extrajudicial foreclosure sale, is entitled to an *ex parte* writ of possession after the title to the mortgaged property had been consolidated in its name, Velasquez, as the bank's transferee of the said property may also petition the court for an *ex parte* writ of possession since he merely stepped into the shoes of Allied Bank. The 10th Division also ruled that the Spouses Gallent can no longer be considered to hold an interest in the property adverse to Allied Bank or Velasquez after they assigned their entire interest therein to Velasquez. Having no more claims on the title of either Allied Bank or Velasquez, an *ex parte* writ of possession may issue against them.

On October 12, 2012, the CA 10th Division denied the Spouses Gallent's motion for reconsideration.[34] On December 6, 2012, they filed a Petition for Review on *Certiorari*[35] before this Court docketed as **G.R. No. 203949**

CA-G.R. SP No. 114527

The CA Special 4th Division issued its Decision[36] dated August 28, 2012, finding that an *ex parte* writ of possession cannot issue against the Spouses Gallent since they are adverse claimants of the property who are in actual possession. The CA relied on *Mendoza*,[37] where the Court ruled that an *ex parte* writ of possession may be issued as a ministerial duty of the court only in three instances: (a) in a land registration case, as provided

---

[33] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Priscilla J. Baltazar-Padilla and Agnes Reyes-Carpio concurring; *id.* at 58-68.

[34] *Id.* at 70.

[35] *Id.* at 12-55.

[36] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Ramon R. Garcia and Socorro B. Inting concurring; *rollo* (G.R. No. 205071), pp. 66-79.

[37] *Supra* note 23.

under Section 17 of Act No. 496; (b) in a judicial foreclosure of real estate mortgage; or (c) in an extrajudicial foreclosure of real estate mortgage under Section 7 of Act No. 3135,[38] as amended.[39] According to the CA, since Velasquez did not acquire his title to the property in a foreclosure sale, but bought the same directly from Allied Bank after title had been consolidated in the said bank, he must first bring an ejectment suit or an *accion reivindictoria* against the Spouses Gallent in order for him to obtain possession thereof.[40]

According to *Mendoza*, an *ex parte* writ of possession ceases to issue as a ministerial duty of the court when sought against a party who has remained in the property upon an adverse claim of ownership, *viz*.:

> Based on these tenets, the issuance of a writ of possession, therefore, is clearly a ministerial duty of the land registration court. **Such ministerial duty, however, ceases to be so with particular regard to petitioners who are actual possessors of the property under a claim of ownership.** Actual possession under claim of ownership raises a disputable presumption of ownership. This conclusion is supported by Article 433 of the Civil Code, which provides:
>
> > Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.
>
> Under said provision, one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The term "judicial process" could mean no less than an ejectment suit or reinvindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated.[41] (Citation omitted and emphasis ours)

---

[38] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES. Approved on March 6, 1924.

[39] *Supra* note 23, at 386.

[40] *Rollo* (G.R. No. 205071), pp. 75-77.

[41] *Mendoza v. Salinas*, *supra* note 23, at 387.

Velasquez filed a motion for reconsideration, but it was denied;[42] hence, he filed a Petition for Review on *Certiorari*[43] before this Court docketed as **G.R. No. 205071**.

Ruling of the Court

The Court grants the petition of the Spouses Gallent, but denies the petition of Velasquez.

The general rule in extrajudicial foreclosure of mortgage is that after the consolidation of the title over the foreclosed property in the buyer, it is the ministerial duty of the court to issue a writ of possession upon an *ex parte* petition[44] by the new owner as a matter of right.

It is well-settled that the purchaser in an extrajudicial foreclosure of real property becomes the *absolute* owner of the property if no redemption is made within one year from the registration of the certificate of sale by those entitled to redeem.[45] As absolute owner, he is entitled to all the rights of ownership over a property recognized in Article 428 of the New Civil Code, not least of which is possession, or *jus possidendi*:[46]

A torrens title recognizes the owner whose name appears in the certificate as entitled to all the rights of ownership under the *civil law*. The Civil Code of the Philippines defines ownership in Articles 427, 428 and 429. This concept is based on Roman Law which the Spaniards introduced to the Philippines through the Civil Code of 1889. Ownership, under Roman Law, may be exercised over things

---

[42] *Rollo* (G.R. No. 205071), pp. 80-81.

[43] *Id.* at 26-65.

[44] An *ex parte* petition is taken or granted at the instance and for the benefit of only one party, without notice to, or contestation by any person adversely interested. [*BLACK'S LAW DICTIONARY*, 5th Edition (1979), p. 517.]

[45] ACT NO. 3135, Section 6.

[46] *Laureano v. Bormaheco, Inc*., 404 Phil. 80, 86 (2001).

or rights. It primarily includes the right of the owner to enjoy and dispose of the thing owned. And the right to enjoy and dispose of the thing includes the right to receive from the thing what it produces, [*jus utendi*; *jus fruendi*] the right to consume the thing by its use, [*jus abutendi*] the right to alienate, encumber, transform or even destroy the thing owned, *[jus disponendi]* and the right to exclude from the possession of the thing owned by any other person to whom the owner has not transmitted such thing *[jus vindicandi]*.[47]

Possession being an essential right of the owner with which he is able to exercise the other attendant rights of ownership,[48] after consolidation of title the purchaser in a foreclosure sale may demand possession as a matter of right.[49] This is why Section 7 of Act No. 3135, as amended by Act No. 4118, imposes upon the RTC a ministerial duty to issue a writ of possession to the new owner upon a mere *ex parte* motion.[50] Section 7 reads:

Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under Section 194 of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of

---

[47] Separate Opinion of Associate Justice Reynato S. Puno in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 994-995 (2000).

[48] See NEW CIVIL CODE, Book II, Title II, Articles 428-430.

[49] *Samson v. Rivera*, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 768-769.

[50] *Metropolitan Bank & Trust Company v. Hon. Judge Abad Santos, et al.*, 623 Phil. 134, 146 (2009).

such petition, collect the fees specified in paragraph 11 of Section 114 of Act No. 496, as amended by Act No. 2866, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

In *Spouses Arquiza v. CA*,[51] it is reiterated that simply on the basis of the purchaser's ownership of the foreclosed property there is no need for an ordinary action to gain possession thereof:

Indeed, it is well-settled that an ordinary action to acquire possession in favor of the purchaser at an extrajudicial foreclosure of real property is not necessary. There is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the one-year period for redemption has expired and after he has obtained the sheriff's final certificate of sale. The basis of this right to possession is the purchaser's ownership of the property. The mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and no bond is required.[52] (Citations omitted)

As also explained in *Asia United Bank v. Goodland Company, Inc.*,[53] the *ex parte* application for writ of possession is a non-litigious summary proceeding without need to post a bond, except when possession is being sought even during the redemption period:

It is a time-honored legal precept that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, entitlement to a writ of possession becomes a matter of right. As the confirmed owner, the purchaser's right to possession becomes absolute. There is even no need for him to post a bond, and it is the ministerial duty of the courts to issue the same upon proper application and proof of title. To accentuate the writ's ministerial character, the Court has consistently disallowed injunction to prohibit its issuance despite a pending action for annulment of mortgage or the foreclosure itself.

The nature of an *ex parte* petition for issuance of the possessory writ under Act No. 3135 has been described as a non-litigious

---

[51] 498 Phil. 793 (2005).

[52] *Id.* at 804.

[53] 650 Phil. 174 (2010).

proceeding and summary in nature. As an *ex parte* proceeding, it is brought for the benefit of one party only, and without notice to or consent by any person adversely interested.[54] (Citations omitted)

Moreover, not even a pending action to annul the mortgage or the foreclosure sale will by itself stay the issuance of the writ of possession, as held in *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc., et al.*:[55]

Furthermore, it is settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession. The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case.[56] (Citations omitted)

When the thing purchased at a foreclosure sale is in turn sold or transferred, the right to the possession thereof, along with all other rights of ownership, follows the thing sold to its new owner.

In *Laureano v. Bormaheco*,[57] the mortgagee-purchaser, Philippine National Cooperative Bank (PNCB), sold the foreclosed lots located in Bel-Air, Makati City to Bormaheco, Inc. without first seeking its possession. The latter filed an *ex parte* petition for a writ of possession, but the RTC of Makati City ordered the service of a copy of the petition upon the former owners, the Spouses Laureano, who as in the case before the Court, opposed the *ex parte* petition and moved to dismiss the same on the ground of the RTC's lack of jurisdiction. The RTC denied the said motion, which was upheld by the CA in a *certiorari* action. When the case reached the Court, it was held that, by

---

[54] *Id.* at 185-186.

[55] 654 Phil. 382 (2011).

[56] *Id.* at 394.

[57] 404 Phil. 80 (2001).

the nature of an *ex parte* petition for writ of possession, no notice is needed to be served upon the Spouses Laureano, the mortgagors-debtors of PNCB, since they already lost all their interests in the properties when they failed to redeem them. By virtue of the sale, Bormaheco, Inc. became the new owner of the lots, entitled to all rights and interests that its predecessor PNCB acquired, including the right to a writ of possession.

As an exception, the ministerial duty of the court to issue an *ex parte* writ of possession ceases once it appears that a third party, not the debtor-mortgagor, is in possession of the property under a claim of title adverse to that of the applicant.

Section 33 of Rule 39 of the Rules of Court provides that in an execution sale, the possession of the property shall be given to the purchaser or last redemptioner, **unless a third party is actually holding the property adversely to the judgment obligor**.

Sec. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given*. — If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer **unless a third**

party is actually holding the property adversely to the judgment obligor. (Emphasis ours)

Pursuant to Section 6 of Act No. 3135, the application of Section 33, Rule 39 of the Rules of Court has been extended to *extrajudicial foreclosure sales*, thus:

> Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of Sections 464 to 466, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

In *China Banking Corporation v. Spouses Lozada*,[58] it was held that for the court's ministerial duty to issue a writ of possession to cease, it is not enough that the property be held by a third party, but rather the said possessor must have a claim thereto adverse to the debtor/mortgagor:

> Where a parcel levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession. Similarly, in an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third party holding the same adversely to the defaulting debtor/mortgagor, the issuance by the RTC of a writ of possession in favor of the purchaser of the said real property ceases to be ministerial and may no longer be done *ex parte*. For the exception to apply, however, the property need not only be possessed by a third party, but also held by the third party adversely to the debtor/mortgagor.[59] (Citation omitted)

Specifically, the Court held that to be considered in adverse possession, the third party possessor must have done so in his own right and not merely as a successor or transferee of the debtor or mortgagor:

---

[58] 579 Phil. 454 (2008).

[59] *Id.* at 474-475.

The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property. x x x.[60] (Citations omitted)

Thus, in *BPI Family*,[61] the Court held that it was an error to issue an *ex parte* writ of possession to the purchaser in an extrajudicial foreclosure, or to refuse to abate one already granted, where a third party has raised in an opposition to the writ or in a motion to quash the same, his actual possession thereof upon a claim of ownership or a right adverse to that of the debtor or mortgagor. The procedure, according to *Unchuan v. CA*,[62] is for the trial court to order a hearing to determine the nature of the adverse possession, conformably with the time-honored principle of due process.[63]

In *Okabe v. Saturnino*,[64] the Court made a definite ruling on the matter, to wit:

The remedy of a writ of possession, a remedy that is available to the mortgagee-purchaser to acquire possession of the foreclosed property from the mortgagor, is made available to a subsequent purchaser, but only after hearing and after determining that the subject property is still in the possession of the mortgagor. *Unlike if the purchaser is the mortgagee or a third party during the redemption period, a writ of possession may issue ex parte or without hearing*. In other words, if the purchaser is a third party who acquired the property after the redemption period, a hearing must be conducted to determine whether possession over the subject property is still with the mortgagor or is already in the possession of a third party holding the same

---

[60] *Id.* at 478-480.

[61] *Supra* note 55.

[62] 244 Phil. 733 (1988).

[63] *Id.* at 738.

[64] G.R. No. 196040, August 26, 2014, 733 SCRA 652.

adversely to the defaulting debtor or mortgagor. If the property is in the possession of the mortgagor, a writ of possession could thus be issued. Otherwise, the remedy of a writ of possession is no longer available to such purchaser, but he can wrest possession over the property through an ordinary action of ejectment.[65]

In regard to their deed of assignment in favor of Velasquez, the Spouses Gallent may be considered as adverse possessors in their own right, the said agreement being in essence an equitable mortgage.

It is the Spouses Gallent's contention that the Deed of Assignment of Rights which they executed in favor of Velasquez was in reality an equitable mortgage under Article 1602 of the New Civil Code. The Spouses Gallent maintained that their true agreement with Velasquez was an equitable mortgage and not an assignment of their interest in the subject property.[66] Having substantially paid the repurchase price of their property, that is, ₱3,790,500.00 out of the price of ₱4 Million, they insisted that they had virtually recovered full ownership of the house when they entered into an equitable mortgage with Velasquez. To prove their allegation, they filed an action, Civil Case No. 10-102, to reform the said deed into a mortgage. In addition, they are seeking to declare void the transfer of the title to Velasquez.

An equitable mortgage[67] has been defined as one which although lacking in some formality, or form or words, or other requisites

---

[65] *Id.* at 666.

[66] *Rollo* (G.R. No. 203949), p. 24.

[67] Art. 1602 of the New Civil Code provides:

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

(1) When the price of a sale with right to repurchase is unusually inadequate;
(2) **When the vendor remains in possession as lessee or otherwise**;

demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, there being no impossibility nor anything contrary to law in this intent.[68] A contract where the vendor/mortgagor remains in physical possession as lessee or otherwise has been held to be an equitable mortgage.[69] In determining the nature of a contract, the Court is not bound by the title or name given to it by the parties, but by their intention, as shown not necessarily by the terminology used in the contract but by their conduct, words, actions and deeds *prior to, during* and *immediately after* executing the agreement.[70]

Without in any way pre-empting the trial court's factual determination in Civil Case No. 10-102, particularly as regards what the Spouses Gallent may have additionally received from Velasquez by way of favor or consideration for the house, if any, the Court will rule on the matter, but only in order to resolve the question of whether the Spouses Gallent may be considered as adverse claimant-occupants against whom an *ex parte* writ of possession will not issue. The substantial payment for the repurchase from Allied Bank of the subject property, ₱3,790,500.00 out of the price of ₱4 Million, as against Velasquez's assumption of the remaining balance of ₱216,635.97,

---

(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; and

(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. (Emphasis ours)

[68] *Go v. Bacaron*, 509 Phil. 323, 331 (2005).

[69] *Legaspi v. Spouses Ong*, 498 Phil. 167, 186 (2005).

[70] *Zamora v. CA*, 328 Phil. 1106, 1115 (1996).

entitles the Spouses Gallent to the legal presumption that their assignment to Velasquez of all their interest under their Contract to Sell with Allied Bank was an equitable mortgage. In a contract of mortgage, the mortgagor retains possession of the property given as security for the payment of the sum borrowed from the mortgagee.[71] By the clear dictate of equity, and as held in *Rockville Excel International Exim Corporation v. Spouses Culla and Miranda*,[72] when the vendor remains in possession of the property sold as lessee or otherwise, or the price of the sale is unusually inadequate, as in this case, the law deems the contract as an equitable mortgage.[73]

It is evident that on account of the Spouses Gallent's substantial down payment under their contract to sell, Allied Bank allowed them to remain in the property, albeit as "lessees". The Spouses Gallent eventually paid a total of ₱3,790,500.00, all within five months. After the additional payment by Velasquez of ₱216,635.97, the next logical step would have been for Allied Bank to execute the sale in favor of the Spouses Gallent, by virtue of their Contract to Sell, but the Spouses Gallent had assured Velasquez that he could keep the title to the property until they have repaid him. To achieve this, they executed a deed of assignment to enable Allied Bank to transfer the title directly to Velasquez, since a transfer, first to the Spouses Gallent, and then a sale or assignment to Velasquez, would have entailed paying capital gains and documentary stamp taxes twice, along with the transfer fees. It was also apparently agreed with Velasquez that the Spouses Gallent could remain in the property, but it seems that they could do so not just as lessees but as owners-mortgagors.

If there was a forgery in the sale to Velasquez by Allied Bank, it was obviously a mere ploy to reduce the taxes and fees due on the said transaction, and not the cause of the transfer of the title of Allied Bank to Velasquez. The consent of the Spouses

---

[71] See *Cosio and De Rama v. Palileo*, 121 Phil. 959 (1965).

[72] 617 Phil. 328 (2009).

[73] *Id.* at 338.

Gallent to the said transfer, for the probable reasons already expounded, is clear from the fact that George himself signed in the first deed of sale to Velasquez as an instrumental witness. But even if it is eventually shown that there was in fact forgery for the purpose of committing fraud against the Spouses Gallent, as held in *Capital Credit Dimension, Inc. v. Chua*,[74] they, as third party occupants, should not be adversely affected by the *ex parte* writ of possession sought by Velasquez, for not being parties to the forgery. Thus, they cannot be summarily ejected without due process.

To recapitulate, it is important to note that this controversy can no longer be considered as an offshoot of the extrajudicial foreclosure proceedings involving Allied Bank, but rather is the result of a subsequent personal transaction between the Spouses Gallent and Velasquez, which they called an assignment; but which the law otherwise recognizes as an equitable mortgage. In the face then of the *ex parte* motion of Velasquez for a writ of possession, it must be kept in mind that, under the facts laid down, the contending parties are now Velasquez and the Spouses Gallent. The Spouses Gallent's defense of equitable mortgage is upheld in law and, they have a superior right to retain the possession of the subject property in their own right.

WHEREFORE, premises considered, the petition in **G.R. No. 203949** is **GRANTED**. The Decision dated May 23, 2012 of the Court of Appeals in CA-G.R. SP No. 116097 is **SET ASIDE**.

The petition in **G.R. No. 205071** is **DENIED**. The Decision dated August 28, 2012 of the Court of Appeals in CA-G.R. SP No. 114527 is **AFFIRMED.**

No costs.

SO ORDERED.

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

---

[74] G.R. No. 157213, April 28, 2004, 428 SCRA 259.

THIRD DIVISION

[G.R. No. 204314. April 6, 2016]

HEIRS OF DANILO ARRIENDA, ROSA G. ARRIENDA, MA. CHARINA ROSE ARRIENDA-ROMANO, MA. CARMELLIE ARRIENDA-MARA, DANILO MARIA ALVIN G. ARRIENDA, JR., and JESUS FRANCIS DOMINIC G. ARRIENDA, *petitioners, vs.* **ROSARIO KALAW,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; B.P. BLG. 129, AS AMENDED; EXCLUSIVE ORIGINAL JURISDICTION OF THE REGIONAL TRIAL COURTS (RTCs), THE METROPOLITAN TRIAL COURTS (MeTCs), THE MUNICIPAL TRIAL COURTS (MCTCs) AND THE MUNICIPAL CIRCUIT TRIAL COURTS (MTCs) OVER REAL ACTIONS. —** Section 19 of B.P. Blg. 129, as amended, provides for the RTCs' exclusive original jurisdiction in civil cases involving title to or possession of real property or any interest therein x x x. Based on the amendments introduced by RA 7691, real actions no longer reside under the exclusive original jurisdiction of the RTCs. Under the said amendments, Metropolitan Trial Courts (*MeTCs*), Municipal Trial Courts (*MTCs*) and Municipal Circuit Trial Courts (*MCTCs*) now have jurisdiction over real actions if the assessed value of the property involved does not exceed ₱20,000.00, or in Metro Manila, where such assessed value does not exceed ₱50,000.00. Otherwise, if the assessed value exceeds ₱20,000.00 or ₱50,000.00, as the case may be, jurisdiction is with the RTC.

2. **ID.; ID.; ID.; ID.; THE REGIONAL TRIAL COURT (RTC) EXERCISES APPELLATE JURISDICTION OVER ALL CASES DECIDED BY FIRST LEVEL COURTS IN THEIR RESPECTIVE TERRITORIAL JURISDICTIONS; ADVERSE DECISION OF THE MUNICIPAL TRIAL COURT (MTC) IN THE EJECTMENT SUIT IS APPEALABLE TO THE REGIONAL TRIAL COURT. —** [T]he RTCs' appellate jurisdiction, as contrasted to its

original jurisdiction, is provided in Section 22 of B.P. Blg. 129, as amended, thus: SECTION 22. *Appellate jurisdiction.* – **Regional Trial Courts shall exercise appellate jurisdiction over all cases decided by Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in their respective territorial jurisdictions.** xxx**.** From the above-quoted provision, it is clear that the RTC exercises appellate jurisdiction over all cases decided by first level courts in their respective territorial jurisdictions. Thus, in the present case, when the RTC took cognizance of Arrienda's appeal from the adverse decision of the MTC in the ejectment suit, it (RTC) was unquestionably exercising its appellate jurisdiction as mandated by law. Perforce, its decision may not be annulled on the basis of lack of jurisdiction as the RTC has, beyond question, jurisdiction to decide the appeal and its decision should be deemed promulgated in the exercise of that jurisdiction.

3. ID.; ID.; ID.; ALL CASES DECIDED BY THE FIRST LEVEL COURTS ARE GENERALLY APPEALABLE TO THE REGIONAL TRIAL COURTS IRRESPECTIVE OF THE AMOUNT INVOLVED, AS THE ASSESSED VALUE OF THE REAL PROPERTY SUBJECT OF THE ACTION, OR THE INTEREST THEREIN, IS IMMATERIAL FOR PURPOSES OF THE RTC'S APPELLATE JURISDICTION.— The Court does not agree with the ruling of the CA that the RTC lacks jurisdiction over the case on the ground that Arrienda failed to allege the assessed value of the subject land in his Complaint. It is true that under the prevailing law x x x in actions involving title to or possession of real property or any interest therein, there is a need to allege the assessed value of the real property subject of the action, or the interest therein, for purposes of determining which court (*MeTC/MTC/MCTC or RTC*) has jurisdiction over the action. However, it must be clarified that this requirement applies only if these courts are in the exercise of their original jurisdiction. In the present case, the RTC was exercising its appellate, not original, jurisdiction when it took cognizance of Arrienda' s appeal and Section 22 of B.P. Blg. 129 does not provide any amount or value of the subject property which would limit the RTC's exercise of its appellate jurisdiction over cases decided by first level courts. Clearly then, in the instant case, contrary to the

ruling of the CA, the assessed value of the disputed lot is immaterial for purposes of the RTC's appellate jurisdiction. Indeed, all cases decided by the MTC are generally appealable to the RTC irrespective of the amount involved. Hence, the CA erred in nullifying the RTC decision for lack of jurisdiction.

APPEARANCES OF COUNSEL

Fernandez & Associates Law Office for petitioners.
Ronald L. Solis for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking to reverse and set aside the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated April 26, 2012 and October 30, 2012, respectively, in CA-G.R. SP No. 118687. The assailed CA Decision reversed and set aside the Decision of the Regional Trial Court (*RTC*) of Calamba City, Branch 35, in an unlawful detainer case docketed as Civil Case No. 3361-03-C, while the CA Resolution denied petitioners' motion for reconsideration.

The facts of the case are as follows:

On January 18, 2001, Danilo Arrienda (*Arrienda*) filed against herein respondent and three other persons a Complaint[3] for unlawful detainer with the Municipal Trial Court (*MTC*) of Calauan, Laguna, alleging that: he is the owner of an 11,635 square-meter parcel of land located along National Road, Barangay Lamot 2, Calauan, Laguna; the seller of the property warranted that the same is not tenanted and is free from any occupants or claimants; despite such warranty, Arrienda later

---

[1] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Hakim S. Abdulwahid and Leoncia R. Dimagiba, concurring; Annex "A" to Petition, *rollo*, pp. 34-42.

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

[3] Records, Vol. I, pp. 5-8.

discovered, that a portion of it was actually being occupied by herein respondent and the other defendants; after talking to respondent and the other defendants, petitioner allowed them to continue occupying the premises in which they have settled, subject to the condition that they will immediately vacate the same upon prior notice by Arrienda that he will be needing it; sometime in November 2000, Arrienda, informed respondent and the other defendants of his intention to use the subject land; despite repeated demands, the last of which was a letter dated December 7, 2000, respondent and the other defendants failed and refused to vacate the disputed premises. Hence, the complaint, praying that respondent and the other defendants be ordered to vacate the premises and restore possession thereof to Arrienda; to pay a reasonable amount for the use and occupation of the same; and to pay moral and exemplary damages, attorney's fees and costs of suit.

In her Answer with Counterclaims,[4] respondent denied the material allegations in Arrienda's Complaint and contended that: the MTC has no jurisdiction over the nature of the action, considering that the main issue in the case is the ownership of the disputed lot and not simply who among the parties is entitled to possession *de facto* of the same; the issue of ownership converts the unlawful detainer suit into one which is incapable of pecuniary estimation and, as such, the case should be placed under the exclusive jurisdiction of the RTC; the subject lot is an agricultural land of which respondent was a tenant; she and her family later obtained ownership over the subject property when their landlord donated the said property to them; Arrienda failed to secure a Certification from the Department of Agrarian Reform that the disputed premises is not really an agricultural land, which is a condition precedent in the filing of the case. As counterclaim, respondent alleged that, by reason of Arrienda's bad faith, greed and malice in filing the complaint, she suffered from anxiety, wounded feelings and similar injuries and was forced to engage the services of a counsel to defend her rights. As such, she prayed that Arrienda be ordered to pay moral damages, attorney's

[4] *Id.* at 20-27.

fees, litigation expenses and other reliefs which the court may deem just and equitable.

The other defendants adopted respondent's Answer with Counterclaim.

After Arrienda filed his Reply,[5] the parties subsequently submitted their Position Papers.

On November 20, 2002, the MTC rendered its Decision[6] dismissing the complaint on the ground of lack of jurisdiction, holding as follows:

xxx xxx xxx

[I]t is well settled that the mere allegation by the defendant in an ejectment case that he is the owner of the property involved therein does not and cannot divest the inferior court of its jurisdiction over the case. But if [it] appears during the trial that by the nature of proof presented, the question of possession cannot be properly determined without settling that of ownership, then the jurisdiction of the court is lost and action should be DISMISSED. x x x Further, Plaintiff must not only prove his ownership of the property but must also identify the land he claim[s] to remove uncertainties.[7]

xxx xxx xxx

The counterclaims of respondent and the other defendants were likewise dismissed on the ground that the complaint was not maliciously filed.

On appeal by Arrienda, the RTC agreed with the MTC that jurisdiction lies with the RTC. The RTC then took cognizance of the case and conducted trial. On April 6, 2010, the RTC rendered its Decision disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered ordering the **defendants-appellees Rosario Kalaw, Felix Taklan, Maximo Valenzuela and Felicidad Ulan** and all persons claiming

---

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

[6] *Rollo*, pp. 103-106.

[7] *Id.* at 106.

rights under them to vacate the parcel of land situated at National Road, Barangay Lamot 2, Calauan, Laguna, covered by Transfer Certificate of Title No. T-204409 containing an area of 11,635 square meters, more or less, and restore the same to the plaintiff-appellant Danilo T. Arrienda. The defendants are likewise ordered to pay plaintiff the sum of ₱10,000.00 as attorney's fees and the sum of ₱500.00 per month as reasonable rental for the use and occupation of the premises beginning January 2001 until the premises are finally vacated.

SO ORDERED.[8]

In so ruling, the RTC held that since it was established that Arrienda is the owner of the subject lot, he is, under the law, entitled to all the attributes of ownership of the property, including possession thereof.

Aggrieved by the RTC Decision, respondent filed a petition for review with the CA. Pending resolution of respondent's appeal, Arrienda died and was substituted by his heirs.

On April 26, 2012, the CA promulgated its assailed Decision reversing and setting aside the RTC Decision. The CA held that the RTC did not acquire jurisdiction over the case for Arrienda's failure to allege the assessed value of the subject property and, as a consequence, the assailed RTC Decision is null and void.

Herein petitioners filed their Motion for Reconsideration, but the CA denied it in its October 30, 2012 Resolution.

Hence, the instant petition based on the following grounds:

I

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS MUST HAVE BEEN CONFUSED WITH THE ORIGINAL AND APPELLATE JURISDICTION OF THE REGIONAL TRIAL COURTS.

---

[8] *Id.* at 193. (Emphasis in the original)

II

IT BEING OBVIOUS, AND AS SO ADMITTED BY THE HONORABLE COURT OF APPEALS THAT "IN THIS CASE, ARRIENDA'S COMPLAINT FOR UNLAWFUL DETAINER DATED 17 JANUARY 2001 WAS FIRST FILED WITH THE MTC OF CALAUAN, LAGUNA," THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING: "THUS, FOR FAILURE OF ARRIENDA TO DISCLOSE THE ASSESSED VALUE OF THE SUBJECT PROPERTY IN HIS COMPLAINT, THE COURT *A QUO* IS BEREFT OF JURISDICTION OF TAKING COGNIZANCE OF THE CASE. WITHOUT ANY JURISDICTION THEN, THE ASSAILED DECISION AND RESOLUTION ARE NULL AND VOID."

III

WITH ALL DUE RESPECT, THE QUESTIONED APRIL 26, 2012 DECISION AND OCTOBER 30, 2012 RESOLUTION OF THE HONORABLE COURT OF APPEALS WOULD WIPE OUT SECTION 8, RULE 40 ON "APPEAL FROM ORDERS DISMISSING CASE WITHOUT TRIAL; LACK OF JURISDICTION" FROM THE 1997 RULES OF CIVIL PROCEDURE, IF NOT NULLIFIED BY THIS HONORABLE SUPREME COURT.[9]

The petition is meritorious.

The basic issue in the instant petition is whether or not the RTC has jurisdiction over Arrienda's appeal of the MTC Decision.

The Court rules in the affirmative.

It bears to reiterate that under Batas Pambansa Bilang. 129 (*B.P. Blg. 129*), as amended by Republic Act No. 7691 (*RA 7691*), RTCs are endowed with original and appellate jurisdictions.

For purposes of the present petition, Section 19 of B.P. Blg. 129, as amended, provides for the RTCs' exclusive original jurisdiction in civil cases involving title to or possession of real property or any interest therein, pertinent portions of which read as follows:

---

[9] *Id.* at 19.

Section 19. *Jurisdiction in civil cases*. — Regional Trial Courts shall exercise exclusive original jurisdiction:

xxx xxx xxx

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 Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts.

xxx xxx xxx

Based on the amendments introduced by RA 7691, real actions no longer reside under the exclusive original jurisdiction of the RTCs. Under the said amendments, Metropolitan Trial Courts (*MeTCs*), Municipal Trial Courts (*MTCs*) and Municipal Circuit Trial Courts (*MCTCs*) now have jurisdiction over real actions if the assessed value of the property involved does not exceed ₱20,000.00, or in Metro Manila, where such assessed value does not exceed ₱50,000.00. Otherwise, if the assessed value exceeds ₱20,000.00 or ₱50,000.00, as the case may be, jurisdiction is with the RTC.

On the other hand, the RTCs' appellate jurisdiction, as contrasted to its original jurisdiction, is provided in Section 22 of B.P. Blg. 129, as amended, thus:

SECTION 22. *Appellate jurisdiction*. — **Regional Trial Courts shall exercise appellate jurisdiction over all cases decided by Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts in their respective territorial jurisdictions**. Such cases shall be decided on the basis of the entire record of the proceedings had in the court of origin such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Courts.[10]

[10] Emphasis supplied.

From the above-quoted provision, it is clear that the RTC exercises appellate jurisdiction over all cases decided by first level courts in their respective territorial jurisdictions.

Thus, in the present case, when the RTC took cognizance of Arrienda's appeal from the adverse decision of the MTC in the ejectment suit, it (RTC) was unquestionably exercising its appellate jurisdiction as mandated by law. Perforce, its decision may not be annulled on the basis of lack of jurisdiction as the RTC has, beyond question, jurisdiction to decide the appeal and its decision should be deemed promulgated in the exercise of that jurisdiction.

The Court does not agree with the ruling of the CA that the RTC lacks jurisdiction over the case on the ground that Arrienda failed to allege the assessed value of the subject land in his Complaint.

It is true that under the prevailing law, as discussed above, in actions involving title to or possession of real property or any interest therein, there is a need to allege the assessed value of the real property subject of the action, or the interest therein, for purposes of determining which court (*MeTC/MTC/MCTC or RTC*) has jurisdiction over the action. However, it must be clarified that this requirement applies only if these courts are in the exercise of their original jurisdiction.[11] In the present case, the RTC was exercising its appellate, not original, jurisdiction when it took cognizance of Arrienda's appeal and Section 22 of B.P. Blg. 129 does not provide any amount or value of the subject property which would limit the RTC's exercise of its appellate jurisdiction over cases decided by first level courts. Clearly then, in the instant case, contrary to the ruling of the CA, the assessed value of the disputed lot is immaterial for purposes of the RTC's appellate jurisdiction.[12] Indeed, all cases decided by the MTC are generally appealable to the RTC

---

[11] See *Serrano v. Gutierrez*, 537 Phil. 187, 196 (2006).

[12] *Wilfred De Vera, et al. v. Spouses Eugenio, Sr. and Esperanza H. Santiago*, G.R. No. 179457, June 22, 2015.

irrespective of the amount involved.[13] Hence, the CA erred in nullifying the RTC decision for lack of jurisdiction.

Finally, in coming up with its Decision, the RTC made an exhaustive and definitive finding on Arrienda's main cause of action. It is within the RTC's competence to make this finding in the exercise of its appellate jurisdiction, as it would, in the exercise of its original jurisdiction.[14]

WHEREFORE, the instant petition is **GRANTED**. The Decision and Resolution of the Court of Appeals, dated April 26, 2012 and October 30, 2012, respectively, in CA-G.R. SP No. 118687 are **SET ASIDE**. The Decision of the Regional Trial Court of Calamba City, Branch 35, dated April 6, 2010, in Civil Case No. 3361-03-C, is **REINSTATED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 206459. April 6, 2016]

SPOUSES FLORANTE E. JONSAY and LUZVIMINDA L. JONSAY and MOMARCO IMPORT CO., INC., *petitioners, vs.* **SOLIDBANK CORPORATION (now METROPOLITAN BANK AND TRUST COMPANY),** *respondent.*

---

[13] *Id.*

[14] *Serrano v. Gutierrez*, *supra* note 10.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; MOTION FOR RECONSIDERATION; A MOTION FOR RECONSIDERATION ALLOWS THE ADJUDICATOR OR JUDGE TO TAKE A SECOND OPPORTUNITY TO REVIEW THE CASE AND TO GRAPPLE ANEW WITH THE ISSUES THEREIN, AND TO DECIDE AGAIN A QUESTION PREVIOUSLY RAISED, THERE BEING NO LEGAL PROSCRIPTION IMPOSED AGAINST THE DECIDING BODY ADOPTING THEREBY A NEW POSITION CONTRARY TO ONE IT HAD PREVIOUSLY TAKEN.—** The petitioners' dismay over how the same division of the CA could make two opposite and conflicting decisions over exactly the same facts is understandable. Yet, what the CA simply did was to admit that it had committed an error of judgment, one which it was nonetheless fully authorized to correct upon a timely motion for reconsideration. Sections 1, 2 and 3 of Rule 37 of the Rules of Court are pertinent x x x. The rule is that while the decision of a court becomes final upon the lapse of the period to appeal by any party, but the filing of a motion for reconsideration or new trial interrupts or suspends the running of the said period, and prevents the finality of the decision or order from setting in. A motion for reconsideration allows a party to request the adjudicating court or quasi-judicial body to take second look at its earlier judgment and correct any errors it may have committed. As explained in *Salcedo II v. COMELEC,* a motion for reconsideration allows the adjudicator or judge to take a second opportunity to review the case and to grapple anew with the issues therein, and to decide again a question previously raised, there being no legal proscription imposed against the deciding body adopting thereby a new position contrary to one it had previously taken.

2. **ID.; ID.; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; FORECLOSURE PROCEEDINGS ENJOY THE PRESUMPTION OF REGULARITY AND THE MORTGAGOR WHO ALLEGES ABSENCE OF A REQUISITE HAS THE BURDEN OF PROVING SUCH FACT.—** In *Philippine Savings Bank v. Spouses Geronimo,* the Court stressed that the right of a bank to extrajudicially foreclose on a real estate mortgage is well-recognized, provided

it faithfully complies with the statutory requirements of foreclosure x x x. In *Cristobal v. CA,* the Court explicitly held that foreclosure proceedings enjoy the presumption of regularity and the mortgagor who alleges the absence of a requisite has the burden of proving such fact x x x. In *Spouses Miranda*, the Court ruled that the foreclosing bank could not invoke the presumption of regularity of the publication of the notice of auction absent any proof whatsoever of the fact of publication. In the case at bar, there is no dispute that there was publication of the auction notice, which the CA in its amended decision now held to have sufficiently complied with the requirement of publication under Section 3 of Act No. 3135. Unfortunately, against the fact of publication and the presumption of regularity of the foreclosure proceedings, the petitioners' only contrary evidence is Florante's testimonial assertion that the *Morning Chronicle* was not a newspaper of general circulation in Calamba City and that it could not be found in the local newsstands.

3. ID.; ID.; ID.; ID. NOTICE AND PUBLICATION REQUIREMENTS UNDER SECTION 3, ACT NO. 3135; TO BE VALID, THE PUBLICATION OF THE NOTICE OF FORECLOSURE SALE SHOULD BE IN THE NEWSPAPER IN GENERAL CIRCULATION IN THE PLACE WHERE THE FORECLOSED PROPERTIES TO BE AUCTIONED ARE LOCATED; NOT COMPLIED WITH.— In *Fortune Motors (Phils.) Inc. v. Metropolitan Bank and Trust Co.,* it was stressed that in order for publication to serve its intended purpose, the newspaper should be in general circulation in the place where the foreclosed properties to be auctioned are located. x x x. In *Spouses Geronimo,* it was held that the affidavit of publication executed by the account executive of the newspaper is *prima facie* proof that the newspaper is generally circulated in the place where the properties are located. But in substance, all that Crisostomo stated is that his newspaper was "*published and edited in the province of Laguna and San Pablo City.*" He did not particularly mention, as the CA seemed to demand in its initial decision, that the *Morning Chronicle* was published and circulated to disseminate local news and general information in Calamba City where the foreclosed properties are located. Nonetheless, when the RTC accredited the *Morning Chronicle* to publish legal notices in Calamba City, it can be presumed that the

RTC had made a prior determination that the said newspaper had met the requisites for valid publication of legal notices in the said locality, guided by the understanding that for the publication of legal notices in Calamba City to serve its intended purpose, it must be in general circulation therein. This presumption lays the burden upon the petitioners to show otherwise, contrary to the CA's first ruling. But as the Court has seen, the petitioners failed to present proof to overcome the presumption of regularity created by the publisher's affidavit of publication and the accreditation of the *Morning Chronicle* by the RTC. Significantly, in A.M. No. 01-1-07-SC, the Court now requires all courts beginning in 2001 to accredit local newspapers authorized to publish legal notices.

4. **ID.; ID.; ID.; ID.; THE QUESTION OF COMPLIANCE OR NON-COMPLIANCE WITH NOTICE AND PUBLICATION REQUIREMENTS OF AN EXTRAJUDICIAL FORECLOSURE SALE IS A FACTUAL ISSUE, AND THE RESOLUTION THEREOF BY THE TRIAL COURT IS GENERALLY BINDING ON THE COURT.—** [I]n *Metropolitan Bank and Trust Co. v. Spouses Miranda,* the Court also clarified that the matter of compliance with the notice and publication requirements is a factual issue which need not be resolved by the high court: It has been our consistent ruling that the question of compliance or non-compliance with notice and publication requirements of an extrajudicial foreclosure sale is a factual issue, and the resolution thereof by the trial court is generally binding on this Court. The matter of sufficiency of posting and publication of a notice of foreclosure sale need not be resolved by this Court, especially when the findings of the RTC were sustained by the CA. Well-established is the rule that factual findings of the CA are conclusive on the parties and carry even more weight when the said court affirms the factual findings of the trial court.

5. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; *DACION EN PAGO*; THE UNACCEPTED PROPOSAL TO EXTINGUISH THE LOAN OBLIGATIONS BY WAY OF *DACION EN PAGO* NEITHER NOVATES THE PARTIES' MORTGAGE CONTRACT NOR SUSPENDS ITS EXECUTION AS THERE WAS NO MEETING OF THE MINDS BETWEEN THE PARTIES.—** On the question of

the petitioners' failed proposal to extinguish their loan obligations by way of *dacion en pago*, no bad faith can be imputed to Solidbank for refusing the offered settlement as to render itself liable for moral and exemplary damages after opting to extrajudicially foreclose on the mortgage. In *Tecnogas Philippines Manufacturing Corporation v. Philippine National Bank*, the Court held: *Dacion en pago* is a special mode of payment whereby the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding obligation. The undertaking is really one of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. It is only when the thing offered as an equivalent is accepted by the creditor that novation takes place, thereby, totally extinguishing the debt. x x x. Undeniably, Tecnogas' proposal to pay by way of *dacion en pago* was not accepted by PNB. Thus, the unaccepted proposal neither novates the parties' mortgage contract nor suspends its execution as there was no meeting of the minds between the parties on whether the loan will be extinguished by way of *dacion en pago*.

6. ID.; ID.; INTERESTS; AN ESCALATION CLAUSE WHICH GIVES THE LENDING BANK UNBRIDLED RIGHT TO UNILATERALLY UPWARDLY ADJUST THE INTEREST ON LOAN, AND COMPLETELY TAKING AWAY FROM THE BORROWER THE RIGHT TO ASSENT TO AN IMPORTANT MODIFICATION IN THEIR AGREEMENT; THUS, NEGATING THE ELEMENT OF MUTUALITY IN CONTRACTS, IS VOID.— After annulling the foreclosure of mortgage, the RTC reduced the interest imposable on the petitioners' loans to 12%, the legal interest allowed for a loan or forbearance of credit, citing *Medel v. CA*. In effect, the RTC voided not just the unilateral increases in the monthly interest, but also the contracted interest of 18.75%. The implication is to allow the petitioners to recover what they may have paid in excess of what was validly due to Solidbank, if any. x x x. In *Philippine National Bank v. CA*, the Court declared void the escalation clause in a credit agreement whereby the "*bank reserves the right to increase the interest rate within the limits allowed by law at any time depending on whatever*

policy it may adopt in the future xxx." The Court said: xxx. We cannot countenance petitioner bank's posturing that the escalation clause at bench gives it unbridled right to *unilaterally* upwardly adjust the interest on private respondents' loan. That would *completely* take away from private respondents the right to assent to an important modification in their agreement, and would negate the element of mutuality in contracts. x x x. In *Equitable PCI Bank v. Ng Sheung Ngor,* the Court annulled the escalation clause and imposed the original stipulated rate of interest on the loan, until ***maturity***, and thereafter, the legal interest of 12% *per annum* was imposed on the outstanding loans. x x x Thus, the Court disregarded the unilaterally escalated interest rates and imposed the mutually stipulated rates, which it applied up to the maturity of the loans.

7. ID.; ID.; ATTORNEY'S FEES; NOT AN INTEGRAL PART OF THE COST OF BORROWING BUT ARISE ONLY ON THE BASIS OF *QUANTUM MERUIT* WHEN THE LENDER COLLECTS UPON THE NOTES; THE COURT DELETES OR EQUITABLY REDUCES BASELESS OR EXCESSIVE ATTORNEY'S FEES.— Concerning the ₱3,000,000.00 attorney's fees charged by Solidbank and added to the amount of its auction bid, as part of the cost of collecting the loans by way of extrajudicial foreclosure, the Court finds no factual basis to justify such an excessive amount. The Court has not hesitated to delete or equitably reduce attorney's fees which are baseless or excessive. In *New Sampaguita,* the Court reduced from 10% to 1% the attorney's fees, holding that they are not an integral part of the cost of borrowing but arise only on the basis of *quantum meruit* when the lender collects upon the notes.

8. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; EXTRAJUDICIAL FORECLOSURE PROCEEDINGS ARE NOT ADVERSARIAL SUITS, AS THE ORDERS OF THE EXECUTIVE JUDGE IN SUCH PROCEEDINGS, WHETHER THEY BE TO ALLOW OR DISALLOW THE EXTRAJUDICIAL FORECLOSURE OF THE MORTGAGE, ARE NOT ISSUED IN THE EXERCISE OF A JUDICIAL FUNCTION BUT IN THE EXERCISE OF HIS ADMINISTRATIVE FUNCTION TO SUPERVISE THE MINISTERIAL DUTY OF THE CLERK OF COURT

AS *EX-OFFICIO* SHERIFF IN THE CONDUCT OF AN EXTRAJUDICIAL FORECLOSURE SALE.— Mortgagee institutions are reminded that extrajudicial foreclosure proceedings are not adversarial suits filed before a court. It is not commenced by filing a complaint but an *ex-parte* application for extrajudicial foreclosure of mortgage before the executive judge, pursuant to Act No. 3135, as amended, and special administrative orders issued by this Court, particularly Administrative Matter No. 99-10-05-0 (Re: Procedure in Extra-Judicial Foreclosure of Mortgage). The executive judge receives the application neither in a judicial capacity nor on behalf of the court; the conduct of extrajudicial foreclosure proceedings is not governed by the rules on ordinary or special civil actions. The executive judge performs therein an administrative function to ensure that all requirements for the extrajudicial foreclosure of a mortgage are satisfied before the clerk of court, as the *ex-officio* sheriff, goes ahead with the public auction of the mortgaged property. Necessarily, the orders of the executive judge in such proceedings, whether they be to allow or disallow the extrajudicial foreclosure of the mortgage, are not issued in the exercise of a judicial function but in the exercise of his administrative function to supervise the ministerial duty of the Clerk of Court as *Ex-Officio* Sheriff in the conduct of an extrajudicial foreclosure sale.

9. ID.; ID.; ID.; ID.; ANY EXCESS EITHER IN THE INTEREST PAYMENTS OF THE BORROWERS OR IN THE AUCTION PROCEEDS, OVER WHAT IS VALIDLY DUE TO LENDING BANK ON THE LOANS, MUST BE REFUNDED OR PAID TO THE BORROWERS.— Coming now to the question of whether Solidbank must refund any excess interest to the petitioners, the CA agreed with the RTC that the loans should earn only 12% for Solidbank, which would result in a drastic reduction in the interest which petitioners would be obliged to pay to Solidbank. Notwithstanding what this Court has said concerning the invalidity of the unilateral increases in the interest rates, the ruling nonetheless violates the contractual agreement of the parties imposing an interest of 18.75% *per annum*, besides the fact that an interest of 18.75% *per annum* cannot *per se* be deemed as unconscionable back in 1995 or in 1997. x x x. To answer, then, the question of whether Solidbank must refund anything to the petitioners,

the contracted rate of 18.75%, not the legal rate of 12%, will be applied to the petitioners' loans. Any excess either in the interest payments of the petitioners or in the auction proceeds, over what is validly due to Solidbank on the loans, will be refunded or paid to the petitioners.

APPEARANCES OF COUNSEL

The Law Firm of Habitan Ferrer Chan Tagapan Habitan & Associates for petitioners.

CRC Law Firm for respondent.

D E C I S I O N

REYES, *J.*:

Before this Court is a Petition for Review[1] from the Amended Decision[2] dated November 26, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 94012, which reconsidered its earlier Decision[3] therein dated April 27, 2012, and granted in part the appeal of herein respondent Solidbank Corporation (Solidbank) from the Amended Decision[4] dated July 7, 2009 of the Regional Trial Court (RTC) of Calamba City, Branch 35, in Civil Case No. 2912-2000-C, which annulled the extrajudicial foreclosure proceedings instituted by Solidbank against the Spouses Florante E. Jonsay (Florante) and Luzviminda L. Jonsay (Luzviminda) (Spouses Jonsay) and Momarco Import Co., Inc. (Momarco) (petitioners) over the mortgaged properties.

---

[1] *Rollo*, pp. 9-27.

[2] Penned by Associate Justice Socorro B. Inting, with Associate Justices Jose C. Reyes, Jr. and Mario V. Lopez concurring; CA *rollo*, pp. 254-272.

[3] Penned by Associate Justice Socorro B. Inting, with Associate Justices Fernanda Lampas Peralta and Mario V. Lopez concurring; *id.* at 194-210.

[4] Rendered by Judge Romeo C. De Leon; records, Vol. 2, pp. 343-352.

Factual Antecedents

Momarco, controlled and owned by the Spouses Jonsay, is an importer, manufacturer and distributor of animal health and feedmill products catering to cattle, hog and poultry producers. On November 9, 1995, and again on April 28, 1997, Momarco obtained loans of ₱40,000,000.00 and ₱20,000,000.00, respectively, from Solidbank for which the Spouses Jonsay executed a blanket mortgage over three parcels of land they owned in Calamba City, Laguna registered in their names under Transfer Certificates of Title Nos. T-224751, T-210327 and T-269668 containing a total of 23,733 square meters.[5] On November 3, 1997,[6] the loans were consolidated under one promissory note[7] for the combined amount of ₱60,000,000.00, signed by Florante as President of Momarco, with his wife Luzviminda also signing as co-maker.[8] The stipulated rate of interest was 18.75% *per annum*, along with an escalation clause tied to increases in pertinent Central Bank-declared interest rates, by which Solidbank was eventually able to unilaterally increase the interest charges up to 30% *per annum*.[9]

Momarco religiously paid the monthly interests charged by Solidbank from November 1995[10] until January 1998, when it paid ₱1,370,321.09. Claiming business reverses brought on by the 1997 Asian financial crisis, Momarco tried unsuccessfully to negotiate a moratorium or suspension in its interest payments. Due to persistent demands by Solidbank, Momarco made its next, and its last, monthly interest payment in April 1998 in the amount of ₱1,000,000.00. Solidbank applied the said payment to Momarco's accrued interest for February 1998. Momarco sought a loan from Landbank of the Philippines to pay off its

---

[5] *Id.* at 343.

[6] *Id.* at 347.

[7] Records, Vol. 1, p. 106.

[8] Records, Vol. 2, p. 343.

[9] *Rollo*, p. 48.

[10] Total amount of ₱21,906,972.18 from November 1995 to December 1997.

aforesaid debt but its application fell through. The anticipated expropriation by the Department of Public Works and Highways of the mortgaged lots for the extension of the South Luzon Expressway (SLEX) also did not materialize.[11]

Solidbank proceeded to extrajudicially foreclose on the mortgage, and at the auction sale held on March 5, 1999, it submitted the winning bid of ₱82,327,249.54,[12] representing Momarco's outstanding loans, interests and penalties, plus attorney's fees of ₱3,600,000.00. But Momarco now claims that on the date of the auction the fair market value of their mortgaged lots had increased sevenfold to ₱441,750,000.00.[13] On March 22, 1999, Sheriff Adelio Perocho (Sheriff Perocho) issued a certificate of sale to Solidbank, duly annotated on April 15, 1999 on the lots' titles.[14]

On March 9, 2000, a month before the expiration of the period to redeem the lots, the petitioners filed a Complaint[15] against Solidbank, Sheriff Perocho and the Register of Deeds of Calamba, Laguna, docketed as Civil Case No. 2912-2000-C, for *Annulment of the Extrajudicial Foreclosure of Mortgage, Injunction, Accounting and Damages with Prayer for the Immediate Issuance of a Writ of Preliminary Prohibitory Injunction*. They averred that: (a) the amount claimed by Solidbank as Momarco's total loan indebtedness is bloated; (b) Solidbank's interest charges are illegal for exceeding the legal rate of 12% *per annum*; (c) the filing fee it charged has no legal and factual basis; (d) the attorney's fees of ₱3,600,000.00 it billed the petitioners is excessive and unconscionable; (e) their previous payments from 1995 to 1997 were not taken into account in computing their principal indebtedness; (f) Sheriff Perocho's certificate of posting was invalid; and (g) the publication of the notice of the auction

---

[11] Records, Vol. 2, pp. 343-344.

[12] Records, Vol. 1, p. 177.

[13] *Id.* at 6.

[14] Records, Vol. 2, pp. 344, 348.

[15] Records, Vol. 1, pp. 1-12.

sale was defective because the *Morning Chronicle* which published the said notice was not a newspaper of general circulation in Calamba, Laguna.[16]

After Solidbank filed its Answer with Counterclaim[17] on April 12, 2000, the RTC heard and granted the petitioners' application for temporary restraining order on April 13, 2000,[18] followed on May 2, 2000[19] by issuance of a writ of preliminary prohibitory injunction, thus suspending the consolidation of Solidbank's titles to the subject lots.

The petitioners' principal witness was Florante, whose testimony was summarized by the RTC in its amended decision, as follows:

> [Florante] signed the loan documents in blank and the signing took place at his office in Quezon City; he asserted that they were able to pay more than Twenty-Four Million Pesos but the same were not deducted by the bank to arrive at the correct amount of indebtedness. He said that his accountant prepared statement of payments showing the payments made to the bank. He further claimed that there are still other payments, the receipts of which are being retrieved by his accountant. He also asserted that the newspaper where the notice of foreclosure sale was published is not a newspaper of general circulation.
>
> The same cannot be found in a newspaper stand in the place where the mortgaged properties are located; he further claimed that [he] suffered moral, emotional and mental injury; he is a graduate of Doctor of Veterinary Medicine; a permanent member of the Philippine Veterinary Medical Association; graduated and passed the Board; he is the President of [Momarco] and the President of Momarco Resort; he has been engaged in this line of business for 31 years now; his wife is a graduate of Dental Medicine and partner of [Momarco]; he has four (4) children three of them had already graduated and one still in college; x x x he is also claiming for

---

[16] *Id.* at 7.

[17] *Id.* at 91-99.

[18] *Id.* at 123-124.

[19] *Id.* at 191-193.

exemplary damages of Five Million Pesos to set an example for other banks like Solidbank, to refrain from filing acts which are irregular and affect borrowers like him, he claimed also for attorney[']s fees of Three Million Pesos.[20]

Solidbank's witnesses, Lela Quijano, head of its collection division, and Benjamin Apan, its senior manager for retail operations, admitted that the monthly interests it collected from 1995 to 1998 ranged from 18.75% to 30%, and that for 1998, Momarco paid ₱2,370,321.09 in interest.[21]

Ruling of the RTC

On July 7, 2009, the RTC issued its Amended Decision, the *fallo* of which reads, as follows:

Wherefore, premises considered, judgment is rendered in favor of the [petitioners] and against the defendant[s] by:

1) Declaring the extra-judicial foreclosure proceedings NULL and VOID and without any legal effect and the defendants are prohibited to consolidate the titles in the name of [Solidbank] without prejudice to the filing of the action for collection or recovery of the sum of money secured by the real estate mortgage in the proper forum;

2) Ordering that the interest rates on the [petitioners'] indebtedness be reduced to 12% per annum;

3) Declaring that the attorney's fees and filing fee being collected by [Solidbank] to be devoid of any legal basis;

4) Ordering [Solidbank] to pay the [petitioners] the following sums, to wit:

   a) Php20,000,000.00 – moral damages;

   b) Php2,500,000.00 – exemplary damages;

   c) Php1,[500],000.00 – for attorney's fees.

5) Ordering the dismissal of the counterclaim for lack of merit.

---

[20] Records, Vol. 2, pp. 346-347.

[21] *Id.* at 347-348; Records, Vol. 1, p. 179.

SO ORDERED.[22]

The RTC ruled that the mortgage contract and the promissory notes prepared by Solidbank, which the Spouses Jonsay signed in blank, were contracts of adhesion; that Solidbank failed to take into account Momarco's payments in the two years preceding 1998 totaling ₱24,277,293.22 (this amount was not disputed by Solidbank); that the interest rates, ranging from 19% to 30%, as well as the penalties, charges and attorney's fees imposed by Solidbank, were excessive, unconscionable and immoral, and that Solidbank has no *carte blanche* authority under the Usury Law to unilaterally raise the interest rates to levels as to enslave the borrower and hemorrhage its assets; that Solidbank's verification in its application for foreclosure of mortgage was defective because it was signed not by its President but only by a vice-president; that the *Morning Chronicle*, in which the notice of auction was published, was not a newspaper of general circulation because it had no *bona fide* list of paying subscribers; that Solidbank manipulated the foreclosure sale through a defective publication of the notice of auction and by submitting an unconscionably low bid of ₱82,327,000.00, whereas the value of the lots had risen sevenfold since the rehabilitation of the SLEX.[23]

Ruling of the CA

On appeal to the CA, Solidbank interposed the following errors of the RTC, to wit:

THE [RTC] GRAVELY ERRED IN NULLIFYING THE FORECLOSURE PROCEEDINGS CONDUCTED AGAINST [THE PETITIONERS'] PROPERTIES ON THE GROUND THAT THE REAL ESTATE MORTGAGE EXECUTED BY THE PARTIES WAS A CONTRACT OF ADHESION;

THE [RTC] GRAVELY ERRED IN NULLIFYING THE FORECLOSURE PROCEEDINGS CONDUCTED AGAINST [THE

[22] *Id.* at 351-352.

[23] *Id.* at 348-350.

PETITIONERS'] PROPERTIES ON THE GROUND THAT THE NEWSPAPER WHERE THE NOTICE OF FORECLOSURE WAS PUBLISHED IS NOT A NEWSPAPER OF GENERAL CIRCULATION;

THE [RTC] GRAVELY ERRED IN NULLIFYING THE FORECLO[S]URE PROCEEDINGS CONDUCTED AGAINST [THE PETITIONERS'] PROPERTIES ON THE GROUNDS THAT THE INTEREST RATES, PENALTIES, ATTORNEY'S FEES CHARGED ARE EXCESSIVE, UNCONSCIONABLE AND IMMORAL AND THAT THE [SOLIDBANK] DID NOT TAKE INTO ACCOUNT [THE PETITIONERS'] PREVIOUS PAYMENT[S] IN THE AMOUNT OF ₱24,277,293.27;

THE [RTC] GRAVELY ERRED IN AWARDING MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES IN FAVOR OF THE [PETITIONERS];

THE [RTC] GRAVE[LY] ERRED IN FAILING TO REGARD [THE PETITIONERS] [IN] ESTOPPEL WHEN THE LATTER DID NOT IMPUGN THE VALIDITY OF THE LOAN AND MORTGAGE DOCUMENTS WITHIN A REASONABLE TIME.[24]

On April 27, 2012, the CA rendered judgment affirming the RTC *in toto*. It agreed that Solidbank did not comply with the publication requirements under Section 3, Act No. 3135, which provides:

Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks **in a newspaper of general circulation in the municipality or city**.[25] (Emphasis ours)

According to the CA, the *Morning Chronicle* was not a newspaper of general circulation, notwithstanding the affidavit of publication issued by its publisher, Turing R. Crisostomo (Crisostomo), to that effect as well as the certification of the Clerk of Court of RTC-Calamba City that it was duly accredited

---

[24] CA *rollo*, pp. 201-202.

[25] *Id.* at 202.

by the court since May 28, 1997 to publish legal notices. The CA ruled that it was not enough for Crisostomo to merely state in his affidavit that the *Morning Chronicle* was published and edited in the province of Laguna and in San Pablo City without a showing that it was published to disseminate local news and general information, that it had a *bona fide* list of paying subscribers, that it was published at regular intervals, and that it was in general circulation in Calamba City where the subject properties are located.[26]

In *Metropolitan Bank and Trust Company, Inc. v. Peñafiel*,[27] cited by the CA, the Court explained that: (1) the object of a notice of sale is to achieve a reasonably wide publicity of the auction by informing the public of the nature and condition of the property to be auctioned, and of the time, place and terms of the sale, and thereby secure bidders and prevent a sacrifice of the property; (2) a newspaper to be considered one of general circulation need not have the largest circulation but must be able to appeal to the public in general and thus ensure a wide readership, and must not be devoted solely to entertainment or the interest of a particular class, profession, trade, calling, race, or religious denomination; and (3) Section 3 of Act No. 3135, as amended by Act No. 4118, does not only require the newspaper to be of general circulation but also that it is circulated in the municipality or city where the property is located.[28]

The CA held that the accreditation of the *Morning Chronicle* by the Clerk of Court of the RTC to publish legal notices is not determinative of whether it is a newspaper of general circulation in Calamba City.[29]

Concerning the loans due from the petitioners, the CA noted that under the *pro forma* promissory note which Solidbank prepared and which the Spouses Jonsay signed in blank, Solidbank

---

[26] *Id.* at 202-204.

[27] 599 Phil. 511 (2009).

[28] *Id.* at 519-520.

[29] CA *rollo*, p. 205.

enjoyed unrestrained freedom to unilaterally increase the interest rate in any month. The note gave it authority to increase or decrease the interest rate from time to time, "without any advance notice" and "in the event the Monetary Board of the Central Bank of the Philippines raises or lowers the interest rates on loans." According to the CA, this provision violated the principle of mutuality of contracts embodied in Article 1308[30] of the Civil Code.[31]

The CA also held that the herein petitioners were not in estoppel for failing to seasonably question the validity of the mortgage loan since the prescriptive period is reckoned from their notice of the statements of account issued by Solidbank showing the unilateral increases in the interest, for only by then would their cause of action have accrued. Since only three years had elapsed from the execution of the mortgage contract to the filing of the complaint on March 15, 2000, the action was brought within the 10-year prescriptive period.[32]

Solidbank moved for reconsideration[33] of the decision, which the CA granted in part on November 26, 2012, *via* its Amended Decision, to wit:

> **WHEREFORE**, premises considered, the Motion is GRANTED IN PART. Our Decision promulgated on April 27, 2012 is hereby amended. Paragraphs 2 and 5 of the dispositive portion of the July 7, 2009 Decision of the [RTC] of Calamba City, Branch 35 remain affirmed. Paragraphs 1, 3 and 4 thereof are hereby reversed and set aside.
>
> **SO ORDERED**.[34]

Thus, in a complete reversal of its decision, the CA now not only found the parties' mortgage contract valid, but also declared

---

[30] Art. 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

[31] CA *rollo*, pp. 205-206.

[32] *Id.* at 208-209.

[33] *Id.* at 219-245.

[34] *Id.* at 271.

that Solidbank's extrajudicial foreclosure of the mortgage enjoyed the presumption of regularity. It took into account the (a) Affidavit of Publication issued by Crisostomo that it duly published the notice of auction sale on February 8, 15, and 22, 1999, (b) the Certification by the Clerk of Court of the RTC-Calamba City that the *Morning Chronicle* was duly accredited by the court to publish legal notices, and (c) the Raffle of Publication dated February 1, 1999 showing that the said newspaper participated in and won the raffle on February 1, 1999 to publish the subject notice. The CA stressed that since the selection of *Morning Chronicle* to publish the notice was through a court-supervised raffle, Solidbank was fully justified in relying on the regularity of the publication of its notice in the aforesaid newspaper, in the choice of which it had no hand whatsoever.[35]

The CA further held that no malice can be imputed on Solidbank's refusal to accept the petitioners' offer of *dacion en pago*, since it was duly authorized under the parties' mortgage contract to extrajudicially foreclose on the mortgage in the event that Momarco defaulted in its interest payments. Thus, when Solidbank opted to foreclose on the mortgage, it was merely exercising its contractual right to protect its interest, and Solidbank's supposed insensitivity or lack of sympathy toward Momarco's financial plight is irrelevant and is not indemnifiable as bad faith.[36]

On the other hand, the CA pointed out that other than Florante's bare testimonial allegations, the petitioners failed to adduce evidence to debunk Solidbank's compliance with the publication of its auction notice. They were unable to show that the *Morning Chronicle* was not a newspaper of general circulation in Calamba City, that it was not published once a week, or that it could not be found in newsstands.[37]

Thus, the CA in its amended decision: (a) upheld the validity of the extrajudicial foreclosure proceedings, the consolidation

---

[35] *Id.* at 262-263.

[36] *Id.* at 264-266.

[37] *Id.* at 262.

of the titles of Solidbank in the foreclosed properties, and the dismissal of Solidbank's counterclaim; (b) ordered the reduction of the interest rates on the petitioners' indebtedness to the legal rate of 12% *per annum*, thereby affirming that the unilateral increases in the monthly interest rates, which averaged 2.19% per month or 26.25% *per annum*, "without notice to the mortgagors," are void for being iniquitous, excessive and unconscionable; and (c) upheld the collection by the Solidbank of attorney's fees and filing fee. Nonetheless, the CA invalidated for lack of basis the award by the RTC to the petitioners of ₱20,000,000.00 as moral damages, ₱2,500,000.00 as exemplary damages, and ₱1,500,000.00 as attorney's fees.[38]

The petitioners moved for partial reconsideration[39] of the CA's Amended Decision dated November 26, 2012, but the CA denied the same in its Resolution[40] dated March 19, 2013.

Petition for Review in the Supreme Court

In this petition for review, the petitioners interpose the following assignment of errors, to wit:

1. WITH ALL DUE RESPECT, THE [CA] GRAVELY ERRED BY RENDERING TWO (2) CONFLICTING DECISIONS ON THE SAME SET OF FACTS AND EVIDENCE. THE AMENDED DECISION IS NOT IN ACCORD WITH LAW AND EXISTING JURISPRUDENCE[; AND]
2. WITH ALL DUE RESPECT, THE [CA] GRAVELY ERRED IN NOT CORRECTLY APPLYING THE LAW AND JURISPRUDENCE ON EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE, DAMAGES AND CONTRACT OF ADHESION IN THE AMENDED DECISION.[41]

The petitioners decry how, after first declaring that "[a]ll told, we find no reason to disturb, much less reverse, the assailed

---

[38] *Id.* at 271; 419-420.

[39] *Id.* at 276-290.

[40] *Id.* at 348-349.

[41] *Rollo*, p. 13.

decision of the RTC," the CA could now be permitted to make a complete turn-around from its previous decision over the same set of facts, and declare that the subject foreclosure is valid, order the consolidation of Solidbank's titles, and delete the award of moral and exemplary damages, attorney's fees and costs of suit.[42]

Ruling of the Court

There is merit in the petition.

There is no legal proscription against an adjudicating court adopting on motion for reconsideration by a party a position that is completely contrary to one it had previously taken in a case.

The petitioners' dismay over how the same division of the CA could make two opposite and conflicting decisions over exactly the same facts is understandable. Yet, what the CA simply did was to admit that it had committed an error of judgment, one which it was nonetheless fully authorized to correct upon a timely motion for reconsideration. Sections 1, 2 and 3 of Rule 37 of the Rules of Court are pertinent:

Sec. 1. *Grounds of and period for filing motion for new trial or reconsideration*. — x x x.

Within the same period, the aggrieved party may move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.

Sec. 2. *Contents of motion for new trial or reconsideration and notice thereof*. — x x x.

xxx xxx xxx

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported

---

[42] *Id.* at 18-19.

by the evidence or which are contrary to law[,] making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

xxx xxx xxx

Sec. 3. *Action upon motion for new trial or reconsideration*. — x x x If the court finds that excessive damages have been awarded or that the judgment or final order is contrary to the evidence or law, it may amend such judgment or final order accordingly.

The rule is that while the decision of a court becomes final upon the lapse of the period to appeal by any party,[43] but the filing of a motion for reconsideration or new trial interrupts or suspends the running of the said period, and prevents the finality of the decision or order from setting in.[44] A motion for reconsideration allows a party to request the adjudicating court or quasi-judicial body to take a second look at its earlier judgment and correct any errors it may have committed.[45] As explained in *Salcedo II v. COMELEC*,[46] a motion for reconsideration allows the adjudicator or judge to take a second opportunity to review the case and to grapple anew with the issues therein, and to decide again a question previously raised, there being no legal proscription imposed against the deciding body adopting thereby a new position contrary to one it had previously taken.[47]

Solidbank has sufficiently complied with the requirement of publication under Section 3 of Act No. 3135.

In *Philippine Savings Bank v. Spouses Geronimo*,[48] the Court stressed that the right of a bank to extrajudicially foreclose on

---

[43] *Teodoro v. CA*, 328 Phil. 116, 122 (1996); RULES OF COURT, Rule 36, Section 2.

[44] RULES OF COURT, Rule 40, Section 2 and Rule 41, Section 3.

[45] *Reyes v. Pearlbank Securities, Inc.*, 582 Phil. 505, 522 (2008).

[46] 371 Phil. 377 (1999).

[47] *Id.* at 392.

[48] 632 Phil. 378 (2010).

a real estate mortgage is well-recognized, provided it faithfully complies with the statutory requirements of foreclosure:

> While the law recognizes the right of a bank to foreclose a mortgage upon the mortgagor's failure to pay his obligation, it is imperative that such right be exercised according to its clear mandate. Each and every requirement of the law must be complied with, lest, the valid exercise of the right would end. It must be remembered that the exercise of a right ends when the right disappears, and it disappears when it is abused especially to the prejudice of others.[49]

In *Cristobal v. CA*,[50] the Court explicitly held that foreclosure proceedings enjoy the presumption of regularity and the mortgagor who alleges the absence of a requisite has the burden of proving such fact:

> Further, as respondent bank asserts, a mortgagor who alleges absence of a requisite has the burden of establishing that fact. Petitioners failed in this regard. Foreclosure proceedings have in their favor the presumption of regularity and the burden of evidence to rebut the same is on the petitioners. x x x.[51] (Citation omitted)

The petitioners insist that the CA was correct when it first ruled in its Decision dated April 27, 2012 that there was no valid publication of the notice of auction, since the *Morning Chronicle* was not shown to be a newspaper of general circulation in Calamba City. The CA disregarded the affidavit of publication executed by its publisher to that effect, as well as the certification by the Clerk of Court of RTC-Calamba City that the said paper was duly accredited by the court to publish legal notices. It ruled that there was no showing by the Solidbank that the *Morning Chronicle* was published to disseminate local news and general information, that it had a *bona fide* list of paying subscribers, that it was published at regular intervals, and that it was in circulation in Calamba City where the subject properties are located.

---

[49] *Id.* at 390, citing *Metropolitan Bank v. Wong*, 412 Phil. 207, 220 (2001).

[50] 384 Phil. 807 (2000).

[51] *Id.* at 815.

But in its Amended Decision on November 26, 2012, the CA now ruled that the questioned foreclosure proceedings enjoy the presumption of regularity, and it is the burden of the petitioners to overcome this presumption. The CA stated:

> It is an elementary rule that the burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense as required by law. The Court has likewise ruled in previous cases that foreclosure proceedings enjoy the presumption of regularity and that the mortgagor who alleges absence of a requisite has the burden of proving such fact.[52] (Citation omitted)

In *Fortune Motors (Phils.), Inc. v. Metropolitan Bank and Trust Co*.,[53] it was stressed that in order for publication to serve its intended purpose, the newspaper should be in general circulation in the place where the foreclosed properties to be auctioned are located.[54] But in *Metropolitan Bank and Trust Co. v. Spouses Miranda*,[55] the Court also clarified that the matter of compliance with the notice and publication requirements is a factual issue which need not be resolved by the high court:

> It has been our consistent ruling that the question of compliance or non-compliance with notice and publication requirements of an extrajudicial foreclosure sale is a factual issue, and the resolution thereof by the trial court is generally binding on this Court. The matter of sufficiency of posting and publication of a notice of foreclosure sale need not be resolved by this Court, especially when the findings of the RTC were sustained by the CA. Well-established is the rule that factual findings of the CA are conclusive on the parties and carry even more weight when the said court affirms the factual findings of the trial court.[56] (Citation omitted)

In *Spouses Miranda*, the Court ruled that the foreclosing bank could not invoke the presumption of regularity of the

---

[52] CA *rollo*, p. 305.

[53] 332 Phil. 844 (1996).

[54] *Id.* at 850.

[55] 655 Phil. 265 (2011).

[56] *Id.* at 272.

publication of the notice of auction absent any proof whatsoever of the fact of publication.[57] In the case at bar, there is no dispute that there was publication of the auction notice, which the CA in its amended decision now held to have sufficiently complied with the requirement of publication under Section 3 of Act No. 3135. Unfortunately, against the fact of publication and the presumption of regularity of the foreclosure proceedings, the petitioners' only contrary evidence is Florante's testimonial assertion that the *Morning Chronicle* was not a newspaper of general circulation in Calamba City and that it could not be found in the local newsstands.

Admittedly, the records are sparse as to the details of the publication. In his Affidavit of Publication, publisher Crisostomo stated concerning the circulation of his paper, as follows:

> I, [CRISOSTOMO], legal age, Filipino, resident of Brgy. III-D, San Pablo City with postal address at San Pablo City, after having been duly sworn in accordance to law, depose and say[:]
>
> That I am the Publisher of The Morning Chronicle Weekly newspaper of Luzon Province and Greater Manila Area, Cavite, [p]ublished and edited in the Province of Laguna and San Pablo City.
>
> xxx xxx xxx[58]

In *Spouses Geronimo*,[59] it was held that the affidavit of publication executed by the account executive of the newspaper is *prima facie* proof that the newspaper is generally circulated in the place where the properties are located.[60] But in substance, all that Crisostomo stated is that his newspaper was "*published and edited in the province of Laguna and San Pablo City*." He did not particularly mention, as the CA seemed to demand in its initial decision, that the *Morning Chronicle* was published

---

[57] *Id.* at 273.

[58] Records, Vol. I, p. 151.

[59] *Supra* note 48.

[60] *Id.* at 387, citing *China Banking Corp. v. Sps. Martir*, 615 Phil. 728, 739 (2009).

and circulated to disseminate local news and general information in Calamba City where the foreclosed properties are located.

Nonetheless, when the RTC accredited the *Morning Chronicle* to publish legal notices in Calamba City, it can be presumed that the RTC had made a prior determination that the said newspaper had met the requisites for valid publication of legal notices in the said locality, guided by the understanding that for the publication of legal notices in Calamba City to serve its intended purpose, it must be in general circulation therein. This presumption lays the burden upon the petitioners to show otherwise, contrary to the CA's first ruling.

It is true that the Court also held in *Peñafiel*,[61] concerning the evidentiary weight of the publisher's affidavit of publication, that the accreditation by the RTC executive judge is not decisive on the issue of whether a newspaper is of general circulation:

> The accreditation of *Maharlika Pilipinas* by the Presiding Judge of the RTC is not decisive of whether it is a newspaper of general circulation in Mandaluyong City. This Court is not bound to adopt the Presiding Judge's determination, in connection with the said accreditation, that *Maharlika Pilipinas* is a newspaper of general circulation. The court before which a case is pending is bound to make a resolution of the issues based on the evidence on record.[62]

But as the Court has seen, the petitioners failed to present proof to overcome the presumption of regularity created by the publisher's affidavit of publication and the accreditation of the *Morning Chronicle* by the RTC.[63] Significantly, in A.M. No. 01-1-07-SC,[64] the Court now requires all courts beginning in 2001 to accredit local newspapers authorized to publish legal notices.[65]

---

[61] *Supra* note 27.

[62] *Id.* at 516.

[63] CA *rollo*, p. 262.

[64] Re: Guidelines in the Accreditation of Newspapers and Periodicals and in the Distribution of Legal Notices and Advertisements for Publication. October 16, 2001.

[65] See *Phil. Savings Bank v. Spouses Geronimo*, *supra* note 48, at 386.

The petitioners' mere proposal to extinguish their loan obligations by way of *dacion en pago* does not novate the mortgage contract.

On the question of the petitioners' failed proposal to extinguish their loan obligations by way of *dacion en pago*, no bad faith can be imputed to Solidbank for refusing the offered settlement as to render itself liable for moral and exemplary damages after opting to extrajudicially foreclose on the mortgage.[66] In *Tecnogas Philippines Manufacturing Corporation v. Philippine National Bank*,[67] the Court held:

> *Dacion en pago* is a special mode of payment whereby the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding obligation. The undertaking is really one of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. It is only when the thing offered as an equivalent is accepted by the creditor that novation takes place, thereby, totally extinguishing the debt.
>
> On the first issue, the Court of Appeals did not err in ruling that Tecnogas has no clear legal right to an injunctive relief because its proposal to pay by way of *dacion en pago* did not extinguish its obligation. Undeniably, Tecnogas' proposal to pay by way of *dacion en pago* was not accepted by PNB. Thus, the unaccepted proposal neither novates the parties' mortgage contract nor suspends its execution as there was no meeting of the minds between the parties on whether the loan will be extinguished by way of *dacion en pago*. Necessarily, upon Tecnogas' default in its obligations, the foreclosure of the REM becomes a matter of right on the part of PNB, for such is the purpose of requiring security for the loans.[68] (Citation omitted)

---

[66] CA *rollo*, p. 266.

[67] 574 Phil. 340 (2008).

[68] *Id.* at 346.

An escalation clause in a loan agreement granting the lending bank authority to unilaterally increase the interest rate without prior notice to and consent of the borrower is void.

After annulling the foreclosure of mortgage, the RTC reduced the interest imposable on the petitioners' loans to 12%, the legal interest allowed for a loan or forbearance of credit, citing *Medel v. CA*.[69] In effect, the RTC voided not just the unilateral increases in the monthly interest, but also the contracted interest of 18.75%. The implication is to allow the petitioners to recover what they may have paid in excess of what was validly due to Solidbank, if any.

In *Floirendo, Jr. v. Metropolitan Bank and Trust Co.*,[70] the promissory note provided for interest at 15.446% *per annum* for the first 30 days, subject to upward/downward adjustment every 30 days thereafter.[71] It was further provided that:

> The rate of interest and/or bank charges herein stipulated, during the term of this Promissory Note, its extension, renewals or other modifications, may be increased, decreased, or otherwise changed from time to time by the Bank *without advance notice to me/us in the event of changes in the interest rate prescribed by law or the Monetary Board of the Central Bank of the Philippines, in the rediscount rate of member banks with the Central Bank of the Philippines, in the interest rates on savings and time deposits, in the interest rates on the bank's borrowings, in the reserve requirements, or in the overall costs of funding or money*[.] [72] (Italics ours)

The Court ordered the "reformation" of the real estate mortgage contract and the promissory note, in that any increases in the interest rate beyond 15.446% *per annum* could not be collected

---

[69] 359 Phil. 820 (1998).

[70] 558 Phil. 654 (2007).

[71] *Id.* at 657.

[72] *Id.* at 658.

by respondent bank since it was devoid of prior consent of the petitioner, as well as ordered that the interest paid by the debtor in excess of 15.446% be applied to the payment of the principal obligation.[73]

In *Philippine National Bank v. CA*,[74] the Court declared void the escalation clause in a credit agreement whereby the "*bank reserves the right to increase the interest rate within the limits allowed by law at any time depending on whatever policy it may adopt in the future x x x*."[75] The Court said:

> It is basic that there can be no contract in the true sense in the absence of the element of agreement, or of mutual assent of the parties. If this assent is wanting on the part of one who contracts, his act has no more efficacy than if it had been done under duress or by a person of unsound mind.
>
> Similarly, contract changes must be made with the consent of the contracting parties. The minds of all the parties must meet as to the proposed modification, especially when it affects an important aspect of the agreement. In the case of loan contracts, it cannot be gainsaid that the rate of interest is always a vital component, for it can make or break a capital venture. Thus, any change must be *mutually* agreed upon, otherwise, it is bereft of any binding effect.
>
> We cannot countenance petitioner bank's posturing that the escalation clause at bench gives it unbridled right to *unilaterally* upwardly adjust the interest on private respondents' loan. That would *completely* take away from private respondents the right to assent to an important modification in their agreement, and would negate the element of mutuality in contracts. x x x.[76] (Citation omitted and italics in the original)

In *New Sampaguita Builders Construction, Inc. (NSBCI) v. PNB*,[77] the Court condemned as the "zenith of farcicality" a

---

[73] *Id.* at 665.

[74] G.R. No. 107569, November 8, 1994, 238 SCRA 20.

[75] *Id.* at 24.

[76] *Id.* at 25-26.

[77] 479 Phil. 483 (2004).

mortgage contract whereby the parties "specify and agree upon rates that could be subsequently upgraded at whim by only one party to the agreement."[78] The Court declared as a contract of adhesion a pro forma promissory note which creates a "take it or leave it" dilemma for borrower and gives the mortgagee bank an unbridled right to adjust the interest independently and upwardly, thereby completely taking away from the borrower the "right to assent to an important modification in their agreement," thus negating the element of mutuality in their contracts.[79] The Court quotes:

Increases in Interest Baseless

Promissory Notes. In each drawdown, the Promissory Notes specified the interest rate to be charged: 19.5 percent in the first, and 21.5 percent in the second and again in the third. However, a uniform clause therein permitted respondent to increase the rate "**within the limits allowed by law at any time depending on whatever policy it may adopt in the future x x x," without even giving prior notice to petitioners**. The Court holds that petitioners' accessory duty to pay interest did not give respondent unrestrained freedom to charge any rate other than that which was agreed upon. No interest shall be due, unless expressly stipulated in writing. It would be the zenith of farcicality to specify and agree upon rates that could be subsequently upgraded at whim by only one party to the agreement.

The "unilateral determination and imposition" of increased rates is "violative of the principle of mutuality of contracts ordained in Article 1308 of the Civil Code." One-sided impositions do not have the force of law between the parties, because such impositions are not based on the parties' essential equality.

Although escalation clauses are valid in maintaining fiscal stability and retaining the value of money on long-term contracts, giving respondent an unbridled right to adjust the interest independently and upwardly would completely take away from petitioners the "right to assent to an important modification in their agreement" and would also negate the element of mutuality in their contracts. The clause

---

[78] *Id.* at 497.

[79] *PNB v. CA*, 328 Phil. 54, 62-63 (1996).

cited earlier made the fulfillment of the contracts "dependent exclusively upon the uncontrolled will" of respondent and was therefore void. Besides, the pro forma promissory notes have the character of a *contract d' adhésion*, "where the parties do not bargain on equal footing, the weaker party's [the debtor's] participation being reduced to the alternative 'to take it or leave it.'"

"While the Usury Law ceiling on interest rates was lifted by [Central Bank] Circular No. 905, nothing in the said Circular grants lenders *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets." In fact, we have declared nearly ten years ago that neither this Circular nor PD 1684, which further amended the Usury Law, "authorized either party to unilaterally raise the interest rate without the other's consent."

Moreover, a similar case eight years ago pointed out to the same respondent (PNB) that borrowing signified a capital transfusion from lending institutions to businesses and industries and was done for the purpose of stimulating their growth; yet respondent's continued "unilateral and lopsided policy" of increasing interest rates "without the prior assent" of the borrower not only defeats this purpose, but also deviates from this pronouncement. Although such increases are not usurious, since the "Usury Law is now legally inexistent" — the interest ranging from 26 percent to 35 percent in the statements of account — "must be equitably reduced for being iniquitous, unconscionable and exorbitant." Rates found to be iniquitous or unconscionable are void, as if it there were no express contract thereon. Above all, it is undoubtedly against public policy to charge excessively for the use of money.[80] (Citations omitted and emphasis ours)

In *New Sampaguita*, the Court invoked Article 1310[81] of the Civil Code which grants courts authority to reduce or increase interest rates equitably. It eliminated the escalated rates, insurance and penalties and imposed only the stipulated interest rates of 19.5% and 21.5% on the notes, *to be reduced to the legal rate*

---

[80] *New Sampaguita Builders Construction, Inc. (NSBCI) v. PNB*, *supra* note 77, at 496-499.

[81] Art. 1310. The determination shall not be obligatory if it is evidently inequitable. In such case, the courts shall decide what is equitable under the circumstances.

of 12% upon their automatic conversion into medium-term loans ***after maturity***:[82]

[T]o give full force to the Truth in Lending Act, only the interest rates of 19.5 percent and 21.5 percent stipulated in the Promissory Notes may be imposed by respondent on the respective availments. After 730 days, the portions remaining unpaid are automatically converted into medium-term loans at the legal rate of 12 percent. In all instances, the simple method of interest computation is followed. x x x.[83]

Thus, all payments made by the petitioners were applied pro-rated to the notes, and after eliminating the charges, penalties and insurance, the result of the recomputation was an overcollection by the bank of ₱3,686,101.52, which the Court ordered refunded to the petitioners with straight interest at 6% *per annum* from the filing of the complaint until finality.[84]

In *Equitable PCI Bank v. Ng Sheung Ngor*,[85] the Court annulled the escalation clause and imposed the original stipulated rate of interest on the loan, until ***maturity***, and thereafter, the legal interest of 12% *per annum* was imposed on the outstanding loans. Thus, the Court ordered the borrower to pay Equitable the stipulated interest rate of 12.66% *per annum* for the dollar denominated loans, and the stipulated 20% *per annum* for the peso denominated loans, up to maturity, and afterwards Equitable was to collect legal interest of 12% *per annum* on all loans due.[86]

---

[82] *New Sampaguita Builders Construction, Inc. (NSBCI) v. PNB*, *supra* note 77, at 529.

[83] *Id.*

[84] *Id.* at 529-530.

[85] 565 Phil. 520 (2007).

[86] *Id.* at 539.

The dispositive portion of the Court decision reads:

xxx xxx xxx

2. ordering respondents Ng Sheung Ngor, doing business under the name and style of "Ken Marketing," Ken Appliance Division, Inc. and Benjamin E. Go to pay petitioner Equitable PCI Bank interest at:

Incidentally, under Monetary Board Circular No. 799, the rate of interest for the loan or forbearance of money, in the absence of stipulation, shall now be 6% *per annum* starting July 1, 2013.[87]

Thus, the Court disregarded the unilaterally escalated interest rates and imposed the mutually stipulated rates, which it applied up to the maturity of the loans. Thereafter, the Court imposed the legal rate of 12% *per annum* on the outstanding loans, or 6% *per annum* legal rate on the excess of the borrower's payments.

Attorney's fees do not form an integral part of the cost of borrowing, but arise only when collecting upon the notes or loans becomes necessary. Courts have the power to determine their reasonableness based on *quantum meruit* and to reduce the amount thereof if excessive.

Concerning the ₱3,000,000.00 attorney's fees charged by Solidbank and added to the amount of its auction bid, as part of the cost of collecting the loans by way of extrajudicial foreclosure, the Court finds no factual basis to justify such an

---

a) 12.66% p.a. with respect to their dollar-denominated loans from January 10, 2001 to July 9, 2001;

b) 20% p.a. with respect to their peso-denominated loans from January 10, 2001 to July 9, 2001;

c) pursuant to our ruling in *Eastern Shipping Lines v. Court of Appeals*, the total amount due on July 9, 2001 shall earn legal interest at 12% p.a. from the time petitioner Equitable PCI Bank demanded payment, whether judicially or extra-judicially; and

d) after this Decision becomes final and executory, the applicable rate shall be 12% p.a. until full satisfaction;

x x x. *Id.* at 544-545.

[87] *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 454-455; *S.C. Megaworld Construction and Development Corporation v. Parada,* G.R. No. 183804, September 11, 2013, 705 SCRA 584, 610.

excessive amount. The Court has not hesitated to delete or equitably reduce attorney's fees which are baseless or excessive. In *New Sampaguita*, the Court reduced from 10% to 1% the attorney's fees, holding that they are not an integral part of the cost of borrowing but arise only on the basis of *quantum meruit* when the lender collects upon the notes.[88]

Mortgagee institutions are reminded that extrajudicial foreclosure proceedings are not adversarial suits filed before a court. It is not commenced by filing a complaint but an *ex-parte* application for extrajudicial foreclosure of mortgage before the executive judge, pursuant to Act No. 3135, as amended, and special administrative orders issued by this Court, particularly Administrative Matter No. 99-10-05-0 (Re: Procedure in Extra-Judicial Foreclosure of Mortgage). The executive judge receives the application neither in a judicial capacity nor on behalf of the court; the conduct of extrajudicial foreclosure proceedings is not governed by the rules on ordinary or special civil actions. The executive judge performs therein an administrative function to ensure that all requirements for the extrajudicial foreclosure of a mortgage are satisfied before the clerk of court, as the *ex-officio* sheriff, goes ahead with the public auction of the mortgaged property. Necessarily, the orders of the executive judge in such proceedings, whether they be to allow or disallow the extrajudicial foreclosure of the mortgage, are not issued in the exercise of a judicial function but in the exercise of his administrative function to supervise the ministerial duty of the Clerk of Court as *Ex-Officio* Sheriff in the conduct of an extrajudicial foreclosure sale.[89]

---

[88] *New Sampaguita Builders Construction, Inc. (NSBCI) v. PNB*, *supra* note 77, at 509-510.

[89] *Ingles v. Estrada*, G.R. No. 141809, April 8, 2013, 695 SCRA 285, 313-314, citing *First Marbella Condominium Ass'n., Inc. v. Gatmaytan*, 579 Phil. 432, 438-439 (2008).

The recomputation of the petitioners' total loan indebtedness based on the stipulated interest, and the exclusion of the penalties and reduction of the attorney's fees results in an excess of the auction proceeds which must be paid to the petitioners.

Coming now to the question of whether Solidbank must refund any excess interest to the petitioners, the CA agreed with the RTC that the loans should earn only 12% for Solidbank, which would result in a drastic reduction in the interest which the petitioners would be obliged to pay to Solidbank. Notwithstanding what this Court has said concerning the invalidity of the unilateral increases in the interest rates, the ruling nonetheless violates the contractual agreement of the parties imposing an interest of 18.75% *per annum*, besides the fact that an interest of 18.75% per annum cannot *per se* be deemed as unconscionable back in 1995 or in 1997.

In the recent cases of *Mallari v. Prudential Bank (now Bank of the Philippine Islands)*[90] and *Spouses Villanueva v. The CA, et al.,*[91] the Court did not consider unconscionable the contractual interest rates of 23% or 24% *per annum*. In *Mallari*, the Court upheld the loans obtained between 1984 and 1989 which bore interest from 21% to 23% per year; in *Spouses Villanueva*, the loans secured in 1994 carried interest of 24% per year were upheld. In *Advocates* for *Truth in Lending, Inc. v. Bangko Sentral Monetary Board*,[92] the Court noted that in the later 1990s, the banks' prime lending rates which they charged to their best borrowers ranged from 26% to 31%.[93]

---

[90] G.R. No. 197861, June 5, 2013, 697 SCRA 555.

[91] 671 Phil. 467 (2011).

[92] G.R. No. 192986, January 15, 2013, 688 SCRA 530.

[93] *Id.* at 538.

To answer, then, the question of whether Solidbank must refund anything to the petitioners, the contracted rate of 18.75%, not the legal rate of 12%, will be applied to the petitioners' loans. Any excess either in the interest payments of the petitioners or in the auction proceeds, over what is validly due to Solidbank on the loans, will be refunded or paid to the petitioners. Thus:

(1) The first loan of ₱40,000,000.00 carried a stipulated interest of 18.75% *per annum*, and from November 9, 1995 to March 5, 1999, which is the auction date and the date the mortgage was terminated, a period of 3 years and 116 days, or 3.3178 years, and total interest earned by the bank thereon is **₱24,883,500.00**; the second loan, for ₱20,000,000.00, was also agreed to earn 18.75% *per annum*, and from April 28, 1997 to March 5, 1999, a period of 1 year and 311 days, or 1.8520 years, it earned **₱6,945,000.00** in interest. In all, Solidbank earned **₱31,828,500.00** in interest up to March 5, 1999 from both loans.

(2) From November 9, 1995 to April 1998, the petitioners paid monthly interests totaling **₱24,277,283.22.** Deducting ₱24,277,283.22 from the sum of the total loan principal of ₱60,000,000.00 and the total interest due of ₱31,828,500.00, which is **₱91,828,500.00**, leaves the amount of **₱67,551,216.78** in interest owed by the petitioners as of March 5, 1999.

(3) As in *New Sampaguita Builders*, the Court shall exclude all the penalties or surcharges charged by the bank, and shall allow the bank to recover only 1% as attorney's fees, or **₱675,512.17,** not the ₱3,600,000.00 awarded by the RTC. Thus, all in all, the petitioners owed the bank ₱68,226,728.95 (₱67,551,216.78 plus ₱675,512.17) as of March 5, 1999.

(4) Deducting **₱68,226,728.95** from Solidbank's winning bid of **₱82,327,000.00** leaves an excess of **₱14,100,271.05** in the proceeds of the auction over the outstanding loan obligation of the petitioners. This amount must be paid by Solidbank to the petitioners.

(5) Since the **₱14,100,271.05** is the excess in the auction proceeds, thus an ordinary monetary obligation and not a loan or a forbearance of credit, it shall earn simple interest at six percent (6%) *per annum* from judicial demand up to finality, following *Eastern Shipping Lines, Inc. v. Court of Appeals*;[94] thereafter, both the said amount and the accumulated interest shall together earn six percent (6%) *per annum*, pursuant to Monetary Board Circular No. 799, until full satisfaction.

Thus:

Particulars			**Amount**
Solidbank's Winning Bid			**₱82,327,000.00**
Less: Amount Due from Petitioners, as of March 5, 1999			
Loan No. 1 Principal		₱40,000,000.00	
Loan No. 2 Principal		20,000,000.00	
Total		**60,000,000.00**	
Add: Interest Due			
Loan No. 1- November 9, 1995 to March 5, 1999 (₱40,000,000.00 x 18.75% p.a. x 3.3178)	₱24,883,500.00		
Loan No. 2- April 28, 1997 to March 5, 1999 or (₱20,000,000.00 x 18.75% p.a. x 1.8520)	6,945,000.00	**31,828,500.00**	
Total		**91,828,500.00**	
Less: Interest paid from November 1995 to April 1998		24,277,283.22	
Net Amount Due from Petitioners		67,551,216.78	
Add: Attorney's fees (1% of ₱67,551,216.78)		675,512.17	**8,226,728.95**
Balance Payable to Petitioners			**₱14,100,271.05**

WHEREFORE, premises considered, the Amended Decision dated November 26, 2012 of the Court of Appeals in CA-G.R. CV No. 94012 is **AFFIRMED with MODIFICATION** in that the stipulated interest rate on the loan obligation of 18.75% shall be applied, resulting in ₱67,551,216.78 as the amount due from the Spouses Florante E. Jonsay and Luzviminda L.

[94] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

Jonsay and Momarco Import Co., Inc. to Solidbank Corporation (now Metropolitan Bank and Trust Company). In addition, the Spouses Florante E. Jonsay and Luzviminda L. Jonsay and Momarco Import Co., Inc. are **ORDERED** to **PAY** attorney's fees in the amount of ₱675,512.17, which is one percent (1%) of the loan obligation.

Thus, Solidbank Corporation (now Metropolitan Bank and Trust Company) is **ORDERED** to **PAY** to the petitioners the amount of **₱14,100,271.05**, representing the excess of its auction bid over the total loan obligation due from the petitioners, plus interest at six percent (6%) *per annum* computed from the date of filing of the complaint or March 15, 2000 up to finality; and thereafter, both the excess of the auction proceeds and the cumulative interest shall earn six percent (6%) *per annum* until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 206766. April 6, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDUARDO YEPES,** *accused-appellant.*

---

* Additional Member per Raffle dated June 29, 2015 *vice* Associate Justice Diosdado M. Peralta.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE TRIAL COURT'S FINDINGS OF FACT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ENTITLED TO GREAT WEIGHT AND WILL NOT BE DISTURBED ON APPEAL, EXCEPT WHERE FACTS OF WEIGHT AND SUBSTANCE WITH DIRECT AND MATERIAL BEARING ON THE FINAL OUTCOME OF THE CASE HAVE BEEN OVERLOOKED, MISAPPREHENDED OR MISAPPLIED.—** The Court reviewed the records of the instant case and saw a different story. The police officers had indeed committed serious lapses in procedure in the conduct of the buy-bust operation on 29 July 2004. The Court also finds that the evidence for the prosecution fall short of the exacting degree of proof beyond reasonable doubt required under our criminal laws. Generally, the trial court's findings of fact, especially when affirmed by the Court of Appeals, are entitled to great weight and will not be disturbed on appeal. This rule, however, admits exceptions and does not apply where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied as in the case at bar.

2. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF SHABU; ELEMENTS; PROOF BEYOND REASONABLE DOUBT IN CRIMINAL PROSECUTIONS FOR THE SALE OF ILLEGAL DRUGS DEMANDS THAT UNWAVERING EXACTITUDE BE OBSERVED IN ESTABLISHING THE *CORPUS DELICTI*, THE BODY OF CRIME WHOSE CORE IS THE CONFISCATED ILLICIT DRUG; RATIONALE.—** To secure a conviction for illegal sale of *shabu,* the following elements must be present: (a) the identities of the buyer and the seller, the object of the sale and the consideration; and (b) the delivery of the thing sold and the payment for the thing. It is material to establish that the transaction or sale actually took place, and to bring to the court the *corpus delicti* as evidence. Proof beyond reasonable doubt in criminal prosecutions for the sale of illegal drugs demands that unwavering exactitude be observed in establishing the *corpus delicti,* the body of crime whose core is the confiscated illicit drug. The reason for this

the Court elucidated in *People v. Tan,* to wit: [B]y the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heron can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses. Needless to state, the lower court should have exercised the utmost diligence and prudence in deliberating upon accused-appellants guilt. It should have given more serious consideration to the *pros* and *cons* of the evidence offered by both the defense and the State and many loose ends should have been settled by the trial court in determining the merits of the present case.

3. **REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; WHILE LAW ENFORCERS ENJOY THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTIES, THIS PRESUMPTION CANNOT PREVAIL OVER THE CONSTITUTIONAL RIGHT OF THE ACCUSED TO BE PRESUMED INNOCENT AND IT CANNOT, BY ITSELF CONSTITUTE PROOF OF GUILT BEYOND REASONABLE DOUBT.—** [T]here are material inconsistencies between and among the testimonies of the police officers raising doubts whether an entrapment operation had indeed been made; and serious questions regarding the integrity of the *corpus delicti* if truly there had been a buy-bust operation. Considering that the police asset was not presented, the evidence against accused-appellant consists solely of PO2 Ariño's declaration that there was a buy-bust operation conducted on a drug-pusher who turned out to be accused-appellant. It is PO2 Ariño's positive declaration versus accused-appellant's denial. While law enforcers enjoy the presumption of regularity in the performance of duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot, by itself constitute proof of guilt beyond reasonable doubt. And although the defense of denial may be weak, courts should not at once look at them with disfavor as there are situations where an accused may really have no other defenses which, if established to be truth, may tilt the scales of justice in his favor, especially when the prosecution evidence itself is weak.

4. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); SECTION 21 THEREOF; PROCEDURE IN THE CUSTODY AND DISPOSITION OF SEIZED DANGEROUS DRUGS; IN ILLEGAL DRUGS CASES, THE IDENTITY AND INTEGRITY OF THE DRUGS SEIZED MUST BE ESTABLISHED WITH THE SAME UNWAVERING EXACTITUDE AS THAT REQUIRED TO ARRIVE AT A FINDING OF GUILT, AND NONCOMPLIANCE WITH THE PROCEDURE RAISES QUESTIONS WHETHER THE ILLEGAL DRUG ITEMS WERE THE SAME ONES ALLEGEDLY SEIZED FROM ACCUSED-APPELLANT.— Even assuming that an entrapment operation in truth had been made, the presumption that police officers enjoy is also overcome by evidence of their procedural lapses in the handling of the seized drug. In illegal drugs cases, the identity and integrity of the drugs seized must be established with the same unwavering exactitude as that required to arrive at a finding of guilt. The procedure set forth in Section 21 of R.A. No. 9165 is intended precisely to ensure the identity and integrity of dangerous drugs seized. This provision requires that upon seizure of illegal drug items, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) a representative from the media and the Department of Justice and any elected public official (e) who shall all be required to sign the inventory and be given copies thereof. Section 21 was laid down by Congress as a safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs. Under the principle that penal laws are strictly construed against the government, stringent compliance therewith is fully justified. In the present case, the procedure was not observed at all. Such noncompliance raises questions whether the illegal drug items were the same ones allegedly seized from accused-appellant.

5. ID.; ID.; ID.; NONCOMPLIANCE WITH THE PROCEDURAL REQUIREMENTS MAYBE EXCUSED ON JUSTIFIABLE GROUNDS AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE ILLEGAL DRUGS

SEIZED ARE PROPERLY PRESERVED; NO JUSTIFIABLE REASON FOR THE NON-OBSERVANCE OF THE PROCEDURE IN CASE AT BAR.— Although justifiable grounds may excuse noncompliance with the requirements of Section 21 as long as the integrity and evidentiary value of the seized items are properly preserved, the police officers in the present case presented no justifiable reason for the non-observance of the procedure. Lamentably, both RTC and the Court of Appeals failed to even note at all that there were deficiencies in the handling of the seized evidence much less inquire into the reasons for the non-observance of procedure. Most important, the Court finds as established fact that the integrity and evidentiary value of the illegal drugs seized were not shown to have been preserved. Contrarily, the records of the case bear out the glaring fact that the chain of custody of the seized illegal drugs was broken even at the very first link thereof.

6. **ID.; ID.; ID.; WHEN THERE ARE RESERVATIONS ABOUT THE IDENTITY OF THE ILLEGAL DRUG ITEM ALLEGEDLY SEIZED FROM THE ACCUSED, THE ACTUAL COMMISSION OF THE CRIME CHARGED IS PUT INTO SERIOUS QUESTION AND COURTS HAVE NO ALTERNATIVE BUT TO ACQUIT THE ACCUSED ON THE GROUND OF REASONABLE DOUBT.—** [T]he testimonial evidence of the prosecution could not even be sure about the number of sachets seized from accused-appellant and to whom it was first handed to by PO2 Ariño. x x x. *Corpus delicti* is the "actual commission by someone of the particular crime charged." In illegal drug cases, it refers to the illegal drug item itself. When there are reservations about the identity of the illegal drug item allegedly seized from the accused, the actual commission of the crime charged is put into serious question and courts have no alternative but to acquit on the ground of reasonable doubt.

7. **REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; THE EVIDENCE FOR THE PROSECUTION MUST STAND OR FALL ON ITS OWN WEIGHT AND CANNOT BE ALLOWED TO DRAW STRENGTH FROM THE WEAKNESS OF THE DEFENSE, AND IF THE PROSECUTION CANNOT ESTABLISH THE GUILT OF ACCUSED-APPELLANT BEYOND REASONABLE**

DOUBT, THE DEFENSE IS NOT EVEN REQUIRED TO ADDUCE EVIDENCE.— Even if accused-appellant failed to present evidence with respect to his defense of denial or the ill motive that impelled the police officers to falsely impute upon him the crime charged, the same is of no moment. The evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense. If the prosecution cannot establish the guilt of accused-appellant beyond reasonable doubt, the defense is not even required to adduce evidence. The presumption of innocence on the part of accused-appellant in this case thus must be upheld.

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.*:

Before us for review is the Decision[1] of the Court of Appeals in CA-G.R. CEB CR HC No. 01007 dated 21 September 2012, which dismissed the appeal of accused-appellant Eduardo Yepes and affirmed with modification the Judgment[2] of the Regional Trial Court (RTC), Branch 28 of Catbalogan City in Criminal Case Nos. 6125-6126 finding accused-appellant guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant was charged with violation of Section 5, Article II of R.A. No. 9165, to wit:

---

[1] *Rollo*, pp. 3-12; Penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Carmelita Salandanan-Manahan and Zenaida T. Galapate-Laguilles concurring.

[2] Records, pp. 175-190; Penned by Judge Sibanah E. Usman.

That on or about the 29th day of July 2004, at about 6:20 o'clock in the evening, more or less, at vicinity of Purok 6, Barangay Guindapunan, Municipality of Catbalogan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to gain and without being authorized by law, did, then and there, wilfully, unlawfully and feloniously sell and hand over One (1) Heat sealed transparent plastic bag containing white crystalline substance called methylamphetamine Hydrocholoride locally known as "shabu", a dangerous drug, having the following marking and net weight, to wit: "A-1-("JFI-1")-0.03 gram", as per Chemistry Report No. D-276-2004, to PO1 Ervin A. Ariño who acted as poseur-buyer in a "buy-bust" operation conducted by the Samar Provincial Police Office (PPO) of Catbalogan, Samar, as evidenced by the Two (2) pieces of One Hundred Pesos Bills (₱100.00) marked money with Serial Numbers RN535127 and QJ837907, respectively.[3]

At his arraignment, accused-appellant pleaded not guilty. Trial ensued.

The prosecution presented as witnesses Police Officer 2 Ervin Ariño (PO2 Ariño), Police Senior Inspector Benjamin Aguirre Cruto (P/S Insp. Cruto) PO2 Roy Lapura (PO2 Lapura), Senior Police Officer 4 Romy dela Cruz (SPO4 dela Cruz), PO3 Nelson Lapeciros (PO3 Lapeciros) and PO3 Jay Ilagan (PO3 Ilagan).

PO2 Ariño testified that on 29 July 2004, at around 6:20 in the evening, he was with PO2 Lapura and PO2 Arthur Perdiso (PO2 Perdiso) at Purok 6, *Barangay* Guindapunan, Catbalogan City to conduct a buy-bust operation on a person yet to be identified and accompanied by their police asset. The operation had been authorized by Police Inspector Carlos G. Vencio in the afternoon of the same day. The police asset whose name PO2 Ariño failed to remember on the witness stand, arrived in a motorcycle with accused-appellant as passenger. PO2 Ariño, as *poseur* buyer, then asked accused-appellant if he had "some stuff" and the latter nodded. PO2 Ariño gave him two (2) One Hundred Peso (₱100.00) bills in exchange for a small sachet of what PO2 Ariño believed to be *shabu* based on its appearance.

---

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

PO2 Ariño removed his cap to signal the consummation of the operation to his companions who had been hiding behind a concrete wall about 5-6 meters away. When his companions arrived and arrested accused-appellant, PO2 Ariño headed for the police station to report the outcome of the operation. Thereat, he surrendered the plastic sachet to PO3 Ilagan.[4]

PO2 Lapura confirmed that they had not been informed about the identity of the suspect before the buy-bust operation and that the police asset was to identify him for them. During the buy-bust operation, PO2 Lapura together with PO2 Perdiso and SPO4 dela Cruz been stationed more or less ten (10) meters from the location of the alleged buy-bust operation. PO2 Lapura saw accused-appellant and PO2 Ariño hand one another something and when the latter executed the pre-arranged, signal, PO2 Lapura and PO2 Perdiso approached them. PO2 Lapura informed the accused-appellant of his constitutional rights and conducted a body search on the latter which yielded two (2) small plastic sachets and two (2) pieces of One Hundred Peso (₱100.00) bills. PO2 Lapura subsequently handed the sachets to SPO4 dela Cruz who had remained at their original location and the bills to PO3 Ilagan at the police station. On cross-examination, PO2 Lapura stated that from his vantage point, he could not see the plastic sachet but merely saw accused-appellant hand PO2 Ariño something. He also stated that he cannot ascertain whether it was *shabu* due to the distance.[5]

SPO4 dela Cruz narrated that he had been waiting at the *barangay* hall when the buy-bust team together with accused-appellant passed by *en route* to the police station. PO2 Ariño handed him three (3) sachets. SPO4 dela Cruz proceeded to examine the contents of one of the sachets. His conclusion that the same was *shabu* is embodied in a Certification of Drug Field Test dated 29 July 2004.[6]

---

[4] TSN, 26 July 2006, pp. 4-11.

[5] TSN, 7 March 2007, pp. 8-18.

[6] TSN, 24 May 2007, pp. 4-7.

PO3 Ilagan, as evidence custodian, testified that three (3) sachets of *shabu* had been surrendered to him at the police station by officers PO2 Ariño and Lapura. He marked the evidence as "JFI" and submitted them to the Philippine Drug Enforcement Agency (PDEA) for examination.[7]

PO3 Lapeciros stated that he had photocopied five (5) pieces of One Hundred Peso (₱100.00) bills and had them subscribed by the Office of the Clerk of Court for use in buy-bust operations.[8]

P/S Insp. Cruto testified that he had conducted a physical examination of the substance alleged to be *shabu*.[9] His positive findings are encapsulated in Chemistry Report No. D-276-2004.[10]

Accused-appellant testified on his behalf and vehemently denied the indictment. He narrated that on the date of the alleged buy-bust operation, he had just come from the public cemetery and was walking to the town proper when a person named Lagrimas, known to be a police asset, came around driving a motorcycle. Lagrimas requested accused-appellant to ride with him in his motorcycle and he acceded. Near the grandstand in *Barangay* Guindapunan, Lagrimas parked the motorcycle with several police officers, more than ten (10) of them, within distance. The police officers approached them and handcuffed accused-appellant. Lagrimas pulled out *shabu* from his shirt, gave it to one of the police officers who attempted to put it inside accused-appellant's pocket which the latter was able to resist. The police officers brought accused-appellant to the police station and there was shown the sachet of *shabu* but he denied any charges. The police officers told him "here, so that you can go free, because according to you, you have not committed any crime, here is Two Hundred (₱200.00) Pesos marked money, go to Guinsorongan, buy this 'shabu', to whoever you will give the money, that is the one we

---

[7] TSN, 20 June 2007, pp. 12-21.

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

[9] TSN, 7 February 2007, pp. 5-7.

[10] Exhibit Folder, p. 10.

will apprehend." When accused-appellant refused the request, he was placed inside the detention cell.[11]

On 19 December 2008, the RTC rendered judgment finding accused-appellant guilty of illegal sale of a dangerous drug. The dispositive portion of the RTC Decision reads:

> WHEREFORE, premises considered, this Court hereby sentences the accused **EDUARDO YEPES Y CINCO**, beyond reasonable doubt for Violation of Section 5 of R.A. No. 9165 and, thus, punishes him to suffer a penalty of life imprisonment to death and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00). But however, acquits the accused of illegal possession of shabu under Section 11 of R.A. No. 9165.
>
> Mr. Victor Templonuevo, OIC, Provincial Warden, is hereby directed to deliver the living body of accused Yepes to Abuyog Penal Colony immediately upon receipt of this judgment, unless otherwise, detained for some other causes. With *cost de oficio*.[12]

Accused-appellant moved for a reconsideration and re-opening of the case, tendering a joint affidavit executed by four (4) affiants stating that no buy-bust operation took place on 29 July 2004, and that about the time of the alleged operation, accused-appellant was working at another place and that the latter is of good moral character and enjoys good standing in their community.[13] This the RTC denied.[14]

Accused-appellant filed a Notice of Appeal on 18 February 2009.[15] On 21 September 2012, the Court of Appeals rendered the assailed judgment affirming with modification the trial court's decision. The Court of Appeals found accused-appellant guilty of the crime charged, or violation of Section 5, Article II of R.A. 9165.

---

[11] TSN, 27 February 2008, 4-18.

[12] Records, p. 190.

[13] *Id.* at 205-207.

[14] *Id.* at 214; Order dated 9 February 2009.

[15] *Id.* at 215.

Accused-appellant appealed his conviction before this Court. In a Resolution[16] dated 08 July 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.[17]

Accused-appellant asserts that the *shabu* was planted by the police officers and that there was no sufficient proof that the prosecution witnesses had indeed seen him sell *shabu*. In addition, the police officers failed to observe the proper procedure in the handling, custody and disposition of the seized drug.

The Court finds merit in the appeal.

The RTC anchored accused-appellant's conviction fundamentally on the testimonial evidence of the prosecution. The RTC brushed aside accused-appellant's defense of denial ruling that his evidence failed to overturn the presumption of regularity in the performance of official duties on the part of the police officers. Similarly, the Court of Appeals affirmed the judgment of the RTC, also lending greater credence to the testimonial evidence of the prosecution. According to the Court of Appeals, said evidence was found to have sufficiently established the elements of the crime charged, as well as the fact of preservation of the integrity and evidentiary value of the drug specimens seized. The appellate court also upheld the presumption of regularity in favor of the police officers.

The Court reviewed the records of the instant case and saw a different story. The police officers had indeed committed serious lapses in procedure in the conduct of the buy-bust operation on 29 July 2004. The Court also finds that the evidence for the prosecution falls short of the exacting degree of proof beyond reasonable doubt required under our criminal laws.

---

[16] *Rollo*, p. 16.

[17] *Id.* at 25.

Generally, the trial court's findings of fact, especially when affirmed by the Court of Appeals, are entitled to great weight and will not be disturbed on appeal. This rule, however, admits of exceptions and does not apply where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied as in the case at bar.[18]

To secure a conviction for illegal sale of *shabu*, the following elements must be present: (a) the identities of the buyer and the seller, the object of the sale and the consideration; and (b) the delivery of the thing sold and the payment for the thing. It is material to establish that the transaction or sale actually took place, and to bring to the court the *corpus delicti* as evidence.[19] Proof beyond reasonable doubt in criminal prosecutions for the sale of illegal drugs demands that unwavering exactitude be observed in establishing the *corpus delicti*, the body of crime whose core is the confiscated illicit drug.[20]

The reason for this the Court elucidated in *People v. Tan*,[21] to wit:

> [B]y the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heron can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses. Needless to state, the lower court should have exercised the utmost diligence and prudence in deliberating upon accused-appellants guilt. It should have given more serious consideration to the *pros* and *cons* of the

---

[18] See *People v. Kamad*, 624 Phil. 289, 299-300 (2010).

[19] *People v. Secreto*, G.R. No. 198115, 27 February 2013, 692 SCRA 298, 306-307.

[20] *People v. Beran*, G.R. No. 203028, 15 January 2014, 715 SCRA 165, 186 citing *People v. Pagaduan*, 641 Phil. 432 (2010).

[21] 401 Phil. 259, 273 (2000).

evidence offered by both the defense and the State and many loose ends should have been settled by the trial court in determining the merits of the present case.

The Court carefully examined the pieces of evidence on record, read the testimonies of the witnesses for the prosecution and the defense, and noted the following material points:

1. Only the police asset/informant and PO2 Ariño had personal knowledge of the buy-bust operation, if at all one was done. Interestingly, the prosecution never presented the police asset. Neither had any statement been taken from him which was material considering that he was the lone source of information regarding accused-appellant's supposed illegal activities. It is noteworthy that the identity of the accused-appellant had not been known to any of the participants of the buy-bust team and that he could only be identified through the police asset. It is also remarkable that PO2 Ariño could not remember the police asset's name on the witness stand. No surveillance was conducted to identify the alleged drug-pusher who would be the subject of the entrapment. There was even no evidence regarding the dependability or reliability of the police asset.
2. PO2 Ariño testified that immediately after his companions apprehended accused-appellant, he went back to the police station to report the incident and hand over **one (1**) plastic sachet to PO3 Ilagan. His actuations were not according to procedure. PO2 Ariño left the scene shortly. There was no mention that he marked the sachet, nor that he took photographs and made an inventory of the same. PO2 Ariño stated that he had the sachet marked but could not recall its marking. Most importantly, PO2 Ariño stated that he surrendered only **one (1)** sachet and that he surrendered the same to **PO3 Ilagan**.
3. PO2 Lapura was positioned with SPO4 dela Cruz and PO2 Perdiso some ten (10) meters away from the location of the buy-bust operation. He admitted that he merely observed the gestures of the PO2 Ariño and accused-appellant and that he could not ascertain from his vantage point whether the plastic sachet indeed contained *shabu*. PO2 Lapura also testified

that his body search on accused-appellant yielded two (2) small plastic sachets and two (2) pieces of One Hundred Peso (₱100.00) bills. PO2 Lapura handed the **sachets to SPO4 dela Cruz** who had remained at their original post and the **bills to PO3 Ilagan at the police station**.

4. SPO4 dela Cruz did not witness the buy-bust operation as **he had waited at the barangay hall**. There, PO2 Ariño allegedly handed him **three (3) sachets**. He opened one (1) sachet, **tasted it and concluded that the same and the other two (2) sachets all contained *shabu***.

5. PO3 Ilagan testified that, as evidence custodian, **three (3) sachets** of *shabu* had been surrendered to him at the police station by **officers PO2 Ariño and Lapura**. He marked the evidence as "JFI" and submitted them to PDEA for examination. There was no mention whether the marking had been made in the presence of accused-appellant.

6. PO3 Lapeciros and P/S Insp. Cruto only performed limited tasks and had no personal knowledge of the buy-bust operation.

Evidently, there are material inconsistencies between and among the testimonies of the police officers raising doubts whether an entrapment operation had indeed been made; and serious questions regarding the integrity of the *corpus delicti* if truly there had been a buy-bust operation. Considering that the police asset was not presented, the evidence against accused-appellant consists solely of PO2 Ariño's declaration that there was a buy-bust operation conducted on a drug-pusher who turned out to be accused-appellant. It is PO2 Ariño's positive declaration versus accused-appellant's denial. While law enforcers enjoy the presumption of regularity in the performance of duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot, by itself constitute proof of guilt beyond reasonable doubt.[22] And although the defense of denial may be weak, courts should not at once look at them with disfavor as there are situations where an accused may really

[22] *People v. Cañete*, 433 Phil. 781, 794 (2002).

have no other defenses which, if established to be truth, may tilt the scales of justice in his favor, especially when the prosecution evidence itself is weak.[23]

Even assuming that an entrapment operation in truth had been made, the presumption that police officers enjoy is also overcome by evidence of their procedural lapses in the handling of the seized drug. In illegal drugs cases, the identity and integrity of the drugs seized must be established with the same unwavering exactitude as that required to arrive at a finding of guilt.[24]

The procedure set forth in Section 21 of R.A. No. 9165 is intended precisely to ensure the identity and integrity of dangerous drugs seized. This provision requires that upon seizure of illegal drug items, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) a representative from the media and the Department of Justice and any elected public official (e) who shall all be required to sign the inventory and be given copies thereof.

Section 21 was laid down by Congress as a safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs. Under the principle that penal laws are strictly construed against the government, stringent compliance therewith is fully justified.[25]

In the present case, the procedure was not observed at all. Such noncompliance raises questions whether the illegal drug items were the same ones allegedly seized from accused-appellant.

Although justifiable grounds may excuse noncompliance with the requirements of Section 21 as long as the integrity and

---

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

[24] *Mallillin v. People*, 576 Phil. 576, 586-587 (2008).

[25] *Rontos v. People*, G.R. No. 188024, 5 June 2013, 697 SCRA 372, 379-380.

evidentiary value of the seized items are properly preserved, the police officers in the present case presented no justifiable reason for the non-observance of the procedure. Lamentably, both RTC and the Court of Appeals failed to even note at all that there were deficiencies in the handling of the seized evidence much less inquire into the reasons for the non-observance of procedure.

Most important, the Court finds as established fact that the integrity and evidentiary value of the illegal drugs seized were not shown to have been preserved. Contrarily, the records of the case bear out the glaring fact that the chain of custody of the seized illegal drugs was broken even at the very first link thereof.

To recall, the testimonial evidence of the prosecution could not even be sure about the number of sachets seized from accused-appellant and to whom it was first handed to by PO2 Ariño. PO2 Ariño testified that he handed it to PO3 Ilagan at the police station who in turn testified that he received three (3) sachets from **both** PO2 Ariño and PO2 Lapura. PO2 Lapura said that he gave two (2) sachets to SPO4 dela Cruz who had been **remained** at his original post. SPO4 dela Cruz however stated that **at the barangay hall** where he had been staying the whole time, PO2 Ariño handed him three (3) sachets. These are confusing testimonies of witnesses who are themselves confused.

Corpus delicti is the "actual commission by someone of the particular crime charged."[26] In illegal drug cases, it refers to the illegal drug item itself.[27] When there are reservations about the identity of the illegal drug item allegedly seized from the accused, the actual commission of the crime charged is put into serious question and courts have no alternative but to acquit on the ground of reasonable doubt.

Even if accused-appellant failed to present evidence with respect to his defense of denial or the ill motive that impelled

---

[26] *People v. Roble*, 663 Phil. 147, 157 (2011).

[27] *People v. Alejandro*, 671 Phil. 33, 44 (2011).

the police officers to falsely impute upon him the crime charged, the same is of no moment. The evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.[28] If the prosecution cannot establish the guilt of accused-appellant beyond reasonable doubt, the defense is not even required to adduce evidence. The presumption of innocence on the part of accused-appellant in this case thus must be upheld.

WHEREFORE, we **REVERSE and SET ASIDE** the Decision dated 21 September 2012 of the Court of Appeals in C.A.-G.R. CEB CR HC No. 01007. Accused-appellant Eduardo Yepes is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention unless he is confined for another lawful cause.

Let a copy of the decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court the action taken thereon within five (5) days from receipt of this Decision.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, del Castillo,[*] and *Reyes, JJ.*, concur.

---

[28] *People v. De Guzman*, 630 Phil. 637, 655 (2010).

[*] Additional Member per Raffle dated 10 February 2016.

THIRD DIVISION

[G.R. No. 208360. April 6, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FELIPE BUGHO *y* ROMPAL, a.k.a. "JUN THE MAGICIAN",** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; ELEMENTS.—** [T]wo elements must be established to hold the accused guilty of statutory rape, namely: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below twelve years of age or demented. Thus, proof of force, intimidation and consent is unnecessary since none of these is an element of statutory rape as the only subject of inquiry is the age of the woman and whether carnal knowledge took place.

2. **ID.; ID.; ID.; PENILE INVASION NECESSARILY ENTAILS CONTACT WITH THE *LABIA* AND EVEN THE BRIEFEST OF CONTACTS WITHOUT LACERATION OF THE HYMEN IS DEEMED TO BE RAPE.—** Indeed, there is no doubt that appellant's sex organ had gone beyond AAA's *mons pubis* and had touched the labia of the pudendum as established by the erythema or redness of the urethra and hymen and swelling of the periurethral area, which are of recent incident. The said areas are located in the internal part of the vagina and for the penis to touch those areas is to attain a degree of penetration beneath the surface of the female genitalia. Penile invasion necessarily entails contact with the *labia* and even the briefest of contacts without laceration of the hymen is deemed to be rape. Moreover, Dr. Dizon's finding that the erythema and swelling found in the internal part of the vagina are of recent incident further bolstered AAA's claim of rape the day before.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE ABSENCE OF STRUGGLE OR OUTCRY OF THE CHILD VICTIM OR EVEN HER PASSIVE SUBMISSION TO THE SEXUAL ACT WILL**

NOT MITIGATE NOR ABSOLVE THE ACCUSED FROM LIABILITY, AS THE LAW PRESUMES THAT A WOMAN OF TENDER AGE DOES NOT POSSESS DISCERNMENT AND IS INCAPABLE OF GIVING INTELLIGENT CONSENT TO THE SEXUAL ACT.— Appellant also attacks AAA's credibility because of her continued visits to appellant's house despite her allegations of several rapes earlier committed against her. AAA testified that she found appellant's magical tricks fun to watch and because he had rabbits, snakes and doves in his house. The joy that appellant's magic and his animals brought to an innocent child did not deter the latter from going back to appellant's house. Sadly, however, appellant took the opportunity to satisfy his carnal desires on the innocent child. It bears stressing that mere sexual congress with a woman below twelve years of age consummates the crimes of statutory rape. The absence of struggle or outcry of the victim or even her passive submission to the sexual act will not mitigate nor absolve the accused from liability. The law presumes that a woman of tender age does not possess discernment and is incapable of giving intelligent consent to the sexual act. The child victim's consent is immaterial because of her presumed incapacity to discern evil from good.

4. **ID.; ID.; ID.; THE FAILURE OF THE CHILD VICTIM TO REPORT THE SEXUAL ABUSE TO HER PARENTS DOES NOT CAST DOUBT ON THE CREDIBILITY OF HER CHARGE.—** Appellant's claim that AAA's failure to report the sexual abuse to her parents also casts doubt on the credibility of her charge is not meritorious. AAA explained that she did not report the sexual abuse to her parents for fear that the latter might get angry with her and might scold or whip her since she and her sister had been forbidden by their parents to go to appellant's house to watch tricks as it disturbed their schooling. Thus, as the Office of the Solicitor General correctly stated, "the prospect of experiencing physical pain and verbal abuse from her parents, in the mind of a ten-year-old girl, is enough reason for the delay in exacting the truth from her." Notably, it was only after AAA's father had a heart-to-heart talk with her on the night of September 17, 2004 and assured her of the latter's understanding that AAA started to talk on what appellant had done to her.

5. ID.; ID.; ID.; THE RAPE VICTIM'S POSITIVE TESTIMONY, COUPLED WITH THE MEDICAL FINDINGS, DESERVES MORE PURSUASIVE WEIGHT THAN THE BARE DENIAL OF APPELLANT.— The RTC correctly rejected appellant's denial which is a self-serving negative evidence that cannot be given greater weight than the declaration of a credible witness who testify on affirmative matters. AAA's positive testimony, coupled with the medical findings, deserves more persuasive weight than the bare denial of appellant.

6. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; PROPER PENALTY.— We find that the RTC, as affirmed by the CA, correctly imposed the penalty of *reclusion perpetua* upon appellant for the crime of statutory rape in accordance with Article 266-B of the Revised Penal Code, as amended.

7. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— The CA's modification of the RTC's awards of civil indemnity and moral damages to the amounts of ₱50,000.00 each, as well as the increase of the exemplary damages to the amount of ₱30,000.00, are likewise affirmed. In addition, the amount of damages awarded should earn interest at the rate of 6% *per annum* from the finality of this judgment until said amounts are fully paid.

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.*:

For review is the Decision[1] dated September 10, 2012 of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 04123 which affirmed the conviction of appellant for statutory rape under

[1] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Vicente S. E. Veloso and Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 2-16.

Article 266-A of the Revised Penal Code and imposed the penalty of *reclusion perpetua*.

Appellant was charged in the Regional Trial Court (RTC) of Baguio City, Branch 59, with statutory rape in an Amended Information[2] dated October 29, 2004, the accusatory portion of which reads:

> That on or about the 17th day of September 2004, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously and by means of cajolery, deceit and other fraudulent machinations, have carnal knowledge of complainant AAA,[3] a minor under twelve (12) years of age.
>
> CONTRARY TO LAW.[4]

When arraigned,[5] appellant pleaded not guilty to the crime charged. Trial thereafter ensued.

The prosecution's evidence showed that in 2004, AAA was only 10 years old having been born on May 4, 1994,[6] and a grade 4 student.[7] She and appellant used to be neighbors.[8] On September 17, 2004, after her dismissal from school, AAA and her younger sister, BBB, went to the house of appellant, who was known in their neighborhood as a magician by occupation, to watch his magic tricks.[9] While AAA and BBB were inside appellant's house, the latter told BBB to leave the house as he

---

[2] Records, p. 18.

[3] The real names of the victim and her immediate family members, as well as any information which could establish or compromise her identity, are withheld, pursuant to *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] See note 2.

[5] *Id.* at 28.

[6] TSN, May 25, 2005, p. 6.

[7] TSN, May 17, 2005, p. 3.

[8] *Id.* at 5.

[9] *Id.* at 6-8.

was going to tell a secret to AAA.[10] BBB left the house and waited outside the gate.[11] Appellant brought AAA to his room and undressed her by removing her pants and panty and laid her on the bed.[12] Appellant then kissed her lips several times, licked her vagina and pressed his penis against it while on top of her.[13] AAA then felt a sticky liquid coming out from appellant's penis.[14] Later, appellant told AAA to put on her dress and gave her thirty pesos (₱30.00).[15] AAA then left appellant's house and looked for BBB, who after a while came out from the direction of appellant's apartment carrying two school bags, that of AAA's and her sister's. Both sisters then went home together.[16]

CCC, the godfather of AAA's father, DDD, and also appellant's neighbor was approached by BBB on September 17, 2004 asking the whereabouts of her sister AAA.[17] CCC later saw that as BBB passed by appellant's house, the latter handed a school bag to BBB[18] which he later learned to belong to AAA.[19] CCC told DDD about what he saw.[20] As DDD got suspicious that appellant was doing something unpleasant to AAA, he had a heart to heart talk with AAA,[21] who told him what appellant did to her on that day.[22] AAA also divulged that appellant had abused her several times before only that she was afraid to tell

---

[10] *Id.* at 9.

[11] *Id.*

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

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

[14] *Id.*

[15] *Id.* at 12.

[16] TSN, May 25, 2005, pp. 2-3.

[17] TSN, July 25, 2005, p. 7.

[18] *Id.* at 8.

[19] TSN, August 1, 2005, p. 4.

[20] TSN, July 25, 2005, p. 9.

[21] TSN, June 15, 2005, p. 7.

[22] *Id.* at 8.

her parents because of fear that they would spank her. The same evening, DDD, accompanied by his wife, brought AAA to the Baguio City Police Station and filed a complaint against appellant,[23] and later proceeded to the Baguio General Hospital and Medical Center (BGHMC) for AAA's physical examination.[24]

Dr. Gwynette Dizon, the Chief Resident of the Pediatric Department of the BGHMC, conducted an ano-genital examination on AAA the following day the incident happened. She issued a medical certificate[25] which showed erythema and swelling of the urethra and periurethral area and erythema on the hymen. During trial, she testified that there was erythema or redness over the urethra and periurethral area and such erythema was fresh which implied a recent incident;[26] that erythema or redness and swelling may be caused by the pressing of the male sex organ to the victim's organ.[27]

Appellant denied the allegation saying that he was doing laundry chores outside his apartment when AAA approached him to collect the amount of ₱30.00 as payment for taking care of his doves and rabbits, which appellant then paid.[28] Appellant later saw AAA sliding down on the stairway railing with her hands and her two feet clipped over the pole.[29] By past noon, he was asked by BBB regarding AAA's whereabouts to which he replied that AAA had already gone home.

On June 10, 2009, the RTC rendered its Decision,[30] the dispositive portion of which reads:

---

[23] *Id.* at 9.

[24] *Id.* at 11.

[25] Records, p. 163.

[26] TSN, October 25, 2005, pp. 8-9.

[27] *Id.* at 9.

[28] TSN, September 26, 2006, pp. 4-6.

[29] *Id.* at 6-7.

[30] CA *rollo*, pp. 38-45; Per Judge Iluminada P. Cabato; Docketed as Criminal Case No. 23626-R.

WHEREFORE, premises all duly considered, the court finds that the prosecution has established the guilt of the accused of the crime of rape under par. 1 (d) of RA 8353 beyond reasonable doubt and hereby imposes upon him the penalty of *Reclusion Perpetua* and to indemnify the offended party the amount of ₱75,000.00 as civil indemnity, the amount of ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages and to pay the costs.[31]

The RTC found that appellant's denial cannot prevail over AAA's clear and positive testimony. Appellant's admission that AAA went to his place and gave her ₱30.00 strengthened the prosecution's evidence; and that the findings of Dr. Dizon that the erythema and swelling found in AAA's genitalia supported the charge of statutory rape.

On September 10, 2012, the CA rendered its Decision, the decretal portion of which reads:

WHEREFORE, premises considered, the Judgment dated 10 June 2009 issued by the Regional Trial Court of Baguio City, Branch 59, finding accused-appellant Felipe Bugho GUILTY beyond reasonable doubt of the crime of RAPE is hereby AFFIRMED with MODIFICATION as to the award of damages: Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages. Costs against the accused-appellant.[32]

Dissatisfied, appellant filed a Notice of Appeal. On September 30, 2013, we required the parties to submit Supplemental Briefs if they so desired.[33] The parties manifested that they were no longer filing supplemental briefs as they had already exhaustively argued their case in their respective briefs filed before the CA.

Appellant contends that his conviction is patently erroneous as it was merely based on the corroborative testimony of Dr. Dizon that AAA suffered erythema on her urethra and periurethral areas; and that AAA's credibility is questionable considering

---

[31] *Id.* at 45.

[32] *Rollo*, p. 15.

[33] *Id.* at 22.

her unexplained continued visits to appellant's apartment until September 17, 2004 despite her allegation that the latter raped her in the same place and manner for several times; and also her failure to justify her non-immediate and voluntary reporting of any molestations to her parents. Appellant further argues that the prosecution failed to prove his guilt as there was no showing that appellant had a penile penetration to consummate the crime of rape.

We find no merit in the appeal.

Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, defines statutory rape as follows:

> Article 266-A. *Rape, When and How Committed*. — Rape is committed —
>
> 1) By a man who shall have carnal knowledge of a woman x x x;
>
> xxx xxx xxx
>
> 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

Thus, two elements must be established to hold the accused guilty of statutory rape, namely: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below twelve years of age or demented. Thus, proof of force, intimidation and consent is unnecessary since none of these is an element of statutory rape as the only subject of inquiry is the age of the woman and whether carnal knowledge took place.[34]

In this case, AAA was only 10 years old when appellant had carnal knowledge of her on September 17, 2004 as she was born on May 4, 1994. AAA's age was stipulated and admitted by appellant and his counsel during the pre-trial conference.[35]

---

[34] *People v. Garbida*, 639 Phil. 107, 116 (2010), citing *People v. Sarcia*, 615 Phil. 97, 118 (2009).

[35] Records, pp. 31, 35-37.

AAA had narrated in a positive and categorical manner how she was sexually abused by appellant. She testified that appellant brought her to his room, removed her pants and panty and laid her on the bed. He kissed her lips, licked her vagina and pressed his penis against her vagina while he was on top of her. She later felt a warm sticky liquid coming out from appellant's sex organ. Thereafter, appellant asked her to put on her dress and gave her ₱30.00.

The Medical Certificate issued by Dr. Dizon lends credence to AAA's testimony that appellant had pressed his sex organ on her vagina. The medical certificate showed that there was erythema or redness and swelling of the urethra and periurethral area and also erythema of the hymen. During the trial, Dr. Dizon explained her findings in this wise:

Q. Now I call your attention to an entry under the heading Ano-Genital Examination after the phrase urethra and periurethral area of the entry reads (+) erythema (+) swelling. Now can you tell the court in layman's term what these findings are?
A. The urethra is the area where the urine comes out and periurethral area is the area around the urethra. I saw erythema meaning redness over there and there was also swelling.

Q. And was this erythema fresh at that time?
A. Yes, sir. Difficult to determine the age sir, but usually presence of redness would imply an acute incident.

Q. Meaning?
A. Meaning recent incident.

xxx xxx xxx

Q. Now can the pressing of a male penis on the sex organ of the victim cause erythema?
A. Yes, possible sir.

Q. And can the pressing of the male penis on the private part of the victim cause also swelling.
A. Possible sir.[36]

xxx xxx xxx

---

[36] TSN, October 25, 2005, pp. 8-9.

Q. Now, you said you took down the brief history of the patient's complaint?
A. Yes, sir.

Q. And after that, you conducted the ano-genital examination on the said person?
A. Yes, sir.

Q. Were your findings as embodied in "Exhibit C" consistent with the history which you took from the patient?

A. Yes, sir.[37]

To the court's clarificatory questions, Dr. Dizon stated, to wit:

COURT:

Q. In your examination on the patient, you do interview, you do external as well as internal examinations. As an expert witness, is there sufficient evidence to show that that particular patient had been sexually abused?
A. Your honor, that is why we wrote in the impression that the ano-genital findings seen in this patient are to be expected in a child who describes this type of molestation because it's how she describes how she was abused.

May I read it?
Court: Yes.

Witness:
"Dinala ako sa kwarto niya at tinanggal ang t-shirt at pantalon ko. Hinawakan nya pekpek ko at dinikit ari nya. Hinalikan din ako sa lips at sa pekpek ko."
Based on the history, the perpetrator did not put inside (*sic*) or did not penetrate.

COURT:

Q. Based on the interview?
A. Yes, your honor.

Q. Would that interview be consistent with your findings?
A. Yes, your honor, because in this interview the victim describes

---

[37] *Id.* at 10.

that the perpetrator held and placed his penis over her external genitalia and also the perpetrator kissed her private part.

Q. So in that particular examination, therefore, finding redness and swelling over the internal part of the vagina there was pressure applied to that?
A. Yes, your honor, it's possible.

Q. And there was no external injury outside of the vaginal premises?
A. Yes, your honor, over the external, the covering.

Q. None, the covering none?
A. None.

Q. But inside, there was?
A. Yes, your honor.[38]

In *People v. Campuhan*,[39] we stated that:

> x x x touching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the *mons pubis*, as in this case. There must be sufficient and convincing proof that the penis indeed touched the labias or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. As the labias, which are required to be "touched" by the penis, are by their natural situs or location beneath the mons pubis or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the *labia majora* or the *labia minora* of the *pudendum* constitutes consummated rape.[40]

Indeed, there is no doubt that appellant's sex organ had gone beyond AAA's *mons pubis* and had touched the labia of the pudendum as established by the erythema or redness of the urethra and hymen and swelling of the periurethral area, which are of recent incident. The said areas are located in the internal part of the vagina and for the penis to touch those areas is to attain

---

[38] TSN, January 24, 2006, pp. 8-9.

[39] 385 Phil. 912 (2000).

[40] *People v. Campuhan*, *supra*, at 920-921. (Emphasis omitted)

a degree of penetration beneath the surface of the female genitalia. Penile invasion necessarily entails contact with the *labia* and even the briefest of contacts without laceration of the hymen is deemed to be rape.[41] Moreover, Dr. Dizon's finding that the erythema and swelling found in the internal part of the vagina are of recent incident further bolstered AAA's claim of rape the day before.

Appellant also attacks AAA's credibility because of her continued visits to appellant's house despite her allegations of several rapes earlier committed against her.

AAA testified that she found appellant's magical tricks fun to watch[42] and because he had rabbits, snakes and doves in his house.[43] The joy that appellant's magic and his animals brought to an innocent child did not deter the latter from going back to appellant's house. Sadly, however, appellant took the opportunity to satisfy his carnal desires on the innocent child. It bears stressing that mere sexual congress with a woman below twelve years of age consummates the crime of statutory rape. The absence of struggle or outcry of the victim or even her passive submission to the sexual act will not mitigate nor absolve the accused from liability.[44] The law presumes that a woman of tender age does not possess discernment and is incapable of giving intelligent consent to the sexual act.[45] The child victim's consent is immaterial because of her presumed incapacity to discern evil from good.[46]

---

[41] *People v. Aguiluz*, 406 Phil. 936, 944 (2001), citing *People v. Dimapilis*, 360 Phil. 466, 495 (1998).

[42] TSN, May 30, 2005, p. 15.

[43] *Id.*

[44] *People v. Jalosjos*, 421 Phil. 43, 93 (2001), citing *People v. Quinagoran*, 374 Phil. 111, 121 (1999).

[45] *Id.*

[46] *People v. Teodoro*, G.R. No. 172372, December 4, 2009, 607 SCRA 307, 315.

Appellant's claim that AAA's failure to report the sexual abuse to her parents also casts doubt on the credibility of her charge is not meritorious. AAA explained that she did not report the sexual abuse to her parents for fear that the latter might get angry with her and might scold or whip her[47] since she and her sister had been forbidden by their parents to go to appellant's house to watch magic tricks as it disturbed their schooling.[48] Thus, as the Office of the Solicitor General correctly stated, "the prospect of experiencing physical pain and verbal abuse from her parents, in the mind of a ten-year-old girl, is enough reason for the delay in exacting the truth from her."[49] Notably, it was only after AAA's father had a heart-to-heart talk with her on the night of September 17, 2004 and assured her of the latter's understanding that AAA started to talk on what appellant had done to her.[50]

The alleged inconsistency as to the amount AAA received from appellant after the rape incident, whether ₱15.00 or ₱30.00, refers to a minor matter which is irrelevant to the elements of the crime of rape.

The RTC correctly rejected appellant's denial which is a self-serving negative evidence that cannot be given greater weight than the declaration of a credible witness who testify on affirmative matters.[51] AAA's positive testimony, coupled with the medical findings, deserves more persuasive weight than the bare denial of appellant.

---

[47] TSN, May 25, 2005, pp. 3-4.

[48] TSN, May 30, 2005, p. 3.

[49] *Rollo*, p. 121.

[50] TSN, June 15, 2005, pp. 7-8.

[51] *People v. Buclao*, G.R. No. 208173, June 11, 2014, 726 SCRA 365, 379, citing *People v. Alvero*, 386 Phil. 181, 200 (2000); see *People v. Piosang*, G.R. No. 200329, June 5, 2013, 697 SCRA 587, 596.

We find that the RTC, as affirmed by the CA, correctly imposed the penalty of *reclusion perpetua* upon appellant for the crime of statutory rape in accordance with Article 266-B[52] of the Revised Penal Code, as amended.

The CA's modification of the RTC's awards of civil indemnity and moral damages to the amounts of ₱50,000.00 each, as well as the increase of the exemplary damages to the amount of ₱30,000.00, are likewise affirmed. In addition, the amount of damages awarded should earn interest at the rate of 6% *per annum* from the finality of this judgment until said amounts are fully paid.[53]

WHEREFORE, the petition is **DISMISSED**. The Decision dated September 10, 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 04123 is hereby **AFFIRMED**. Appellant Felipe Bugho y Rompal is further **ORDERED** to **PAY** legal interest on all damages awarded in this case at the rate of six percent (6%) *per annum* from the date of finality of this decision until fully paid.

SO ORDERED.

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

---

[52] Article 266-B. *Penalty*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

[53] *Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated February 29, 2016.

THIRD DIVISION

[G.R. No. 208446. April 6, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff and appellee, vs.* **JONEL VARGAS *Y* RAMOS, JERIENALD VILLAMERO *Y* ESMAN, ARMANDO CADANO @ MANDO, JOJO ENORME @ JOJO, RUTHER GARCIA @ BENJIE/LOLOY, AND ALIAS TABOY,** *accused,* **JONEL VARGAS *Y* RAMOS, JERIENALD VILLAMERO *Y* ESMAN,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; THE TASK OF THE PROSECUTION IS TO PROVE BEYOND REASONABLE DOUBT THE COMMISSION OF THE CRIME CHARGED AND TO ESTABLISH WITH THE SAME QUANTUM OF PROOF THE IDENTITY OF PERSON RESPONSIBLE THEREFOR.— In every criminal case, the task of the prosecution is always two-fold, that is, (1) to prove beyond reasonable doubt the commission of the crime charged, and (2) to establish with the same quantum of proof the identity of the person or persons responsible therefor, because, even if the commission of the crime is a given, there can be no conviction without the identity of the malefactor being likewise clearly ascertained.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN SERIOUS AND INEXPLICABLE DISCREPANCIES ARE PRESENT BETWEEN A PREVIOUSLY EXECUTED SWORN STATEMENT OF A WITNESS AND HER TESTIMONIAL DECLARATIONS WITH RESPECT TO ONE'S PARTICIPATION IN A SERIOUS IMPUTATION, THERE IS RAISED A GRAVE DOUBT ON THE VERACITY OF THE WITNESS' ACCOUNT, AND THE INCONSISTENT STATEMENTS COULD NOT BE DISMISSED AS INCONSEQUENTIAL BECAUSE THE INCONSISTENCY GOES INTO THE VERY IDENTIFICATION OF THE ASSAILANTS, WHICH IS A CRUCIAL ASPECT IN SUSTAINING A CONVICTION. — In his Sworn

Statement, Adolfo mentioned six (6) individuals involved in the crime but that he could not remember who shot the victim. In his testimony however, the number of participants were reduced to two, who conveniently were the only two individuals arrested in connection with the crime. Adolfo also remembered seeing Jonel shoot the victim. We held in *People v. Flores* that when serious and inexplicable discrepancies are present between a previously executed sworn statement of a witness and her testimonial declarations with respect to one's participation in a serious imputation such as murder, there is raised a grave doubt on the veracity of the witness' account. There is no other evidence in this case aside from the testimony of the lone eyewitness which directly implicates appellants to the crime. The inconsistent statements could not be dismissed as inconsequential because the inconsistency goes into the very identification of the assailants, which is a crucial aspect in sustaining a conviction.

3. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; A SLIGHT DOUBT CREATED IN THE IDENTITY OF THE PERPETRATORS OF THE CRIME SHOULD BE RESOLVED IN FAVOR OF THE ACCUSED; RATIONALE.— The deficiency in the proof submitted by the prosecution cannot be ignored. A slight doubt created in the identity of the perpetrators of the crime should be resolved in favor of the accused. As succinctly put by the Court in *People v. Fernandez*: It is better to liberate a guilty man than to unjustly keep in prison one whose guilt has not been proved by the required quantum of evidence. Hence, despite the Court's support of ardent crusaders waging all-out war against felons on the loose, when the People's evidence fails to prove indubitably the accused's authorship of the crime of which they stand accused, it is the Court's duty – and the accused's right – to proclaim their innocence. Acquittal, therefore, is in order.

4. CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCES; TREACHERY; WHERE NO PARTICULARS ARE KNOWN AS TO HOW THE KILLING BEGAN, THE PERPETRATION OF AN ATTACK WITH TREACHERY CANNOT BE PRESUMED.— Appellants were correct in asserting that Adolfo did not witness the onset of the commotion. For treachery to be considered, it must be present and seen by

the witness right at the inception of the attack. Where no particulars are known as to how the killing began, the perpetration of an attack with treachery cannot be presumed. Adolfo merely saw the victim being chased by two armed men. He could not describe how the aggression began and who started it.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

PEREZ, *J.*:

Before us for review is the Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 05286 dated 8 January 2013 which affirmed with modification the Judgment[2] of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 12, in Criminal Case No. 1014-M-2005 finding appellants Jonel Vargas y Ramos (Jonel) and Jerienald Villamero y Esman (Jerienald) guilty beyond reasonable doubt of the crime of murder.

The Information filed on 7 April 2005 charged appellants with murder committed as follow:

That on or about the 4th day of September 2004, in San Jose del Monte City, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with unknown caliber guns, and with intent to kill one Jojo F. Magbanua, with evident premeditation, treachery and abuse of superior strength, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said firearms, they were then provided, the said

---

[1] *Rollo*, pp. 2-22; Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Franchito N. Diamante and Melchor Quirino C. Sadang concurring.

[2] Records, pp. 159-174; Presided by Judge Virgilita Bautista-Castillo.

Jojo F. Magbanua, hitting him on his head, thereby inflicting upon him mortal wound which directly caused his death.[3]

Appellants entered a "not guilty" plea. Trial proceeded.

The prosecution's lone eyewitness, Adolfo Lagac (Adolfo), narrated that on 4 September 2004, at around 7:00 p.m., he was inside a grocery store in *Barangay* Muzon, San Jose del Monte City, Bulacan when he heard a gunshot which preceded the arrival of Jojo Magbanua (Jojo), who was bloodied and running. Immediately thereafter, two (2) armed men, whom Adolfo identified as appellants Jonel and Jerienald, entered the grocery store. They approached Jojo who, then, was already sprawled on the ground. Adolfo saw Jonel shoot Jojo while Jerienald merely stood beside Jonel. After the shooting, appellants hurriedly left the store.[4]

The victim's father, Elias Magbanua (Elias) testified on the expenses he incurred as a result of the death of his son, Jojo. Elias however failed to present the receipts in court.

In his defense, Jonel claimed that he was watching television inside his house in Pabahay 2000 in San Jose del Monte City on 4 September 2004 between 4:00 p.m. and 11:00 p.m, the time of the supposed shooting incident. Jonel denied he knew and killed Jojo.[5] Jonel also denied knowing the eyewitness, Adolfo.[6]

Jerienald admitted that he and Jonel grew up together in Quezon City. He narrated that he was at home doing his chemistry project on 4 September 2004 when he heard from a neighbor that someone was killed in the area near the church. Worried for his cousins who were attending a service in said church, Jerienald went to the scene of the crime.[7] He did not find his cousins. He was arrested a year later or on 10 September 2005 by three aides upon identification by Jonel's brother.[8]

---

[3] *Id*. at 2.

[4] TSN, 10 February 2006, pp. 3-7.

[5] TSN, 30 May 2008, pp. 2-6.

[6] TSN, 8 August 2008, p. 3.

[7] TSN, 9 June 2009, pp. 3-5.

[8] TSN, 3 November 2009, pp. 13-1

Jerienald's mother corroborated his statement that he was at home studying on the date of the incident.[9]

On 30 June 2011, the RTC rendered judgment finding appellants guilty beyond reasonable doubt of Murder. The dispositive portion reads:

> **WHEREFORE**, the Court finds the accused JONEL VARGAS y RAMOS and JERIENALD VILLAMERO y ESMAN, **guilty beyond reasonable doubt of the crime of Murder**, and hereby sentences them to suffer the penalty of RECLUSION PERPETUA and to pay the heirs of the victim Jojo Magbanua, the sum of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and costs.
>
> In so far as the other accused ARMANDO CADANO @Mando; JOJO ENORME @ Jojo; and RUTHER GARCIA @Benjie/Loloy are concerned, let an ALIAS WARRANT be issued against them. In the meantime, the records of this case [are] hereby sent to the archives to be revived upon the arrest of the other accused.[10]

The RTC relied on the lone eyewitness' positive identification of appellants as the perpetrators of the crime over appellants' defense of denial and alibi.

Appellant seasonably filed a Notice of Appeal[11] before the Court of Appeals. On 8 January 2012, the Court of Appeals affirmed the judgment of the RTC with modification on the amount of damages awarded, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the appeal is **DENIED**. The Decision dated 30 June 2011 of the Regional Trial Court, Third Judicial Region, Branch 12, City of Malolos, Bulacan in Criminal Case No. 1014-M-2005, finding accused-appellants Jonel Vargas y Ramos and Jerienald Villamero y Esman guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code, sentencing accused-appellants to suffer the penalty of *reclusion perpetua*, and ordering them to pay to the heirs of the victim Jojo

---

[9] TSN, 7 October 2010, pp. 3-4.

[10] Records, p. 174.

[11] CA *rollo*, p. 66.

Francisco Magbanua the sum of Php75,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php30,000.00 as exemplary damages is **AFFIRMED** with **MODIFICATION** in that accused-appellants are further ordered to pay to the heirs of the victim Php25,000.00 as temperate damages, with interest of six percent (6%) per *annum* on all damages, from the date of finality of this Decision until fully paid.[12]

Appellants filed a Notice of Appeal.[13] On 25 September 2013, we issued a Resolution requiring the parties to file their supplemental briefs, if they so desire.[14] Both parties manifested that they will adopt the same arguments in their separate briefs filed before the Court of Appeals.[15]

Appellants highlight the inconsistencies in the statements given by the lone prosecution witness in his sworn statement and in his testimony in open court relative to the identification of the perpetrators. Appellants assert that due to said inconsistencies, their guilt has not been proven beyond reasonable doubt.

Appellants also question the trial court's finding of treachery to qualify the crime to murder. Appellants aver that the eyewitness did not witness the whole incident, thus treachery cannot be presumed.

We agree with appellants.

In every criminal case, the task of the prosecution is always two-fold, that is, (1) to prove beyond reasonable doubt the commission of the crime charged; and (2) to establish with the same quantum of proof the identity of the person or persons responsible therefor, because, even if the commission of the crime is a given, there can be no conviction without the identity of the malefactor being likewise clearly ascertained.[16]

In his sworn statement, Adolfo named six (6) individuals who apparently chased the victim into the grocery store, namely:

---

[12] *Rollo*, p. 21.

[13] *Id*. pp. 23-25.

[14] *Id*. pp. 29-30.

[15] *Id*. at 31-33 and 37-39.

[16] *People v. De Guzman,* G.R. No. 192250, 11 July 2012.

Jonel Vargas, *alyas* Taroy, *alyas* Mando, *alyas* Jojo, *alyas* Jamin and *alyas* Benjie, and he could not identify who shot the victim. He reasoned that he could not remember because he was too scared for his life.[17] Two years later and testifying before the court, Adolfo categorically identified appellants as the only two assailants who chased Adolfo into the grocery store and further pointed to Jonel as the one who shot him.

Generally, whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight considering that affidavits taken *ex parte* are inferior to testimony in court, the former being almost invariably incomplete and oftentimes inaccurate, sometimes from partial suggestions and sometimes from want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected circumstances necessary for his accurate recollection of the subject.[18]

The circumstances obtaining in this case militate against the application of the aforecited principle. The inconsistency between the two statements relate to the identification of the assailants. Adolfo named six (6) assailants in his sworn statement which was taken twelve (12) days after the shooting incident, thus:

6. T- : Kilala mo ba ang mga taong humabol at bumaril kay Jojo Magbanua?

S- : Kilala ko lang po sila sa mukha at sa kanilang mga alyas o palayaw.

7. T- : Kung kilala mo sila sa kanilang palayaw, ano-ano ang kanilang palayaw?

S- : Sina **Jonel Vargas, Alyas Taroy, Alyas Mando, Alyas Jojo, Alyas Jamin at si Alyas Benjie** po.[19] (Emphasis supplied)

---

[17] Records, p. 6.

[18] *Gonzales v. People*, 544 Phil. 409, 417-418 (2007).

[19] Records, p. 6.

Such categorical identification could not be taken as utterances made out of fear or panic. Adolfo gave out names which match the names of actual people living in *Barangay* Muzon. Furthermore, when pressed by the police officer on who shot the victim, Adolfo replied that he could not remember, thus:

8. T - : Sa mga taong sinabi mo, sino naman ang bumaril kay Jojo?

S - : Hindi ko na po matandaan sa kanila.

9. T - : Sinabi mong nakita mo nuong nabaril si Jojo, bakit hindi mo matandaan kung sino sa kanila ang bumaril?

S - : Dahil po sa natakot ako at nagmadali narin akong umalis.[20]

And then two years later, he crossed out from his recollection the other accused that were still at large and zeroed in on appellants as the only two assailants. Adolfo testified:

DIRECT-EXAMINATION BY FISCAL CARAIG:

Q: Tell us, Mr. Witness, if you can recall, where were you on September 4, 2004, at about 7:00 in the evening?
A: I was inside a store, a semi-grocery, sir.

Q: Where is that located?
A: At Phase 3, Pabahay 2000, sir.

Q: Barangay what?
A: Brgy. Muzon, San Jose del Monte City.

Q: While you were in that place, do you know of any unusual incident that took place?
A: Yes, sir.

Q: Tell us what was that?
A: I heard a gunshot from the nearby place and after about more than a minute, I saw the son of Elias Magbanua running towards the store where I was then buying cigarettes and I noticed that he had bloodstains on his back.

Q: Was that person you saw able to enter the grocery?
A: Yes, sir.

---

[20] *Id*.

Q: When he was able to enter the grocery, what did you saw (sic) next?
A: I saw blood on his back before he fell on the ground face up.

Q: And that is while he was already inside the grocery?
A: Yes, sir.

Q: On that point and time, how far were you from him?

INTERPRETER:

Witness pointing to the chair.

WITNESS:

A: Three (3) meters, sir.

FISCAL:

Q: And as you said that was 7:00 in the evening.
Why were you able to see him from that distance away from you?

A: Because the grocery was illuminated.

Q: And immediately before that person whom you saw running with bloodstains on his back, what other things did you see?
A: I saw the persons chasing this son of Elias and I noticed that they had guns with them.

Q: How many persons were chasing that person?
A: I only saw two (2) men with firearm who entered the grocery store.

Q: Were those persons the same persons you said chasing the son of Elias?
A: Yes, sir.

Q: Were they both armed with guns?
A: Yes, sir.

Q: Describe to us what kind of guns they were carrying at that time?
A: Both appeared to be armed with revolvers.

Q: You said that these two (2) persons entered the grocery. Were they able to go near to the son of Elias?

A: Yes, sir, they approached the son of Elias when he was already on the ground. [21] (Emphasis supplied)

Adolfo would adamantly repeat that he only saw two armed men running after the victim. And he even unceremoniously added that, he saw Jonel shoot the victim, *viz*:

Q: And when they were able to approach the son of Elias, what did you notice, if any, with respect to the son of Elias?
A: I noticed the son of Elias who was a young man raised his hands saying. "Hindi po ako ang kalaban ninyo."

Q: And after uttering those words, what happened next?
A: One of the two (2) armed men shot him instead.

Q: Did you see what part of the body of the son of Elias was hit?
A: He was hit on the left side of his head.

Q: And after the son of Elias was hit at his left forehead, what happened to him?
A: When he was hit on the head, the impact made him turned over with the empty cartoon boxes inside the grocery.

Q: Now, tell us what was the position of the son of Elias immediately before he was shot on the head?
A: He was lying on the ground with his face up and with his hands raised.

Q: Now you said that when he was shot, he also turned over and even rolled with empty cartoon boxes, what happened to him?
A: He just laid there still motionless.

Q: Where is he now?
A: He was already buried, sir.

Q: Why?
A: Because he died, sir.

Q: Now, you said the two (2) men you saw were chasing the son of Elias and one of them shot him. If you will see those two (2) persons again, will you able to identify them?
A: Yes, sir.

---

[21] TSN, 10 February 2006, pp. 3-5.

Q: Would you please look around and point to us if they are inside the courtroom.

COURT:

Witness pointed to accused Jonel Vargas and Jerienald Villamiro inside the courtroom.

COURT: (to the accused)

Q: Ano ang apelyido mo sa ina, Jonel Vargas?
A: Ramos po.

Q: Ikaw naman, Jerienald?
A: Esman po.

FISCAL:

With the information given by the accused with respect to their maternal names, Your Honor, please, may we request that amendment be made accordingly with respect to their names.

COURT:

Go ahead.

FISCAL:

Q: When you saw them able to get near the son of Elias and one of them shot the son of Elias, how far were they from the son of Elias?
A: About one (1) adult arm's length.

Q: Who was that person who shot the son of Elias?

COURT:

Witness pointing to Jonel Vargas inside the courtroom.

FISCAL:

Q: Immediately before Jonel shot the son of Elias, what was his companion doing, this Jerienald?
A: He was just standing besides Jonel.

Q: Immediately before Jonel shot the son of Elias, did you hear any words uttered by these two (2) persons?
A: None, sir.

Q: After the son of Elias was shot, what did these two (2) persons do?
A; They just went out of the grocery store.

Q: Were they in a hurry at that time?
A: Yes, sir.[22] (Emphasis supplied)

Twelve days after the shooting of the victim, the lone eyewitness mentioned details of what he saw: six people running after the victim. Nothing in such detail referred to the identity of the culprit. The lone witness clearly said he could not remember who shot the victim. Two years thereafter, he came with the testimony that only two not six chased the deceased. And he saw the person who shot the victim.

In *People v. Rodrigo*,[23] the Court had the occasion to instruct that great care should be taken in considering the identification of the accused especially, when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification.

In his Sworn Statement, Adolfo mentioned six (6) individuals involved in the crime but that he could not remember who shot the victim. In his testimony however, the number of participants were reduced to two, who conveniently were the only two individuals arrested in connection with the crime. Adolfo also remembered seeing Jonel shoot the victim.

We held in *People v. Flores*[24] that when serious and inexplicable discrepancies are present between a previously executed sworn statement of a witness and her testimonial declarations with respect to one's participation in a serious imputation such as murder, there is raised a grave doubt on the veracity of the witness' account. There is no other evidence in this case aside from the testimony of the lone eyewitness which directly implicates appellants to the crime. The inconsistent

---

[22] *Id.* at 5-7.

[23] 586 Phil. 515, 528 (2008).

[24] 377 Phil. 1009, 1014 (1999).

statements could not be dismissed as inconsequential because the inconsistency goes into the very identification of the assailants, which is a crucial aspect in sustaining a conviction.

In *People v. Tumambing*,[25] we declared that:

> A successful prosecution of a criminal action largely depends on proof of two things: the identification of the author of the crime and his actual commission of the same. An ample proof that a crime has been committed has no use if the prosecution is unable to convincingly prove the offender's identity. The constitutional presumption of innocence that an accused enjoys is not demolished by an identification that is full of uncertainties.[26]

The deficiency in the proof submitted by the prosecution cannot be ignored. A slight doubt created in the identity of the perpetrators of the crime should be resolved in favor of the accused.[27]

As succinctly put by the Court in *People v. Fernandez*:[28]

> It is better to liberate a guilty man than to unjustly keep in prison one whose guilt has not been proved by the required quantum of evidence. Hence, despite the Court's support of ardent crusaders waging all-out war against felons on the loose, when the People's evidence fails to prove indubitably the accused's authorship of the crime of which they stand accused, it is the Court's duty — and the accused's right — to proclaim their innocence. Acquittal, therefore, is in order.[29]

Although the acquittal of appellants renders any further question on the elements of the crime moot, we deem it worthwhile to discuss why treachery should not be appreciated in this case had appellants been proven to have killed the victim.

---

[25] 659 Phil. 544 (2011).

[26] *Id*. at 547.

[27] *People v. De la Cruz*, 666 Phil. 593, 619 (2011) citing *People v. Ong*, 568 Phil. 114, 131 (2008).

[28] 434 Phil. 435 (2002).

[29] *Id*. at 455 as cited in *People v. De Guzman*, 690 Phil. 701, 717 (2012).

Appellants were correct in asserting that Adolfo did not witness the onset of the commotion. For treachery to be considered, it must be present and seen by the witness right at the inception of the attack. Where no particulars are known as to how the killing began, the perpetration of an attack with treachery cannot be presumed.[30] Adolfo merely saw the victim being chased by two armed men. He could not describe how the aggression began and who started it.

For failure of the prosecution to prove beyond reasonable doubt that appellants were the perpetrators of the crime, we are constrained to rule on the latters' acquittal.

WHEREFORE, the Decision dated 8 January 2013 of the Court of Appeals affirming the conviction of appellants Jonel Vargas y Ramos and Jerienald Villamero y Esman by the Regional Trial Court of Malolos, Bulacan, Branch 12, for murder is **REVERSED AND SET ASIDE.** Appellants are hereby **ACQUITTED** of the crime charged against them and ordered immediately **RELEASED** from custody, unless they are being held for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to forthwith implement this decision and to **INFORM** this Court, within five (5) days from receipt hereof, of the date when appellants were actually released from confinement.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Brion,*[*] *Peralta,* and *Reyes, JJ.,* concur.

---

[30] *People v. Watamama*, G.R. No. 188710, 2 June 2014, 724 SCRA 331, 340.

[*] Additional Member per Raffle dated 25 January 2016.

SECOND DIVISION

[G.R. Nos. 208896-97. April 6, 2016]

EDREN RICASATA, *petitioner, vs.* **CARGO SAFEWAY, INC. and EVERGREEN MARINE CORPORATION (TAIWAN), LTD.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DISABILITY BENEFITS; SECTION 19(C) OF POEA-SEC WHICH PROVIDES FOR REPATRIATION AT A CONVENIENT PORT BEFORE THE EXPIRATION OF THE CONTRACT MAY ONLY BE EXERCISED BY THE EMPLOYER IF THE ORIGINAL PERIOD OF THE SEAFARER IS AT LEAST TEN (10) MONTHS; NOT APPLICABLE TO CASE AT BAR.— [S]ection 19(C) of POEA-SEC does not apply to this case. Section 19(C) of POEA-SEC states that the mode of termination it provides may only be exercised by the master/employer if the original period of the seafarer is at least ten months. Ricasata's contract of employment is only for nine months. Granting that the provision is applicable, Cargo Safeway and Evergreen Marine failed to present proof that they paid Ricasata all his earned wages, his leave pay for the entire contract period, and his termination pay equivalent to one month of his basic salary.

2. ID.; ID.; ID.; FOR A SEAMAN'S DISABILITY CLAIM TO PROSPER, IT IS MANDATORY THAT WITHIN THREE DAYS FROM REPATRIATION, HE IS EXAMINED BY A COMPANY-DESIGNATED PHYSICIAN, AND HIS NON-COMPLIANCE THEREOF WILL RESULT TO THE FORFEITURE OF HIS RIGHT TO CLAIM FOR COMPENSATION AND DISABILITY BENEFITS.— Ricasata arrived in the Philippines on 23 March 2010. On 29 March 2010, he underwent an Audiogram at the Seamen's Hospital. On 27 April 2010, Dr. Lara-Orencia diagnosed him with "Permanent Medical Unfitness with a Disability Grade 1" based on the Audiogram. It is a settled rule that for a seaman's disability claim to prosper, it is mandatory that within three days from repatriation, he is examined by a company-designated

physician. His failure to do so will result to the forfeiture of his right to claim for compensation and disability benefits. Ricasata failed to comply with this requirement. He also failed to show that he was physically incapacitated to be medically examined by a company-designated physician that would have justified his non-compliance with the mandatory three-day period.

3. **ID.; ID.; ID.; ID.; DISABILITY BENEFITS AND SICKNESS ALLOWANCE SHALL BE DENIED WHERE THE SEAFARER FAILS TO PROVE ENTITLEMENT THERETO.—** Ricasata submitted an Audiogram to support his claim for disability benefits. The Audiogram, taken six days after his arrival, did not indicate that it was taken by a company-designated physician. It did not indicate that it came from Seaman's Hospital. It was not signed, and it did not contain an interpretation of the graph. It was simply a printout from the audiometer. Dr. Lara-Orencia, who issued a medical certificate diagnosing Ricasata with severe hearing loss, was not a company-designated physician. She specializes in Family and Occupational Medicine and is not EENT. Her medical certificate was based only on the Audiogram. Yet, she declared Ricasata to be suffering from "Permanent Medical Unfitness with a Disability Grade 1" without giving him additional medical examinations and procedures. Dr. Lara-Orencia's medical certificate was only issued on 27 April 2010, or almost a month after the Audiogram. Considering the foregoing, the Court of Appeals did not err in ruling that Ricasata failed to prove that he is entitled to the disability benefits and sickness allowance that he was claiming.

4. **ID.; ID.; ID.; SECTION 19(B) OF POEA-SEC CANNOT BE USED BY THE EMPLOYER TO JUSTIFY THE SEAFARER'S DISEMBARKATION WHERE THE UNEXPIRED PORTION OF THE EMPLOYMENT CONTRACT IS MORE THAN ONE MONTH; REMAND OF THE CASE TO THE PANEL OF ARBITRATORS FOR THE PROPER COMPUTATION OF PETITIONER'S MONETARY ENTITLEMENT PROPER.—** We agree with both the Court of Appeals and the Panel of Arbitrators that Ricasata was not able to complete his employment contract. He was repatriated one and a half months before the end of his contracted service. In ruling on his monetary entitlement,

we are guided by Section 19(B) of POEA-SEC. x x x. The rule applies to repatriation at a convenient port before the expiration of the contract. It could not be used by Cargo Safeway and Evergreen Marine to justify Ricasata's disembarkation because the unexpired portion of his contract was more than one month. However, it can be used as guide to determine Ricasata's remunerations considering that Cargo Safeway and Evergreen Marine did not appear to have acted in bad faith. Thus, applying Section 19(B) of POEA-SEC, the Court of Appeals correctly stated that Ricasata is entitled to his earned wages, earned leave pay, and basic wages corresponding to the unserved portion of his contract. The Court of Appeals correctly remanded the case to the Panel of Arbitrators for their proper computation.

5. ID.; ID.; MONETARY CLAIM; WHERE AN EMPLOYEE IS FORCED TO LITIGATE AND INCUR EXPENSES TO PROTECT HIS RIGHT AND INTEREST, HE IS ENTITLED TO ATTORNEY'S FEES EQUIVALENT TO TEN PERCENT OF THE TOTAL AWARD AT THE TIME OF ACTUAL PAYMENT.— The rule is that where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to attorney's fees equivalent to ten percent of the total award at the time of actual payment. In this case, Ricasata was forced to protect his rights. Although his claim for disability benefits was denied, it was established that he was not able to finish his contract of employment without fault on his part. We deem it proper to allow him to recover attorney's fees.

APPEARANCES OF COUNSEL

Dela Cruz Entero & Associates for petitioner.
Del Rosario and Del Rosario for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Petitioner Edren Ricasata (Ricasata) assails in this petition for review[1] the Consolidated Decision[2] promulgated on 20 March 2013 and the Resolution[3] promulgated on 25 July 2013 of the Court of Appeals in CA-G.R. SP No. 122937[4] and CA-G.R. SP No. 123015.[5] The Court of Appeals denied the petition in CA-G.R. SP No. 122937 and granted the petition in CA-G.R. SP No. 123015 and remanded the case to the Panel of Voluntary Arbitrators (Panel of Arbitrators) for the proper computation of Ricasata's unearned wages, earned leave pay, and basic wages corresponding to the unserved portion of his contract.

The Antecedent Facts

In June 2009, Ricasata was hired as an engine fitter for M.V. Uni Chart, a ship owned by Evergreen Marine Corporation, Ltd. of Taiwan (Evergreen Marine), represented in the Philippines by its local manning agency, Cargo Safeway, Inc. (Cargo Safeway). The deployment was for a period of nine months with a basic monthly salary of US$704. Ricasata was found fit for sea duty without restrictions and was deployed aboard the vessel on 2 August 2009. His work included handling noisy equipment such as grinders, generators, and pumps in the vessel's engine room on a regular eight to five shift schedule.

---

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 55-69. Penned by Associate Justice Franchito N. Diamante, with Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang concurring.

[3] *Id.* at 71-73.

[4] *Edren Ricasata v. Panel of Voluntary Arbitrators, Cargo Safeway, Inc., and Evergreen Corp., Ltd.*

[5] *Cargo Safeway, Inc. and Evergreen Marine Corp. (Taiwan) Ltd. v. Panel of Voluntary Arbitrators (Hon. Hermenegildo Dumlao, Hon. Gregorio Sialsa and Hon. Rene E. Ofreneo) and Edren A. Ricasata.*

In November 2009, Ricasata experienced severe pain in his ears. He reported the pain to the Chief Engineer and requested for a medical check-up, but his request was denied. On 10 January 2010, Ricasata experienced another bout of severe pain in his ears. Again, Ricasata requested for a medical check-up which was also denied. In March 2010, Ricasata was replaced by a reliever. On 19 March 2010, he disembarked from the vessel at Coco Solo, Panama. He returned to the Philippines on 23 March 2010.

On 29 March 2010, Ricasata underwent an Audiogram at the Seamen's Hospital. According to Ricasata, he was diagnosed with Severe Hearing Loss. Later, Dr. Li-Ann Lara-Orencia (Dr. Lara-Orencia), a private doctor, diagnosed him with "Permanent Medical Unfitness with a Disability Grade 1" due to a "profound hearing loss."

On 21 July 2010, Ricasata filed an action against Cargo Safeway and Evergreen Marine before the National Labor Relations Commission, claiming disability benefits, moral and exemplary damages, legal interest, and attorney's fees. Cargo Safeway and Evergreen Marine moved for the dismissal of the case and its referral for Voluntary Arbitration on the ground that Ricasata's employment was covered by a Collective Bargaining Agreement (CBA) between the Associated Marine Officers' and Seamen's Union of the Philippines and the National Chinese Seamen's Union. The case was referred to the National Conciliation and Mediation Board and submitted to a Panel of Arbitrators.[6]

The Decision of the Panel of Voluntary Arbitrators

Ricasata claimed that his loss of hearing was due to his work in a noisy environment, within an engine room filled with compressed air. As such, his illness is compensable under the Philippine Overseas Employment Administration-Standard

[6] The Panel of Arbitrators was composed of Atty. Hermenegildo Dumlao as Chairman and Captain Gregorio Sialsa and Dr. Rene E. Ofreneo as members.

Employment Contract (POEA-SEC). He sought a total permanent disability benefit of US$89,100, sickness allowance of US$2,816 equivalent to four months, moral and exemplary damages, and attorney's fees.

Cargo Safeway and Evergreen Marine countered that Ricasata is not entitled to the benefits claimed because (1) he did not suffer any illness, accident, or injury while on board the vessel; (2) he was repatriated to the Philippines because of the expiration of his contract; and (3) he did not report any illness, injury, or accident upon his arrival in the Philippines, and he did not request for referral to a company-designated physician.

In its Decision[7] dated 22 December 2011, the Panel of Arbitrators rejected Cargo Safeway and Evergreen Marine's contention that Ricasata's employment contract expired on 19 March 2010. The Panel of Arbitrators ruled that Ricasata signed off one and a half months before the expiration of his nine-month contract. The Panel of Arbitrators also rejected the contention of Cargo Safeway and Evergreen Marine that the flexibility provision of the CBA for the completion of the contract "one month more or one month less as a result of operational convenience or convenience of the port of call" should apply to justify Ricasata's early embarkment. The Panel of Arbitrators ruled that Section 19 (C) of POEA-SEC providing for repatriation within three months before the expiration of the contract when the vessel drops anchor in a convenient port would not apply in this case. Instead, the Panel of Arbitrators ruled that Ricasata was not able to complete his contract and thus, he is entitled to sickness allowance equivalent to one and a half months of his monthly wage of US$704 plus 10% per annum of the resulting amount as penalty for non-payment of the unexpired portion of the contract.

The Panel of Arbitrators also ruled that Ricasata is entitled to full disability benefit. According to the Panel of Arbitrators, Cargo Safeway and Evergreen Marine failed to refute the Audiogram finding by the Seamen's Hospital and the assessment

[7] *Rollo*, pp. 42-53.

made by Dr. Lara-Orencia. The Panel of Arbitrators ruled that it is unjust and unfair to award Ricasata a compensation equivalent to Impediment Grade 11, amounting only to US$13,303, which is the compensation for Severe Hearing Loss under the CBA. However, the Panel of Arbitrators disapproved Ricasata's claim of US$89,000 and instead awarded him US$51,000 as compensation.

The dispositive portion of the Decision of the Panel of Arbitrators reads:

> WHEREFORE, premises considered, [t]his Panel ruled that Seafarer EDREN RICASATA is entitled to —
>
> back disability benefit equivalent to US$51,000.00 plus ten [percent] per annum of this back benefit, at its peso equivalent at the time of actual payment;
>
> back sick allowance equivalent to one and a half months of his monthly salary of US$704.00 plus ten [percent] per annum of the back allowance, at its peso equivalent at the time of actual payment, and
>
> attorney's fees of ten percent (10%) of the total monetary award at its peso equivalent at the time of actual payment.
>
> SO ORDERED.[8]

Both parties appealed from the Decision of the Panel of Voluntary Arbitrators to the Court of Appeals.

The Decision of the Court of Appeals

In CA-G.R. SP No. 122937, Ricasata prayed for the modification of the Decision of the Panel of Arbitrators by increasing the award for back disability benefit and sick allowance.

In CA-G.R. SP No. 123015, Cargo Safeway and Evergreen Marine sought the reversal of the Decision of the Panel of Arbitrators.

---

[8] *Id.* at 52.

In a Resolution dated 27 November 2012, the Court of Appeals consolidated the two petitions.

The Court of Appeals ruled that entitlement to disability benefits is a matter governed by law and contract and not solely by medical findings. Citing Section 20 (B) of the POEA-SEC, the Court of Appeals ruled that for a disability to be compensable, the following elements must be present: (1) the, injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. The Court of Appeals ruled that Ricasata forfeited his claim for compensation by failing to comply with the mandatory reporting requirements.

The Court of Appeals ruled that Ricasata failed to undergo a post-employment medical examination by a company-designated physician within three days upon his return. Instead, he went to the Seamen's Hospital on 29 March 2010, six days after his arrival, for an Audiogram. The Court of Appeals noted that the Audiogram did not indicate that it was issued by a company-designated physician, and there was no signature or specification that it was issued by the company-designated physician or at least by Seamen's Hospital. As such, the Court of Appeals ruled that the Audiogram is not a sufficient evidence to prove Ricasata's claim. In addition, the Court of Appeals ruled that Dr. Lara-Orencia is Ricasata's personal physician and her medical certificate was issued on 27 April 2010, or almost a month after Ricasata's repatriation.

The Court of Appeals ruled that entitlement to sickness allowance requires the submission of medical reports. Since Ricasata failed to undergo the mandatory reporting to a company-designated physician, he was not able to submit the medical reports to substantiate his claim for sickness allowance.

The Court of Appeals further ruled that there is no basis for the award of attorney's fees. However, the Court of Appeals ruled that Ricasata was not able to finish his contract. Hence, he is entitled to his unearned wages and earned leave pay and to his basic wages corresponding to the unserved portion of his contract.

The dispositive portion of the Decision of the Court of Appeals reads:

> WHEREFORE, premises considered, the Petition in CA-G.R. SP No. 122937 is DENIED. On the other hand, the Petition in CA-G.R. SP No. 123015 is GRANTED and the Decision dated December 22, 2011 of the Panel of Voluntary Arbitrators in NCMB-NCR-AC-056 (NCMB-32-01-06-11) is REVERSED and SET ASIDE and a new one is rendered granting Edren Ricasata his unearned wages and earned leave pay and to his basic wages corresponding to the unserved portion of the contract. For this purpose, the case is REMANDED to the Panel of Voluntary Arbitrators for proper computation in line with the foregoing discussion.
>
> SO ORDERED.[9]

Ricasata filed a motion for reconsideration. In its 25 July 2013 Resolution, the Court of Appeals denied the motion for lack of merit.

Ricasata filed a petition for review before this Court for the reversal of the Decision and Resolution of the Court of Appeals. Ricasata alleged that the Court of Appeals committed a reversible error in finding that he is not entitled to disability benefits, sickness allowance, and attorney's fees.

The Issues

There are two issues for resolution in this case. They are:

(1) Whether Ricasata was able to finish his contract of employment; and

(2) Whether Ricasata is entitled to disability benefits, sickness allowance, and attorney's fees.

The Ruling of this Court

Ricasata alleged that the Court of Appeals misappreciated the facts of the case and denied him his rightful compensation under the law. Ricasata further alleged that while the Panel of

---

[9] *Id.* at 68.

Arbitrators correctly ruled that he is suffering from total permanent disability, it erred in awarding him disability benefits that are contrary to jurisprudence.

We deny the petition.

Expiration of Contract of Employment

In their Comment,[10] Cargo Safeway and Evergreen Marine contend that Ricasata is not entitled to unearned wages, unearned leave pay, and basic wages corresponding to the unserved portion of his contract. They invoke Section 19 (C) of the POEA-SEC to the effect that "[i]f the vessel arrives at a convenient port within a period of three (3) months before the expiration of his contract, the master/employer may repatriate the seafarer from such port x x x." They also invoke Article 5.1 of the CBA which states that "it is mutually agreed that the term of service of the seafarer covered by this Agreement shall be up to NINE (9) months as covenanted by the parties and subject to the provisions of Article 6.5.1.4, however, a flexibility of one (1) month more or one (1) month less as a result of operational convenience or convenience of port of call shall be acceptable x x x."

We do not agree. Counsels for Cargo Safeway and Evergreen Marine only quoted a portion of Section 19 (C) of POEA-SEC. It provides in full:

SECTION 19. REPATRIATION

xxx xxx xxx

C. If the vessel arrives at a convenient port within a period of three (3) months before the expiration of his contract, the master/employer may repatriate the seafarer from such port provided that the seafarer shall be paid all his earned wages. In addition, the seafarer shall also be paid his leave pay for the entire contract period plus a termination pay equivalent to one (1) month of his basic pay, provided however, that this mode of termination may only be exercised by the master/employer if the original contract period of the seafarer

[10] *Id.* at 75-101.

is at least ten (months); provided, further, that the conditions for this mode of termination shall not apply to dismissal for cause.

Clearly, Section 19 (C) of POEA-SEC does not apply to this case. Section 19 (C) of POEA-SEC states that the mode of termination it provides may only be exercised by the master/ employer if the original period of the seafarer is at least ten months. Ricasata's contract of employment is only for nine months. Granting that the provision is applicable, Cargo Safeway and Evergreen Marine failed to present proof that they paid Ricasata all his earned wages, his leave pay for the entire contract period, and his termination pay equivalent to one month of his basic salary.

On the other hand, Article 5, Section 5.1 of the CBA provides:

> 5.1. Subject to the provisions hereinafter provided, the engagement of a seafarer shall be at the time of departure from Manila to the date of expiration of contract or arrival in Manila, unless terminated for just cause or causes enumerated in this Agreement. It is mutually agreed that the term of service of the seafarer covered by this Agreement shall be up to NINE (9) months as covenanted by the parties and subject to the provisions of Article 6.5.1.4, however, a flexibility of one (1) month more or one (1) month less as a result of operational convenience or convenience of port of call shall be acceptable without penalizing the Company or seafarer. If any lesser period is agreed for operational convenience, this shall be specified in the employment contract.[11]

We agree with the Panel of Voluntary Arbitrators and the Court of Appeals that the provision of the CBA was specific: the flexibility period is one month more or one month less from the term of the contract. Ricasata disembarked one and a half months before the expiration of his contract, meaning it does not fall within the one month more or one month less covered by the CBA. The CBA also provides that if any lesser period is agreed for operational convenience, it should be specified in the employment contract. No such provision is present in this

---

[11] CA *rollo* (CA-G.R. SP No. 123015), p. 52.

case. Hence, the flexibility provision of the CBA does not also apply to this case.

Entitlement to Disability Benefits and Sickness Allowance

Ricasata arrived in the Philippines on 23 March 2010. On 29 March 2010, he underwent an Audiogram at the Seamen's Hospital. On 27 April 2010, Dr. Lara-Orencia diagnosed him with "Permanent Medical Unfitness with a Disability Grade 1" based on the Audiogram.

It is a settled rule that for a seaman's disability claim to prosper, it is mandatory that within three days from repatriation, he is examined by a company-designated physician.[12] His failure to do so will result to the forfeiture of his right to claim for compensation and disability benefits.[13] Ricasata failed to comply with this requirement. He also failed to show that he was physically incapacitated to be medically examined by a company-designated physician that would have justified his non-compliance with the mandatory three-day period. We note the finding of the Court of Appeals that Ricasata was inconsistent on whether he was referred to a company-designated physician. In his Petition before the Court of Appeals, he alleged that Cargo Safeway referred him to a company-designated physician[14] while in his Memorandum, he alleged that Cargo Safeway refused to refer him for post-medical check-up.[15]

Ricasata submitted an Audiogram to support his claim for disability benefits. The Audiogram,[16] taken six days after his arrival, did not indicate that it was taken by a company-designated physician. It did not indicate that it came from Seamen's Hospital. It was not signed, and it did not contain an interpretation of the

---

[12] *InterOrient Maritime Enterprises, Inc. v. Creer III*, G.R. No. 181921, 17 September 2014, 735 SCRA 267.

[13] *Id.*

[14] CA *rollo* (CA G.R. SP No. 122937), p. 11.

[15] *Id.* at 304.

[16] *Id.* at 97.

graph. It was simply a printout from the audiometer. Dr. Lara-Orencia, who issued a medical certificate[17] diagnosing Ricasata with severe hearing loss, was not a company-designated physician. She specializes in Family and Occupational Medicine and is not an EENT.[18] Her medical certificate was based only on the Audiogram. Yet, she declared Ricasata to be suffering from "Permanent Medical Unfitness with a Disability Grade 1" without giving him additional medical examinations and procedures. Dr. Lara-Orencia's medical certificate was only issued on 27 April 2010, or almost a month after the Audiogram.

Considering the foregoing, the Court of Appeals did not err in ruling that Ricasata failed to prove that he is entitled to the disability benefits and sickness allowance that he was claiming.

Monetary Entitlement and Attorney's Fees

We agree with both the Court of Appeals and the Panel of Arbitrators that Ricasata was not able to complete his employment contract. He was repatriated one and a half months before the end of his contracted service. In ruling on his monetary entitlement, we are guided by Section 19 (B) of POEA-SEC. It provides:

> 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.

The rule applies to repatriation at a convenient port before the expiration of the contract. It could not be used by Cargo Safeway and Evergreen Marine to justify Ricasata's disembarkation because the unexpired portion of his contract

---

[17] *Id.* at 98.

[18] *Id.*

was more than one month. However, it can be used as guide to determine Ricasata's remunerations considering that Cargo Safeway and Evergreen Marine did not appear to have acted in bad faith. Thus, applying Section 19 (B) of POEA-SEC, the Court of Appeals correctly stated that Ricasata is entitled to his earned wages, earned leave pay, and basic wages corresponding to the unserved portion of his contract. The Court of Appeals correctly remanded the case to the Panel of Arbitrators for their proper computation.

The rule is that where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to attorney's fees equivalent to ten percent of the total award at the time of actual payment.[19] In this case, Ricasata was forced to protect his rights. Although his claim for disability benefits was denied, it was established that he was not able to finish his contract of employment without fault on his part. We deem it proper to allow him to recover attorney's fees.

WHEREFORE, we **DENY** the petition. We affirm the Consolidated Decision promulgated on 20 March 2013 and the Resolution promulgated on 25 July 2013 of the Court of Appeals in CA-G.R. SP No. 122937 and CA-G.R. SP No. 123015 with **MODIFICATION** by ruling that Edren Ricasata is also entitled to attorney's fees equivalent to ten percent (10%) of the total award at the time of actual payment.

SO ORDERED.

Brion, del Castillo, Mendoza, and *Leonen, JJ*., concur.

---

[19] *Fil-Pride Shipping Company, Inc. v. Balasta*, G.R. No. 193047, 3 March 2014, 717 SCRA 624.

SECOND DIVISION

[G.R. Nos. 210220-21. April 6, 2016]

EDWARD THOMAS F. JOSON, *petitioner, vs.* **THE OFFICE OF THE OMBUDSMAN, GOV. AURELIO M. UMALI, ALEJANDRO R. ABESAMIS, EDILBERTO M. PANCHO, MA. CHRISTINA G. ROXAS, and FERDINAND R. ABESAMIS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; THE DETERMINATION OF WHETHER PROBABLE CAUSE EXISTS OR NOT IS A FUNCTION THAT BELONGS TO THE OMBUDSMAN; THUS, IT HAS DISCRETION TO DETERMINE WHETHER A CRIMINAL CASE, GIVEN ITS ATTENDANT FACTS AND CIRCUMSTANCES, SHOULD BE FILED OR NOT.—** The Court agrees with the findings of the Ombudsman that there was no sufficient evidence to indict the respondents for the crimes of violation of Section 3(e) of R.A. No. 3019 and unlawful appointment ; and the charge of grave misconduct was not established by substantial evidence. The Ombudsman is endowed with wide latitude, in the exercise of its investigatory and prosecutor powers, to pass upon criminal complaints involving public officials and employees. Specifically, the determination of whether probable cause exists or not is a function that belongs to the Ombudsman. In other words, the Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not.

2. **ID.; ID.; ID.; DEFINED; A FINDING OF PROBABLE CAUSE NEEDS ONLY TO REST ON EVIDENCE SHOWING THAT MORE LIKELY THAN NOT A CRIME HAS BEEN COMMITTED AND THAT THERE IS ENOUGH REASON TO BELIEVE THAT IT WAS COMMITTED BY THE ACCUSED.—** [A] finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and that there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilty, or on evidence

establishing absolute certainty of guilt. The case of *Vergara v. The Hon. Ombudsman* is instructive on this score: Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. Probable cause need not be based on clear and convincing evidence of guilt, or on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt, but it certainly demands more than bare suspicion and can never be left to presupposition, conjecture, or even convincing logic. In this case, the allegations and evidence presented by the petitioners failed to prove that the Ombudsman acted in such a capricious and whimsical exercise of judgment in determining the non-existence of probable cause against the private respondents. The Ombudsman dismissed the petitioner's complaint for lack probable cause based on its appreciation and review of the evidence presented.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; A CONSULTANCY SERVICE IS NOT CONSIDERED GOVERNMENT SERVICE AND IS NOT COVERED BY CIVIL SERVICE LAW, AS THERE IS NO EMPLOYER-EMPLOYEE RELATIONSHIP IN THE ENGAGEMENT OF A CONSULTANT BUT THAT OF CLIENT-PROFESSIONAL RELATIONSHIP.—** The Ombudsman concluded that there could be no legal basis to support a finding that Governor Umali violated Article 244 of the RPC considering that Ferdinand was not appointed to a government office; and that, there could be no finding that the respondents violated R.A. No. 3019 considering that the alleged irregularity in the engagements of Ferdinand was not shown by substantial evidence. In *Posadas v. Sandiganbayan*, the Court stated that a consultancy service is not considered government service. Pursuant to CSC Resolution No. 93-1881 dated May 25, 1993, **a contract for consultancy services is not covered by Civil Service Law, rules and regulations because the said position is not found in the index of position title approved by DBM.** Accordingly, it does not need the approval of the CSC. x x x A "**consultant**" is defined as one who provides professional advice on matters within the field of his specific knowledge or training. **There is no employer-employee relationship in**

the engagement of a consultant but that of client-professional relationship.

4. ID.; ID.; ID.; ID.; THOSE WHO HAVE RENDERED SERVICES WITH THE GOVERNMENT, WITHOUT OCCUPYING A PUBLIC OFFICE OR WITHOUT OUT HAVING BEEN ELECTED OR APPOINTED AS A PUBLIC OFFICER EVIDENCED BY A WRITTEN APPOINTMENT AND RECORDED WITH THE CIVIL SERVICE COMMISSION, DID SO OUTSIDE THE CONCEPT OF GOVERNMENT SERVICE.— The Court notes that Ferdinand did not take an oath of office prior to his rendition of consultancy services for the Provincial Government of Nueva Ecija. All public officers and employees from the highest to the lowest rank are required to take an oath of office which marks their assumption to duty. It is well-settled that an oath of office is a qualifying requirement for public office, a prerequisite to the full investiture of the office. Ferdinand was not required to take an oath of office because he rendered consultancy services for the provincial government not by virtue of an appointment or election to a specific public office or position but by a contractual engagement. In fine, those who have rendered services with the government, without occupying a public office or without having been elected or appointed as a public officer evidenced by a written appointment and recorded with the Civil Service Commission, did so outside the concept of government service.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED; NOT EVERY ERROR IN THE PROCEEDINGS, OR EVERY ERRONEOUS CONCLUSION OF LAW OR FACT, CONSTITUTES GRAVE ABUSE OF DISCRETION; THUS, WHILE THE INVESTIGATING OFFICERS OF THE OFFICE OF THE OMBUDSMAN, MAY ERR OR ABUSE THE DISCRETION LODGED IN THEM BY LAW, SUCH ERROR OR ABUSE ALONE DOES NOT RENDER THEIR ACT AMENABLE TO CORRECTION AND ANNULMENT BY THE EXTRAORDINARY REMEDY OF *CERTIORARI*.— [T]he Ombudsman did not commit grave abuse of discretion in dismissing the criminal charges against the private respondents. As defined by this Court in *United Coconut Planters Bank v. Looyuko:* By grave abuse of discretion

is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must by grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. It falls upon the petitioner to discharge the burden of proving there was grave abuse of discretion on the part of the Ombudsman, in accordance with the definition and standards set by law and jurisprudence. "Not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion. While the prosecutor, or in this case, the investigating officers of the Office of the Ombudsman, may err or even abuse the discretion lodged in them by law, such error or abuse alone does not render their act amenable to correction and annulment by the extraordinary remedy of *certiorari*." The requirement for judicial intrusion is still for the petitioner to show clearly that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction. Joson, in this case, failed to do so. On the contrary, the record reveals that the Ombudsman carefully perused and studied the documents and meticulously weighed the evidence submitted by the parties before issuing the assailed joint resolution and joint order which strongly negated any averment that they were issued capriciously, whimsically, arbitrarily, or in a despotic manner.

6. ID.; ID.; ID.; ID.; ABSENT GRAVE ABUSE OF DISCRETION, THE COURT DOES NOT INTERFERE WITH THE OMBUDSMAN'S DETERMINATION OF THE EXISTENCE OR ABSENCE OF PROBABLE CAUSE, AS THE COURT REPOSES IMMENSE RESPECT TO THE FACTUAL DETERMINATION AND APPRECIATION MADE BY THE OMBUDSMAN; RATIONALE.— [A] finding of probable cause, or lack of it, is a finding of fact which is generally not reviewable by this Court. Only when there is a clear case of grave abuse of discretion will this Court interfere with the findings of the Office of the Ombudsman. As a general rule, the Court does not interfere with the Ombudsman's determination of the existence or absence of probable cause. As the Court is not a trier of facts, it reposes immense respect to the factual determination and appreciation made by the Ombudsman. The rationale behind this rule is

explained in *Republic v. Desierto,* in this wise: The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.

7. POLITICAL LAW; ADMINISTRATIVE LAW; OFFICE OF THE OMBUDSMAN; SECTION 7, RULE III OF THE OMBUDSMAN RULES; THE RULING OF THE OMBUDSMAN ABSOLVING PRIVATE RESPONDENTS OF THE ADMINISTRATIVE CHARGE IS FINAL AND UNAPPEALABLE.— The assailed ruling of the Ombudsman absolving the private respondents of the administrative charge possesses the character of finality and, thus, not subject to appeal. x x x In *Reyes, Jr. v. Belisario*, the Court wrote: The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case. The complainant, therefore, is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or fine a equivalent to one month salary.

8. ID.; ID.; ID.; ID.; THOUGH FINAL AND UNAPPEALABLE IN THE ADMINISTRATIVE LEVEL, THE DECISIONS OF ADMINISTRATIVE AGENCIES ARE STILL SUBJECT TO JUDICIAL REVIEW IF THEY FAIL THE TEST OF ARBITRARINESS, OR UPON PROOF OF GRAVE ABUSE OF DISCRETION, FRAUD OR ERROR OF LAW, OR WHEN SUCH ADMINISTRATIVE OR QUASI-JUDICIAL BODIES GROSSLY MISAPPRECIATE EVIDENCE OF SUCH NATURE AS TO COMPEL A CONTRARY

CONCLUSION.— Though final and unappealable in the administrative level, the decisions of administrative agencies are still subject to judicial review if they fail the test of arbitrariness, or upon proof of grave abuse of discretion, fraud or error of law, or when such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion. Specifically, the correct procedure is to file a petition for *certiorari* before the CA to question the Ombudsman's decision of dismissal of the administrative charge. Joson, however, failed to do this. Hence, the decision of the Ombudsman exonerating the private respondents from the charge of grave misconduct had already become final. In any event, the subject petition failed to show any grave abuse of discretion or any reversible error on the part of the Ombudsman to compel this Court to overturn its assailed administrative ruling.

9. ID.; ID.; ID.; ID.; THE COURT MAINTAINS ITS POLICY OF NON-INTERFERENCE WITH THE OMBUDSMAN'S EXERCISE OF ITS INVESTIGATORY AND PROSECUTORY POWERS IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION.— This Court has maintained its policy of non-interference with the Ombudsman's exercise of its investigatory and prosecutory powers in the absence of grave abuse of discretion, not only out of respect for these constitutionally mandated powers but also for practical considerations owing to the myriad functions of the courts. In the case at bench, the Court will uphold the findings of the Ombudsman absent a clear showing of grave abuse of discretion on its part.

APPEARANCES OF COUNSEL

Marrack Valdez-Marrack Law Offices for petitioner.
Office of the Solicitor General for public respondents.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for *certiorari* seeking to reverse and set aside the September 8, 2011 Joint Resolution[1] and the September 23, 2013 Joint Order[2] of the Office of the Ombudsman *(Ombudsman)* in OMB-L-C-08-0315-D and OMB-L-A-08-0245-D, dismissing the criminal and administrative complaints against the respondents.

The Antecedents

Petitioner Edward Thomas F. Joson *(Joson)* filed his Affidavit-Complaint,[3] dated April 21, 2008, before the Ombudsman charging the respondents — Governor Aurelio M. Umali *(Governor Umali)*, Provincial Administrator Atty. Alejandro R. Abesamis *(Alejandro)*, Consultant Atty. Ferdinand R. Abesamis (*Ferdinand*), Provincial Treasurer Edilberto M. Pancho *(Pancho)*, and Officer-in Charge Ma. Cristina G. Roxas *(Roxas)* of the Office of the Provincial Accountant, all of the Province of Nueva Ecija, with the criminal offenses of Violation of Section 3 (e) of Republic Act *(R.A.)* No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and Unlawful Appointment, defined and penalized under Article 244 of the Revised Penal Code *(RPC)*, docketed as OMB-L-C-08-0315-D, and offense of Grave Misconduct, docketed as OMB-L-A-08-0245-D.

The filing of the above charges stemmed from the alleged appointment of Ferdinand as Consultant-Technical Assistant in the Office of the Governor of Nueva Ecija.

In his affidavit-complaint, Joson alleged that on July 2, 2007, the Province of Nueva Ecija, represented by Governor Umali,

---

[1] *Rollo*, pp. 24-31. Penned by Graft Investigation and Prosecution Officer I Francis Euston R. Acero and Approved by Ombudsman Conchita Carpio-Morales.

[2] *Id.* at 32-50. Penned by Assistant Ombudsman Atty. Leilanie Bernadette C. Cabras and Approved by Ombudsman Conchita Carpio-Morales.

[3] *Id.* at 52-61.

entered into a contract of consultancy with Ferdinand wherein the latter was appointed or employed as Consultant-Technical Assistant in the Office of the Governor. On February 28, 2008, Governor Umali and Ferdinand entered into another contract of consultancy on February 28, 2008, wherein the former, representing the Provincial Government of Nueva Ecija, again appointed or re-employed the latter in the same position. Joson asserted that Governor Umali appointed Ferdinand despite his knowledge of the latter's disqualification for appointment or re-employment in any government position. He claimed that Ferdinand was dismissed from the service as Senior State Prosecutor of the Department of Justice for "conduct prejudicial to the best interest of the service" pursuant to Administrative Order (A.O.) No. 14, dated August 27, 1998; and that such penalty of dismissal carried with it his perpetual disqualification for re-employment in the government service. According to Joson, because Ferdinand was meted out the penalty of dismissal from service with all accessory penalties attached to it and that he was never granted any executive clemency, his appointment as legal consultant was unlawful, illegal and invalid being in violation of the Administrative Code of 1987 and the Civil Service Law, Rules and Regulations. Joson added that for the same reason as above, the twin contracts of consultancy were likewise invalid and unlawful.

Joson further averred that the execution of the contract of consultancy, dated February 28, 2008, was legally defective because its effectivity was made to retroact to January 2, 2008 in violation of the rule that *"[i]n no case shall an appointment take effect earlier than the date of its issuance."*[4] He argued that because no consultancy contract existed from January 2, 2008 to February 28, 2008, Ferdinand should not have been paid any honorarium for his alleged services rendered during the said period. With respect to the rest of the respondents, Joson asserted that they should be held liable for the above charges considering that they processed the payment of honoraria to Ferdinand arising out of the illegal and invalid contracts of consultancy.

---

[4] Rule IV, Effectivity of Appointment, Omnibus Rules on Appointment and Other Personnel Actions.

Joson also contended that the appointment of Ferdinand as consultant by Governor Umali in spite of being disqualified to hold public office, and the payment of his monthly honorarium from the coffers of the provincial government by the other respondents, were done with manifest partiality, evident bad faith or gross inexcusable negligence, giving unwarranted benefit to Ferdinand and causing great and irreparable damage and prejudice to the taxpayers of the Province of Nueva Ecija. In view of this, Joson submitted that the private respondents should be made liable for violation of Section 3 (e) of R.A. No. 3019. Joson added that Governor Umali should also be held liable for violation of Article 244 of the RPC for knowingly extending appointments to Ferdinand as legal consultant regardless of the latter's lack of legal qualification to the said position. Lastly, Joson asserted that Governor Umali's act of illegally and unlawfully hiring the services of Ferdinand could be reasonably viewed as gross misconduct in office because such act involved the transgression of some established and definite rules.

In his Counter-Affidavit,[5] Governor Umali responded that the legal arguments advanced by Joson in his affidavit-complaint were fatally defective and had no basis in fact and in law. He averred that the consultancy services rendered by Ferdinand could not be considered as government service within the contemplation of law and, hence, not governed by the Civil Service Law, Rules and Regulations. He pointed out that under the twin contracts of consultancy, Ferdinand had been engaged to render lump sum consultancy services for a short duration of six (6) months on a daily basis and had not been paid any salary or given any benefits enjoyed by government employees such as PERA, COLA and RATA, but merely paid honoraria as stipulated in the contracts.

Governor Umali argued that if Ferdinand was indeed appointed or re-employed by the provincial government, as erroneously perceived by Joson, then there would be no need for him to execute the second consultancy contract which was merely a renewal of his previous contract of July 2, 2007. He submitted

[5] *Id.* at 73-80.

that the consultancy contracts were mere agreements to render service and could not in themselves create public office to which the Revised Omnibus Rules on Appointments and other Personnel Actions would apply. To bolster his claim, Governor Umali cited the Department of Interior and Local Government (*DILG*) Opinion No. 72 series of 2004, dated August 23, 2004[6] and DILG Opinion No. 100 series of 2004, dated October 14, 2004,[7] wherein then DILG Secretary Angelo T. Reyes opined that a consultancy service was not covered by the phrase "*any office in the government*." Governor Umali alleged that he could not be adjudged guilty of gross misconduct because prior to his signing of the subject consultancy contracts, he sought the legal opinion[8] of the Provincial Legal Office which assured him that there was no legal impediment in engaging the services of Ferdinand. He merely relied in good faith on its advice, which he presumed to be in accordance with law and existing jurisprudence.

Governor Umali averred that the true and actual date of the execution of the second consultancy contract was January 2, 2008 as clearly shown by the effectivity of the engagement of Ferdinand stated in paragraph 1 thereof. The said contract was a renewal of the earlier contract, dated July 2, 2007, which expired on December 31, 2007. He explained that the date of execution of the second contract was inadvertently left blank and the secretary of the notary public, Mary Grace Cauzon, mistakenly stamped the date of the notarial act, February 28, 2008, on the said blank space on the first page of the contract supposedly pertaining to its date of execution.

Ferdinand, on the other hand, posited in his Counter-Affidavit,[9] dated June 16, 2008, that although his dismissal from government service was not yet final as his motion for reconsideration had not yet been resolved by the Office of the President at the time of his appointment, there was no way that his service contract

---

[6] *Id.* at 81-82.

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

[8] *Id.* at 85.

[9] *Id.* at 87-93.

with the Provincial Government of Nueva Ecija could be construed as to create a public office. He alleged that his engagements squarely fell within the ambit of contracts of service/job orders under Section 2 (a), Rule XI of the Civil Service Commission Circular No. 40 series of 1998. He insisted that he was not a government employee and the specifics of his contracts were governed by the Commission on Audit (*COA*). He adopted Governor Umali's explanation anent the true date of execution of the second consultancy contract.

In their Joint Counter-Affidavit,[10] Alejandro, Pancho and Roxas stressed that they committed no infraction of the law in affixing their respective signatures in the obligation requests and disbursement vouchers which authorized the payment of honoraria in favor of Ferdinand for the consultancy services he rendered. They explained that the signing of the obligation requests and disbursement vouchers were done in the ordinary course of business and in the normal processing of the said documents. They added that the charges against them were premature considering that the payment of honoraria to Ferdinand had not yet been subjected to post audit by the COA which had the sole authority and jurisdiction to suspend or disallow disbursements of public funds.

On July 17, 2008, Joson filed his Reply-Affidavit[11] in amplification of his contentions and arguments in his affidavit-complaint. He further argued that by entering in the subject consultancy contracts, Ferdinand became a government employee and a public officer because he was holding a non-career service position in accordance with Section 9, Chapter 2, Title I, Book V of Executive Order (*E.O.*) No. 292 (the Administrative Code of 1987).

The Ruling of the Ombudsman

On September 8, 2011, the Office of the Ombudsman issued a joint resolution dismissing the criminal and administrative complaints against all the respondents. The Ombudsman disposed of the case as follows:

---

[10] *Id.* at 94-101.

[11] *Id.* at 126-141.

WHEREFORE, premises considered, it is respectfully recommended that:

1. The criminal charges for Violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act and for Unlawful Appointments against respondents Aurelio M. Umali, Alejandro R. Abesamis, Ferdinand R. Abesamis, Edilberto Pancho and Ma. Cristina G. Roxas be DISMISSED for lack of sufficient evidence; and

2. The administrative charges for Grave Misconduct against respondents Aurelio M. Umali, Alejandro R. Abesamis, Ferdinand R. Abesamis, Edilberto Pancho and Ma. Cristina G. Roxas be DISMISSED for lack of merit.

SO RESOLVED.[12]

Joson moved for reconsideration of the joint resolution, but his motion was denied by the Ombudsman in its September 23, 2013 Joint Order. It decreed:

WHEREFORE, the Motion for Reconsideration is hereby DENIED. The JOINT RESOLUTION dated September 8, 2011 DISMISSING OMB-L-C-08-0315-D and OMB-L-A-08-0245-D STANDS.

SO ORDERED.[13]

Undaunted, Joson comes to this Court via a *certiorari* petition ascribing grave abuse of discretion on the part of the Ombudsman in dismissing the criminal charges for lack of probable cause and the administrative charges for lack of merit. Joson raised the following:

ASSIGNMENT OF ERRORS

I. THE OFFICE OF THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE CHARGES AGAINST THE RESPONDENTS.

---

[12] *Id.* at 30.

[13] *Id.* at 49.

II. THE OFFICE OF THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED THE PETITIONER'S MOTION FOR RECONSIDERATION.[14]

The Court's Ruling

The petition is devoid of merit.

The Court agrees with the findings of the Ombudsman that there was no sufficient evidence to indict the respondents for the crimes of violation of Section 3 (e) of R.A. No. 3019 and unlawful appointment; and that the charge of grave misconduct was not established by substantial evidence.

The Ombudsman is endowed with wide latitude, in the exercise of its investigatory and prosecutory powers, to pass upon criminal complaints involving public officials and employees. Specifically, the determination of whether probable cause exists or not is a function that belongs to the Ombudsman. In other words, the Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not.[15]

In the present petition, the Court does not perceive any showing of manifest error or grave abuse of discretion on the part of the Ombudsman when it issued the assailed Joint Resolution, dated September 8, 2011 and Joint Order, dated September 23, 2013 which dismissed the criminal complaint against the private respondents for violation of Section 3 (e) of R.A. No. 3019 and Unlawful Appointment for want of sufficient evidence.

To begin with, a finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and that there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, or on evidence establishing

---

[14] *Id.* at 11.

[15] *Casing v. Hon. Ombudsman*, 687 Phil. 468, 475 (2012).

absolute certainty of guilt. The case of *Vergara v. The Hon. Ombudsman*[16] is instructive on this score:

> Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. Probable cause need not be based on clear and convincing evidence of guilt, or on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt, but it certainly demands more than bare suspicion and can never be left to presupposition, conjecture, or even convincing logic.[17]

In this case, the allegations and evidence presented by the petitioners failed to prove that the Ombudsman acted in such a capricious and whimsical exercise of judgment in determining the non-existence of probable cause against the private respondents. The Ombudsman dismissed the petitioner's complaint for lack of probable cause based on its appreciation and review of the evidence presented. In the Joint Resolution, dated September 8, 2011, the Ombudsman stated that Ferdinand was not appointed to a public office through the contracts of consultancy because of the following factors:

1. The rights, authority and duties of Ferdinand arose from contract, not law;
2. Ferdinand was not vested with a portion of the sovereign authority;
3. The consultancy contracts were for a limited duration, as the same were valid for only six (6) months each and could be terminated by a mere written notice given five (5) days prior;
4. Ferdinand did not enjoy the benefits given to government employees such as PERA, COLA and RATA, but only received honoraria for consultancy services actually rendered; and

---

[16] 600 Phil. 26 (2009).

[17] *Id.* at 44.

5. The Revised Omnibus Rules on Appointments and other Personnel Actions recognize that service contracts like the subject twin contracts of consultancy were not considered government service.

The Ombudsman concluded that there could be no legal basis to support a finding that Governor Umali violated Article 244 of the RPC considering that Ferdinand was not appointed to a government office; and that, there could be no finding that the respondents violated R.A. No. 3019 considering that the alleged irregularity in the engagements of Ferdinand was not shown by substantial evidence.

In *Posadas v. Sandiganbayan*,[18] the Court stated that a consultancy service is not considered government service.

> Pursuant to CSC Resolution No. 93-1881 dated May 25, 1993, **a contract for consultancy services is not covered by Civil Service Law, rules and regulations because the said position is not found in the index of position titles approved by DBM**. Accordingly, it does not need the approval of the CSC. xxx A "**consultant**" is defined as one who provides professional advice on matters within the field of his specific knowledge or training. **There is no employer-employee relationship in the engagement of a consultant but that of client-professional relationship**.[19]
>
> [Emphases Supplied]

The Court notes that Ferdinand did not take an oath of office prior to his rendition of consultancy services for the Provincial Government of Nueva Ecija. All public officers and employees from the highest to the lowest rank are required to take an oath of office which marks their assumption to duty. It is well-settled that on oath of office is a qualifying requirement for public office, a prerequisite to the full investiture of the office.[20] Ferdinand was not required to take an oath of office because he

---

[18] 714 Phil. 248 (2003).

[19] *Id.* at 285.

[20] *Mendoza v. Laxina, Sr.*, 453 Phil. 1013, 1026-1027 (2003); *Chavez v. Ronidel*, 607 Phil. 76 (2009).

rendered consultancy services for the provincial government not by virtue of an appointment or election to a specific public office or position but by a contractual engagement. In fine, those who have rendered services with the government, without occupying a public office or without having been elected or appointed as a public officer evidenced by a written appointment and recorded with the Civil Service Commission, did so outside the concept of government service.

Although in its September 23, 2013 Joint Order, the Ombudsman stated that the engagement of Ferdinand as consultant "comes within the purview of the term 'public office' and therefore, his dismissal from the service disqualifies him from being hired as such xxx,"[21] it opined, and so held, that the private respondents could not be held criminally liable for violation of Section 3 (e) of R.A. No. 3019 because the two elements of the offense are wanting. According to the Ombudsman, there was no undue injury amounting to actual damages to the government as it was not disputed that Ferdinand performed the tasks and duties required of him under the questioned contracts and, thus, the payment of honoraria to him was in order and did not cause damage to or result in prejudice to the provincial government. The Ombudsman was also of the opinion that the private respondents did not act with manifest partiality, evident bad faith or gross inexcusable negligence in entering into the consultancy contracts with Ferdinand because Governor Umali relied on the issuances of the Civil Service Commission and the opinions of the DILG and the Provincial Legal Office in good faith before proceeding to engage Ferdinand.

Moreover, the Ombudsman stated that Governor Umali could not be held liable for violation of Article 244 of the RPC for unlawful appointment explaining in this wise:

> Umali believed in good faith that Ferdinand's dismissal from the service did not disqualify him from being hired as a consultant, hence, Art. 244 cannot apply since to commit the crime, one must knowingly appoint the disqualified person. The term "knowingly"

[21] *Rollo*, p. 43.

presupposes that the public officer knows of the disqualification and despite such, he appointed said person.[22]

Verily, the foregoing sufficiently shows that the Ombudsman did not commit grave abuse of discretion in dismissing the criminal charges against the private respondents. As defined by this Court in *United Coconut Planters Bank v. Looyuko*:[23]

> By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[24]

It falls upon the petitioner to discharge the burden of proving there was grave abuse of discretion on the part of the Ombudsman, in accordance with the definition and standards set by law and jurisprudence. "Not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion. While the prosecutor, or in this case, the investigating officers of the Office of the Ombudsman, may err or even abuse the discretion lodged in them by law, such error or abuse alone does not render their act amenable to correction and annulment by the extraordinary remedy of *certiorari*."[25] The requirement for judicial intrusion is still for the petitioner to show clearly that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction. Joson, in this case, failed to do so. On the contrary, the record reveals that the Ombudsman carefully perused and studied the documents and meticulously weighed the evidence submitted by the parties before issuing the assailed joint resolution and joint order which strongly

---

[22] *Id.* at 47.

[23] 560 Phil. 581 (2007).

[24] *Id.* at 591-592.

[25] *Agdeppa v. Honorable Office of the Ombudsman*, G.R. No. 146376, April 23, 2014, 723 SCRA 293, 332-333.

negated any averment that they were issued capriciously, whimsically, arbitrarily, or in a despotic manner.

Moreover, a finding of probable cause, or lack of it, is a finding of fact which is generally not reviewable by this Court. Only when there is a clear case of grave abuse of discretion will this Court interfere with the findings of the Office of the Ombudsman. As a general rule, the Court does not interfere with the Ombudsman's determination of the existence or absence of probable cause. As the Court is not a trier of facts, it reposes immense respect to the factual determination and appreciation made by the Ombudsman. The rationale behind this rule is explained in *Republic v. Desierto*,[26] in this wise:

> The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[27]

It is readily apparent from Joson's assertion in the petition that he was questioning the correctness of the appreciation of facts by the Ombudsman. He presented an issue which touched on the factual findings of the Ombudsman. Such issue is not reviewable by this Court via *certiorari*.[28]

With respect to the dismissal of the administrative charge for gross misconduct, the Court finds that the same has already attained finality because Joson failed to file a petition for *certiorari* before the Court of Appeals *(CA)*.

---

[26] 541 Phil. 57 (2007), citing *Ocampo v. Ombudsman*, G.R. Nos. 103446-47, August 30, 1993, 225 SCRA 725, 730.

[27] *Id.* at 67-68.

[28] *Brito v. Office of the Deputy Ombudsman for Luzon*, 554 Phil. 112, 127 (2007).

The assailed ruling of the Ombudsman absolving the private respondents of the administrative charge possesses the character of finality and, thus, not subject to appeal. Section 7, Rule III of the Ombudsman Rules provides:

> SECTION 7. Finality of decision. — Where the respondent is **absolved of the charge**, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be **final and unappealable**. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari shall have been filed by him as prescribed in Section 27 of RA 6770.
>
> [Emphasis Supplied]

In *Reyes, Jr. v. Belisario*,[29] the Court wrote:

> The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case. The complainant, therefore, is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or fine a equivalent to one month salary.[30]

Though final and unappealable in the administrative level, the decisions of administrative agencies are still subject to judicial review if they fail the test of arbitrariness, or upon proof of grave abuse of discretion, fraud or error of law, or when such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion.[31] Specifically, the correct procedure is to file a petition for *certiorari* before the CA to question the Ombudsman's decision of dismissal

---

[29] 612 Phil. 936 (2009).

[30] *Id.* at 954.

[31] *Orais v. Almirante*, 710 Phil. 662, 673 (2013).

of the administrative charge.[32] Joson, however, failed to do this. Hence, the decision of the Ombudsman exonerating the private respondents from the charge of grave misconduct had already become final. In any event, the subject petition failed to show any grave abuse of discretion or any reversible error on the part of the Ombudsman to compel this Court to overturn its assailed administrative ruling.

This Court has maintained its policy of non-interference with the Ombudsman's exercise of its investigatory and prosecutory powers in the absence of grave abuse of discretion, not only out of respect for these constitutionally mandated powers but also for practical considerations owing to the myriad functions of the courts. In the case at bench, the Court will uphold the findings of the Ombudsman absent a clear showing of grave abuse of discretion on its part.

At any rate, the Court notes that upon motion for reconsideration, A.O. No. 14, which decreed the dismissal from service of respondent Atty. Ferdinand Abesamis as Senior State Prosecutor, was already reversed and set aside per Resolution,[33] dated March 11, 2010, issued by the Office of the President. In effect, it affirmed the May 21, 1998 Resolution[34] of then Justice Secretary Silvestre Bello III which strongly admonished Ferdinand to be more circumspect in the discharge of his public office.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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

---

[32] *Ruivivar v. Office of the Ombudsman*, 587 Phil. 100, 113 (2008).

[33] *Rollo*, pp. 223-225.

[34] *Id.* at 219-222.

THIRD DIVISION

[G.R. No. 210308. April 6, 2016]

ASIAN INTERNATIONAL MANPOWER SERVICES, INC., *petitioner, vs.* **DEPARTMENT OF LABOR AND EMPLOYMENT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE DUE PROCESS; ESSENCE; IN ADMINISTRATIVE PROCEEDINGS, THE FILING OF CHARGES AND GIVING REASONABLE OPPORTUNITY TO THE PERSON CHARGED TO ANSWER THE ACCUSATIONS AGAINST HIM CONSTITUTE THE MINIMUM REQUIREMENTS OF DUE PROCESS.— "[T]he essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. In the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard." "Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself." "The observance of fairness in the conduct of an investigation is at the very heart of procedural due process." As long as he is given the opportunity to defend his interests in due course, he is not denied due process. In administrative proceedings, the filing of charges and giving reasonable opportunity to the person charged to answer the accusations against him constitute the minimum requirements of due process.

2. LABOR AND SOCIAL LEGISLATIONS; LABOR CODE; OVERSEAS EMPLOYMENT; 2002 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA) RULES; ADVERTISEMENT OF OVERSEAS JOB WHEN

PERMITTED EVEN WITHOUT PRIOR APPROVAL FROM THE POEA.— AIMS also points out that the flyer advertising the jobs in Macau and California was never presented or made part of the record, and neither was the AIMS lady clerk who allegedly distributed the same even identified, as AIMS demanded. Besides, granting that AIMS did advertise with flyers for hotel workers or grape pickers, for which it allegedly had no existing approved job orders, it is provided in Sections 1 and 2 of Rule VII (Advertisement for Overseas Jobs), Part II of the 2002 POEA Rules that the said activity is permitted for manpower pooling purposes, without need of prior approval from the POEA, upon the following conditions: (1) it is done by a licensed agency; (2) the advertisement indicates in bold letters that it is for manpower pooling only; (3) no fees are collected from the applicants; and (4) the name, address and POEA license number of the agency, name and worksite of the prospective registered/ accredited principal and the skill categories and qualification standards are indicated.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; ONLY SUBSTANTIAL EVIDENCE IS NEEDED; PETITIONER'S RIGHT TO BE INFORMED OF THE CHARGES AGAINST IT AND TO BE HELD LIABLE ONLY UPON SUBSTANTIAL EVIDENCE, VIOLATED.—** It is true that in administrative proceedings, as in the case below, only substantial evidence is needed, or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Unfortunately, there is no evidence against AIMS to speak of, much less substantial evidence. Clearly, AIMS's right to be informed of the charges against it, and its right to be held liable only upon substantial evidence, have both been gravely violated.

APPEARANCES OF COUNSEL

Renta Pe Causing Sabarre Castro & Associates for petitioner.

D E C I S I O N

REYES, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated July 9, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 123565, which sustained the Order dated April 12, 2011 and Resolution dated December 22, 2011 of the Department of Labor and Employment (DOLE) in OS-POEA-0142-1013-2008.

The Facts

Rule II, Part VI of the 2002 Philippine Overseas Employment Agency (POEA) Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers (2002 POEA Rules) authorizes the filing of a complaint by the POEA upon its own initiative[3] against a recruitment agency suspected of violations of its Rules on the recruitment and placement of overseas workers. In particular, Section 2 (e) of Rule I, Part VI thereof provides:

> SECTION 2. Grounds for imposition of administrative sanctions:
>
> xxx xxx xxx
>
> e. Engaging in act/s of misrepresentation in connection with recruitment and placement of workers, such as furnishing or publishing any false notice, information or document in relation to recruitment or employment;
>
> xxx xxx xxx

---

[1] *Rollo*, pp. 15-35.

[2] Penned by Associate Justice Florito S. Macalino, with Associate Justices Sesinando E. Villon and Pedro B. Corales concurring; *id.* at 37-44.

[3] Section 1 of Rule II, Part VI of the 2002 POEA Rules provides that "the Administration, on its own initiative, may conduct proceedings based on reports of violation POEA Rules and Regulations and other issuances on overseas employment subject to preliminary evaluation."

On November 8, 2006, the Anti-Illegal Recruitment Branch of the POEA, pursuant to Surveillance Order No. 033, Series of 2006, conducted a surveillance of Asian International Manpower Services, Inc. (AIMS) with office address at 1653 Taft Avenue corner Pedro Gil Street, Malate, Manila to determine whether it was operating as a recruitment agency despite the cancellation of its license on August 28, 2006.[4] The operatives reported that their surveillance did not reveal the information needed, so another surveillance was recommended.[5]

On February 20, 2007, another surveillance was conducted on the premises of AIMS' office pursuant to Surveillance Order No. 011. This time the POEA operatives observed that there were people standing outside its main entrance, and there were announcements of job vacancies posted on the main glass door of the office.[6] Posing as applicants, the POEA operatives, Atty. Romelson E. Abbang and Edilberto V. Alogoc, inquired as to the requirements for the position of executive staff, and a lady clerk of AIMS handed them a flyer.[7] Through the flyer, they learned that AIMS was hiring hotel workers for deployment to Macau and grape pickers for California.[8] They also saw applicants inside the office waiting to be attended to. The POEA operatives later confirmed through the POEA Verification System that AIMS had regained its license and good standing on December 6, 2006, but that it had no existing approved job orders yet at that time.[9]

On March 26, 2007, the POEA issued a Show Cause Order directing AIMS and its covering surety, Country Bankers Insurance Corporation, to submit their answer or explanation to the Surveillance Report dated November 8, 2006 of the POEA

---

[4] *Rollo*, p. 38.

[5] *Id.*

[6] *Id.*

[7] *Id.* at 19, 38.

[8] *Id.* at 21.

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

operatives.[10] However, no copy of the Surveillance Report dated February 21, 2007 was attached.[11]

In compliance thereto, Danilo P. Pelagio, AIMS President, wrote to the POEA on April 3, 2007 maintaining that AIMS was not liable for any recruitment misrepresentation. Invoking the Surveillance Report dated November 8, 2006, he cited the POEA operatives' own admission that when they first came posing as applicants, the AIMS staff advised them that it had no job vacancies for waiters and that its license had been cancelled. He also called POEA's attention to the notice issued to AIMS, which was received on November 27, 2006, that the cancellation of its license had been set aside on December 6, 2006; and that the POEA Adjudication Office even circulated an advise to all its operating units of the restoration of AIMS' license.[12]

During the hearing on May 9, 2007, AIMS representative, Rommel Lugatiman (Lugatiman), appeared, and averring that it had already filed its answer, he then moved for the resolution of the complaint.[13]

In the Order dated June 30, 2008, then POEA Administrator Rosalinda Baldoz ruled that on the basis of the Surveillance Report dated February 21, 2007 of the POEA operatives, AIMS was liable for misrepresentation under Section 2 (e), Rule I, Part VI of the 2002 POEA Rules, since the POEA records showed that AIMS had no job orders to hire hotel workers for Macau, nor grape pickers for California, as its flyer allegedly advertised. The *fallo* of the order reads:

> **WHEREFORE**, premises considered, we find and so hold [AIMS] liable for violation of Section 2(e), Rule I, Part VI of the [2002 POEA Rules] and is hereby imposed with (sic) the penalty of suspension of its license for four (4) months or, in lieu thereof, fine amounting to PHP40,000.00.

---

[10] *Id.* at 39.

[11] *Id.* at 19.

[12] *Id.* at 39.

[13] *Id.*

SO ORDERED.[14]

AIMS filed a motion for reconsideration before the DOLE. It alleged that its right to due process was violated because the POEA did not furnish it with a copy of the Surveillance Report dated February 21, 2007, which was the basis of the POEA Administrator's factual findings.[15]

In an Order dated April 12, 2011, the DOLE affirmed the order of the POEA, asserting that due process was observed. It cited AIMS's letter-answer to POEA's Show Cause Order dated April 3, 2007 denying POEA's charge of misrepresentation. It likewise cited the hearing held on May 9, 2007 wherein AIMS's representative, Lugatiman, after manifesting that it had filed its answer, merely moved that the case be deemed submitted for resolution instead of availing of the hearing to rebut the allegations of misrepresentation against it.[16]

AIMS moved for reconsideration from the DOLE ruling, which the DOLE denied on December 22, 2011.[17]

On January 3, 2012, AIMS filed a petition for *certiorari* in the CA, docketed as CA-G.R. SP No. 123565, upon the following grounds:

THE [DOLE] GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT HEED THE PLEA OF [AIMS] FOR COMPLIANCE WITH THE DUE PROCESS OF LAW, AT LEAST REMANDING THE CASE TO THE POEA TO ENABLE [AIMS] TO ANSWER SQUARELY THE [SURVEILLANCE REPORT DATED FEBRUARY 21, 2007] AND ALL OTHER EVIDENCE ALONG WITH IT.

THE [DOLE] GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION

---

[14] *Id.* at 39-40.

[15] *Id.* at 40.

[16] *Id.*

[17] *Id.*

WHEN IT AFFIRMED THE ORDER OF THE POEA IN RULING THAT [AIMS] IS GUILTY OF THE OFFENSE CHARGED DESPITE THE LACK OF SUBSTANTIAL EVIDENCE TO SUPPORT THE FINDINGS.[18]

In its Decision[19] dated July 9, 2013, the CA dismissed AIMS's charge of denial of due process for failure of POEA to furnish it with a copy of the Surveillance Report dated February 21, 2007. It held that AIMS' misrepresentation with regard to the recruitment of workers for non-existent overseas jobs was supported by substantial evidence.

In the case at bench, AIMS['s] failure to receive a copy of Surveillance Report dated 21 February 2007 does not amount to denial of due process. True, in the Show Cause Order, only the Surveillance Report dated 8 November 2006 and the Affidavit of the operatives who conducted the surveillance were attached to the same. Hence, when AIMS filed a Letter in reply to the Show Cause Order, it answered only the contents of Surveillance Report dated 8 November 2006. However, it is undisputed that on 9 May 2007, POEA scheduled a preliminary hearing where Lugatiman, AIMS representative, appeared. Lugatiman was obviously informed of the charges against AIMS. Instead of rebutting the allegations of the operatives in the two (2) Surveillance Reports, Lugatiman failed to clarify the issues or the charges and merely manifested that AIMS already filed an answer and thus moved for the resolution of the Complaint against it. Clearly, AIMS was given the opportunity to be heard and to present its side but failed to make use of the same. Thus, AIMS cannot feign denial of due process.

Further, the charge of misrepresentation against AIMS is supported by substantial evidence. It is well settled that in administrative proceedings as in the case before the POEA, only substantial evidence is needed or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.

Section 2(e) of Rule I, Part VI of the 2002 POEA Rules reads:

"SECTION 2. Grounds for imposition of administrative sanctions:

---

[18] *Id.* at 41.

[19] *Id.* at 37-44.

xxx xxx xxx

6. Engaging in act/s of misrepresentation in connection with recruitment and placement of workers, such as furnishing or publishing any false notice, information or document in relation to recruitment or employment;

xxx xxx xxx"

In this case, AIMS committed misrepresentation in connection with recruitment and placement of workers when it offered various job openings in Macau as hotel workers and for U.S.A. as grape pickers although it knew that it had no existing approved job orders. AIMS misrepresented to its applicants that it had the valid authority and capacity to deploy workers to the said places in violation of the 2002 POEA Rules.[20] (Citations omitted and underlining ours)

In this petition, AIMS insists that its right to due process was violated because it was never furnished with a copy of the POEA Surveillance Report dated February 21, 2007, upon which both the POEA and DOLE anchored their factual finding that it misrepresented to job applicants that it had existing job orders.

Ruling of the Court

The petition is granted.

"[T]he essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. In the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard."[21]

"Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself."[22] "The observance of fairness in the conduct

---

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

[21] *Gannapao v. Civil Service Commission, et al*., 665 Phil. 60, 70 (2011).

[22] *F/O Ledesma v. CA*, 565 Phil. 731, 740 (2007).

of an investigation is at the very heart of procedural due process."[23] As long as he is given the opportunity to defend his interests in due course, he is not denied due process.[24] In administrative proceedings, the filing of charges and giving reasonable opportunity to the person charged to answer the accusations against him constitute the minimum requirements of due process.[25]

According to the CA, AIMS was "obviously informed of the charges" against it during the May 9, 2007 preliminary hearing at the POEA, where its representative Lugatiman appeared. But instead of rebutting the allegations of the POEA operatives in their Surveillance Reports, Lugatiman "failed to clarify the issues or the charges and merely manifested that AIMS already filed an answer and thus moved for the resolution of the Complaint against it." Thus, the CA concluded that AIMS was given opportunity to be heard and to present its side but it failed to make use of the said opportunity.[26]

The Court does not agree. In concluding that, through Lugatiman, AIMS was "obviously informed of the charges" during the preliminary hearing, the CA overlooked the crucial fact that, as the POEA itself admitted, it did not furnish AIMS with a copy of its Surveillance Report dated February 21, 2007, which contains the factual allegations of misrepresentation supposedly committed by AIMS. It is incomprehensible why the POEA would neglect to furnish AIMS with a copy of the said report, since other than the fact that AIMS was represented at the hearing on May 9, 2007, there is no showing that Lugatiman was apprised of the contents thereof. In fact, as AIMS now claims, the alleged recruitment flyer distributed to its applicants was not even presented.

---

[23] *Vivo v. Philippine Amusement and Gaming Corporation (PAGCOR)*, G.R. No. 187854, November 12, 2013, 709 SCRA 276, 281.

[24] *Gannapao v. Civil Service Commission, et al.*, *supra* note 21; see also *Cojuangco, Jr. v. Atty. Palma*, 501 Phil. 1, 8 (2005).

[25] *Rivas v. Sison*, 498 Phil. 148, 154 (2005).

[26] *Rollo*, p. 43.

Since AIMS was provided with only the Surveillance Report dated November 8, 2006, it could only have been expected to respond to the charge contained in the Show Cause Order. Thus, in its answer, it needed only to point to the POEA operatives' own admission in their Surveillance Report dated November 8, 2006 that when they came posing as job applicants, the staff of AIMS advised them that it had no job vacancies for waiters and that its license had been cancelled. As POEA now also admits, AIMS's license to recruit was restored on December 6, 2006.

The CA faulted AIMS for failing to avail itself of the opportunity to rebut the allegations of the POEA operatives in the two Surveillance Reports, as well as "to clarify the issues or the charges," during the May 9, 2007 preliminary hearing.[27] Considering that AIMS was not furnished with the Surveillance Report dated February 21, 2007, it cannot be expected to second-guess what charges and issues it needed to clarify or rebut in order to clear itself. Needless to say, its right to due process consisting of being informed of the charges against it has been grossly violated.

Moreover, AIMS also points out that the flyer advertising the jobs in Macau and California was never presented or made part of the record, and neither was the AIMS lady clerk who allegedly distributed the same even identified, as AIMS demanded. Besides, granting that AIMS did advertise with flyers for hotel workers or grape pickers, for which it allegedly had no existing approved job orders, it is provided in Sections 1 and 2 of Rule VII (Advertisement for Overseas Jobs), Part II of the 2002 POEA Rules[28] that the said activity is permitted for manpower pooling

---

[27] *Id.*

[28] Section 1. Advertisement for Actual Job Vacancies. Licensed agencies may advertise for actual job vacancies without prior approval from the Administration if covered by manpower requests of registered/accredited foreign principals and projects. The advertisements shall indicate the following information:

a. Name, address and POEA license number of the agency;
b. Work site of prospective principal/project;
c. Skill categories and qualification standards; and
d. Number of available positions.

purposes, without need of prior approval from the POEA, upon the following conditions: (1) it is done by a licensed agency; (2) the advertisement indicates in bold letters that it is for manpower pooling only; (3) no fees are collected from the applicants; and (4) the name, address and POEA license number of the agency, name and worksite of the prospective registered/ accredited principal and the skill categories and qualification standards are indicated.

It is true that in administrative proceedings, as in the case below, only substantial evidence is needed, or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[29] Unfortunately, there is no evidence against AIMS to speak of, much less substantial evidence. Clearly, AIMS's right to be informed of the charges against it, and its right to be held liable only upon substantial evidence, have both been gravely violated.

WHEREFORE, premises considered, the petition is **GRANTED**. Accordingly, the Decision dated July 9, 2013 and Resolution dated December 6, 2013 of the Court of Appeals in CA-G.R. SP No. 123565, are **REVERSED** and **SET ASIDE**.

SO ORDERED.

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

Section 2. Advertisement for Manpower Pooling. Licensed agencies may advertise for manpower pooling without prior approval from the Administration subject to the following conditions:

a. The advertisement should indicate in bold letters that it is for manpower pooling only and that no fees will be collected from the applicants; and

b. The advertisement indicates the name, address and POEA license number of the agency, name and worksite of the prospective registered/ accredited principal and the skill categories and qualification standards.

[29] *Office of the Ombudsman v. Beltran*, 606 Phil. 573, 590 (2009).

THIRD DIVISION

[G.R. No. 212382. April 6, 2016]

SCANMAR MARITIME SERVICES, INCORPORATED, CROWN SHIPMANAGEMENT INC., LOUIS DREYFUS ARMATEURS AND M/T ILE DE BREHAT AND/OR MR. EDGARDO CANOZA, *petitioners, vs.* **EMILIO CONAG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEALS BY *CERTIORARI*; WHILE THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND THE LABOR ARBITER (LA) ARE IMBUED WITH EXPERTISE AND AUTHORITY TO RESOLVE FACTUAL ISSUES, THE COURT HAS IN EXCEPTIONAL CASES DELVED INTO THEM WHERE THERE IS INSUFFICIENT EVIDENCE TO SUPPORT THEIR FINDINGS, OR TOO MUCH IS DEDUCED FROM THE BARE FACTS SUBMITTED BY THE PARTIES, OR THE LA AND THE NLRC CAME UP WITH CONFLICTING FINDINGS.— In appeals by *certiorari* under Rule 45 of the Rules of Court, the task of the Court is generally to review only errors of law since it is not a trier of facts, a rule which definitely applies to labor cases. But while the NLRC and the LA are imbued with expertise and authority to resolve factual issues, the Court has in exceptional cases delved into them where there is insufficient evidence to support their findings, or too much is deduced from the bare facts submitted by the parties, or the LA and the NLRC came up with conflicting findings, as the Court has found in this case.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DISABILITY BENEFITS; SEAFARER'S ACTION FOR TOTAL AND PERMANENT DISABILITY BENEFITS, CONDITIONS.— The relevant legal provisions governing a seafarer's right to disability benefits, in addition to the parties' contract and medical findings, are Articles 191 to 193 of the Labor Code and Section 2, Rule X of the Amended Rules on

Employee Compensation. The pertinent contracts are the POEA-SEC, the CBA, if any, and the employment agreement between the seafarer and his employer. x x x In *C.F. Sharp Crew Management, Inc., et al. v. Taok*, the Court enumerated the conditions which may be the basis for the seafarer's action for total and permanent disability benefits, as follows: (a) [T]he company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion; (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.

3. ID.; ID.; ID.; UNDER SECTION 20-B(3), THE DUTY TO SECURE THE OPINION OF A THIRD DOCTOR BELONGS TO THE EMPLOYEE ASKING FOR DISABILITY BENEFITS.— But even granting that his afterthought consultation with Dr. Jacinto could be given due consideration, it has been held in *Philippine Hammonia ship Agency, Inc. v. Dumadag*, and reiterated in *Simbajon*, that under Section 20-

B(3) of the POEA-SEC, **the duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits.** Not only did Conag fail to seasonably obtain an opinion from his own doctor before filing his complaint, thereby permitting the petitioners no opportunity to evaluate his doctor's assessment, but he also made it impossible for the parties to jointly seek the opinion of a third doctor precisely because the petitioners had not known about Dr. Jacinto's opinion in the first place. Indeed, three months passed before Conag sought to dispute the company-designated physician's assessment, and during this interval other things could have happened to cause or aggravate his injury. In particular, the Court notes that, after he collected his sick wage, Conag spent two months in his home province and engaged in various physical activities.

4. ID.; ID.; ID.; NO FACTUAL MEDICAL BASIS FOR THE RESPONDENT'S CLAIM OF PERMANENT DISABILITY BENEFITS.— Even considering the inherent merits of the medical certificate issued by Dr. Jacinto on March 20, 2010, the NLRC did not hide its suspicion that his certification was not the result of an honest, *bona fide* treatment of Conag, but rather one issued out of a short one-time visit. xxx. No laboratory and diagnostic tests and procedures, if any, were presented which could have enabled him to diagnose him as suffering from lumbar hernia or "*Herniated Nucleus Pulposus, L5-S1, Right"* as the cause of his permanent disability. There is no proof of hospital confinement, laboratory or diagnostic results, treatments and medical prescriptions shown which could have helped the company-designated physicians in re-evaluating their assessment of Conag's fitness. When Dr. Jacinto said that "[Conag's] symptoms [were] aggravated due to his work which entails carrying heavy loads," he obviously relied merely on Conag's account about what allegedly happened to him aboard ship nine months earlier. This Court is thus inclined to concur with the NLRC that on the basis solely of Conag's story, Dr. Jacinto made his assessment that he was "physically unfit to work as a seafarer."

5. ID.; ID.; ID.; THE LABOR ARBITER IS NOT TRAINED OR AUTHORIZED TO MAKE A DETERMINATION OF UNFITNESS TO WORK FROM THE MERE APPEARANCE OF THE EMPLOYEE; NO SHOWING THAT "MILD LUMBAR LEVOCONVEX SCOLIOSIS AND SPONDYLOSIS"

IS A SERIOUS SPINAL INJURY THAT MAY RESULT IN PERMANENT DISABILITY IN CASE AT BAR.— The Court finds it significant that both the LA and the CA concluded, on the basis alone of a diagnosis of "*Mild Lumbar Levoconvex Scoliosis* [left curvature of the spinal column in the lower back, L1 to L5] *and Spondylosis*; *Right S1 Nerve Root Compression,*" that Conag suffered serious spinal injuries which caused his total disability. Nowhere is the nature of this injury or condition described or explained, or that it could have been the result of strain or an accident while Conag was aboard ship, not to mention that it was only a "mild" case. xxx. Concerning the LA's observation of his alleged deteriorated physical and medical condition, and therefore his unfitness to return to work, let it suffice that the LA's own opinion as to the physical appearance of Conag is of no relevance in this case, as it must be stated that he is not trained or authorized to make a determination of unfitness to work from the mere appearance of Conag at the arbitral proceedings.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
R.C. Carrera & Associates Law Office for respondent.

D E C I S I O N

REYES, *J.*:

This is a Petition for Review on *Certiorari*[1] from the Decision[2] dated January 27, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 119282, which reversed the Decision[3] dated November 30, 2010 of the National Labor Relations Commission

---

[1] *Rollo*, pp. 26-75.

[2] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Fernanda Lampas Peralta and Myra V. Garcia-Fernandez concurring; *id.* at 77-86.

[3] Rendered by Presiding Commissioner Gerardo C. Nograles, with Commissioners Perlita B. Velasco and Romeo L. Go concurring; *id.* at 194-203.

(NLRC) in NLRC LAC No. OFW(M) 09-000666-10 and ordered the reinstatement of the Decision[4] of the Labor Arbiter (LA) dated July 8, 2010 in NLRC RAB NCR Case No. (M) 02-02666-10.

Since 2002, respondent Emilio A. Conag (Conag) had been deployed annually by petitioner Scanmar Maritime Services, Inc. (Scanmar) as a bosun's mate aboard foreign vessels owned or operated by its principal, Crown Ship Management, Inc./ Louis Dreyfus Armateurs SAS (Crown Ship). On March 27, 2009, he was again deployed as a bosun's mate aboard the vessel *M/T Ile de Brehat*. According to him, his job entailed lifting heavy loads and occasionally, he would skid and fall while at work on deck. On June 19, 2009, as he was going about his deck duties, he felt numbness in his hip and back. He was given pain relievers but the relief was temporary. Two months later, the pain recurred with more intensity, and on August 18, 2009 he was brought to a hospital in Tunisia.[5]

On August 25, 2009, Conag was medically repatriated. Upon arrival in Manila on August 27, 2009, he was referred to the company-designated physicians at the Metropolitan Medical Center (MMC), Marine Medical Services, where he was examined and subjected to laboratory examinations.[6]

The laboratory tests showed that Conag had *"Mild Lumbar Levoconvex Scoliosis and Spondylosis; Right S1 Nerve Root Compression,"* with an incidental finding of *"Gall Bladder Polyposis v. Cholesterolosis."*[7] For over a period of 95 days, he was treated by the company-designated physicians, Drs. Robert Lim (Dr. Lim) and Esther G. Go (Dr. Go), and in their final medical report[8] dated December 1, 2009, they declared Conag fit to resume sea duties. Later that day, Conag signed a Certificate of Fitness for Work,[9] written in English and Filipino. Conag

---

[4] Rendered by Labor Arbiter Fedriel S. Panganiban; *id.* at 183-192.

[5] *Id.* at 78.

[6] *Id.*

[7] *Id.*

[8] *Id.* at 147.

[9] *Id.* at 149.

claimed that he was required to sign the certificate as a condition *sine qua non* for the release of his accumulated sick pay.[10] According to him, however, his condition deteriorated while he was undergoing treatment. On February 18, 2010, he filed a complaint against Scanmar, Crown Ship and Edgardo Canoza (collectively, petitioners) seeking full and permanent disability benefits, among others. He also consulted another doctor, Dr. Manuel C. Jacinto, Jr. (Dr. Jacinto), at Sta. Teresita General Hospital in Quezon City, who on March 20, 2010 issued a certificate stating that his "condition did not improve despite medicine and that his symptoms aggravated due to his work which entails carrying of heavy loads."[11] Dr. Jacinto then assessed Conag as unfit to go back to work as a seafarer.[12]

Ruling of the LA

In its Decision[13] dated July 8, 2010, the LA held that the disability assessment of Dr. Jacinto was reflective of Conag's actual medical and physical condition.[14] Citing *Maunlad Transport, Inc., and/or Nippon Merchant Marine Company, Ltd., Inc. v. Manigo, Jr.*,[15] the LA ruled that the medical reports presented by the parties are not binding upon the arbitration tribunal, but must be evaluated on their inherent merit, and that the declaration of fitness by the company-designated physicians may be overcome by superior evidence.[16] In particular, the LA noted that during the arbitration proceedings, Conag appeared to be clearly physically unfit to resume sea duties on account of his spinal injuries.[17] As for the certificate of fitness to work

---

[10] *Id.* at 163.

[11] *Id.* at 185.

[12] *Id.*

[13] *Id.* at 183-192.

[14] *Id.* at 188.

[15] 577 Phil. 319 (2008).

[16] *Rollo*, pp. 188-189.

[17] *Id.* at 188.

Conag signed, the LA ruled it out for being an invalid waiver.[18] The *fallo* of the LA decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered ordering [Scanmar] and/or [Crown Ship] to pay [Conag] the Philippine peso equivalent at the time of actual payment of **ONE HUNDRED EIGHTEEN THOUSAND EIGHT HUNDRED US DOLLARS (US$118,800)**, representing permanent disability benefits in accordance with the Collective Bargaining Agreement, plus ten [percent] (10%) thereof as and for attorney's fees.
>
> All other claims are hereby ordered dismissed for lack of merit.
>
> SO ORDERED.[19]

Ruling of the NLRC

On appeal by the petitioners, the NLRC in its Decision[20] dated November 30, 2010, dismissed Conag's complaint for lack of merit. It took note that Conag failed to comply with the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC) requirement on the appointment of a neutral physician in case of disagreement as to his disability assessment.[21] The NLRC nevertheless ruled that even without the opinion of a third doctor jointly chosen by the parties, any ruling will have to be based on the evidence on record,[22] pursuant to *Nisda v. Sea Serve Maritime Agency, et al*.[23] It concluded that Conag's evidence was inadequate to overcome the assessment of fitness by the company-designated physicians. The NLRC pointed out that Conag was under the care of the company-designated physicians from the time of his repatriation on August 27, 2009 until he was declared fit to work on December 1, 2009. The company-designated physicians

---

[18] *Id.* at 190.

[19] *Id.* at 191-192.

[20] *Id.* at 194-203.

[21] *Id.* at 198-199.

[22] *Id.* at 199.

[23] 611 Phil. 291 (2009).

were able to show the detailed procedures and laboratory tests done on Conag. On the other hand, Dr. Jacinto's medical certificate did not specify the dates when he saw and treated Conag, nor the diagnostic and laboratory tests he conducted and the specific treatments and medications he administered, if any, in arriving at his conclusion that the latter suffered from *"Herniated Nucleus Pulposus, L5-S1, Right,"* and was now unfit to work.[24]

The petitioners' motion for reconsideration was denied by the NLRC in its Resolution[25] dated February 28, 2011.

Ruling of the CA

In upholding the LA decision, the CA found "undisputed" evidence that Conag suffered from spinal injuries which caused his total disability, discrediting as without basis the NLRC's dismissal of Dr. Jacinto's assessment. That he was not rehired by the petitioners is a telling proof, the CA said, of his unfitness for sea duties, after having assessed him as fit to go back to work.[26]

On motion for reconsideration,[27] the petitioners tried to show, to no avail, that the award of disability benefits to Conag is without basis because there is no proof that his claimed spinal injury was work-related, since he could point to no incident on board which could have caused it. They claimed that he was declared fit to work by the company-designated physicians pursuant to the provisions of the POEA-SEC, to which he was bound. They further averred that, granting he was permanently disabled, as a bosun's mate, Conag was classified as "rating" only and not a junior officer; and he is thus entitled only to $89,100.00 in disability benefits under the Collective Bargaining Agreement (CBA). They also claimed that the CA's reliance on the 120-day rule in the treatment of seafarers is misplaced

---

[24] *Rollo*, pp. 199-202.

[25] *Id.* at 205-206.

[26] *Id.* at 85.

[27] *Id.* at 87-124.

and attorney's fees cannot be awarded because they are fully justified in denying disability benefits to Conag.

Grounds

In this petition for review on *certiorari*, the petitioners basically reiterate the same grounds they had raised before the CA, to wit:

1. Whether the [CA] committed serious, reversible error of law in disregarding the medical findings of the company-designated physician[s] and awarding full disability compensation under the CBA.
2. Whether the [CA] committed serious, reversible error of law in invoking the 120-day [rule]. The [CA's] reliance on the 120-day [rule] is misplaced. Mere inability to work for more than 120 days does not of itself [entitle] [Conag] to full disability compensation.
3. Whether the [CA] erred in awarding attorney's fees in favor of [Conag] despite justified refusal to pay full and permanent benefits.[28]

Essentially, the petitioners seek to belie the conclusion of the CA that the NLRC's determination of Conag's permanent total disability is not borne out by the evidence. In effect, the Court was asked to make an inquiry into the contrary factual findings of the NLRC and the LA, whose statutory function is to make factual findings based on the evidence on record.[29] Crucial, then, to a ruling on the above issue is whether the CA was justified in finding that, contrary to the NLRC's conclusion, Conag suffered a work-related spinal injury which rendered him unfit to return to work.

Ruling of the Court

The Court grants the petition.

---

[28] *Id.* at 32-33.

[29] See *CBL Transit, Inc. v. NLRC*, 469 Phil. 363, 371 (2004).

In appeals by *certiorari* under Rule 45 of the Rules of Court, the task of the Court is generally to review only errors of law since it is not a trier of facts, a rule which definitely applies to labor cases.[30] But while the NLRC and the LA are imbued with expertise and authority to resolve factual issues, the Court has in exceptional cases delved into them where there is insufficient evidence to support their findings, or too much is deduced from the bare facts submitted by the parties, or the LA and the NLRC came up with conflicting findings,[31] as the Court has found in this case.

Seafarer's right to disability benefits

The relevant legal provisions governing a seafarer's right to disability benefits, in addition to the parties' contract and medical findings,[32] are Articles 191 to 193 of the Labor Code and Section 2, Rule X of the Amended Rules on Employee Compensation. The pertinent contracts are the POEA-SEC, the CBA, if any, and the employment agreement between the seafarer and his employer.[33] To summarize and harmonize the pertinent provisions on the establishment of a seafarer's claim to disability benefits, the Court held in *Vergara v. Hammonia Maritime Services, Inc., et al*.[34] that:

> [T]he seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. 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

---

[30] *Tagle v. Anglo-Eastern Crew Management, Phils., Inc*., G.R. No. 209302, July 9, 2014, 729 SCRA 677, 687.

[31] *Nisda v. Sea Serve Maritime Agency, et al*., *supra* note 23, at 311.

[32] *C.F. Sharp Crew Management, Inc., et al. v. Taok*, 691 Phil. 521, 533 (2012).

[33] *Id.*; *Tagle v. Anglo-Eastern Crew Management, Phils., Inc*., *supra* note 30, at 688.

[34] 588 Phil. 895 (2008).

partially or totally, as his condition is defined under the POEA[-SEC] 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 his medical condition.[35] (Citations omitted and italics in the original)

In *C.F. Sharp Crew Management, Inc., et al. v. Taok*,[36] the Court enumerated the conditions which may be the basis for a seafarer's action for total and permanent disability benefits, as follows:

(a) [T]he company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion; (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) the company-designated physician

---

[35] *Id.* at 912.

[36] 691 Phil. 521 (2012).

declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.[37]

Incidentally, in the recent case of *Magsaysay Maritime Corporation v. Simbajon*,[38] the Court has mentioned that an amendment to Section 20-A (6) of the POEA-SEC, contained in POEA Memorandum Circular No. 10, series of 2010,[39] now "finally clarifies" that "[for work-related illnesses acquired by seafarers from the time the 2010 amendment to the POEA-SEC took effect, the declaration of disability should no longer be based on the number of days the seafarer was treated or paid his sickness allowance, but rather on the disability grading he received, whether from the company-designated physician or from the third independent physician, if the medical findings of the physician chosen by the seafarer conflicts with that of the company-designated doctor."[40]

Conag failed to comply with Section 20-B (3) of the POEA-SEC

---

[37] *Id.* at 538-539.

[38] G.R. No. 203472, July 9, 2014, 729 SCRA 631.

[39] POEA Memorandum Circular No. 10, series of 2010, Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, October 26, 2010.

Section 20-A(6) provides:

> In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.
>
> The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.

[40] *Magsaysay Maritime Corporation v. Simbajon*, *supra* note 38, at 652-653.

On December 1, 2009, after 95 days of therapy, Conag was pronounced by the company-designated doctors as fit to work. Later that day, he executed a certificate, in both English and Filipino, acknowledging that he was now fit to work. On December 5, 2009, he left for his home province of Negros Oriental, as he told his employers in his letter[41] dated February 9, 2010, wherein he expressed his desire to be redeployed. He told them that during his vacation he was able to engage in a lot of activities such as walking around his neighborhood four times a week, swimming two times a week, weightlifting three times a week, driving his car on Saturdays for one hour, riding his motorbike five times a week, playing basketball every Sunday, and fishing and doing some house repairs when he had the time.

Interestingly, however, on February 18, 2010,[42] a mere nine days after his letter, Conag filed his complaint with the LA for disability benefits, presumably after he was told that he would not be rehired, although the reasons for his rejection are nowhere stated. It is not alleged that before he filed his complaint, he first sought payment of total disability benefits from the petitioners. In fact, it was only on March 20, 2010, three months after the petitioners declared him fit to work, that Conag obtained an assessment of unfitness to work from a doctor of his choice, Dr. Jacinto. Thus, when he filed his complaint for disability benefits, he clearly had as yet no medical evidence whatsoever to support his claim of permanent and total disability.

But even granting that his afterthought consultation with Dr. Jacinto could be given due consideration, it has been held in *Philippine Hammonia Ship Agency, Inc. v. Dumadag*,[43] and reiterated in *Simbajon*,[44] that under Section 20-B (3) of the POEA-SEC, **the duty to secure the opinion of a third doctor belongs to the employee asking for disability benefits**. Not only did

---

[41] *Rollo*, p. 150.

[42] *Id.* at 30.

[43] G.R. No. 194362, June 26, 2013, 700 SCRA 53.

[44] *Supra* note 38.

Conag fail to seasonably obtain an opinion from his own doctor before filing his complaint, thereby permitting the petitioners no opportunity to evaluate his doctor's assessment, but he also made it impossible for the parties to jointly seek the opinion of a third doctor precisely because the petitioners had not known about Dr. Jacinto's opinion in the first place. Indeed, three months passed before Conag sought to dispute the company-designated physicians' assessment, and during this interval other things could have happened to cause or aggravate his injury. In particular, the Court notes that, after he collected his sick wage, Conag spent two months in his home province and engaged in various physical activities.

Conag has no factual medical basis for his claim of permanent disability benefits

According to the CA, there is no dispute that Conag suffered from spinal injuries designated as *"Mild Lumbar Levoconvex Scoliosis and Spondylosis; Right S1 Nerve Root Compression,"* with an incidental finding of *"Gall Bladder Polyposis v. Cholesterolosis,"* on account of his job as a bosun's mate, which is "associated with working with machinery, lifting heavy loads and cargo." The CA also found that he sustained his injuries during his employment with the petitioners.[45]

The Court disagrees.

A review of the petitioners' evidence reveals that both the CA and the LA glossed over vital facts which would have upheld the fitness to work assessment issued by the company-designated physicians. The petitioners cited a certification by the ship master,[46] which Conag has not denied, that the ship's logbook carried no entry whatsoever from March 28 to August 25, 2009 of any accident on board in which Conag could have been involved. Instead, Conag's medical repatriation form shows that he was sent home because of a "big pain on his left kidney,

---

[45] *Rollo*, p. 84.

[46] *Id.* at 151.

kidney stones."[47] In their final report dated December 1, 2009,[48] Drs. Lim and Go of the MMC certified that he was first "cleared urologic-wise" upon his repatriation. The NLRC also noted that Conag mentioned no particular incident at work on deck which could have caused his spinal pain.

To rule out any spinal injury, pertinent tests were nevertheless conducted, resulting in a diagnosis of "*Mild Lumbar Levoconvex Scoliosis and Spondylosis*; *Right S1 Nerve Root Compression,"* with an incidental finding of *"Gall Bladder Polyposis v. Cholesterolosis."* Attached to the report of Drs. Lim and Go is a certificate, also dated December 1, 2009, issued by Dr. William Chuasuan, Jr. (Dr. Chuasuan), Orthopedic and Adult Joint Replacement Surgeon also at MMC, who attended to Conag, that he had *"Low Back Pain; Herniated Nucleus Pulposus, L5-S1, Right."*[49] In declaring Conag fit to return to work, Dr. Chuasuan noted that he was now free from pain and he had regained full range of trunk movement. He noted *"Negative Straight Leg Raising Test. Full trunk range of motion, (-) pain. Fit to return to work*."[50]

Even considering the inherent merits of the medical certificate issued by Dr. Jacinto on March 20, 2010, the NLRC did not hide its suspicion that his certification was not the result of an honest, *bona fide* treatment of Conag, but rather one issued out of a short one-time visit. It noted that Dr. Jacinto issued a pro-forma medical certificate,[51] with the blanks filled in his own hand. Dr. Jacinto certified that Conag's condition "did not improve despite medicine," yet nowhere did he specify what medications, therapy or treatments he had prescribed in arriving at his unfit-

---

[47] *Id.* at 29.

[48] *Id.* at 147.

[49] *Id.* at 148.

[50] The straight-leg-raise test (or (*Lasègue's sign)* is the most sensitive test for lumbar disk herniation, with a negative result strongly indicating against lumbar disk herniation. <http://www.aafp.org/afp/2008/1001/p835.htm> viewed March 29, 2016; *id.*

[51] *Rollo*, pp. 200-201.

to-work assessment, nor when and how many times he had treated Conag, except to say, vaguely, "from March 2010 to present," "present" being March 20, 2010, the date of his certificate. No laboratory and diagnostic tests and procedures, if any, were presented which could have enabled him to diagnose him as suffering from lumbar hernia or *"Herniated Nucleus Pulposus, L5-S1, Right"* as the cause of his permanent disability. There is no proof of hospital confinement, laboratory or diagnostic results, treatments and medical prescriptions shown which could have helped the company-designated physicians in re-evaluating their assessment of Conag's fitness. When Dr. Jacinto said that "[Conag's] symptoms [were] aggravated due to his work which entails carrying heavy loads," he obviously relied merely on Conag's account about what allegedly happened to him aboard ship nine months earlier. This Court is thus inclined to concur with the NLRC that on the basis solely of Conag's story, Dr. Jacinto made his assessment that he was "physically unfit to work as a seafarer."

In *Coastal Safeway Marine Services, Inc. v. Esguerra*,[52] this Court rejected the medical certifications upon which the claimant-seaman anchored his claim for disability benefits, for being unsupported by diagnostic tests and procedures which would have effectively disputed the results of the medical examination in a foreign clinic to which he was referred by his employer. In *Magsaysay Maritime Corporation and/or Dela Cruz, et al. v. Velasquez, et al.*,[53] the Court brushed aside the evidentiary value of a recommendation made by the doctor of the seafarer which was "based on a single medical report which outlined the alleged findings and medical history" of the claimant-seafarer.[54] In *Montoya v. Transmed Manila Corporation/Mr. Ellena, et al.,*[55] the Court dismissed the doctor's plain statement of the supposed work-relation/work-aggravation of a seafarer's ailment for being

---

[52] 671 Phil. 56 (2011).

[53] 591 Phil. 839 (2008).

[54] *Id.* at 852.

[55] 613 Phil. 696 (2009).

"not supported by any reason or proof submitted together with the assessment or in the course of the arbitration."[56]

In *Dumadag*,[57] where the seafarer's doctor examined him only once, and relied on the same medical history, diagnoses and analyses produced by the company-designated specialists, it was held that there is no reason for the Court to simply say that the seafarer's doctor's findings are more reliable than the conclusions of the company-designated physicians.

No showing that "Mild Lumbar Levoconvex Scoliosis and Spondylosis" is a serious spinal injury that may result in permanent disability

The Court finds it significant that both the LA and the CA concluded, on the basis alone of a diagnosis of "*Mild Lumbar Levoconvex Scoliosis* [left curvature of the spinal column in the lower back, L1 to L5] *and Spondylosis; Right S1 Nerve Root Compression,"* that Conag suffered serious spinal injuries which caused his total disability. Nowhere is the nature of this injury or condition described or explained, or that it could have been the result of strain or an accident while Conag was aboard ship, not to mention that it was only a "mild" case. Dr. Chuasuan noted in his December 1, 2009 report that Conag was now free from pain and had regained full range of trunk movement: *"Negative Straight Leg Raising Test. Full trunk range of motion, (-) pain. Fit to return to work."* For 95 days, Conag underwent therapy and medication, and Dr. Chuasuan's final *Lasègue's* sign test to see if his low back pain had an underlying herniated disk (slipped disc) was negative.

Apparently, then, Conag's back pain had been duly addressed. He himself was able to attest that back home from December 2009 to February 2010 he was able to engage in various normal

---

[56] *Id.* at 711.

[57] *Supra* note 43.

physical routines. Concerning the LA's observation of his alleged deteriorated physical and medical condition, and therefore his unfitness to return to work, let it suffice that the LA's own opinion as to the physical appearance of Conag is of no relevance in this case, as it must be stated that he is not trained or authorized to make a determination of unfitness to work from the mere appearance of Conag at the arbitral proceedings.

WHEREFORE, the Court **GRANTS** the petition. The Decision dated January 27, 2014 of the Court of Appeals in CA-G.R. SP No. 119282 is **REVERSED**, and the Decision dated November 30, 2010 of the National Labor Relations Commission in NLRC LAC No. OFW(M) 09-000666-10 is hereby **REINSTATED**.

SO ORDERED.

Velasco, Jr. (Chairperson), del Castillo,[*] *Perez,* and *Jardeleza*, *JJ.*, concur.

SECOND DIVISION

[G.R. No. 213394. April 6, 2016]

SPOUSES EMMANUEL D. PACQUIAO and JINKEE J. PACQUIAO, *petitioners, vs.* **THE COURT OF TAX APPEALS – FIRST DIVISION and THE COMMISSION OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. TAXATION; REPUBLIC ACT NO. 1125, OTHERWISE KNOWN AS AN ACT CREATING THE COURT OF TAX

---

[*] Designated Additional Member per Raffle dated January 21, 2015 *vice* Associate Justice Diosdado M. Peralta.

APPEALS, AND FOR OTHER PURPOSES, AS AMENDED; SECTION 11 THEREOF; AN APPEAL TO THE COURT OF TAX APPEALS FROM THE DECISION OF THE COLLECTOR OF INTERNAL REVENUE WILL NOT SUSPEND THE PAYMENT, LEVY, DISTRAINT, AND/ OR SALE OF ANY PROPERTY OF THE TAXPAYER FOR THE SATISFACTION OF HIS TAX LIABILITY AS PROVIDED BY EXISTING LAW, BUT THE TAX APPEALS MAY SUSPEND THE SAID COLLECTION AND REQUIRE THE TAXPAYER EITHER TO DEPOSIT THE AMOUNT CLAIMED OR TO FILE A SURETY BOND, WHEN IN THE VIEW OF THE TAX APPEALS, THE COLLECTION MAY JEOPARDIZE THE INTEREST OF THE GOVERNMENT AND/OR THE TAXPAYER,.— Section 11 of R.A. No. 1125, as amended by R.A. No. 9282, embodies the rule that an appeal to the CTA from the decision of the CIR will not suspend the payment, levy, distraint, and/ or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law. When, in the view of the CTA, the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond.

2. **ID.; ID.; ID.; ID.; THE AUTHORITY OF THE COURT OF TAX APPEALS (CTA) TO ISSUE INJUNCTIVE WRITS TO RESTRAIN THE COLLECTION OF TAX AND TO DISPENSE WITH THE DEPOSIT OF THE AMOUNT CLAIMED OR THE FILING OF THE REQUIRED BOND IS NOT CONFINED TO CASES WHERE PRESCRIPTION HAS SET IN, BUT ALSO WHENEVER IT IS DETERMINED BY THE COURTS THAT THE METHOD EMPLOYED BY THE COLLECTOR OF INTERNAL REVENUE IN THE COLLECTION OF TAX JEOPARDIZES THE INTERESTS OF A TAXPAYER FOR BEING PATENTLY IN VIOLATION OF THE LAW; RATIONALE.—** [D]espite the amendments to the law, the Court still holds that the CTA has ample authority to issue injunctive writs to restrain the collection of tax **and to even dispense with the deposit of the amount claimed or the filing of the required bond**, whenever the **method** employed by the CIR in the collection of tax jeopardizes the interest of a taxpayer

for being **patently in violation of the law.** Such authority emanates form the jurisdiction conferred to it not only by Section 11 of R.A. No. 1125, but also by Section 7 of the same law. x x x. From all the foregoing, it is clear that the authority of the courts to issue injunctive writs to restrain the collection of tax and to dispense with the deposit of the amount claimed or the filing of the required bond **is not simply confined to cases where prescription has set in.** As explained by the Court in those cases, ***whenever it is determined by the courts that the method employed by the Collector of Internal Revenue in the collection of tax is not sanctioned by law,*** the **bond** requirement under Section 11 of R.A. No. 1125 **should be dispensed with.** The purpose of the rule is not only to prevent jeopardizing the interest of the taxpayer, but more importantly, to prevent the absurd situation wherein the court would declare "that the collection by the summary methods of distraint and levy was violative of law, and then, in the same breath require the petitioner to deposit or file a bond as a prerequisite for the issuance of a writ of injunction."

3. ID.; ID.; ID.; ID.; TO DETERMINE WHETHER THE REQUIREMENT OF PROVIDING THE REQUIRED SECURITY COULD BE REDUCED OR DISPENSED WITH *PENDENTE LITE*, THE COURT OF TAX APPEALS SHOULD CONDUCT A PRELIMINARY HEARING AND RECEIVE EVIDENCE TO PROPERLY DETERMINE WHETHER THE COLLECTOR OF INTERNAL REVENUE (CIR), IN ITS ASSESSMENT OF THE TAX LIABILITY OF THE TAXPAYERS, AND ITS EFFORT OF COLLECTING THE SAME, COMPLIED WITH THE LAW AND THE PERTINENT ISSUANCES OF THE BIR ITSELF.— [T]he Court finds no sufficient basis in the records for the Court to determine whether the dispensation of the required cash deposit or bond provided under Section 11, R.A. No. 1125 is appropriate. It should first be highlighted that in rendering the assailed resolution, the CTA, without stating the facts and law, made a determination that the illegality of the methods employed by the CIR to effect the collection of tax was not patent. x x x Though it may be true that it would have been premature for the CTA to immediately determine whether the assessment made against the petitioners was valid or whether the warrants were properly issued and served, *still,*

it behooved upon the CTA to properly determine, **at least preliminarily, whether the CIR,** in its assessment of the tax liability of the petitioners, and its effort of collecting the same, **complied with the law and the pertinent issuances of the BIR itself.** The CTA should have conducted a preliminary hearing and received evidence so it could have properly determined whether the requirement of providing the required security under Section 11, R.A. No. 1125 could be reduced or dispensed with *pendent lite*.

4. ID.; ID.; ID.; ID.; ID.; THE CTA IS IN A BETTER POSITION TO DETERMINE WHETHER THE METHODS EMPLOYED BY THE CIR IN ITS ASSESSMENT JEOPARDIZED THE INTERESTS OF A TAXPAYER FOR BEING PATENTLY IN VIOLATION OF THE LAW, AS THE SAME IS A QUESTION OF FACT THAT CALLS FOR THE RECEPTION OF EVIDENCE WHICH WOULD SERVE AS BASIS; REMAND OF THE CASE TO THE CTA, PROPER.— Absent any evidence and preliminary determination by the CTA, the Court cannot make any factual finding and settle the issue whether the petitioners should comply with the security requirement under Section 11, R.A. No. 1125. The determination of whether the methods, employed by the CIR in its assessment, jeopardized the interests of a taxpayer for being patently in violation of the law **is a question of fact that calls for the reception of evidence** which would serve as basis. In this regard, the CTA is in a better position to initiate this given its time and resources. The remand of the case to the CTA on this question is, therefore, more sensible and proper. For the Court to make any finding of fact on this point would be premature. As stated earlier, there is no evidentiary basis. All the arguments are mere allegations from both sides. Moreover, **any finding by the Court would pre-empt the CTA** from properly exercising its jurisdiction and settle the main issues presented before it, that is, whether the petitioners were afforded due process; whether the CIR has valid basis for its assessment; and whether the petitioners should be held liable for the deficiency taxes.

5. ID.; NATIONAL INTERNAL REVENUE CODE; TAX AUDITS AND/OR INVESTIGATION; SECTION 3 OF REVENUE REGULATION NO. 12-99; THE SERVICE OF A NOTICE OF INFORMAL CONFERENCE IS

MANDATORY, AS THE SAME IS PART OF THE DUE PROCESS REQUIREMENT IN THE ISSUANCE OF A DEFICIENCY TAX ASSESSMENT, AND THE ABSENCE THEREOF RENDERS NUGATORY ANY ASSESSMENT MADE BY THE TAX AUTHORITIES.— [T]he petitioners contend that the BIR issued the PAN without first sending a NIC to petitioners. One of the first requirements of Section 3 of Revenue Regulation *(R.R.)* No. 12-99, the then prevailing regulation on the due process requirement in tax audits and/or investigation, is that a NIC be first accorded to the taxpayer. The use of the word *"shall"* in subsection 3.1.1 describes the mandatory nature of the service of a NIC. As with the other notices required under the regulation, the purpose of sending a NIC is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities.

6. ID.; ID.; TAX ASSESSMENT; THE 3-YEAR LIMIT FOR THE ASSESSMENT OF DEFICIENCY INTERNAL REVENUE TAXES MAY BE EXTENDED TO TEN (10) YEARS IN CASES WHERE THERE IS FALSE, ACTUAL AND INTENTIONAL FRAUD, OR NON-FILING OF A TAX RETURN.— Section 203 of the Tax Code provides a 3-year limit for the assessment of internal revenue taxes. While the prescriptive period to assess deficiency taxes may be extended to 10 years in cases where there is false, fraudulent, or non-filing of a tax return – the fraud contemplated by law must be actual. It must be intentional, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right.

7. ID.; ID.; ID.; A PRELIMINARY INVESTIGATION MUST FIRST BE CONDUCTED BEFORE A LETTER OF AUTHORITY IS ISSUED.— In its letter, dated December 13, 2010, the NID had been conducting a fraud investigation against the petitioners under its RATE program and that it found that "fraud had been established in the instant case as determined by the Commissioner." Under Revenue Memorandum Order *(RMO)*No. 27-10, it is required that a **preliminary investigation** must first be conducted **before a LA is issued.**

8. ID.; ID.; ID.; AN ASSESSMENT, IN ORDER TO STAND JUDICIAL SCRUTINY, MUST BE BASED ON FACTS,

AS THE PRESUMPTION OF THE CORRECTNESS OF AN ASSESSMENT, BEING A MERE PRESUMPTION, CANNOT BE MADE TO REST ON ANOTHER PRESUMPTION.— The FLD issued against the petitioners allegedly stated that the amounts therein were **"estimates based on best possible source."** A taxpayer should be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment is void. An assessment, in order to stand judicial scrutiny, must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption. To stress, the petitioners had asserted that the assessment of the CIR was based on actual transactions but on **"estimates based on best possible sources."** This assertion has not been satisfactorily addressed by the CIR in detail. Thus, there is a need for the CTA to conduct a preliminary hearing.

9. ID.; ID.; ID.; IN THE CONDUCT OF THE PRELIMINARY HEARING, THE CTA MUST BALANCE THE SCALE BETWEEN THE INHERENT POWER OF THE STATE TO TAX AND ITS RIGHT TO PROSECUTE PERCEIVED TRANSGRESSORS OF THE LAW, ON THE ONE SIDE, AND THE CONSTITUTIONAL RIGHTS OF THE TAXPAYERS TO DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAWS, ON THE OTHER. IN CASE OF DOUBT, THE SCALE SHOULD FAVOR THE TAXPAYER.— In case the CTA finds that the petitioners should provide the necessary security under Section 11 of R.A. 1125, a recomputation of the amount thereof is in order. If there would be a need for a bond or to reduce the same, the CTA should take note that the Court, in A.M. No. 15-92-01-CTA, resolved to approve the CTA *En Banc* Resolution No. 02-2015, where the phrase "amount claimed" stated in Section 11 of R.A. No. 1125 was construed to refer to the **principal** amount of the deficiency taxes, ***excluding penalties, interests and surcharges.*** Moreover, the CTA should also consider the claim of the petitioners that they already paid a total of ₱32,196,534.40 deficiency VAT assessed against them. Despite said payment, the CIR still assessed them the total amount of ₱3,298,514,894.35, including the amount assessed as VAT deficiency, plus surcharges, penalties and interest. If so, these should also be deducted from the amount of the bond to be

computed and required. In the conduct of its preliminary hearing, the CTA must balance the scale between the inherent power of the State to tax and its right to prosecute perceived transgressors of the law, on one side; and the constitutional rights of petitioners to due process of law and the equal protection of the laws, on the other. In case of doubt, the tax court must remember that as in all tax cases, such scale should favor the taxpayer, for a citizen's right to due process and equal protection of the law is amply protected by the Bill of Rights under the Constitution.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for petitioners.

Office of the Solicitor General for public respondents.

D E C I S I O N

MENDOZA, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 65 of the Rules of Court filed by petitioner spouses, now Congressman Emmanuel D. Pacquiao (*Pacquiao*) and Vice-Governor Jinkee J. Pacquiao (*Jinkee*), to set aside and annul the April 22, 2014 Resolution[2] and the July 11, 2014 Resolution[3] of the Court of Tax Appeals (*CTA*), First Division, in CTA Case No. 8683.

Through the assailed issuances, the CTA granted the petitioners' Urgent Motion to Lift Warrants of Distraint & Levy and Garnishment and for the Issuance of an Order to Suspend the Collection of Tax (with Prayer for the Issuance of a Temporary Restraining Order[4] [*Urgent Motion*], dated October 18, 2013,

---

[1] *Rollo*, pp. 3-55.

[2] *Id.* at 82-91.

[3] *Id.* at 92-100.

[4] *Id.* at 635-654.

but required them, as a condition, to deposit a cash bond in the amount of ₱3,298,514,894.35 or post a bond of ₱4,947,772,341.53.

The Antecedents

The genesis of the foregoing controversy began a few years before the petitioners became elected officials in their own right. Prior to their election as public officers, the petitioners relied heavily on Pacquiao's claim to fame as a world-class professional boxer. Due to his success, Pacquiao was able to amass income from both the Philippines and the United States of America (*US*). His income from the US came primarily from the purses he received for the boxing matches he took part under Top Rank, Inc. On the other hand, his income from the Philippines consisted of talent fees received from various Philippine corporations for product endorsements, advertising commercials and television appearances.

In compliance with his duty to his home country, Pacquiao filed his 2008 income tax return on April 15, 2009 reporting his Philippine-sourced income.[5] It was subsequently amended to include his US-sourced income.[6]

The controversy began on March 25, 2010, when Pacquiao received a Letter of Authority[7] (*March LA*) from the Regional District Office No. 43 (*RDO*) of the Bureau of Internal Revenue (*BIR*) for the examination of his books of accounts and other accounting records for the period covering January 1, 2008 to December 31, 2008.

On April 15, 2010, Pacquiao filed his 2009 income tax return,[8] which although reflecting his Philippines-sourced income, failed to include his income derived from his earnings in the US.[9] He

---

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

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

[7] *Id.* at 543.

[8] *Id.* at 544-546.

[9] Memorandum of Petitioners, p. 10; *id.* at 1418.

also failed to file his Value Added Tax (*VAT*) returns for the years 2008 and 2009.[10]

Finding the need to directly conduct the investigation and determine the tax liabilities of the petitioners, respondent Commissioner of Internal Revenue (*CIR*) issued another Letter of Authority, dated July 27, 2010 (*July LA*), authorizing the BIR's National Investigation Division (*NID*) to examine the books of accounts and other accounting records of both Pacquiao and Jinkee for the last 15 years, from 1995 to 2009.[11] On September 21, 2010 and September 22, 2010, the CIR replaced the July LA by issuing to both Pacquiao[12] and Jinkee[13] separate electronic versions of the July LA pursuant to Revenue Memorandum Circular (*RMC*) No. 56-2010.[14]

Due to these developments, the petitioners, through counsel, wrote a letter[15] questioning the propriety of the CIR investigation. According to the petitioners, they were already subjected to an earlier investigation by the BIR for the years prior to 2007, and no fraud was ever found to have been committed. They added that pursuant to the March LA issued by the RDO, they were already being investigated for the year 2008.

In its letter,[16] dated December 13, 2010, the NID informed the counsel of the petitioners that the July LA issued by the CIR had effectively cancelled and superseded the March LA issued by its RDO. The same letter also stated that:

Although fraud had been established in the instant case as determined by the Commissioner, your clients would still be given the opportunity to present documents as part of their procedural

---

[10] Memorandum of Respondent CIR, p. 4; *id.* at 1361.

[11] *Id.* at 547.

[12] *Id.* at 550.

[13] *Id.* at 551.

[14] Dated June 28, 2010.

[15] *Rollo*, pp. 552-554.

[16] *Id.* at 555-556.

rights to due process with regard to the civil aspect thereof. Moreover, any tax credits and/or payments from the taxable year 2007 & prior years will be properly considered and credited in the current investigation.[17]

[Emphasis Supplied]

The CIR informed the petitioners that its reinvestigation of years prior to 2007 was justified because the assessment thereof was pursuant to a "fraud investigation" against the petitioners under the "Run After Tax Evaders" (*RATE*) program of the BIR.

On January 5 and 21, 2011, the petitioners submitted various income tax related documents for the years 2007-2009.[18] As for the years 1995 to 2006, the petitioners explained that they could not furnish the bureau with the books of accounts and other tax related documents as they had already been disposed in accordance with Section 235 of the Tax Code.[19] They added

---

[17] *Id.* at 558.

[18] *Id.* at 559-561.

[19] SEC. 235. *Preservation of Books and Accounts and Other Accounting Records*. — All the books of accounts, including the subsidiary books and other accounting records of corporations, partnerships, or persons, shall be preserved by them for a period beginning from the last entry in each book until the last day prescribed by Section 203 within which the Commissioner is authorized to make an assessment.

The said books and records shall be subject to examination and inspection by internal revenue officers: Provided, That for income tax purposes, such examination and inspection shall be made only once in a taxable year, except in the following cases:

(a) Fraud, irregularity or mistakes, as determined by the Commissioner; (b) The taxpayer requests reinvestigation; (c) Verification of compliance with withholding tax laws and regulations; (d) Verification of capital gains tax liabilities; and (e) In the exercise of the Commissioner's power under Section 5 (B) to obtain information from other persons in which case, another or separate examination and inspection may be made.

Examination and inspection of books of accounts and other accounting records shall be done in the taxpayer's office or place of business or in the office of the Bureau of Internal Revenue.

that even if they wanted to, they could no longer find copies of the documents because during those years, their accounting records were then managed by previous counsels, who had since passed away. Finally, the petitioners pointed out that their tax liabilities for the said years had already been fully settled with then CIR Jose Mario Buñag, who after a review, found no fraud against them.[20]

On June 21, 2011, on the same day that the petitioners made their last compliance in submitting their tax-related documents, the CIR issued a *subpoena duces tecum*,[21] requiring the petitioners to submit additional income tax and VAT-related documents for the years 1995-2009.

After conducting its own investigation, the CIR made its initial assessment finding that the petitioners were unable to fully settle their tax liabilities. Thus, the CIR issued its Notice of Initial Assessment-Informal Conference (*NIC*),[22] dated January 31, 2012, **directly addressed to the petitioners**, informing them that based on the best evidence obtainable, they were liable for deficiency **income taxes** in the amount of ₱714,061,116.30 for 2008 and ₱1,446,245,864.33 for 2009, inclusive of interests and surcharges.

All corporations, partnerships or persons that retire from business shall, within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their books of accounts, including the subsidiary books and other accounting records to the Commissioner or any of his deputies for examination, after which they shall be returned.

Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability.

Any provision of existing general or special law to the contrary notwithstanding, the books of accounts and other pertinent records of tax-exempt organizations or grantees of tax incentives shall be subject to examination by the Bureau of Internal Revenue for purposes of ascertaining compliance with the conditions under which they have been granted tax exemptions or tax incentives, and their tax liability, if any.

[20] *Rollo*, pp. 562-564.

[21] *Id.* at 566-572.

[22] *Id.* at 574-578.

After being informed of this development, the counsel for the petitioners sought to have the conference reset but he never received a response.

Then, on February 20, 2012, the CIR issued the Preliminary Assessment Notice[23] (*PAN*), informing the petitioners that based on *third-party information* allowed under Section 5 (B)[24] and 6 of the National Internal Revenue Code (*NIRC*),[25] they found

---

[23] *Id.* at 580-586.

[24] SEC. 5. *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons*. — In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

(A) x x x

(B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;

xxx xxx xxx

[25] SEC. 6. *Power of the Commissioner to Make assessments and Prescribe additional Requirements for Tax Administration and Enforcement*. — (A) *Examination of Returns and Determination of Tax Due* — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer.

the petitioners liable not only for deficiency income taxes in the amount of ₱714,061,116.30 for 2008 and ₱1,446,245,864.33

(B) *Failure to Submit Required Returns, Statements, Reports and other Documents*. — When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.

In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be *prima facie* correct and sufficient for all legal purposes.

(C) *Authority to Conduct Inventory-taking, surveillance and to Prescribe Presumptive Gross Sales and Receipts*. — The Commissioner may, at any time during the taxable year, order inventory-taking of goods of any taxpayer as a basis for determining his internal revenue tax liabilities, or may place the business operations of any person, natural or juridical, under observation or surveillance if there is reason to believe that such person is not declaring his correct income, sales or receipts for internal revenue tax purposes.

The findings may be used as the basis for assessing the taxes for the other months or quarters of the same or different taxable years and such assessment shall be deemed *prima facie* correct.

When it is found that a person has failed to issue receipts and invoices in violation of the requirements of Sections 113 and 237 of this Code, or when there is reason to believe that the books of accounts or other records do not correctly reflect the declarations made or to be made in a return required to be filed under the provisions of this Code, the Commissioner, after taking into account the sales, receipts, income or other taxable base of other persons engaged in similar businesses under similar situations or circumstances or after considering other relevant information may prescribe a minimum amount of such gross receipts, sales and taxable base, and such amount so prescribed shall be *prima facie* correct for purposes of determining the internal revenue tax liabilities of such person.

(D) *Authority to Terminate Taxable Period*. — When it shall come to the knowledge of the Commissioner that a taxpayer is retiring from business subject to tax, or is intending to leave the Philippines or to remove his property therefrom or to hide or conceal his property, or is performing any act tending to obstruct the proceedings for the collection of the tax for the past or current quarter or year or to render the same totally or

for 2009, but also for their non-payment of their VAT liabilities in the amount ₱4,104,360.01 for 2008 and ₱24,901,276.77 for 2009.

---

partly ineffective unless such proceedings are begun immediately, the Commissioner shall declare the tax period of such taxpayer terminated at any time and shall send the taxpayer a notice of such decision, together with a request for the immediate payment of the tax for the period so declared terminated and the tax for the preceding year or quarter, or such portion thereof as may be unpaid, and said taxes shall be due and payable immediately and shall be subject to all the penalties hereafter prescribed, unless paid within the time fixed in the demand made by the Commissioner.

(E) *Authority of the Commissioner to Prescribe Real Property Values* — The Commissioner is hereby authorized to divide the Philippines into different zones or areas and shall, upon consultation with competent appraisers both from the private and public sectors, determine the fair market value of real properties located in each zone or area.

For purposes of computing any internal revenue tax, the value of the property shall be, whichever is the higher of:

(1) the fair market value as determined by the Commissioner, or

(2) the fair market value as shown in the schedule of values of the Provincial and City Assessors.

(F) *Authority of the Commissioner to inquire into Bank Deposit Accounts.* — Notwithstanding any contrary provision of Republic Act No. 1405 and other general or special laws, the Commissioner is hereby authorized to inquire into the bank deposits of:

(1) a decedent to determine his gross estate; and (2) any taxpayer who has filed an application for compromise of his tax liability under Sec. 204 (A) (2) of this Code by reason of financial incapacity to pay his tax liability.

In case a taxpayer files an application to compromise the payment of his tax liabilities on his claim that his financial position demonstrates a clear inability to pay the tax assessed, his application shall not be considered unless and until he waives in writing his privilege under Republic Act No. 1405 or under other general or special laws, and such waiver shall constitute the authority of the Commissioner to inquire into the bank deposits of the taxpayer.

(G) *Authority to Accredit and Register Tax Agents* — The Commissioner shall accredit and register, based on their professional competence, integrity and moral fitness, individuals and general professional partnerships and their representatives who prepare and file tax returns,

The petitioners filed their protest against the PAN.[26]

After denying the protest, the BIR issued its Formal Letter Demand[27] (*FLD*), dated May 2, 2012, finding the petitioners liable for deficiency income tax and VAT amounting to ₱766,899,530.62 for taxable years 2008 and ₱1,433,421,214.61 for 2009, inclusive of interests and surcharges. Again, the petitioners questioned the findings of the CIR.[28]

On May 14, 2013, the BIR issued its Final Decision on Disputed Assessment (*FDDA*),[29] addressed to *Pacquiao only*, informing him that the CIR found him liable for deficiency income tax and VAT for taxable years 2008 and 2009 which, inclusive of interests and surcharges, amounted to a total of ₱2,261,217,439.92.

---

statements, reports, protests, and other papers with or who appear before, the Bureau for taxpayers.

Within one hundred twenty (120) days from January 1, 1998, the Commissioner shall create national and regional accreditation boards, the members of which shall serve for three (3) years, and shall designate from among the senior officials of the Bureau, one (1) chairman and two (2) members for each board, subject to such rules and regulations as the Secretary of Finance shall promulgate upon the recommendation of the Commissioner.

Individuals and general professional partnerships and their representatives who are denied accreditation by the Commissioner and/or the national and regional accreditation boards may appeal such denial to the Secretary of Finance, who shall rule on the appeal within sixty (60) days from receipt of such appeal.

Failure of the Secretary of Finance to rule on the Appeal within the prescribed period shall be deemed as approval of the application for accreditation of the appellant.

(H) Authority of the Commissioner to Prescribe Additional Procedural or Documentary Requirements — The Commissioner may prescribe the manner of compliance with any documentary or procedural requirement in connection with the submission or preparation of financial statements accompanying the tax returns.

[26] *Rollo*, pp. 587-611.

[27] *Id.* at 489-495.

[28] *Id.* at 496-514.

[29] *Id.* at 516-531.

Seeking to collect the total outstanding tax liabilities of the petitioners, the Accounts Receivable Monitoring Division of the BIR (*BIR-ARMD*), issued the Preliminary Collection Letter (*PCL*),[30] dated July 19, 2013, demanding that both Pacquiao and Jinkee pay the amount of ₱2,261,217,439.92, inclusive of interests and surcharges.

Then, on August 7, 2013, the BIR-ARMD sent *Pacquiao and Jinkee* the Final Notice Before Seizure (*FNBS*),[31] informing the petitioners of their last opportunity to make the necessary settlement of deficiency income and VAT liabilities before the bureau would proceed against their property.

Although they no longer questioned the BIR's assessment of their **deficiency VAT liability**, the petitioners requested that they be allowed to pay the same in four (4) quarterly installments. Eventually, through a series of installments, Pacquiao and Jinkee paid a total ₱32,196,534.40 in satisfaction of their liability for deficiency VAT.[32]

Proceedings at the CTA

Aggrieved that they were being made liable for **deficiency income taxes** for the years 2008 and 2009, the petitioners sought redress and filed a petition for review[33] with the CTA.

Before the CTA, the petitioners contended that the assessment of the CIR was defective because it was predicated on its mere allegation that they were guilty of fraud.[34]

They also questioned the validity of the attempt by the CIR to collect deficiency taxes from Jinkee, arguing that she was denied due process. According to the petitioners, as all previous communications and notices from the CIR were addressed to

---

[30] *Id.* at 612.

[31] *Id.* at 781.

[32] *Id.* at 20; pp. 625-628; 785-789.

[33] *Id.* at 443-488.

[34] *Id.* at 475-478.

both petitioners, the FDDA was void because it was only addressed to Pacquiao. Moreover, considering that the PCL and FNBS were based on the FDDA, the same should likewise be declared void.[35]

The petitioners added that the CIR assessment, which was **not based on actual transaction documents but simply on "best possible sources**," was not sanctioned by the Tax Code. They also argue that the assessment failed to consider not only the taxes paid by Pacquiao to the US authorities for his fights, but also the deductions claimed by him for his expenses.[36]

Pending the resolution by the CTA of their appeal, the petitioners sought the suspension of the issuance of warrants of distraint and/or levy and warrants of garnishment.[37]

Meanwhile, in a letter,[38] dated October 14, 2013, the BIR-ARMD informed the petitioners that they were denying their request to defer the collection enforcement action for lack of legal basis. The same letter also informed the petitioners that despite their initial payment, the amount to be collected from both of them still amounted to ₱3,259,643,792.24, for **deficiency income tax** for taxable years 2008 and 2009, **and** ₱46,920,235.74 for **deficiency VAT** for the same period. A warrant of distraint and/or levy[39] against Pacquiao and Jinkee was included in the letter.

Aggrieved, the petitioners filed the subject Urgent Motion for the CTA to lift the warrants of distraint, levy and garnishments issued by the CIR against their assets and to enjoin the CIR from collecting the assessed deficiency taxes pending the resolution of their appeal. As for the cash deposit and bond requirement under Section 11 of Republic Act (*R.A.*) No. 1125,

---

[35] *Id.* at 461-462.

[36] *Id.* at 462-474.

[37] *Id.* at 782-784.

[38] *Id.* at 793.

[39] *Id.* at 792.

the petitioners question the necessity thereof, arguing that the CIR's assessment of their tax liabilities was highly questionable. At the same time, the petitioners manifested that they were willing to file a bond for such reasonable amount to be fixed by the tax court.

On April 22, 2014, the CTA issued the first assailed resolution granting the petitioner's Urgent Motion, ordering the CIR to desist from collecting on the deficiency tax assessments against the petitioners. In its resolution, the CTA noted that the amount sought to be collected was way beyond the petitioners' net worth, which, based on Pacquiao's Statement of Assets, Liabilities and Net Worth (*SALN*), only amounted to ₱1,185,984,697.00. Considering that the petitioners still needed to cover the costs of their daily subsistence, the CTA opined that the collection of the total amount of ₱3,298,514,894.35 from the petitioners would be highly prejudicial to their interests and should, thus, be suspended pursuant to Section 11 of R.A. No. 1125, as amended.

The CTA, however, saw no justification that the petitioners should deposit less than the disputed amount. They were, thus, required to deposit the amount of ₱3,298,514,894.35 or post a bond in the amount of ₱4,947,772,341.53.

The petitioners sought partial reconsideration of the April 22, 2014 CTA resolution, praying for the reduction of the amount of the bond required or an extension of 30 days to file the same. On July 11, 2014, the CTA issued the second assailed resolution[40] denying the petitioner's motion to reduce the required cash deposit or bond, but allowed them an extension of thirty (30) days within which to file the same.

Hence, this petition, raising the following

---

[40] *Id.* at 92-100.

GROUNDS

A.

Respondent Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in presuming the correctness of a fraud assessment without evidentiary support other than the issuance of the fraud assessments themselves, thereby violating Petitioner's constitutional right to due process.

B.

Respondent Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it required the Petitioners to post a bond even if the tax collection processes employed by Respondent Commissioner against Petitioners was patently in violation of law thereby blatantly breaching Petitioners' constitutional right to due process, to wit:

1. **Respondent Commissioner commenced tax collection process against Jinkee without issuing or serving an FDDA against her.**
2. **Respondent Commissioner failed to comply with the procedural due process requirements for summary tax collection remedies under Section 207(A) and (B) of the Tax Code when she commenced summary collection remedies before the expiration of the period for Petitioners to pay the assessed deficiency taxes.**
3. **Respondent Commissioner failed to comply with the procedural due process requirements for summary tax collection remedies under Section 208 of the Tax Code when she failed to serve Petitioners with warrants of garnishment against their bank accounts.**
4. **The Chief of the ARMD, without any authority from Respondent Commissioner, increased the aggregate amount of deficiency income tax and VAT assessed against Petitioners from ₱2,261,217,439.92 to**

₱3,298,514,894.35 after the filing of the Petition for Review with the Court of Tax Appeals.

5. Respondent Commissioner arbitrarily refused to admit that Petitioners had already paid the deficiency VAT assessments for the years 2008 and 2009.

C.

Respondent Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in requiring Petitioners to post a cash bond in the amount of ₱3,298,514,894.35 or a surety bond in the amount of ₱4,947,772,341.53, which is effectively an impossible condition given that their undisputed net worth is only ₱1,185,984,697.00.

D.

Respondent Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it imposed a bond requirement which will effectively prevent Petitioners from continuing the prosecution of its appeal from the arbitrary and bloated assessments issued by Respondent Commissioner.[41]

Arguments of the Petitioners

Contending that the CTA En Banc has no *certiorari* jurisdiction over interlocutory orders issued by its division, the petitioners come before the Court, asking it to 1] direct the CTA to dispense with the bond requirement imposed under Section 11 of R.A. No. 1125, as amended; and 2] direct the CIR to suspend the collection of the deficiency income tax and VAT for the years 2008 and 2009. The petitioners also pray that a temporary restraining order (*TRO*) be issued seeking a similar relief pending the disposition of the subject petition.

In support of their position, the petitioners assert that the CTA acted with grave abuse of discretion amounting to lack or

---

[41] *Id.* at 27-29.

excess of jurisdiction in requiring them to provide security required under Section 11 of R.A. No. 1125. Under the circumstances, they claim that they should not be required to make a cash deposit or post a bond to stay the collection of the questioned deficiency taxes considering that the assessment and collection efforts of the BIR was marred by both procedural and substantive errors. They are synthesized as follows:

First. The CTA erred when it required them to make a cash deposit or post a bond on the basis of the fraud assessment by the CIR. Similar to the argument they raised in their petition for review with the CTA, they insist that the fraud assessment by the CIR could not serve as basis for security because the amount assessed by the CIR was made without evidentiary basis,[42] but just grounded on the "best possible sources," without any detail.

Second. The BIR failed to accord them procedural due process when it initiated summary collection remedies even before the expiration of the period allowed for them to pay the assessed deficiency taxes.[43] They also claimed that they were not served with warrants of garnishment and that the warrants of garnishment served on their banks of account were made even before they received the FDDA and PCL.[44]

Third. The BIR only served the FDDA to Pacquiao. There was no similar notice to Jinkee. Considering such failure, the CIR effectively did not find Jinkee liable for deficiency taxes. The collection of deficiency taxes against Jinkee was improper as it violated her right to due process of law.[45] Accordingly, the petitioners question the propriety of the CIR's attempt to collect deficiency taxes from Jinkee.

---

[42] *Id.* at 34-46.

[43] *Id.* at 48-50.

[44] *Id.* at 50-52.

[45] *Id.* at 47-48.

Fourth. The amount assessed by the BIR as deficiency taxes included the deficiency VAT for the years 2008 and 2009 which they had already paid, albeit in installments.

Fifth. The posting of the required security is effectively an impossible condition given that their undisputed net worth is only ₱1,185,984,697.00.

Considering the issues raised, it is the position of the petitioners that the circumstances of the case warrant the application of the exception provided under Section 11 of R.A. No. 1125 as affirmed by the ruling of the Court in *Collector of Internal Revenue v. Avelino*[46] (*Avelino*) and *Collector of Internal Revenue v. Zulueta*,[47] (*Zulueta*) and that they should have been exempted from posting the required security as a prerequisite to suspend the collection of deficiency taxes from them.

On August 18, 2014, the Court resolved to grant the petitioners' prayer for the issuance of a TRO and to require the CIR to file its comment.[48]

Arguments of the CIR

For its part, the CIR asserts that the CTA was correct in insisting that the petitioners post the required cash deposit or bond as a condition to suspend the collection of deficiency taxes. According to the tax administrator, Section 11 of R.A. No. 1125, as amended, is without exception when it states that notwithstanding an appeal to the CTA, a taxpayer, in order to suspend the payment of his tax liabilities, is required to deposit the amount claimed by the CIR or to file a surety bond for not more than double the amount due.[49]

As for the Court's rulings in *Avelino* and *Zulueta* invoked by the petitioners, the CIR argues that they are inapplicable considering that in the said cases, it was ruled that *the requirement*

---

[46] 100 Phil. 327 (1956).

[47] 100 Phil. 872 (1957).

[48] *Rollo*, p. 1238.

[49] *Id.* at 1296-1298.

of posting a bond to suspend the collection of taxes could be dispensed with only if the methods employed by the CIR in the tax collection were clearly null and void and prejudicial to the taxpayer.[50] The CIR points out that, in this case, the CTA itself made no finding that its collection by summary methods was void and even ruled that "the alleged illegality of the methods employed by the respondent (CIR) to effect the collection of tax [is] not at all patent or evident xxx" and could only be determined after a full-blown trial.[51] The CIR even suggests that the Court revisit its ruling in *Avelino* and *Zulueta* as Section 11 of R.A. No. 1125, as amended, gives the CTA no discretion to allow the dispensation of the required bond as a condition to suspend the collection of taxes.

Finally, the CIR adds that whether the assessment and collection of the petitioners' tax liabilities were proper as to justify the application of *Avelino* and *Zulueta* is a question of fact which is not proper in a petition for *certiorari* under Rule 65, considering that the rule is only confined to issues of jurisdiction.[52]

The Court's Ruling

Appeal will not suspend the collection of tax; Exception

Section 11 of R.A. No. 1125, as amended by R.A. No. 9282,[53] embodies the rule that an appeal to the CTA from the decision of the CIR will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law. When, in the view

---

[50] *Id.* at 1298.

[51] *Id.* at 1298-1310.

[52] *Id.* at 1313-1317.

[53] Entitled "An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, As Amended, Otherwise Known as The Law Creating the Court of Tax Appeals, and for Other Purposes."

of the CTA, the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond.

The application of the exception to the rule is the crux of the subject controversy. Specifically, Section 11 provides:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal*. — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.
>
> xxx xxx xxx
>
> No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry and Secretary of Agriculture, as the case may be shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law:
>
> **Provided, however, That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer, the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.**
>
> xxx xxx xxx
>
> [Emphasis Supplied]

Essentially, the petitioners ascribe grave abuse of discretion on the part of the CTA when it issued the subject resolutions requiring them to deposit the amount of ₱3,298,514,894.35 or post a bond in the amount of ₱4,947,772,341.53 as a condition for its order enjoining the CIR from collecting the taxes from

them. The petitioners anchor their contention on the premise that the assessment and collection processes employed by the CIR in exacting their tax liabilities were in patent violation of their constitutional right to due process of law. They, thus, posit that pursuant to *Avelino* and *Zulueta*, the tax court should have not only ordered the CIR to suspend the collection efforts it was pursuing in satisfaction of their tax liability, but also dispensed with the requirement of depositing a cash or filing a surety bond.

To recall, the Court in *Avelino* upheld the decision of the CTA to declare the warrants of garnishment, distraint and levy and the notice of sale of the properties of Jose Avelino null and void and ordered the CIR to desist from collecting the deficiency income taxes which were assessed for the years 1946 to 1948 through summary administrative methods. The Court therein found that the demand of the then CIR was made without authority of law because it was made five (5) years and thirty-five (35) days after the last two returns of Jose Avelino were filed — clearly beyond the three (3)-year prescriptive period provided under what was then Section 51 (d) of the National Internal Revenue Code. Dismissing the contention of the CIR that the deposit of the amount claimed or the filing of a bond as required by law was a requisite before relief was granted, the Court therein concurred with the opinion of the CTA that the courts were clothed with authority to dispense with the requirement "*if the method employed by the Collector of Internal Revenue in the collection of tax is not sanctioned by law*."[54]

In *Zulueta*, the Court likewise dismissed the argument that the CTA erred in issuing the injunction without requiring the taxpayer either to deposit the amount claimed or to file a surety bond for an amount not more than double the tax sought to be collected. The Court cited *Collector of Internal Revenue v. Aurelio P. Reyes and the Court of Tax Appeals*[55] where it was written:

---

[54] *Collector of Internal Revenue v. Avelino*, *supra* note 46, at 335-336.

[55] 100 Phil. 822 (1957).

Xxx At first blush it might be as contended by the Solicitor General, but a careful analysis of the second paragraph of said Section 11 will lead Us to the conclusion that the requirement of the bond as a condition precedent to the issuance of a writ of injunction applies only in cases where the processes by which the collection sought to be made by means thereof are carried out in consonance with law for such cases provided *and not when said processes are obviously in violation of the law to the extreme that they have to be SUSPENDED for jeopardizing the interests of the taxpayer*.[56]

[Italics included]

The Court went on to explain the reason for empowering the courts to issue such injunctive writs. It wrote:

"Section 11 of Republic Act No. 1125 is therefore premised on the assumption that the collection by *summary proceedings* is by itself in accordance with existing laws; and then what is suspended is the act of collecting, whereas, in the case at bar what the respondent Court suspended was the *use of the method employed to verify the collection which was evidently illegal after the lapse of the three-year limitation period*. The respondent Court issued the injunction in question on the basis of its findings that the means intended to be used by petitioner in the collection of the alleged deficiency taxes were in violation of law. **It would certainly be an absurdity on the part of the Court of Tax Appeals to declare that the collection by the summary methods of distraint and levy was violative of the law, and then, on the same breath require the petitioner to deposit or file a bond as a prerequisite of the issuance of a writ of injunction**. Let us suppose, for the sake of argument, that the Court *a quo* would have required the petitioner to post the bond in question and that the taxpayer would refuse or fail to furnish said bond, would the Court *a quo* be obliged to authorize or allow the Collector of Internal Revenue to proceed with the collection from the petitioner of the taxes due by a means it previously declared to be contrary to law?"[57]

[Italics included. Emphases and Underlining Supplied]

---

[56] *Id.* at 828.

[57] *Id.* at 829.

Thus, despite the amendments to the law, the Court still holds that the CTA has ample authority to issue injunctive writs to restrain the collection of tax **and to even dispense with the deposit of the amount claimed or the filing of the required bond**, whenever the **method** employed by the CIR in the collection of tax jeopardizes the interests of a taxpayer for being **patently in violation of the law**. Such authority emanates from the jurisdiction conferred to it not only by Section 11 of R.A. No. 1125, but also by Section 7 of the same law, which, as amended provides:

> Sec. 7. *Jurisdiction*. — The Court of Tax Appeals shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;**
>
> xxx xxx xxx
>
> [Emphasis Supplied]

From all the foregoing, it is clear that the authority of the courts to issue injunctive writs to restrain the collection of tax and to dispense with the deposit of the amount claimed or the filing of the required bond **is not simply confined to cases where prescription has set in**. As explained by the Court in those cases, ***whenever it is determined by the courts that the method employed by the Collector of Internal Revenue in the collection of tax is not sanctioned by law***, the **bond** requirement under Section 11 of R.A. No. 1125 **should be dispensed with**. The purpose of the rule is not only to prevent jeopardizing the interest of the taxpayer, but more importantly, to prevent the absurd situation wherein the court would declare "that the collection by the summary methods of distraint and levy was violative of law, and then, in the same breath require the petitioner to deposit

or file a bond as a prerequisite for the issuance of a writ of injunction."[58]

The determination of whether the petitioners' case falls within the exception provided under Section 11, R.A. No. 1125 cannot be determined at this point

Applying the foregoing precepts to the subject controversy, the Court finds no sufficient basis in the records for the Court to determine whether the dispensation of the required cash deposit or bond provided under Section 11, R.A. No. 1125 is appropriate.

It should first be highlighted that in rendering the assailed resolution, the CTA, without stating the facts and law, made a determination that the illegality of the methods employed by the CIR to effect the collection of tax was not patent. To quote the CTA:

> In this case, the alleged illegality of the methods employed by respondent to effect the collection of tax **is not at all patent or evident as in the foregoing cases**. At this early stage of the proceedings, it is premature for this Court to rule on the issues of whether or not the warrants were defectively issued; or whether the service thereof was done in violation of the rules; or whether or not respondent's assessments were valid. **These matters are evidentiary in nature, the resolution of which can only be made after a full blown trial.**
>
> Apropos, the Court finds no legal basis to apply *Avelino* and *Zulueta* to the instant case and exempt petitioners from depositing a cash bond or filing a surety bond before a suspension order may be effected.[59]

Though it may be true that it would have been premature for the CTA to immediately determine whether the assessment made against the petitioners was valid or whether the warrants were properly issued and served, *still*, it behooved upon the CTA to

---

[58] *Id.*

[59] *Rollo*, p. 98.

properly determine, **at least preliminarily, whether the CIR**, in its assessment of the tax liability of the petitioners, and its effort of collecting the same, **complied with the law and the pertinent issuances of the BIR itself**. The CTA should have conducted a preliminary hearing and received evidence so it could have properly determined whether the requirement of providing the required security under Section 11, R.A. No. 1125 could be reduced or dispensed with *pendente lite*.

The Court cannot make a preliminary determination on whether the CIR used methods not sanctioned by law

Absent any evidence and preliminary determination by the CTA, the Court cannot make any factual finding and settle the issue of whether the petitioners should comply with the security requirement under Section 11, R.A. No. 1125. The determination of whether the methods, employed by the CIR in its assessment, jeopardized the interests of a taxpayer for being patently in violation of the law **is a question of fact that calls for the reception of evidence** which would serve as basis. In this regard, the CTA is in a better position to initiate this given its time and resources. The remand of the case to the CTA on this question is, therefore, more sensible and proper.

For the Court to make any finding of fact on this point would be premature. As stated earlier, there is no evidentiary basis. All the arguments are mere allegations from both sides. Moreover, **any finding by the Court would pre-empt the CTA** from properly exercising its jurisdiction and settle the main issues presented before it, that is, whether the petitioners were afforded due process; whether the CIR has valid basis for its assessment; and whether the petitioners should be held liable for the deficiency taxes.

Petition to be remanded to the CTA; CTA to conduct preliminary hearing

As the CTA is in a better position to make such a preliminary determination, a remand to the CTA is in order. To resolve the issue of whether the petitioners should be required to post the security bond under Section 11 of R.A. No. 1125, and, if so, in what amount, the CTA must take into account, among others, the following:

First. *Whether the requirement of a Notice of Informal Conference was complied with* — The petitioners contend that the BIR issued the PAN without first sending a NIC to petitioners. One of the first requirements of Section 3 of Revenue Regulations (*R.R.*) No. 12-99,[60] the then prevailing regulation on the due process requirement in tax audits and/or investigation,[61] is that a NIC be first accorded to the taxpayer. The use of the word

---

[60] SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment*. —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 *Notice for informal conference*. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

xxx xxx xxx

[61] While R.R. No. 12-99 was recently amended by R.R. No. 18-2013 on November 28, 2013, the same should not be deemed to have retroacted effect and cure the otherwise fatal defect committed by the CIR. R.R. No.

"*shall*" in subsection 3.1.1 describes the mandatory nature of the service of a NIC. As with the other notices required under the regulation, the purpose of sending a NIC is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities.[62]

Second. *Whether the 15-year period subject of the CIR's investigation is arbitrary and excessive*. — Section 203[63] of the Tax Code provides a 3-year limit for the assessment of internal revenue taxes. While the prescriptive period to assess deficiency taxes may be extended to 10 years in cases where there is false, fraudulent, or non-filing of a tax return — the fraud contemplated by law must be actual. It must be intentional, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right.[64]

Third. *Whether fraud was duly established*. — In its letter, dated December 13, 2010, the NID had been conducting a fraud investigation against the petitioners under its RATE program and that it found that "fraud had been established in the instant case as determined by the Commissioner." Under Revenue Memorandum Order (*RMO*) No. 27-10, it is required that a

---

18-2013 is bereft of any indication that the revenue regulation shall operate retroactively.

[62] *Commissioner of Internal Revenue v. Metro Superama, Inc*., 652 Phil. 172, 186 (2010).

[63] Section 203. *Period of Limitation Upon Assessment and Collection*. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

[64] *Transglobe International, Inc. v. Court of Appeals*, 631 Phil. 727, 739 (1999).

preliminary investigation must first be conducted **before a LA is issued**.[65]

---

[65] The pertinent portion of RMO No. 27-10 reads:

II. *Policies and Procedures*

The following policies and guidelines shall be observed in the development and investigation of RATE cases, in addition to those set forth in the relevant revenue issuances:

A. x x x

B. *Issuance of Letters of Authority in RATE cases*. —

1. In all RATE cases, a preliminary investigation must first be conducted to establish *prima facie* evidence of fraud or tax evasion. Such investigation shall include the verification and determination of the schemes employed and the extent of fraud perpetrated by the subject taxpayer;

2. In the event that, following the conduct of the required preliminary investigation, the NID/SIDs should determine that there is *prima facie* evidence of tax fraud, it shall submit the case, together with a memorandum justifying the issuance of a Letter of Authority (LA) to the Deputy Commissioner — Legal and Inspection Group (DCIR-LIG), through the Assistant Commissioner (Enforcement Service)/the concerned Regional Director, for evaluation;

The DCIR-LIG shall then evaluate the request, and determine whether the same shall be recommended for approval by the Commissioner of Internal Revenue. If the DCIR-LIG finds a request meritorious, the docket of the case, together with the memorandum-request bearing the concurrence of the DCIR-LIG, shall be forwarded to the Commissioner, for final review and approval.

3. The DCIR-LIG shall likewise conduct the appropriate verification with the Letter of Authority Monitoring System (LAMS), to ascertain whether a LA for a taxpayer for a particular taxable year has already been issued to the concerned taxpayer.

In the event that, following such verification, it is ascertained that no LA has been previously issued against the concerned taxpayer, a printout of the LAMS search results must be included in the docket of the case, to support the issuance of the requested LA.

4. If, however, it is disclosed that an LA was previously issued for the concerned taxpayer, and that the corresponding investigation has already been commenced or concluded, the DCIR-LIG shall include in the request for issuance of an LA a recommendation and justification for the re-assignment to, or re-opening of the investigation by, the NID/SID concerned. The Commissioner shall then decide whether the investigation shall be continued by the present investigating office, or if the investigation

Fourth. *Whether the FLD issued against the petitioners was irregular*. — The FLD issued against the petitioners allegedly stated that the amounts therein were "**estimates based on best possible sources**." A taxpayer should be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment is void.[66] An assessment, in order to stand judicial scrutiny, must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.[67]

To stress, the petitioners had asserted that the assessment of the CIR was not based on actual transactions but on "**estimates based on best possible sources**." This assertion has not been satisfactorily addressed by the CIR in detail. Thus, there is a need for the CTA to conduct a preliminary hearing.

Fifth. *Whether the FDDA, the PCL, the FNBS, and the Warrants of Distraint and/or Levy were validly issued*. In its hearing, the CTA must also determine if the following allegations of the petitioners have merit:

a. The FDDA and PCL were issued against petitioner **Pacquiao only**. The Warrant of Distraint and/

---

shall be re-assigned to/re-opened by the NID/SID concerned.

5. In the event that the Commissioner should rule in favor of the re-assignment to/re-opening of the tax investigation by the NID/SID, the DCIR-LIG shall inform the RDO/LT District Office or Division concerned, thru the Regional Director/Assistant Commissioner — LTS, of the decision of the Commissioner, and require the transmittal of the docket of the case to the NID/SID, as well as the cancellation of the existing LA.

6. x x x

7. The issuance of LAs shall cover only the taxable year(s) for which *prima facie* evidence of tax fraud, or of violations of the Tax Code, was established through the appropriate preliminary investigation, unless the investigation of prior or subsequent years is necessary in order to:

• Determine or trace continuing transactions entered into in the covered year and concluded thereafter, or those transactions concluded in the covered year that were commenced in prior years; or

• Establish that the same scheme was utilized for prior or subsequent years.

[66] *Commissioner of Internal Revenue v. Reyes*, 516 Phil. 176, 186 (2006).

[67] *Collector of Internal Revenue v. Benipayo*, 114 Phil. 135, 138 (1962).

or Levy/Garnishment issued by the CIR, however, were made against the assets of **both petitioners**;

b. The warrants of garnishment had been served on the banks of both petitioners **even before the petitioners received the FDDA and PCL**;

c. The Warrant of Distraint and/or Levy/Garnishment against the petitioners was allegedly made **prior to the expiration of the period allowed for the petitioners to pay the assessed deficiency taxes**;

d. The Warrant of Distraint and/or Levy/Garnishment against petitioners failed to take into consideration that the **deficiency VAT was already paid in full**; and

e. **Petitioners were not given a copy of the Warrants**. Sections 207[68] and 208[69] of the Tax Code require the

---

[68] Section 207. *Summary Remedies*. —

(A) Distraint of Personal Property. — Upon the failure of the person owing any delinquent tax or delinquent revenue to pay the same at the time required, the Commissioner or his duly authorized representative, if the amount involved is in excess of One million pesos (₱1,000,000), or the Revenue District Officer, if the amount involved is One million pesos (₱1,000,000) or less, shall seize and distraint any goods, chattels or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property of such persons; in sufficient quantity to satisfy the tax or charge, together with any increment thereto incident to delinquency, and the expenses of the distraint and the cost of the subsequent sale.

A report on the distraint shall, within ten (10) days from receipt of the warrant, be submitted by the distraining officer to the Revenue District Officer, and to the Revenue Regional Director: Provided, That the Commissioner or his duly authorized representative shall, subject to rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, have the power to lift such order of distraint: Provided, further, That a consolidated report by the Revenue Regional Director may be required by the Commissioner as often as necessary.

(B) Levy on Real Property. — After the expiration of the time required to pay the delinquent tax or delinquent revenue as prescribed in this Section, real property may be levied upon, before simultaneously or after the

Warrant of Distraint and/or Levy/Garnishment be served upon the taxpayer.

---

distraint of personal property belonging to the delinquent. To this end, any internal revenue officer designated by the Commissioner or his duly authorized representative shall prepare a duly authenticated certificate showing the name of the taxpayer and the amounts of the tax and penalty due from him. Said certificate shall operate with the force of a legal execution throughout the Philippines.

Levy shall be affected by writing upon said certificate a description of the property upon which levy is made. At the same time, written notice of the levy shall be mailed to or served upon the Register of Deeds for the province or city where the property is located and upon the delinquent taxpayer, or if he be absent from the Philippines, to his agent or the manager of the business in respect to which the liability arose, or if there be none, to the occupant of the property in question.

In case the warrant of levy on real property is not issued before or simultaneously with the warrant of distraint on personal property, and the personal property of the taxpayer is not sufficient to satisfy his tax delinquency, the Commissioner or his duly authorized representative shall, within thirty (30) days after execution of the distraint, proceed with the levy on the taxpayer's real property.

Within ten (10) days after receipt of the warrant, a report on any levy shall be submitted by the levying officer to the Commissioner or his duly authorized representative: Provided, however, That a consolidated report by the Revenue Regional Director may be required by the Commissioner as often as necessary: Provided, further, That the Commissioner or his duly authorized representative, subject to rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, shall have the authority to lift warrants of levy issued in accordance with the provisions hereof.

[69] Section 208. *Procedure for Distraint and Garnishment*. — The officer serving the warrant of distraint shall make or cause to be made an account of the goods, chattels, effects or other personal property distrained, a copy of which, signed by himself, shall be left either with the owner or person from whose possession such goods, chattels, or effects or other personal property were taken, or at the dwelling or place of business of such person and with someone of suitable age and discretion, to which list shall be added a statement of the sum demanded and note of the time and place of sale.

Stocks and other securities shall be distrained by serving a copy of the warrant of distraint upon the taxpayer and upon the president,

Additional Factors

In case the CTA finds that the petitioners should provide the necessary security under Section 11 of R.A. 1125, a recomputation of the amount thereof is in order. If there would be a need for a bond or to reduce the same, the CTA should take note that the Court, in A.M. No. 15-92-01-CTA, resolved to approve the CTA *En Banc* Resolution No. 02-2015, where the phrase "amount claimed" stated in Section 11 of R.A. No. 1125 was construed to refer to the **principal** amount of the deficiency taxes, ***excluding penalties, interests and surcharges***.

Moreover, the CTA should also consider the claim of the petitioners that they already paid a total of ₱32,196,534.40 deficiency VAT assessed against them. Despite said payment, the CIR still assessed them the total amount of ₱3,298,514,894.35, including the amount assessed as VAT deficiency, plus surcharges, penalties and interest. If so, these should also be deducted from the amount of the bond to be computed and required.

In the conduct of its preliminary hearing, the CTA must balance the scale between the inherent power of the State to tax and its right to prosecute perceived transgressors of the law, on one side; and the constitutional rights of petitioners to due process of law and the equal protection of the laws, on the other. In case of doubt, the tax court must remember that as in all tax cases, such scale should favor the taxpayer, for a citizen's right

---

manager, treasurer or other responsible officer of the corporation, company or association, which issued the said stocks or securities.

Debts and credits shall be distrained by leaving with the person owing the debts or having in his possession or under his control such credits, or with his agent, a copy of the warrant of distraint. The warrant of distraint shall be sufficient authority to the person owning the debts or having in his possession or under his control any credits belonging to the taxpayer to pay to the Commissioner the amount of such debts or credits.

Bank accounts shall be garnished by serving a warrant of garnishment upon the taxpayer and upon the president, manager, treasurer or other responsible officer of the bank. Upon receipt of the warrant of garnishment,

to due process and equal protection of the law is amply protected by the Bill of Rights under the Constitution.[70]

In view of all the foregoing, the April 22, 2014 and July 11, 2014 Resolutions of the CTA, in so far as it required the petitioners to deposit first a cash bond in the amount of ₱3,298,514,894.35 or post a bond of ₱4,947,772,341.53, should be further enjoined until the issues aforementioned are settled in a preliminary hearing to be conducted by it. Thereafter, it should make a determination if the posting of a bond would still be required and, if so, compute it taking into account the CTA *En Banc* Resolution, which was approved by the Court in A.M. No. 15-02-01-CTA, and the claimed payment of ₱32,196,534.40, among others.

WHEREFORE, the petition is **PARTIALLY GRANTED**. Let a Writ of Preliminary Injunction be issued, enjoining the implementation of the April 22, 2014 and July 11, 2014 Resolutions of the Court of Tax Appeals, First Division, in CTA Case No. 8683, requiring the petitioners to first deposit a cash bond in the amount of ₱3,298,514,894.35 or post a bond of ₱4,947,772,341.53, as a condition to restrain the collection of the deficiency taxes assessed against them.

The writ shall remain in effect until the issues aforementioned are settled in a preliminary hearing to be conducted by the Court of Tax Appeals, First Division.

Accordingly, the case is hereby **REMANDED** to the Court of Tax Appeals, First Division, which is ordered to conduct a preliminary hearing to determine whether the dispensation or reduction of the required cash deposit or bond provided under Section 11, Republic Act No. 1125 is proper to restrain the collection of deficiency taxes assessed against the petitioners.

If required, the Court of Tax Appeals, First Division, shall proceed to compute the amount of the bond in accordance with the guidelines aforestated, particularly the provisions of A.M.

---

the bank shall turn over to the Commissioner so much of the bank accounts as may be sufficient to satisfy the claim of the Government.

[70] *Commissioner of Internal Revenue v. Metro Superama, Inc.*, 352 Phil. 172, 187-188 (2010).

No. 15-02-01-CTA. It should also take into account the amounts already paid by the petitioners.

After the posting of the required bond, or if the Court of Tax Appeals, First Division, determines that no bond is necessary, it shall proceed to hear and resolve the petition for review pending before it.

SO ORDERED.

Carpio (Chairperson), Brion, Reyes,[*] and *Leonen, JJ.*, concur.

SECOND DIVISION

[G.R. No. 219811. April 6, 2016]

REX DACLISON, *petitioner, vs.* **EDUARDO BAYTION,** *respondent.*

SYLLABUS

1. CIVIL LAW; OWNERSHIP; RIGHT OF ACCESSION WITH RESPECT TO IMMOVABLE PROPERTY; REQUISITES IN ORDER FOR AN ACCRETION TO BE CONSIDERED.— Baytion's contention that he owns that portion by reason of accretion is misplaced. Article 457 of the New Civil Code provides: To the owners of lands adjoining the banks of rivers belongs the accretion which they gradually receive from the effects of the current of the waters. In other words, the following requisites must concur in order for an accretion to be considered, namely: (1) that the deposit be gradual and imperceptible; (2) that it be made through the effects of the current of the water;

---

[*] Designated additional member per Raffle dated December 1, 2014.

and, (3) that the land where accretion takes place is adjacent to the banks of rivers.

2. ID.; ID.; ID.; ID.; THE DISPUTED PORTION CANNOT BE CONSIDERED AN ACCRETION WHERE THE LAND CAME ABOUT NOT BY REASON OF A GRADUAL AND IMPERCEPTIBLE DEPOSIT AND THE EXCLUSIVE RESULT OF THE CURRENT FROM THE RIVER OR CREEK ADJACENT TO THE PROPERTY, BUT WAS THE RESULT OF HUMAN INTERVENTION. — In the case at bench, this contested portion cannot be considered an accretion. [T]he land came about not by reason of a gradual and imperceptible deposit. The deposits were artificial and man-made and not the exclusive result of the current from the creek adjacent to his property. Baytion failed to prove the attendance of the indispensable requirement that the deposit was due to the effect of the current of the river or creek. Alluvion must be the exclusive work of nature and not a result of human intervention.

3. ID.; ID.; ID.; ID.; FOR THE DISPUTED PROPERTY TO BE CONSIDERED AN IMPROVEMENT OR ACCESSSION, THE SUPPOSED IMPROVEMENT MUST BE MADE, CONSTRUCTED OR INTRODUCED WITHIN OR ON THE PROPERTY AND NOT OUTSIDE.— [T]he disputed property cannot also be considered an improvement or accession. Article 445 of the Civil Code provides: Art. 445. Whatever is built, planted or sown **on** the land of another and the improvements or repairs **made thereon,** belong to the owner of the land, subject to the provisions of the following articles. It must be noted that Article 445 uses the adverb "thereon" which is simply defined as "on the thing that has been mentioned." In other words, the supposed improvement must be made, constructed or introduced within or on the property and not outside so as to qualify as an improvement contemplated by law. Otherwise, it would just be very convenient for land owners to expand or widen their properties in the guise of improvements.

APPEARANCES OF COUNSEL

Dilbert N. Quetulio for petitioner.
Rolando P. Quimbo for respondent.

D E C I S I O N

MENDOZA, *J.*:

Assailed in this petition for review[1] are the February 5, 2015 Decision[2] and the August 3, 2015 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 99627, which affirmed *in toto* the April 27, 2012 Decision[4] rendered by the Regional Trial Court, Branch 224, Quezon City (*RTC*) in Civil Case No. Q-09-66145, a case for forcible entry.

The Antecedents

On January 27, 2009, respondent Eduardo Baytion (*Baytion*) filed a complaint[5] for Forcible Entry and Damages with Prayer for Issuance of Preliminary Mandatory Injunction with the Metropolitan Trial Court, Branch 43, Quezon City (*MeTC*) against petitioner Rex Daclison (*Daclison*), which was docketed as Civil Case No. 39225.

In the complaint, Baytion alleged that he was a co-owner of a parcel of land consisting of 1,500 square meters, covered by Transfer Certificate Title (*TCT*) No. 221507. The said property was inherited by him and his siblings from their parents and, as agreed upon, was being administered by him. As administrator, he leased portions of the property to third persons.

---

[1] *Rollo*, pp. 11-32.

[2] *Id.* at 33-44; Penned by Associate Justice Elihu A. Ybañez with Associate Justices Isaias P. Dicdican and Victoria Isabel A. Paredes, concurring.

[3] *Id.* at 45-46.

[4] *Id.* at 88-92. Penned by Presiding Judge Tita Marilyn Payoyo-Villordon.

[5] *Id.* at 47-52.

Erected on the said property was a one-storey building which was divided into seven units or stalls. One of the stalls was leased to a certain Leonida Dela Cruz (*Leonida*) who used it for her business of selling rocks, pebbles and similar construction materials.

When the lease of Leonida expired sometime in May 2008, Daclison and other persons acting under her took possession of the portion leased and occupied by Leonida without the prior knowledge and consent of Baytion. Since then, Daclison had been occupying the contested portion and using it for his business of selling marble and other finishing materials without paying anything to Baytion.

Upon learning of Daclison's unauthorized entry into the subject portion of the property, sometime in June 2008, Baytion demanded that he vacate it. Despite oral and written demands to vacate, Daclison refused to do so. This prompted Baytion to file the complaint for forcible entry and damages.

Daclison, in his answer, averred that sometime in 1978, Baytion leased the subject portion to Antonio dela Cruz (*Antonio*) where the latter started a business; that ten or fifteen years later, a stone walling, called a *riprap*, was erected at the creek lying beside Baytion's property, leaving a deep down-sloping area; that Antonio negotiated with a certain engineer so he could be in possession of the said down-slope; that Antonio had the down-slope filled up until it was leveled with the leased portion; that Antonio paid for the right to possess the same; that in 2000, Antonio's business was taken over by Leonida, who suffered a stroke in December 2007; that after her death, the business was taken over by Ernanie Dela Cruz (*Ernanie*); that in February 2008, he (Daclison) entered into a business venture with Ernanie in the same leased property and he took over the management of the business; that he received a letter from Baytion addressed to Ernanie requesting the latter to vacate the subject premises; that Baytion and Ernanie came to an agreement that the latter would continue the lease of the property; that he issued a check in the amount of ₱100,000.00 as payment for the rental arrears; that two weeks thereafter, Baytion returned the check and

demanded that Ernanie vacate the property; that Baytion promised that he would no longer bother them if they would just transfer to the filled-up and plane-leveled property; that on account of the said promise, he and Ernanie vacated the leased area and transferred their business to the filled-up portion; that despite the fact that they already vacated the leased portion of the property, Baytion still filed a complaint with the barangay claiming that the filled-up portion was part of his property; that the executive officer of the barangay who conducted the investigation made a report indicating that a *mojon* was placed by him (Daclison) which showed the boundary of Baytion's property, that Baytion acknowledged the said report and agreed to put an end to the controversy; and that despite Baytion's agreement to put an end to the dispute, he still sent a demand letter to vacate.[6]

On August 25, 2009, the MeTC dismissed the case on the ground that Baytion failed to include his siblings or his co-owners, as plaintiffs in the case. The dismissal, however, was without prejudice.

Baytion appealed the case to the RTC, which ruled that the MeTC lacked jurisdiction to decide the case because the allegations in the complaint failed to constitute a case of forcible entry. Pursuant to Section 8, Rule 40 of the Rules of Court, however, the RTC did not dismiss the case and, instead, exercised its original jurisdiction over the same.

The RTC then decided that Baytion had a better right of possession over the property. The dispositive portion of its decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering:
>
> 1) The defendant and other persons claiming under him to vacate and to turn over the possession of the subject property to the plaintiff; and,

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

2) The defendant to pay plaintiff the amount of ₱20,000.00/monthly for the use of the premises commencing from May 2008 until the subject premises is vacated.

SO ORDERED.[7]

Aggrieved, Daclison filed an appeal with the CA.

The CA tackled two issues, namely: a) whether the RTC committed a reversible error when it exercised original jurisdiction of the case and decided the same on its merits pursuant to Section 8, Rule 40 of the Rules of Court; and, b) who, between Baytion and Daclison, had a better right to possess the subject property.

The CA ruled that the MeTC had no jurisdiction to hear and decide the case in a summary proceeding for forcible entry because Baytion failed to allege that he was in prior physical possession of the property and that he was deprived of his possession under Section 1, Rule 70 of the Revised Rules of Court. It was of the view that the present action for forcible entry had actually ripened into one for recovery of the right to possess or *accion publiciana*, which was an action in an ordinary civil proceeding in the Regional Trial Court. The action was aimed at determining who among the parties had a better right of possession of realty independent of the issue of ownership or title. It was an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty.[8] Thus, it agreed with the RTC when the latter correctly assumed jurisdiction over the case following the mandate of Section 8, Rule 40 of the Revised Rules of Court.[9]

As to the issue of possession, the CA concluded that Baytion, as co-owner of the subject property, had a better right to possess. It wrote:

Xxx, it is clear that Antonio, Leonida and Ernanie were all lessees of the subject property and its improvements owned by the plaintiff.

---

[7] *Id.* at 92.

[8] *Id.* at 41.

[9] *Id.* at 41.

Ernanie, who is a sub-lessee of the subject property, again sub-leased the same to appellant, without authority or consent from appellee. Thus, since appellant have been possessing the subject property in his capacity as a mere sub-lessee, he cannot own the subject property and its improvements through open, continuous and adverse possession of the property. It follows then that appellee has the right to repossess the subject property.[10]

On February 5, 2015, the CA rendered the assailed decision, disposing in this wise:

WHEREFORE, the instant appeal is hereby DISMISSED for lack of merit, and the Decision 27 April 2012 rendered by Branch 224 of the RTC of Quezon City in Civil Case No. Q-09-66145 is AFFIRMED *in toto*.

SO ORDERED.[11]

Daclison filed a motion for reconsideration but it was denied by the CA in the assailed resolution.

Hence, the present petition for review raising the following:

ISSUES

I.

THE HONORABLE COURT *A QUO* GRAVELY ERRED WHEN IT HELD THAT THE INSTANT CASE IS AN ACCION PUBLICIANA, MORE SIGNIFICANTLY [WITH] RESPECT TO THE LAND OUTSIDE TCT NO. 221507; THAT, EFFECTIVELY, THE RESPONDENT HAS PRIOR POSSESSION OF THE PROPERTY OUTSIDE TCT NO. 221507.

II.

THE HONORABLE COURT *A QUO* GRAVELY ERRED UNDER THE LAW WHEN IT RULED THAT THE PETITIONER WAS A LESSEE OF THE SECOND PROPERTY.

---

[10] *Id.* at 43.

[11] *Id.* at 43-44.

III.

THE HONORABLE COURT *A QUO* GRAVELY ERRED UNDER THE LAW WHEN IT RULED THAT THE SECOND PROPERTY OR LAND WAS AN IMPROVEMENT ON THE PROPERTY OF THE RESPONDENT.

IV.

THE HONORABLE COURT *A QUO* GRAVELY ERRED UNDER THE LAW WHEN IT RULED THAT THE RESPONDENT HAS LEGAL CAPACITY TO SUE.

V.

THE HONORABLE COURT *A QUO* GRAVELY ERRED UNDER THE LAW WHEN IT RULED THAT THE PETITIONER SHOULD PAY THE [RESPONDENT] THE AMOUNT OF ₱20,000 MONTHLY FOR THE USE OF THE PREMISES.[12]

Daclison insists that what is really in dispute in the present controversy is the filled-up portion between the *riprap* constructed by the government and the property of Baytion and,[13] therefore, outside of the land co-owned by Baytion. Accordingly, the RTC and the CA should have dismissed the case because the leased property was already surrendered to its owner, thereby, mooting the complaint.[14]

Daclison insists that Antonio, from whom he derived his right over the contested portion, made an open, continuous and adverse possession and use of the property when the latter extended his place of business to the filled-up portion.[15] He claims that the filled-up portion is not an improvement on the leased property as found by the RTC and the court *a quo*. It is a property separate and distinct from the leased property.[16]

---

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

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

[14] *Id.* at 23.

[15] *Id.* at 26.

[16] *Id.* at 29.

The Respondent's Position

Baytion basically posits that although the disputed portion is outside the description of the property covered by TCT No. 221507, it forms an integral part of the latter because it is an accretion, construction, or improvement on the property and, under the law, any accretion or anything built thereon belongs to him and his co-owners.[17]

The Court's Ruling

At the outset, it was clear that the disputed property was the filled-up portion between the *riprap* constructed by the government and the property covered by TCT No. 221507. According to Daclison, the property covered by TCT No. 221507 had already been surrendered to Baytion which the latter never disputed. As such, the Court is now confronted with the question as to who between the parties has a better right over this contested portion between the land co-owned by Baytion and the constructed *riprap*.

Baytion does not have a better right over the contested portion

The RTC and the CA erred in holding that Baytion has a better right to possess the contested portion.

Baytion's contention that he owns that portion by reason of accretion is misplaced. Article 457 of the New Civil Code provides:

> To the owners of lands adjoining the banks of rivers belongs the accretion which they gradually receive from the effects of the current of the waters.

In other words, the following requisites must concur in order for an accretion to be considered, namely:

(1) that the deposit be gradual and imperceptible;

---

[17] *Id.* at 125-126.

(2) that it be made through the effects of the current of the water; and,

(3) that the land where accretion takes place is adjacent to the banks of rivers.[18]

In the case at bench, this contested portion cannot be considered an accretion. To begin with, the land came about not by reason of a gradual and imperceptible deposit. The deposits were artificial and man-made and not the exclusive result of the current from the creek adjacent to his property. Baytion failed to prove the attendance of the indispensable requirement that the deposit was due to the effect of the current of the river or creek. Alluvion must be the exclusive work of nature and not a result of human intervention.[19]

Furthermore, the disputed property cannot also be considered an improvement or accession. Article 445 of the Civil Code provides:

> Art. 445. Whatever is built, planted or sown **on** the land of another and the improvements or repairs **made thereon**, belong to the owner of the land, subject to the provisions of the following articles.
>
> [Emphases supplied]

It must be noted that Article 445 uses the adverb "thereon" which is simply defined as "on the thing that has been mentioned."[20] In other words, the supposed improvement must be made, constructed or introduced within or on the property and not outside so as to qualify as an improvement contemplated by law. Otherwise, it would just be very convenient for land owners to expand or widen their properties in the guise of improvements.

---

[18] *Republic of the Philippines v. CA*, 217 Phil. 483, 489 (1984).

[19] *Id.*

[20] *http://www.merriam-webster.com/dictionary/thereon*.> Last visited on March 2, 2016.

In view of all the foregoing, it is the opinion of this Court that Baytion, not being the owner of the contested portion, does not have a better right to possess the same. In fact, in his initiatory pleading, he never claimed to have been in prior possession of this piece of property. His claim of ownership is without basis. As earlier pointed out, the portion is neither an accretion nor an accession. That being said, it is safe to conclude that he does not have any cause of action to eject Daclison.

WHEREFORE, the petition is **GRANTED**. The February 5, 2015 Decision and the August 3, 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 99627 are **REVERSED** and **SET ASIDE**. The complaint for possession is hereby ordered **DISMISSED**.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. RTJ-16-2455. April 11, 2016]
(Formerly OCA I.P.I. No. 10-3443-RTJ)

NEMIA CASTRO, *complainant, vs.* **JUDGE CESAR A. MANGROBANG, REGIONAL TRIAL COURT, BRANCH 22, IMUS, CAVITE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISQUALIFICATION OF JUDGES; VOLUNTARY INHIBITION; UNJUSTIFIED ASSUMPTIONS AND MERE MISGIVINGS THAT THE JUDGE ACTED WITH PREJUDICE, PASSION, PRIDE, AND PETTINESS IN THE PERFORMANCE OF HIS FUNCTIONS CANNOT

OVERCOME THE PRESUMPTION THAT A JUDGE SHALL DECIDE ON THE MERITS OF A CASE WITH AN UNCLOUDED VISION OF ITS FACTS. — There is an absolute dearth herein of any evidence of Judge Mangrobang's bias or partiality, which would have required him to inhibit from Civil Case No. 2187-00. Judge Mangrobang's series of orders adverse to Castro and favorable to spouses Guevarra, by itself, does not constitute sufficient proof, even if characterized by palpable error/s. Castro did not allege, much less prove, any ill motive, corrupt purpose, or malicious intention behind Judge Mangrobang's orders. Unjustified assumptions and mere misgivings that the judge acted with prejudice, passion, pride, and pettiness in the performance of his functions cannot overcome the presumption that a judge shall decide on the merits of a case with an unclouded vision of its facts. The Court highlights that mere imputation of bias or partiality is not enough ground for inhibition, there must be extrinsic evidence of malice or bad faith on the judge's part. Moreover, the evidence must be clear and convincing to overcome the presumption that a judge will undertake his noble role to dispense justice according to law and evidence without fear or favor.

2. **ID.; ID.; ID.; A JUDGE'S RULING NOT TO INHIBIT ONESELF SHOULD BE ALLOWED TO STAND ABSENT CLEAR AND CONVINCING EVIDENCE TO PROVE THE CHARGE OF BIAS AND PREJUDICE.—** In the absence of clear and convincing evidence to prove the charge of bias and prejudice, a judge's ruling not to inhibit oneself should be allowed to stand. Because voluntary inhibition is discretionary, Judge Mangrobang was in the best position to determine whether or not there was a need to inhibit from the case, and his decision to continue to hear the case, in the higher interest of justice, equity, and public interest, should be respected.

3. **ID.; CHARGES AGAINST JUDGES; AN ADMINISTRATIVE OR DISCIPLINARY COMPLAINT IS NOT THE PROPER REMEDY TO ASSAIL THE JUDICIAL ACTS OF MAGISTRATES OF THE LAW, PARTICULARLY THOSE RELATED TO THEIR ADJUDICATIVE FUNCTIONS, AS ANY ERRORS SHOULD BE CORRECTED THROUGH APPROPRIATE JUDICIAL REMEDIES. —** Just as important is the fact that Judge Mangrobang issued the orders

in the exercise of his judicial functions. The filing by Castro of an administrative case against Judge Mangrobang – to compel him to inhibit from Civil Case No. 2187-00 – is not the proper remedy. The pronouncements of the Court in *Re: Letters of Lucena B. Rallos for Alleged Acts/Incidents/Occurrences Relative to the Resolutions(s) Issued in CA-G.R. SP No. 06676 by Court of Appeals Executive Justice Pampio Abarintos and Associate Justices Ramon Paul Hernando and Victoria Isabel Paredes* on the voluntary inhibition of Justices of the Court of Appeals are just as relevant for judges. The Court quotes: Considering that the assailed conduct under both complaints referred to the performance of their judicial functions by the respondent Justices, we feel compelled to dismiss the complaints for being improper remedies. We have consistently held that an administrative or disciplinary complaint is not the proper remedy to assail the judicial acts or magistrates of the law, particularly those related to their adjudicative functions. Indeed, any errors should be corrected through appropriate judicial remedies, like appeal in due course or, in the proper cases, the extraordinary writs of *certiorari* and prohibition if the errors were jurisdictional. Having the administrative or disciplinary complaint be an alternative to available appropriate judicial remedies would be entirely unprocedural. In *Pitney v. Abrogar,* the Court has forthrightly expressed the view that extending the immunity from disciplinary action is a matter of policy, for "[t]o hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment." xxx.

4. ID.; ID.; FAILURE TO DECIDE A CASE WITHIN THE REGLEMENTARY PERIOD IS NOT EXCUSABLE AND CONSTITUTES GROSS INEFFICIENCY, AS EVERY JUDGE SHOULD DECIDE CASES WITH DISPATCH AND SHOULD BE CAREFUL, PUNCTUAL, AND OBSERVANT IN THE PERFORMANCE OF HIS FUNCTIONS FOR DELAY IN THE DISPOSITION OF CASES ERODES THE FAITH AND CONFIDENCE OF OUR PEOPLE IN THE JUDICIARY, LOWERS ITS STANDARDS AND BRINGS IT INTO DISREPUTE.— [T]he Court finds merit in the charge of undue delay by Judge Mangrobang in the resolution of Castro's Omnibus Motion and Motion to Admit Postmaster's Certification, which were filed on August 26, 2009 and

September 18, 2009, respectively. Judge Mangrobang only resolved said Motions in his Order dated June 8, 2010. In *Re: Cases submitted for Decision Before Hon, Teresito A. Andoy, former Judge, Municipal Trial Court, Cainta, Rizal*, the Court held : x x x. The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge.

5. ID.; ID.; CLAIM OF HEAVY WORK LOAD DOES NOT AUTOMATICALLY ABSOLVE A JUDGE OF ANY ADMINISTRATIVE LIABILITY, FOR IF A JUDGE FINDS HIMSELF UNABLE TO COMPLY WITH THE 90-DAY MANDATORY REGLEMENTARY PERIOD, HE SHOULD ASK THE COURT FOR A REASONABLE PERIOD OF EXTENSION TO RESOLVE THE PARTY'S MOTIONS.— Judge Mangrobang's claim of heavy work load is unsubstantiated, and even if assumed as true, does not automatically absolve him of any administrative liability. Judge Mangrobang, upon finding himself unable to comply with the 90-day mandatory reglementary period, should have asked the Court for a reasonable period of extension to resolve Castro's Motions. The Court, mindful of the heavy caseload of judges, generally grants such requests for extension. Judge Mangrobang did not make such a request.

6. ID.; ID.; UNDUE DELAY IN RENDERING A DECISION OR ORDER IS A LESS SERIOUS CHARGE WHICH IS PENALIZED WITH EITHER A SUSPENSION OR A FINE. — According to Section 9(1), in relation to Section 11(B), Rule 140 of the Rules of Court, as amended, undue delay in rendering a decision or order is a less serious charge, for which the respondent judge shall be penalized with either (a) suspension from office without salary and other benefits for not less than one nor more than three months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. Taking

into account that Judge Mangrobang had rendered 16 years of continuous service to the Government; he readily admitted that he failed to resolve the said Motions within the 90-day mandatory reglementary period; he had already optionally retired on August 31, 2012; and as a retiree, he would be mostly relying financially on his retirement benefits, the Court agrees with OCA that a fine of ₱10,000.00 would suffice in this case.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.:*

This is an administrative complaint for Gross Inefficiency, Neglect of Duty, Gross Ignorance of the Law and Manifest Bias and Partiality, filed by Nemia Castro (Castro) against Judge Cesar A. Mangrobang (Judge Mangrobang) of the Regional Trial Court, Branch 22 (RTC-Branch 22), Imus, Cavite, relative to Civil Case No. 2187-00, entitled *Nemia Castro v. Rosalyn Guevarra, sued with her husband, Jamir Guevarra.*

The complaint arose from the following facts:

Civil Case No. 2187-00 was an action for- Cancellation and/or Discharge of Check and Defamation/Slander with Damages instituted on October 5, 2000 before the RTC of Imus, Cavite, by Castro against spouses Jamir and Rosalyn Guevarra (spouses Guevarra). The case was raffled to RTC-Branch 90 oflmus, Cavite, presided by Judge Dolores Español (Judge Español). In her complaint, Castro sought the cancellation of her undated Far East Bank and Trust Company (FEBTC) Check No. 0133501 in the amount of ₱1,862,000.00 payable to the order of Rosalyn Guevarra, contending that the total obligation for which said check was issued had already been fully paid. Castro also prayed that her FEBTC Check Nos. 0133574 and 0133575, dated March 24, 2000 and March 31, 2000, respectively, in the amount of ₱l0,000.00 each, be declared without value; that Rosalyn Guevarra be ordered to return the excess payments Castro had made amounting to ₱477,257.00, plus interest; and that Castro be awarded exemplary damages, moral damages, and attorney's fees. Spouses Guevarra, in their defense, alleged that the personal

checks in question were issued by Castro in their favor in exchange for rediscounted checks in Rosalyn Guevarra's possession; and that of Castro's ₱l,862,000.00 obligation to the spouses Guevarra, only ₱230,000.00 had been paid. By reason of Castro's stop payment order to the bank for the three checks, spouses Guevarra filed before the Municipal Trial Court (MTC) of Imus, Cavite, three criminal complaints under the Bouncing Checks Law against Castro. During trial of Civil Case No. 2187-00, spouses Guevarra moved for the issuance of *subpoena ad testificandum* and *subpoena duces tecum* for certain bank officials and documents, but said motions were denied by Judge Español. Spouses Guevarra challenged Judge Español's denial of their motions for subpoena *via* a Petition for *Certiorari* before the Court of Appeals, docketed as CA-G.R. SP No. 80561. Given the pendency of CA-G.R. SP No. 80561, spouses Guevarra did not file a Formal Offer of Evidence before RTC- Branch 90 and instead filed on December 15, 2003 a Motion to Defer Action in Civil Case No. 2187-00.

Judge Español of RTC-Branch 90 rendered a Decision on December 22, 2003 in Civil Case No. 2187-00 with the following dispositive portion:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff [Nemia Castro] and against defendants Rosalyn Guevarra and Jamir Guevarra ordering the discharge of Far East Bank and Trust Co. (FEBTC) Check No. 0070789 and its replacement FEBTC Check No. 0133501, which, defendants subsequently affixed the date July 15, 2000 thereto, both in the amount of ₱1,862,000.00, the same are hereby cancelled if not returned to the plaintiff. Further, FEBTC Checks Nos. 0133574 and 0133575 dated March 24, 2000 and March 30, 2000, respectively, each in the amount of ₱10,000.00, are also hereby declared as without value. Likewise, the defendants are ordered to return to the plaintiff the amount of ₱477,257.00 representing the excess payment made by plaintiff plus legal interest of 12% per annum, from the filing of this complaint until fully paid. Further, defendants are ordered to pay plaintiff moral damages of ₱400,000.00, exemplary damages of ₱100,000.00, attorney's fees of ₱200,000.00 and the costs of suit.
>
> Furthermore, for lack of factual and legal basis, Criminal Case No. 8624-01, entitled People of the Philippines vs. Nemia Castro,

for Estafa under Article 315 (2-d), RPC in relation to P.D. 818, is hereby DISMISSED. Thus, the Clerk of Court is directed to furnish the Municipal Trial Court of Imus, Cavite, with a copy of this decision for its information and guidance with regard to the Criminal Cases involving FEBTC Checks Nos. 0133574 and 0133575 pending before the said court.[1]

In the body of the same Decision, Judge Español mentioned that the spouses Guevarra' s Motion to Defer Action was denied "pursuant to Section 7, Rule 65 of the 1997 Rules of Civil Procedure."

Spouses Guevarra filed on January 26, 2004 a Motion for Reconsideration assailing the validity of the Decision dated December 22, 2003 in Civil Case No. 2187-00 on the grounds that it was promulgated after Judge Español's retirement; it was contrary to law and the facts of the case; and it was rendered without due process as they were denied the right to present evidence. Spouses Guevarra filed two days later, on January 28, 2004, a Motion to Re-Raffle Case considering Judge Español's mandatory retirement on January 9, 2004 and the uncertainty of when a new judge would be appointed to replace her. Judge Norberto Quisumbing, Jr., Executive Judge of the RTC of Imus, Cavite, issued an Order[2] dated January 28, 2004 granting spouses Guevarra's Motion to Re-Raffle Case, and consequently, Civil Case No. 2187-00 was raffled to RTC-Branch 22, presided by Judge Mangrobang.

On December 15, 2004, Judge Mangrobang issued an Omnibus Order resolving spouses Guevarra's (1) Motion to Defer Action, and (2) Motion for Reconsideration of the Decision dated December 22, 2003. Judge Mangrobang found merit in spouses Guevarra' s Motion for Reconsideration, thus:

> After a thorough study of the positions of both parties, this Court is of the opinion that defendants [spouses Guevarra] had clearly presented a meritorious contention in proving that the questioned decision is null and void. Circumstantial and concrete evidence had

---

[1] *Rollo,* pp. 19-20.

[2] *Id*. at 24.

been established by defendants which will show that the said decision was clearly promulgated after the Honorable Judge Dolores Español had retired from service.

As correctly pointed out by defendants, the certified photocopy of the original of the subject decision dated December 22, 2003, which they secured on January 14, 2004 from the court and attached to their Motion for Reconsideration, does not show that it has been filed with the clerk of court from the time it was written until it was promulgated or sent to the parties. Unfortunately, plaintiff [Castro] failed to disprove said defendants' claim. The failure of the former judge to file the said decision with the clerk of court is very vital and cannot just be considered as one simple procedural lapse.

As held by the Honorable Supreme Court:

> *"The rule is well-established that the filing of the decision, judgment or order with the clerk of court, not the date of writing of the decision or judgment, nor the signing thereof or even the promulgation thereof that constitutes rendition. (Echaus vs. CA G.R. 57343, July 23, 1990; Marcelino vs. Cruz, Jr. supra, p. 55; Castro vs. Malazo, 99 SCRA 164, 170 [1968]; Comia v. Nicolas, 29 SCRA 492 [1969].*
>
> *"What constitutes rendition of judgment is not the mere pronouncement of the judgment in open court but the filing of the decision signed by the judge with the Clerk of Court (Quintana Sta. Maria v. Ubay, 87 SCRA 179).*

Evidently, although the decision is dated December 22, 2003, the same was mailed to the parties on January 12, 2004 and the neighboring Municipal Trial Court furnished on January 13, 2004. A considerable length of time therefore had lapsed from the time the said decision was presumably written up to the time it was actually served upon the parties. The Court cannot find a justifiable excuse in not serving the decision, during the incumbency or before the retirement of the former Judge Dolores Español, taking into account that there were occasions wherein the sheriff of this Court had caused the service of orders of lesser importance to the defendants.

xxx xxx xxx

The decision dated December 22, 2003 having been considered as null and void, the other issues raised by the defendants in their Motion for Reconsideration are rendered moot and academic.[3]

Ultimately, Judge Mangrobang decreed in his Omnibus Order:

WHEREFORE, for being meritorious, defendants' [spouses Guevarra's] Motion for Reconsideration is hereby granted, and the Court's decision dated December 22, 2003 is hereby reconsidered and set aside.

Further, in order not to intricate matters in this case considering that a Petition for Certiorari had been filed by the defendants before the Honorable Court of Appeals, let the proceedings of this case be held in abeyance until after the Court of Appeals shall have ruled on the pending petition.[4]

The Court of Appeals rendered a Decision on July 20, 2006 in CA- G.R. SP No. 80561 dismissing spouses Guevarra's Petition for *Certiorari.* According to the appellate court, the issues raised in said petition had become moot and academic because of the Decision dated December 22, 2003 rendered by RTC-Branch 90 in Civil Case No. 2187-00.

Spouses Guevarra filed on October 20, 2006 before the RTC-Branch 22 a Motion to Revive Proceedings and/or New Trial in Civil Case No. 2187-00, to enable them to complete their presentation of evidence by submitting newly discovered evidence which could disprove Castro's claims. Judge Mangrobang issued an Order[5] dated March 23, 2007 granting spouses Guevarra's Motion and setting new trial of the case on April 27, 2007 at 8:30 in the morning.

It was now Castro's turn to file on July 19, 2007 before the Court of Appeals a Petition for *Certiorari,* Prohibition and Mandamus with prayer for issuance of Temporary Restraining Order (TRO), docketed as CA-G.R. SP No. 99763, directly

---

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

[4] *Id*. at 29-30.

[5] *Id*. at 39.

challenging Judge Mangrobang's Order dated March 23, 2007 and also collaterally attacking his Omnibus Order dated December 15, 2004, for having been issued with grave abuse of discretion. In its Decision dated April 26, 2010, the appellate court denied Castro's petition. It opined that the petition should have been dismissed outright for Castro's failure to file a motion for reconsideration of Judge Mangrobang's Order dated March 23, 2007. The Court of Appeals also ruled that the issuance of the Order dated March 23, 2007 was not tainted with grave abuse of discretion as Judge Mangrobang acted within the bounds of his authority and in the exercise of his sound discretion. Castro filed a Motion for Reconsideration but it was denied by the Court of Appeals in a Resolution dated June 29, 2010. Castro filed before the Court a Petition for Review on *Certiorari,* docketed as G.R. No. 192737. On April 25, 2012, the Court rendered a Decision denying Castro's petition. The Court sustained Judge Mangrobang's Omnibus Order dated December 15, 2004, reasoning that: (1) Civil Case No. 2187-00 was properly assigned and transferred to RTC- Branch 22, vesting Judge Mangrobang with the authority and competency to take cognizance and to dispose of the case and all pending incidents therein, such as the spouses Guevarra's Motion for Reconsideration of Judge Español's Decision dated December 22, 2003; and (2) Judge Mangrobang's Omnibus Order dated December 15, 2004 had already attained finality after Castro failed to avail herself of any of the available remedies for questioning the same. The Court though found that the Court of Appeals should have given due course to Castro's Petition for *Certiorari* as an exception to the general rule requiring the prior filing of a motion for reconsideration because there was no basis at all for Judge Mangrobang's Order dated March 23, 2007 granting spouses Guevarra's motion for new trial. A motion for new trial is only available when relief is sought against a judgment and the judgment is not yet final. Spouses Guevarra' s motion for new trial in Civil Case No. 2187-00 was premature as RTC-Branch 22 has not yet rendered any decision in said case. Yet, in the interest of justice, the Court deemed it fair and equitable to allow the spouses Guevarra to

adduce evidence in Civil Case No. 2187-00 before RTC-Branch 22 and thereafter make their formal offer. If Castro would no longer present any rebuttal evidence, RTC-Branch 22 could already decide the case on the merits.[6]

In the meantime, Castro filed on July 20, 2007 before RTC-Branch 22 a Motion to Suspend Proceedings[7] in Civil Case No. 2187-00 by reason of her Petition for *Certiorari* filed before the Court of Appeals just the day before. On November 3, 2008, Judge Mangrobang issued an Order denying Castro's Motion because the Court of Appeals had not issued a TRO or writ of preliminary injunction despite the lapse of more than a year since the filing of the Petition for *Certiorari.*

Complainant Castro then filed a Motion and Manifestation to Secure Services of Counsel after her third lawyer's withdrawal of services. During the hearing on April 16, 2009, Castro herself spoke before Judge Mangrobang reiterating her request to suspend the hearing of Civil Case No. 2187-00 to give her time to look for another lawyer and accord the Court of Appeals the opportunity to resolve her Petition for *Certiorari* in CA-G.R. SP No. 99763. Judge Mangrobang granted Castro only until May 28, 2009 to secure the services of a new lawyer but denied her motion to suspend the hearing of Civil Case No. 2187-00 while her Petition for *Certiorari* was pending before the appellate court.

Castro filed on April 23, 2009 a Motion for Inhibition,[8] charging Judge Mangrobang with manifest bias and partiality in favor of the spouses Guevarra in violation of Castro's right to due process. Spouses Guevarra filed an Opposition (To the Motion for Inhibition), to which Castro filed a Reply. On July 30, 2009, Judge Mangrobang issued an Order[9] which stated that Castro failed to submit a reply to the spouses Guevarra's

---

[6] See *Castro v. Sps. Guevarra,* 686 Phil. 1125 (2012).

[7] *Rollo,* pp. 40-42.

[8] *Id*. at 51-58.

[9] *Id*. at 60-62

Opposition (To the Motion for Inhibition) and she was already deemed to have waived her right to file the same. At the end of said Order, Judge Mangrobang adjudged:

> WHEREFORE, in view of the foregoing, plaintiff's [Castro's] Motion for Inhibition is hereby denied.
>
> Accordingly, let the hearing for this case be set on September 9, 2009 at 2:00 o'clock in the afternoon. The plaintiff is hereby sternly warned that she should appear with a lawyer on that date. Otherwise, she would be deemed to have waived her right to present her evidence and the Court would be [constrained] to allow the defendants [spouses Guevarra] to start their presentation of evidence.[10]

Castro, through new counsel, filed on August 26, 2009 an Omnibus Motion with Leave of Court *(ad cautelam)* [11] praying for, among other remedies, a reconsideration of Judge Mangrobang's Order dated July 30, 2009 which denied her Motion for Inhibition. Castro additionally filed on September 18, 2009 a Manifestation and Motion to Admit Postmaster's Certification[12] to prove that her Reply to spouses Guevarra's Opposition (To the Motion for Inhibition), under Registry Receipt No. 15718, was delivered in a sealed envelope to RTC-Branch 22 and received by Orlando G. Nicolas on June 15, 2009.

Castro eventually received a Notice of Hearing, setting the continuation of the hearing of Civil Case No. 2187-00 on June 3, 2010, prompting Castro to file an Urgent Motion for Postponement citing again her lack of counsel and Judge Mangrobang's failure to rule on her Omnibus Motion and Motion to Admit Postmaster's Certification.

Based on the foregoing events, Castro filed a Complaint-Affidavit against Judge Mangrobang before the Office of the Court Administrator (OCA) on June 15, 2010.

---

[10] *Id*. at 62.

[11] *Id*. at 63-67.

[12] *Id*. at 76-77.

Castro takes Judge Mangrobang to task for his failure to promptly act on her two pending Motions in Civil Case No. 2187-00, stressing that a judge must act on all motions and interlocutory matters pending before their courts within the 90-day period provided in the Constitution, unless the law requires a lesser period. Failure by the judge to promptly dispose the court's business within the periods prescribed by law and the rules constitutes gross inefficiency and warrants administrative sanction.

Castro further questions Judge Mangrobang's Omnibus Order dated December 15, 2004 which granted spouses Guevarra's Motion to Defer Action and held in abeyance the proceedings in Civil Case No. 2187-00 until after the Court of Appeals have ruled on spouses Guevarra's Petition for *Certiorari* in CA-G.R. SP No. 80561. Castro argues that said Omnibus Order was in violation of Section 7, Rule 65 of the Revised Rules of Court which provides that "[t]he petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case[;]" and that such rule is so elementary that "not to know, or to act as if one does not know the same, constitutes gross ignorance of the law, even without the complainant having to prove malice or bad faith."

In addition, Castro contends that Judge Mangrobang exhibited bias and partiality in granting spouses Guevarra's Motion to Defer Action by reason of their pending Petition for *Certiorari* before the Court of Appeals, but later denying Castro's Motion to Suspend Proceedings also on the basis of her pending Petition for *Certiorari* before the Court of Appeals. According to Castro, Judge Mangrobang's undue preference to spouses Guevarra constitutes neglect of his duty to administer justice impartially under Rule 1.02 of The Code of Judicial Conduct, and of his obligation to conduct himself free of any whiff of impropriety.

Castro lastly avers that Judge Mangrobang had acted maliciously, deliberately, and in bad faith in issuing his Orders dated December 15, 2004, March 23, 2007, November 3, 2008,

April 16, 2009, and July 30, 2009. Castro maintains that it was not true that Judge Español did not rule on the spouses Guevarra's Motion to Defer Action when she obviously did by denying the same in her Decision dated December 22, 2003. In still granting the spouses Guevarra's Motion to Defer Action, Judge Mangrobang deliberately allowed himself to be used as a tool by said spouses in getting a "TRO," which the Court of Appeals already denied in its Resolution dated February 18, 2004 in CA-G.R. SP No. 80561. For said Orders, Judge Mangrobang could be held liable for gross ignorance of the law, as well as gross misconduct.

In Judge Mangrobang's Comment[13] dated September 8, 2010, he dismisses Castro as a "disgruntled litigant" who would always cry that an injustice was committed against her. Judge Mangrobang asserts that as a matter of public policy, not every error or mistake committed by a judge in the performance of his/her official duties renders him/her administratively liable; and that, in the absence of fraud, dishonesty, or deliberate intent to do an injustice, acts done in the judge's official capacity, even though sometimes erroneous, do not always constitute misconduct.

Judge Mangrobang identifies two major issues against him in Castro's complaint: (1) his denial of Castro's Motion for Inhibition; and (2) his alleged undue delay in resolving Castro's pending Motions in Civil Case No. 2187-00.

On his refusal to inhibit himself from Civil Case No. 2187-00, Judge Mangrobang invokes Section 1, Rule 137 of the Revised Rules of Court, which states that except as to the ground of close blood relationship with either party or counsel to a case, voluntary inhibition based on good, sound, or ethical grounds is a matter of discretion on the part of the judge and the official who is empowered to act upon the request for inhibition. Judge Mangrobang also points out that requiring a judge to grant all motions for inhibition would open the floodgates to a form of

[13] *Id.* at 93-101.

forum shopping, in which litigants would be allowed to shop for a judge more sympathetic to their cause.

Judge Mangrobang adds that a litigant seeking a judge's inhibition has the burden of proving the impossibility on said judge's part to render an impartial judgment upon the matter before him/her. In the instant case, Judge Mangrobang challenges Castro to describe particular acts or conduct that are clearly indicative of his arbitrariness or prejudice. Prejudice should not be presumed. It would not benefit the judicial system to brand a judge as biased and prejudiced simply because said judge issued orders in favor of or against a party. A mere suspicion and bare allegation that the judge was partial to one party are not enough. There must be clear and convincing evidence of such partiality.

Anent the second issue against him, Judge Mangrobang informs the Court that he already resolved Castro's Omnibus Motion and Motion to Admit Postmaster's Certification in an Order dated June 8, 2010, copies of which were mailed to the parties on June 21, 2010. However, Castro's copy of the said Order, sent to the address stated in her motions, were returned to the sender for the reason that the addressee did not reside in the given address.

Judge Mangrobang then begs the indulgence of OCA, admitting that he failed to resolve Castro's aforementioned motions within the prescribed period of 90 days because of his heavy work load. Judge Mangrobang clarifies though that he already resolved Castro's Motion for Inhibition by denying the same in his Order dated July 30, 2009, and what he failed to immediately resolve was Castro's Omnibus Motion in which she sought reconsideration of the Order dated July 30, 2009. Judge Mangrobang justifies that his delay in resolving Castro's Omnibus Motion and Motion to Admit Postmaster's Certification could not be deemed unreasonable considering that the delay in the disposition of the entire case was due to several motions and postponements sought by Castro herself. Moreover, Judge Mangrobang claims that the immediate resolution of said motions was not essential to the continuation of the hearing of Civil

Case No. 2187-00 since the arguments raised by Castro therein were mere rehash of her previous motions.

On April 27, 2011, OCA submitted its Report[14] with the following recommendations:

RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court are the following recommendations:

1. That the instant administrative case be **RE-DOCKETED** as a regular administrative matter;

2. That the charges of Gross Ignorance of the Law and Manifest Bias or Partiality against respondent **Judge Cesar A. Mangrobang** of the Regional Trial Court, Branch 22, Imus, Cavite, be **DISMISSED** for being judicial in nature; and

3. That respondent **Judge Cesar A. Mangrobang** of the Regional Trial Court, Branch 22, Imus, Cavite, be found **GUILTY** of Undue Delay in Rendering an Order, and be meted the penalty of **FINE** in the amount of **Ten Thousand Pesos (₱10,000.00)**, with a **warning** that a repetition of the same, or any similar infraction in the future, shall be dealt with more severely.

In a Resolution dated November 21, 2011, the Court required the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed. Judge Mangrobang and Castro submitted their respective Manifestations[15] dated January 31, 2012 and February 13, 2012, respectively. Thereafter, the Court deemed the instant case submitted for decision.

The Court agrees with the findings and conclusion of the OCA.

There is no basis for taking any administrative action against Judge Mangrobang for his denial of Castro's Motion to Inhibit.

Section 1, Rule 137 of the Revised Rules of Court provides for when a judge is mandatorily disqualified and when a judge

---

[14] *Id*. at 109.

[15] *Id*. at 115, 117.

may voluntarily inhibit from a case. Said rule is reproduced in full below:

> Sec. 1. *Disqualification of judges*.—No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
>
> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

None of the circumstances for the mandatory disqualification of a judge from a case applies to Judge Mangrobang. The question then is should Judge Mangrobang have voluntarily inhibited himself from Civil Case No. 2187-00?

The Court answers in the negative.

The following lengthy disquisition of the Court in *Philippine Commercial International Bank v. Spouses Dy Hong Pi*[16] is pertinent in this case:

> Under the first paragraph of Section 1, Rule 137 of the Rules of Court, a judge or judicial officer shall be **mandatorily disqualified** to sit in any case in which:
>
> (a) he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise; or
>
> (b) he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of civil law; or
>
> (c) he has been executor, administrator, guardian, trustee or counsel; or

[16] 606 Phil. 615, 636-639 (2009).

(d) he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

Paragraph two of the same provision meanwhile provides for the rule on **voluntary inhibition** and states: "[a] judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above." That discretion is a matter of conscience and is addressed primarily to the judge's sense of fairness and justice. We have elucidated on this point in **Pimentel v. Salanga,** as follows:

> A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He is a man, subject to the frailties of other men. He should, therefore, exercise great care and caution before making up his mind to act in or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decision to sit or not to sit may depend to a great extent the all-important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substances to the second paragraph of Section 1, Rule 137. He serves the cause of the law who forestalls miscarriage of justice.

The present case not being covered by the rule on mandatory inhibition, the issue thus turns on whether Judge Napoleon Inoturan should have voluntarily inhibited himself.

At the outset, we underscore that while a party has the right to seek the inhibition or disqualification of a judge who does not appear to be wholly free, disinterested, impartial and independent in handling the case, this right must be weighed with the duty of a judge to decide cases without fear of repression. Respondents consequently have no vested right to the issuance of an Order granting the motion to inhibit, given its discretionary nature.

However, the second paragraph of Rule 137, Section 1 does not give judges unfettered discretion to decide whether to desist from hearing a case. The inhibition must be for just and valid causes, and in this regard, we have noted that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. This Court has to be shown acts or conduct clearly indicative of arbitrariness or prejudice before it can brand them with the stigma of bias or partiality. Moreover, extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice.

We do not find any abuse of discretion by the trial court in denying respondents' motion to inhibit. Our pronouncement in **Webb, et al. v. People of the Philippines, et al.** is *apropos:*

> A perusal of the records will reveal that petitioners failed to adduce any extrinsic evidence to prove that respondent judge was motivated by malice or bad faith in issuing the assailed rulings. *Petitioners simply lean on the alleged series of adverse rulings of the respondent judge which they characterized as palpable errors. This is not enough.* We note that respondent judge's rulings resolving the various motions filed by petitioners were all made after considering the arguments raised by all the parties. x x x.
>
> xxx xxx xxx
>
> We hasten to stress that a party aggrieved by erroneous interlocutory rulings in the course of a trial is not without remedy. The range of remedy is provided in our Rules of Court

> and we need not make an elongated discourse on the subject. *But certainly, the remedy for erroneous rulings, absent any extrinsic evidence of malice or bad faith, is not the outright disqualification of the judge.* For there is yet to come a judge with the omniscience to issue rulings that are always infallible. The courts will close shop if we disqualify judges who err for we all err.

There is an absolute dearth herein of any evidence of Judge Mangrobang's bias or partiality, which would have required him to inhibit from Civil Case No. 2187-00. Judge Mangrobang's series of orders adverse to Castro and favorable to spouses Guevarra, by itself, does not constitute sufficient proof, even if characterized by palpable error/s. Castro did not allege, much less prove, any ill motive, corrupt purpose, or malicious intention behind Judge Mangrobang's orders. Unjustified assumptions and mere misgivings that the judge acted with prejudice, passion, pride, and pettiness in the performance of his functions cannot overcome the presumption that a judge shall decide on the merits of a case with an unclouded vision of its facts.[17] The Court highlights that mere imputation of bias or partiality is not enough ground for inhibition, there must be extrinsic evidence of malice or bad faith on the judge's part. Moreover, the evidence must be clear and convincing to overcome the presumption that a judge will undertake his noble role to dispense justice according to law and evidence without fear or favor.[18]

In the absence of clear and convincing evidence to prove the charge of bias and prejudice, a judge's ruling not to inhibit oneself should be allowed to stand.[19] Because voluntary inhibition is discretionary, Judge Mangrobang was in the best position to determine whether or not there was a need to inhibit from the case, and his decision to continue to hear the case, in the higher interest of justice, equity, and public interest, should be respected.[20]

---

[17] *Jimenez, Jr. v. People,* G.R. Nos. 209195 and 209215, September 17, 2014, 735 SCRA 596, 625.

[18] *Villamor v. Manalastas,* G.R. No. 171247, July 22, 2015.

[19] *Jimenez, Jr. v. People, supra* note 17.

[20] *Villamor v. Manalastas, supra* note 18.

Just as important is the fact that Judge Mangrobang issued the orders in the exercise of his judicial functions. The filing by Castro of an administrative case against Judge Mangrobang—to compel him to inhibit from Civil Case No. 2187-00 — is not the proper remedy. The pronouncements of the Court in *Re: Letters of Lucena B. Rallos for Alleged Acts/Incidents/Occurrences Relative to the Resolution(s) Issued in CA-G.R. SP No. 06676 by Court of Appeals Executive Justice Pampio Abarintos and Associate Justices Ramon Paul Hernando and Victoria Isabel Paredes* [21] on the voluntary inhibition of Justices of the Court of Appeals are just as relevant for judges. The Court quotes:

> Considering that the assailed conduct under both complaints referred to the performance of their judicial functions by the respondent Justices, we feel compelled to dismiss the complaints for being improper remedies. We have consistently held that an administrative or disciplinary complaint is not the proper remedy to assail the judicial acts of magistrates of the law, particularly those related to their adjudicative functions. Indeed, any errors should be corrected through appropriate judicial remedies, like appeal in due course or, in the proper cases, the extraordinary writs of *certiorari* and prohibition if the errors were jurisdictional. Having the administrative or disciplinary complaint be an alternative to available appropriate judicial remedies would be entirely unprocedural. In *Pitney v. Abrogar,* the Court has forthrightly expressed the view that extending the immunity from disciplinary action is a matter of policy, for "[t]o hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment."
>
> In addition, the Court reminds that the disregard of the policy by Rallos would result in the premature filing of the administrative complaints – a form of abuse of court processes.

Rallos is consistent with the doctrine and policy previously recognized in *Atty. Flores v. Hon. Abesamis,* [22] thus:

---

[21] IPI No. 12-203-CA-J (formerly A.M. No. 12-8-06-CA) and A.M. No. 12-9-08-CA, December 10, 2013,711 SCRA 673, 690-691.

[22] 341 Phil. 299, 313-314 (1997).

Now the established doctrine and policy is that disciplinary proceedings and criminal actions against Judges are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies, as well as the entry of judgment in the corresponding action or proceeding, are pre-requisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality, that the door to an inquiry into his criminal, civil or administrative liability may be said to have opened, or closed.

Flores resorted to administrative prosecution (or institution of criminal actions) as a substitute for or supplement to the specific modes of appeal or review provided by law from court judgments or orders, on the theory that the Judges' orders had caused him "undue injury." This is impermissible, as this Court had already more than once ruled. Law and logic decree that "administrative or criminal remedies are neither alternative nor cumulative to judicial review where such review is available, and must wait on the result thereof." x x x. Indeed, since judges must be free to judge, without pressure or influence from external forces or factors, they should not be subject to intimidation, the fear of civil, criminal or administrative sanctions for acts they may do and dispositions they may make in the performance of their duties and functions; and it is sound rule, which must be recognized independently of statute, that judges are not generally liable for acts done within the scope of their jurisdiction and in good faith; and that exceptionally, prosecution of a judge can be had only if "there be a *final declaration by a competent court in some appropriate proceeding of the manifestly unjust character of the challenged judgment or order,* and x x x also *evidence of malice or bad faith, ignorance of inexcusable negligence, on the part of the judge in rendering said judgment or order"* or under the stringent circumstances set out in Article 32 of the Civil Codex x x x.

The Court notes that in the instant case, Castro did have the opportunity to challenge two of Judge Mangrobang's orders, *i.e.,* Omnibus Order dated December 15, 2004 (granting spouses Guevarra's Motion for Reconsideration of the Decision dated December 22, 2003 and Motion to Defer Action) and Order dated March 23, 2007 (granting spouses Guevarra's Motion to

Revive Proceedings and/or New Trial), through a Petition for *Certiorari* before the Court of Appeals in CA-G.R. SP No. 99763, and subsequently, a Petition for Review on *Certiorari* before this Court in G.R. No. 192737. To recall, the Court, in its Decision dated April 25, 2012 in G.R. No. 192737, ruled that: (1) Judge Mangrobang had the authority and competency to issue the Order dated December 15, 2004, which already attained finality; (2) Judge Mangrobang had no legal basis for granting the spouses Guevarra's motion for new trial in his Order dated March 23, 2007, but in the interest of justice, fairness, and equity, the spouses were allowed to adduce evidence in Civil Case No. 2187-00 before the RTC-Branch 22. The Court made no declaration in G.R No. 192737 which Castro could use as basis for her charge of bias, partiality, or prejudice against Judge Mangrobang.

Nevertheless, the Court finds merit in the charge of undue delay by Judge Mangrobang in the resolution of Castro's Omnibus Motion and Motion to Admit Postmaster's Certification, which were filed on August 26, 2009 and September 18, 2009, respectively. Judge Mangrobang only resolved said Motions in his Order dated June 8, 2010.

In *Re: Cases Submitted for Decision Before Hon. Teresito A. Andoy, former Judge, Municipal Trial Court, Cainta, Rizal,* the Court held[23]:

> Article VIII, Section 15 (1) of the 1987 Constitution mandates lower court judges to decide a case within the reglementary period of 90 days. The Code of Judicial Conduct under Ru1e 3.05 of Canon 3 likewise enunciates that judges should administer justice without delay and directs every judge to dispose of the court's business promptly within the period prescribed by law. Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. Thus, the 90-day period is mandatory.
>
> Judges are enjoined to decide cases with dispatch. Any delay, no matter how short, in the disposition of cases undermines the people's

[23] 634 Phil. 378, 381-382 (2010).

faith and confidence in the judiciary. It also deprives the parties of their right to the speedy disposition of their cases.

The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge.

Castro's Omnibus Motion and Motion to Admit Postmaster's Certification were pending matters in Civil Case No. 2187-00. It took Judge Mangrobang 10 months and nine months to resolve the Omnibus Motion and Motion to Admit Postmaster's Certification, respectively.

Judge Mangrobang failed to resolve said Motions within the 90-day reglementary period for no justifiable reason. Judge Mangrobang's claim of heavy work load is unsubstantiated, and even if assumed as true, does not automatically absolve him of any administrative liability. Judge Mangrobang, upon finding himself unable to comply with the 90-day mandatory reglementary period, should have asked the Court for a reasonable period of extension to resolve Castro's Motions. The Court, mindful of the heavy caseload of judges, generally grants such requests for extension.[24] Judge Mangrobang did not make such a request.

According to Section 9(1), in relation to Section 11(B), Rule 140 of the Rules of Court, as amended,[25] undue delay in rendering a decision or order is a less serious charge, for which the respondent judge shall be penalized with either (a) suspension

---

[24] *Office of the Court Administrator v. Dilag,* 508 Phil. 183, 189 (2005).

[25] *En Banc* Resolution in A.M. No. 01-8-10-SC dated September 11, 2001 (Re: Proposed Amendment to Rule 140 of the Rules of Court Regarding the Discipline of Justices and Judges).

from office without salary and other benefits for not less than one nor more than three months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

Taking into account that Judge Mangrobang had rendered 16 years of continuous service to the Government; he readily admitted that he failed to resolve the said Motions within the 90-day mandatory reglementary period; he had already optionally retired on August 31, 2012; and as a retiree, he would be mostly relying financially on his retirement benefits, the Court agrees with OCA that a fine of ₱10,000.00 would suffice in this case.

WHEREFORE, the Court fmds **JUDGE CESAR A. MANGROBANG,** former judge of the Regional Trial Court of Imus, Cavite, Branch 22, **GUILTY** of undue delay in resolving pending matters in Civil Case No. 2187-00, and for which he is **FINED** in the amount of **₱10,000.00,** to be deducted from the retirement benefits due and payable to him. Let a copy of this Resolution be **FORWARDED** to the Office of the Court Administrator so that the remaining benefits due respondent judge are promptly released, unless there exists another lawful cause for withholding the same.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 203370. April 11, 2016]

MALAYAN INSURANCE COMPANY, INC. and HELEN Y. DEE, *petitioners, vs.* **PHILIP PICCIO, MIA GATMAYTAN, MA. ANNABELLA RELOVA SANTOS, JOHN JOSEPH GUTIERREZ, JOCELYN UPANO, JOSE DIZON, ROLANDO PAREJA, WONINA M. BONIFACIO, ELVIRA CRUZ, CORNELIO ZAFRA, VICENTE ORTUOSTE, VICTORIA GOMEZ JACINTO, JUVENCIO PERECHE, JR., RICARDO LORAYES, PETER C. SUCHIANCO, and TRENNIE MONSOD,** *respondents.*

[G.R. No. 215106. April 11, 2016]

MALAYAN INSURANCE COMPANY, INC., *petitioner, vs.* **PHILIP PICCIO, MIA GATMAYTAN, MA. ANNABELLA RELOVA SANTOS, JOHN JOSEPH GUTIERREZ, JOCELYN UPANO, JOSE DIZON, ROLANDO PAREJA, WONINA M. BONIFACIO, ELVIRA CRUZ, CORNELIO ZAFRA, VICENTE ORTUOSTE, VICTORIA GOMEZ JACINTO, JUVENCIO PERECHE, JR., RICARDO LORAYES, PETER C. SUCHIANCO, and TRENNIE MONSOD,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; THE AUTHORITY TO REPRESENT THE REPUBLIC AND/OR THE PEOPLE OF THE PHILIPPINES IN APPEALS OF CRIMINAL CASES BEFORE THE SUPREME COURT AND THE COURT OF APPEALS IS VESTED SOLELY IN THE OFFICE OF THE SOLICITOR GENERAL (OSG), BUT PRIVATE COMPLAINANT OR THE OFFENDED PARTY MAY FILE AN APPEAL OR A SPECIAL CIVIL ACTION WITHOUT THE INTERVENTION OF THE OSG ONLY INSOFAR AS THE CIVIL ASPECT OF THE CASE IS CONCERNED;

RATIONALE.— The authority to represent the State in appeals of criminal cases before the Court and the CA is vested solely in the OSG which is "the law office of the Government whose specific powers and functions include that of representing the Republic and/or the People [of the Philippines] before any court in any action which affects the welfare of the people as the ends of justice may require." x x x. In *People v. Piccio (Piccio),* which involved one of the thirteen (13) criminal cases between the same parties, this Court held that "if there is a dismissal of a criminal case by the trial court or if there is an acquittal of the accused, **it is only the OSG that may bring an appeal on the criminal aspect representing the People**. The rationale therefor is rooted in the principle that the party affected by the dismissal of the criminal action is the People and not the petitioners who are mere complaining witnesses. For this reason, **the People are therefore deemed as the real parties in interest in the criminal case and, therefore, only the OSG can represent them in criminal proceedings pending in the CA or in this Court**. In view of the corollary principle that every action must be prosecuted or defended in the name of the real party in interest who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit, an appeal of the criminal case not filed by the People as represented by the OSG is perforce dismissible. The private complainant or the offended party may, however, file an appeal without the intervention of the OSG but only insofar as the civil liability of the accused is concerned. He may also file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his interest in the civil aspect of the case."

2. ID.; ID.; ID.; ID.; AN APPEAL FILED BY PRIVATE COMPLAINANTS BEFORE THE COURT OF APPEALS IN RELATION TO THE CRIMINAL ASPECT OF THE CASE SHALL BE DISMISSED WHERE THE SAME WAS FILED WITHOUT AUTHORIZATION OF THE OSG, BUT THE DISMISSAL OF THE APPEAL IS WITHOUT PREJUDICE TO PRIVATE COMPLAINANTS' APPROPRIATE ACTION TO PRESERVE THEIR INTEREST IN THE CIVIL ASPECT OF THE CRIMINAL CASE.— In this case, as in *Piccio*, records show that petitioners' appeal in **CA-G.R. CR No. 31467** principally sought the remand of **Criminal Case Nos. 06-877 and 06-882** to the Makati-RTC, Br. 137 for

arraignment and trial, or, in the alternative, amend the Informations, and therefore, was not intended to merely preserve their interest in the civil aspect of the case. Thus, as its appeal was filed in relation to the criminal aspect of the case, it is necessary that the same be filed with the authorization of the OSG, which, by law, is the proper representative of the real party in interest in the criminal proceedings, the People. There being no authorization given, the appeal was rightfully dismissed by the CA. In fact, in its Comment dated July 5, 2013, the People, through the OSG, even sought the dismissal of petitioners' appeal before this Court on the ground that "petitioners have no legal personality to elevate on appeal the quashal of the [Informations] in the subject criminal cases." As it is, petitioners have no legal standing to interpose an appeal in the criminal proceeding; hence, as they went beyond the bounds of their interest, petitioners cannot successfully contest the propriety of the Makati-RTC, Br. 137's dismissal of the criminal cases. It must, however, be clarified that the CA's denial of petitioners' appeal is without prejudice to their filing of the appropriate action to preserve their interest in the civil aspect of the Libel cases, following the parameters of Rule 111 of the Rules of Criminal Procedure.

3. ID.; ID.; VENUE; VENUE IS JURISDICTIONAL IN CRIMINAL ACTIONS SUCH THAT THE PLACE WHERE THE CRIME WAS COMMITTED DETERMINES NOT ONLY THE VENUE OF THE ACTION BUT CONSTITUTES AN ESSENTIAL ELEMENT OF JURISDICTION; THE VENUE OF LIBEL CASES WHERE THE COMPLAINANT IS A PRIVATE INDIVIDUAL IS LIMITED TO EITHER THE PLACE WHERE THE COMPLAINANT ACTUALLY RESIDES AT THE TIME OF THE COMMISSION OF THE OFFENSE, OR WHERE THE ALLEGED DEFAMATORY ARTICLE WAS PRINTED AND FIRST PUBLISHED.— "Venue is jurisdictional in criminal actions such that the place where the crime was committed determines not only the venue of the action but constitutes an essential element of jurisdiction. This principle acquires even greater import in libel cases, given that Article 360 [of the RPC], as amended [by Republic Act No. 4363], specifically provides for the possible venues for the institution of the criminal and civil aspects of such cases, x x x. Thus, generally speaking, "the venue of libel cases where the complainant is a private individual is limited to only either of two places, namely: 1) where the complainant actually resides

at the time of the commission of the offense; or 2) where the alleged defamatory article was printed and first published."

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioner.

Solis Medina Limpingco & Fajardo Law Offices for respondents Bonifacio, Upano, Ortuoste and Pereche, Jr.

Ongkiko Manhit Custodio & Acorda Law Office counsel for respondents Piccio, Gatmaytan, Pareja, Zafra, Cruz and Gomez-Jacinto.

Soo Gutierrez Leogardo & Lee counsel for respondent Monsod.

Gerodias Suchianco Estrella counsel for respondent Suchianco.

Walfredo C. Bayhon counsel respondents Santos and Gutierrez.

Ricardo Bebo for respondent Dizon.

D E C I S I O N

PERLAS-BERNABE, *J.:*

Before this Court are two (2) consolidated petitions for review on *certiorari*.[1] The first petition, docketed as GR. No. 203370, filed by petitioners Malayan Insurance Company, Inc. (Malayan Insurance) and Helen Y. Dee (petitioners) assails the Decision[2] dated February 24, 2012 and the Resolution[3] dated September 5, 2012 of the Court of Appeals (CA) in CA-GR. CR No. 31467, which denied their appeal from the Order[4] dated February 20,

---

[1] *Rollo* (G.R. No. 203370), pp. 10-51; and *rollo* (G.R. No. 215106), pp. 10-37.

[2] *Rollo* (G.R. No. 203370), pp. 54-62. Penned by Associate Justice Manuel M. Barrios with Associate Justices Juan Q. Enriquez, Jr. and Apolinario D. Bruselas, Jr. concurring.

[3] *Id*. at 64-65. Penned by Associate Justice Manuel M. Barrios with Associate Justices Apo1inario D. Bruselas, Jr. and Francsico P. Acosta concurring.

[4] *Id*. at 311-321. Penned by Presiding Judge (now Deputy Court Administrator) Jenny Lind R. Aldecoa-Delorino.

2007 and the Resolution[5] dated September 3, 2007 of the Regional Trial Court of Makati City (Makati-RTC), Branch 137 (Makati-RTC, Br. 137) in Criminal Case Nos. 06-877 and 06-882 on the ground that the same was not authorized by the Office of the Solicitor General (OSG). On the other hand, the second petition, docketed as GR. No. 215106, filed by petitioner Malayan Insurance assails the Decision [6] dated March 31, 2014 and the Resolution[7] dated October 17, 2014 of theCA in CA-G.R. CR. No. 32148, which denied its appeal from the Orders[8] dated December 28, 2007 and August 29, 2008 of the Makati-RTC, Branch 62 (Makati-RTC, Br. 62) in Criminal Case No. 06-884 on the ground of lack of jurisdiction.

The Facts

On October 18, 2005, Jessie John P. Gimenez (Gimenez), President of the Philippine Integrated Advertising Agency — the advertising arm of the Yuchengco Group of Companies (Yuchengco Group), to which Malayan Insurance is a corporate member—filed a Complaint-Affidavit[9] for thirteen (13) counts of Libel, defined and penalized under Article 355 in relation to Article 353 of the Revised Penal Code (RPC), before the City Prosecutor of Makati City, docketed as I.S. No. 05-I-11895, against herein respondents Philip Piccio, Mia Gatmaytan, Ma. Annabella Relova Santos, John Joseph Gutierrez, Jocelyn Upano, Jose Dizon, Rolando Pareja, Wonina M. Bonifacio, Elvira Cruz, Cornelio Zafra, Vicente Ortuoste, Victoria Gomez Jacinto, Juvencio Pereche, Jr., Ricardo Lorayes, Peter C. Suchianco, and Trennie Monsod (respondents) for purportedly posting

---

[5] *Id*. at 341-344.

[6] *Rollo* (G.R. No. 215106), pp. 47-55. Penned by Associate Justice Elihu A. Ybañez with Associate Justices Japar B. Dimaampao and Melchor Q.C. Sadang concurring.

[7] *Id*. at 57-58.

[8] *Id*. at 249-257 and 314, respectively. Penned by Judge Seima Palacio Alaras.

[9] *Rollo* (G.R. No. 203370), pp. 68-90; and *rollo* (G.R. No. 215106), pp. 59-81.

defamatory articles/statements on the website www.pepcoalition.com that besmirched the reputation of the Yuchengco family and the Yuchengco Group, including herein petitioners.[10]

Upon the prosecutor's finding of probable cause,[11] thirteen (13) Informations were filed before the Makati-RTC. Among those filed were Criminal Case Nos. 06-877[12] and 06-882[13] (raffled

---

[10] *Rollo* (G.R. No. 203370), pp. 16-20; and *rollo* (G.R. No. 215106), pp. 15-19.

[11] See Resolution dated May 2, 2006 (promulgated on May 5, 2006) of the Makati City Prosecutor's Office signed by 1st Assistant City Prosecutor Romulo I. Nanola and approved by City Prosecutor Feliciano Aspi; *rollo* (G.R. No. 203370), pp. 219-230; and *rollo* (G.R. No. 215106), pp. 198-209.

[12] Excerpts from the Information in Criminal Case No. 06-877 read:

That on or about the 26th day of August 2005 in Makati City, Metro Manila, Philippines, a place within the jurisdiction of the Honorable Court, the above-named accused, being then the trustees of Parents Enabling Parents Coalition and as such trustees they hold the legal title to the website [www.pepcoalition.com] which is of general circulation, and publication to the public conspiring confederating and mutually helping with one another together with John Does, did then and there [wilfully], unlawfully and feloniously and publicly and maliciously with intention of attacking the honesty, virtue, honor and integrity, character and reputation of complainant Malayan Insurance Co., Inc., Yuchengco Family particularly Yuchengco Family and [Yuchengco Group of Companies (YGC)] of which Malayan is part and for further purpose exposing the complainant to public hatred and contempt published an article imputing a vice or defect to the complainant and caused to be composed, posted and published in the said website [www.pepcoalition.com] and injurious and defamatory article as follows:

> It's just plain common sense. Why throw good, hard earned money on something that will earn you nothing?
>
> We PPI planholders should face reality. The Yuchengcos are not the insurance business. Their core business is DECEPTION. So why put your money on an insurance or pre-need company that is not trustworthy? Ten years from now when you make a claim, they'll just give you the same run around that they've been giving us now.
>
> C'mon do you really believe that the Yuchengco[']s will honor their commitments? Hoy, Gising'
>
> xxxx (See *rollo* [G.R. No. 203370], pp. 231-233.)

[13] Excerpts from the Information in Criminal Case No. 06-882 read:

to Makati-RTC, Br. 137) and Criminal Case No. 06-884[14] (raffled to Makati-RTC, Br. 62), from which arose the present petitions.

That on or about the 12th day of September 2005 in Makati City, Metro Manila, Philippines, a place within the jurisdiction of the Honorable Court, the above-named accused, being then the trustees of Parents Enabling Parents Coalition and as such trustees they hold the legal title to the website [www.pepcoalition.com] which is of general circulation, and publication to the public conspiring confederating and mutually helping with one another together with John Does, did then and there [wilfully], unlawfully and feloniously and publicly and maliciously with intention of attacking the honesty, virtue, honor and integrity, character and reputation of complainant Malayan Insurance Co., Inc., Yuchengco Family particularly Malayan is part and Helen Dee and for further purpose exposing the complainant to public hatred and contempt published an article imputing a vice or defect to the complainant and caused to be composed, posted and published in the said website [www.pepcoalition.com] and injurious and defamatory article as follows:

> The coalition has been attacked by all sorts of lowlifes unleased [sic] by the HYDRA (Helen Yuchengco Dee's Rampaging *Alipores)*.
>
> Maybe it is time to give YGC a dose of their own medicine. There are a lot of you there with access or at least internet cafes.
>
> x x x (See *rollo* [G.R. No. 203370], pp. 234-235.)

[14] Excerpts from the Information in Criminal Case No. 06-884 read:

That on or about the 24th day of September 2005 in Makati City, Metro Manila, Philippines, a place within the jurisdiction of the Honorable Court, the above-named accused, being then the trustees of Parents Enabling Parents Coalition and as such trustees they hold the legal title to the website [www.pepcoalition.com] which is of general circulation, and publication to the public conspiring confederating and mutually helping with one another together with John Does, did then and there [wilfully], unlawfully and feloniously and publicly and maliciously with intention of attacking the honesty, virtue, honor and integrity, character and reputation of complainant Malayan Insurance Co., Inc., Yuchengco Family particularly Yuchengco Family and for further purpose exposing the complainant to public hatred and contempt published an article imputing a vice or defect to the complainant and caused to be composed, posted and published in the said website [www.pepcoalition.com] and injurious and defamatory article as follows:

> If, by any chance, our children's cries for justice and a better future, have struck a choir in your heart, we ask you to convince the Scrooges in your family to let go of the greed that seems to have overtaken

In Criminal Case Nos. 06-877 and 06-882, respondents filed a Motion to Quash[15] dated June 7, 2006, asserting, among others, lack of jurisdiction, since the residences of petitioners were not alleged in the Informations. Besides, even if so stated, the residence or principal office address of petitioners was admittedly at Quintin Paredes Street, Binondo, Manila, and not in Makati City. Hence, the venue was mislaid, and the Makati-RTC, Br. 137 did not have jurisdiction over the said cases.[16]

In an Order[17] dated February 20, 2007, the Makati-RTC, Br. 137 granted the said motion and dismissed **Criminal Case Nos. 06-877 and 06-882** on the ground of lack of jurisdiction.[18] It found that the Informations filed in these cases failed to state that any one of the offended parties resides in Makati City, or that the subject articles were printed or first published in Makati City.[19] Hence, the failure to state the aforementioned details was a fatal defect which negated its jurisdiction over the criminal cases:[20] Petitioners filed a motion for reconsideration,[21] which was, however, denied in a Resolution[22] dated September 3, 2007. Hence, petitioners filed an appeal[23] before the CA, docketed as **CA-G.R. CR No. 31467**.

---

and ruled their style of corporate governance... lest the spirits of the past, present and future catch up with them all.

x x x x (See *rollo* [G.R. No. 215106], pp. 210-211.)

[15] Particularly respondents Wonina M. Bonifacio, Vicente Ortuoste, Juvencio Pereche, Jr., and Jocelyn Upano. *Rollo* (G.R. No. 203370), pp. 236-274.

[16] *Id*. at 55.

[17] *Id*. at 311-321.

[18] *Id*. at 321.

[19] *Id*. at 319-320.

[20] *Id*. at 320-321.

[21] Dated March 15, 2007, *id*. at 322-340.

[22] *Id*. at 341-344.

[23] See Notice of Appeal dated September 21, 2007 filed through the private prosecutor, with conformity of Public Prosecutor George V. De Joya; *id*. at 345-346.

Similarly, in Criminal Case No, 06-884 respondents filed Motion to Quash[24] dated June 5, 2006, based on the following grounds: *(a)* that the Information failed to vest jurisdiction on the Makati-RTC; (b) that the acts complained of in the Information are not punishable by law; and *(c)* that the Information is fatally defective for failing to designate the offense charged and to allege the acts or omissions complained of as constituting the offense of Libel.[25]

In an Order[26] dated December 28 2007 the Makati RTC, Br. 62 dismissed **Criminal Case No. 06-884** for lack of probable cause. Among others, it ruled that the element of malice was lacking since respondents did not appear to have been motivated by person ill will to speak or spite Malayan Insurance.[27] The prosecution filed a motion for reconsideration,[28] which was, however, denied in an Order[29] dated August 29 2008. Thus, Malayan Insurance filed an appeal[30] before the CA docketed as **CA-G.R. CR. No. 32148.**

The Proceedings Before the CA

In **CA-G.R. CR No. 31467**, the CA noted that while petitioners filed a Notice of Appeal, the Appellants' Brief was filed only by the private prosecutor, and not by the OSG as required by law.[31] It likewise observed from the records that the OSG filed

---

[24] Particularly respondents Winona M. Bonifacio, Vicente Ortuoste, Juvencio Pereche, Jr., and Jocelyn Upano. *Rollo* (G.R. No. 215106), pp. 212-246,

[25] *Id*. at 212.

[26] *Id*. at 249-257.

[27] *Id*. at 51 and 256.

[28] Dated April 24, 2008; *id*. at 258-278.

[29] *Id*. at 314.

[30] See Notice of Appeal dated September 23, 2008 filed through the private prosecutor; *id*. at 315-317.

[31] *Id*. at 56.

a Manifestation and Motion[32] dated September 16, 2008 asking that "it be excused from filing any documents or pleadings relative to the aforementioned case[,] considering that it had not received any endorsement coming from the Department of Justice to appeal the same."[33] Moreover, the CA held that "the Chief City Prosecutor of Makati City was required to comment, and he categorically stated in his Explanation and Compliance that he did not authorize the filing, nor conform to the filing of an appeal from the quashal of the two (2) Informations in **[Criminal Case Nos. 06-877 and 06-882**]."[34]

Thus, in the assailed Decision[35] dated February 24, 2012, the CA denied the appeal outright on the ground that the same was not filed by the authorized official, *i.e.,* the OSG. It remarked that although the private prosecutor may, at certain times, be permitted to participate in criminal proceedings on appeal in the CA, his participation is always subject to prior approval of the OSG; and the former cannot be permitted to adopt a position that is not consistent with that of the OSG.[36] Petitioners' motion for reconsideration[37] was denied in the assailed Resolution[38] dated September 5, 2012, prompting them to file the petition in **G.R. No. 203370.**

The same was reached when the CA, in the assailed Decision[39] dated March 31, 2014 in **CA-G.R. CR. No. 32148**, denied Malayan Insurance's appeal, but this time, on the ground of lack of jurisdiction. The ruling was premised on its finding that the case of *Bonifacio v. RTC of Makati, Branch 149 (Bonifacio),*[40]

---

[32] Dated September 16, 2008. *Id*. at 366-368.

[33] *Id*. at 56.

[34] *Id*.

[35] *Id*. at 54-62.

[36] *Id*. at 58-59.

[37] Not attached to the *rollos.*

[38] *Rollo* (G.R. No. 203370), pp. 64-65.

[39] *Rollo* (G.R. No. 215106), pp. 47-55.

[40] 634 Phil. 348 (2010).

which involved one of the thirteen (13) Libel cases, particularly Criminal Case No. 06-876, participated in by the same parties albeit concerning a different defamatory article, is already controlling.[41] Hence, since this Court directed the quashal of Information in Criminal Case No. 06-876 and dismissed the same, the CA did not delve on the propriety of the Makati-RTC, Br. 62's finding of probable cause, and instead adopted. the same course of action in *Bonifacio.* In its view, all other issues are rendered moot and academic in light of this Court's declaration that the Makati-RTC is without jurisdiction to try and hear cases for Libel filed by Malayan Insurance against respondents.[42] Malayan Insurance's motion for reconsideration[43] was denied in the assailed Resolution[44] dated October 17 2014, prompting it to file the petition in **G.R. No. 215106.**

The Issues Before the Court

In **G.R. No. 203370**, petitioners contend that the CA erred in denying the appeal in **CA-G.R. CR No. 31467** due to lack of the OSG's authorization. While in **G.R. No. 215106** Malayan Insurance argued that the CA likewise erred in denying its appeal in **CA-G.R. CR. No. 32148,** but this time, on jurisdictional grounds.

The Court's Ruling

I. Resolution of G.R. No. 203370

The authority to represent the State in appeals of criminal cases before the Court and the CA is vested solely in the OSG[45] which is "the law office of the Government whose specific

---

[41] *Rollo* (G.R. No. 215106), p. 52.

[42] *Id*. at 53.

[43] Not attached to the *rollos.*

[44] *Rollo* (GR. No. 215106), pp. 57-58.

[45] *Villareal v. Aliga,* G.R. No. 166995, January 13, 2014, 713 SCRA 52, 64, citing *Bautista v. Cuneta-Pangilinan,* G.R. No. 189754, October 24, 2012, 684 SCRA 521,534.

powers and functions include that of representing the Republic and/or the People [of the Philippines] before any court in any action which affects the welfare of the people as the ends of justice may require."[46] Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code[47] provides that:

> Section 35. Powers and Functions. — **The Office of the Solicitor General shall represent the Government of the Philippines,** its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. x x x. It shall have the following specific powers and functions:
>
> (1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**; represent the Government and its officers in the Supreme Court, and Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (Emphases supplied)

In *People v. Piccio (Piccio),*[48] which involved one of the thirteen (13) criminal cases between the same parties, this Court held that "if there is a dismissal of a criminal case by the trial court or if there is an acquittal of the accused, **it is only the OSG that may bring an appeal on the criminal aspect representing the People.** The rationale therefor is rooted in the principle that the party affected by the dismissal of the criminal action is the People and not the petitioners who are mere complaining witnesses. For this reason, **the People are therefore deemed as the real parties in interest in the criminal case and, therefore, only the OSG can represent them in criminal proceedings pending in the CA or in this Court.** In view of the corollary principle that every action must be prosecuted or defended in the name of the real party in interest who stands to

---

[46] *Gonzales v. Chavez,* G.R. No. 97351, February 4, 1992, 205 SCRA 816, 845.

[47] Executive Order No. 292, Series of 1987, entitled "INSTITUTING THE ADMINISTRATIVE CODE OF 1987," signed on July 25, 1987.

[48] G.R. No. 19368l, August 6, 2014, 732 SCRA254.

be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit, an appeal of the criminal case not filed by the People as represented by the OSG is perforce dismissible. The private complainant or the offended party may, however, file an appeal without the intervention of the OSG but only insofar as the civil liability of the accused is concerned. He may also file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his interest in the civil aspect of the case."[49]

In this case, as in *Piccio,* records show that petitioners' appeal in **CA- G.R. CR No. 31467** principally sought the remand of **Criminal Case Nos. 06-877 and 06-882** to the Makati-RTC, Br. 137 for arraignment and trial, or, in the alternative, amend the Informations, and therefore, was not intended to merely preserve their interest in the civil aspect of the case. Thus, as its appeal was filed in relation to the criminal aspect of the case, it is necessary that the same be filed with the authorization of the OSG, which, by law, is the proper representative of the real party in interest in the criminal proceedings, the People. There being no authorization given, the appeal was rightfully dismissed by the CA. In fact, in its Comment[50] dated July 5, 2013, the People, through the OSG, even sought the dismissal of petitioners' appeal before this Court[51] on the ground that "petitioners have no legal personality to elevate on appeal the quashal of the [Informations] in the subject criminal cases."[52] As it is, petitioners have no legal standing to interpose an appeal in the criminal proceeding; hence, as they went beyond the bounds of their interest, petitioners cannot successfully contest the propriety of the Makati- RTC, Br. 137's dismissal of the criminal cases. It must, however, be clarified that the CA's denial of petitioners' appeal is without prejudice to their filing of the appropriate action to preserve their interest in the civil aspect

---

[49] *Id*. at 261-262; emphases and underscoring supplied.

[50] *Rollo* (G.R. No. 203370), pp. 636-660.

[51] *Id*. at 659.

[52] *Id*. at 648.

of the Libel cases, following the parameters of Rule 111 of the Rules of Criminal Procedure.[53]

II. Resolution of G.R. No. 215106

"Venue is jurisdictional in criminal actions such that the place where the crime was committed determines not only the venue of the action but constitutes an essential element of jurisdiction. This principle acquires even greater import in libel cases, given that Article 360 [of the RPC], as amended [by Republic Act No. 4363[54]], specifically provides for the possible venues for the institution of the criminal and civil aspects of such cases,"[55] to wit:

> Article 360. *Persons responsible.* – x x x.
>
> xxx xxx xxx
>
> The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately **with the court of first instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense**: x x x.
>
> x x x (Emphasis and underscoring supplied)

Thus, generally speaking, "the venue of libel cases where the complainant is a private individual is limited to only either of two places, namely: 1) where the complainant actually resides at the time of the commission of the offense; or 2) where the alleged defamatory article was printed and first published."[56]

In this case, the CA proceeded to deny Malayan Insurance's appeal in view of the Makati-RTC, Br. 62's lack of jurisdiction

---

[53] See *People v. Piccio, supra* note 48, at 262.

[54] Entitled "AN ACT FURTHER AMEND ARTICLE THREE HUNDRED SIXTY OF THE REVISED PENAL CODE," approved on June 19, 1965.

[55] *Bonifacio v. RTC of Makati, Branch 149, supra* note 40, at 360, citing *Macasaet v. People,* 492 Phil. 355, 370 (2005).

[56] *Id*. at 361; underscoring supplied.

over Criminal Case No. 06-884. It held that this Court's ruling in *Bonifacio* is already "controlling here because they involve the same parties and the same issues,"[57] observing that this case is "one (1) of the thirteen (13) cases/[I]nformations filed before the [Makati-RTC] which originated from the complaint initiated by [Gimenez]."[58]

To contextualize, the Libel case involved in *Bonifacio* was Criminal Case No. 06-876 which, as the CA observed, involved the same parties herein. Highlighting the Amended Information's allegation that the offending article **"was first published and accessed by the private complainant in Makati City,"**[59] respondents submitted that "[t]he prosecution erroneously laid the venue of the case in the place where the offended party accessed the internet-published article."[60] This Court sustained the argument, and directed the Makati-RTC to quash the Amended Information in Criminal Case No. 06-876 and dismiss the case, ratiocinating in the following wise:

> If the circumstances as to where the libel was printed and first published are used by the offended party as basis for the venue in the criminal action, the Information must allege with particularity where the defamatory article was printed and first published, as evidenced or supported by, for instance, the address of their editorial or business offices in the case of newspapers, magazines or serial publications. This pre-condition becomes necessary in order to forestall any inclination to harass.
>
> The same measure cannot be reasonably expected when it pertains to defamatory material appearing on a website on the internet as there would be no way of determining the *situs* of its printing and first publication. To credit Gimenez's premise of equating his first *access* to the defamatory article on petitioners' website in Makati with printing and first publication would spawn the very ills that

---

[57] *Rollo* (G.R. No. 215106), p. 52.

[58] *Id*.

[59] *Bonifacio v. RTC of Makati, Branch 149, supra* note 40, at 357; emphasis and underscoring in the original.

[60] *Id*. at 358.

the amendment to Article 360 of the RPC sought to discourage and prevent. It hardly requires much imagination to see the chaos that would ensue in situations where the website's author or writer, a blogger or anyone who posts messages therein could be sued for libel anywhere in the Philippines that the private complainant may have allegedly accessed the offending website.

For the Court to hold that the Amended Information sufficiently vested jurisdiction in the courts of Makati simply because the defamatory article was accessed therein would open the floodgates to the libel suit being filed in all other locations where the *pepcoalition* website is likewise accessed or capable of being accessed.[61] (Underscoring in the original)

Here, Malayan Insurance opposes the CA's application of *Bonifacio,* asserting that the venue was properly laid as the Informations subject of this case state in one continuous sentence that: "x x x in Makati City, [Metro Manila,] Philippines and a place within the jurisdiction of this Honorable Court x x x, the above-named accused x x x did then and there x x x **caused to be composed, posted and published** in the said website www.pepcoalition.com and [sic] injurious and defamatory article."[62] They also aver that *Bonifacio* laid down an entirely new requirement on internet Libel cases which did not exist prior to its promulgation and, hence, should not be applied retroactively to Malayan Insurance's prejudice.[63]

While *Bonifacio's* applicability was indeed squarely raised in the instant petition, this Court finds that it would be improper not to pass upon this issue considering that—similar to the appeal in CA-G.R. CR No. 31467—the appeal in CA-G.R. CR No. 32148,

---

[61] *Id*. at 362-363.

[62] *Rollo* (G.R. No. 215106), p. 26; emphasis supplied. See also *id*. at 210-211.

[63] *Id*. at 30. Notably, this same argument is echoed in the above-discussed petition in G.R. No. 203370. However, since the actual basis of the CA's denial of appeal was the OSG's lack of conformity to the appeal in CA-G.R. CR No. 31467, which this Court has hereinabove sustained, it is unnecessary to pass upon the merits of such claim (see *rollo* [G.R. No. 203370], pp. 32-35).

as well as this petition for review, suffers from a fatal defect in that they were filed without the conformity of the OSG. As earlier stated, the right to prosecute criminal cases pertains exclusively to the People, which is, therefore, the proper party to bring the appeal, through the representation of the OSG. **The People are deemed as the real parties in interest in the criminal case and, therefore, only the OSG can represent them in criminal proceedings pending in the CA or in this Court.** As the records bear out, this Court, in a Resolution[64] dated September 9, 2015, required the OSG to file its Comment so as to be given the ample opportunity to manifest its desire to prosecute the present appeal, in representation of the People. However, in a Manifestation (In lieu of Comment),[65] the People, through the OSG, manifested that it is adopting its Comment[66] dated July 5, 2013 in G.R. No. 203370, which sought the dismissal of the petition on the ground that "petitioners have no legal personality to elevate on appeal the quashal of the [Informations] in the subject criminal cases."[67] Hence, in view of Malayan Insurance's lack of legal personality to file the present petition, this Court has to dismiss the same, without prejudice, however, to Malayan Insurance's filing of the appropriate action to preserve its interest in the civil aspect of the Libel case following the parameters of Rule 111 of the Rules of Criminal Procedure.[68]

WHEREFORE, the petitions are **DENIED.**

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

---

[64] See Minute Resolution dated September 9, 2015; *rollo* (G.R. No. 203370), pp. 713-715.

[65] Dated February 2, 2016. *Rollo* (G.R. No. 215106), pp. 487-489.

[66] *Rollo* (G.R. No. 203370), pp. 636-660.

[67] *Id*. at 648.

[68] See *People v. Piccio, supra* note 48, at 262.

EN BANC

[A.C. No. 8172. April 12, 2016]

ALEX NULADA, *complainant, vs.* **ATTY. ORLANDO S. PAULMA,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY ; A LAWYER CAN BE DISCIPLINED FOR ANY CONDUCT, IN HIS PROFESSIONAL OR PRIVATE CAPACITY, WHICH RENDERS HIM UNFIT TO CONTINUE TO BE AN OFFICER OF THE COURT**. — Canon 1 of the CPR mandates all members of the bar "to obey the laws of the land and promote respect for law x x x." Rule1.01 thereof specifically provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." By taking the lawyer's oath, a lawyer becomes a guardian of the law and an indispensable instrument for the orderly administration of justice. As such, he can be disciplined for any conduct, in his professional or private capacity, which renders him unfit to continue to be an officer of the court.

2. **ID.; ID.; ADMINISTRATIVE CHARGES; THE ISSUANCE OF WORTHLESS CHECKS IN VIOLATION OF BP BLG. 22 INDICATES A LAWYER'S UNFITNESS FOR THE TRUST AND CONFIDENCE REPOSED ON HIM, SHOWS SUCH LACK OF PERSONAL HONESTY AND GOOD MORAL CHARACTER AS TO RENDER HIM UNWORTHY OF PUBLIC CONFIDENCE, AND CONSTITUTES A GROUND FOR DISCIPLINARY ACTION.—** In *Enriquez v. De Vera*, the Court discussed the purpose and nature of a violation of BP 22 in relation to an administrative case against a lawyer, as in this case, to wit: x x x . Being a lawyer, respondent was well aware of the objectives and coverage of [BP] 22. If he did not, he was nonetheless presumed to know them, for the law was penal in character and application. His issuance of the unfunded check involved herein knowingly violated [BP] 22, and exhibited his indifference towards the

pernicious effect of his illegal act to public interest and public order. He thereby swept aside his Lawyer's Oath that enjoined him to support the Constitution and obey the laws. Clearly, the issuance of worthless checks in violation of BP Blg. 22 indicates a lawyer's unfitness for the trust and confidence reposed on him, shows such lack of personal honesty and good moral character as to render him unworthy of public confidence, and constitutes a ground for disciplinary action.

3. **ID.; ID.; ID.; CONVICTION FOR VIOLATION OF BP BLG. 22, A CRIME INVOLVING MORAL TURPITUDE, CONSTITUTES VIOLATION OF THE LAWYER'S OATH AND RULE 1.01, CANON 1 OF THE CODE PROFESSIONAL RESPONSIBILITY, PUNISHABLE WITH SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF TWO (2) YEARS.—** [R]espondent's conviction for violation of BP 22, a crime involving moral turpitude, had been indubitably established. Such conviction has, in fact, already become final. Consequently, respondent violated the lawyer's oath, as well as Rule 1.01, Canon 1 of the CPR, as aptly found by the IBP and, thus, must be subjected to disciplinary action. In *Heenan v. Espejo*, the Court suspended therein respondent from the practice of law for a period of two (2) years when the latter issued checks which were dishonored due to insufficiency of funds. In *A-1 Financial Services, Inc. v. Valerio*, the same penalty was imposed by the Court to respondent who issued worthless checks to pay off her loan. x x x. Accordingly, and in view of the foregoing instances when the erring lawyer was suspended for a period of two (2) years for the same violation, the Court finds it appropriate to mete the same penalty to respondent in this case.

4. **ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER IS REQUIRED TO OBSERVE THE LAW AND BE MINDFUL OF HIS ACTIONS WHETHER ACTING IN A PUBLIC OR PRIVATE CAPACITY, AND ANY TRANSGRESSION OF THIS DUTY ON HIS PART WOULD NOT ONLY DIMINISH HIS REPUTATION AS A LAWYER BUT WOULD ALSO ERODE THE PUBLIC'S FAITH IN THE LEGAL PROFESSION AS A WHOLE.—** [I]t should be emphasized that membership in the legal

profession is a privilege burdened with conditions. A lawyer is required to observe the law and be mindful of his or her actions whether acting in a public or private capacity. Any transgression of this duty on his part would not only diminish his reputation as a lawyer but would also erode the public's faith in the legal profession as a whole. In this case, respondent's conduct fell short of the exacting standards expected of him as a member of the bar, for which he must suffer the necessary consequences.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

The instant administrative case arose from a verified complaint[1] for disbarment by reason of dishonesty and conviction of a crime involving moral turpitude filed by complainant Alex Nulada (complainant) against respondent Atty. Orlando S. Paulma (respondent).

The Facts

Complainant alleged that on September 30, 2005, respondent issued in his favor a check in the amount of ₱650,000.00 as payment for the latter's debt. Because of respondent's standing as a respected member of the community and his being a member of the *Sangguniang Bayan* of the Municipality of Miagao,[2] Province of Iloilo, complainant accepted the check without question.[3]

Unfortunately, when he presented the check for payment, it was dishonored due to insufficient funds. Respondent failed to make good the amount of the check despite notice of dishonor and repeated demands, prompting complainant to file a criminal complaint for violation of *Batas Pambansa Bilang*

---

[1] Dated January 7, 2009. *Rollo*, pp. 1-5.

[2] Spelled as "Miag-ao" in some parts of the *rollo*.

[3] *Rollo*, p. 2.

(BP) 22[4] against respondent,[5] before the Office of the Provincial Prosecutor, Province of Iloilo, docketed as I.S. No. 2006-637,[6] which issued a Resolution[7] dated May 26, 2006 recommending the filing of the appropriate information against respondent before the Municipal Trial Court of Miagao, Province of Iloilo (MTC).[8] Subsequently, said information was docketed as Criminal Case No. 2604.[9]

After due proceedings, the MTC rendered a Decision[10] dated October 30, 2008 finding respondent guilty of violation of BP 22 and ordering him to pay the amount of ₱150,000.00 as fine, with subsidiary imprisonment in case of failure to pay. Furthermore, he was ordered to pay: (1) the sum of ₱650,000.00 representing the amount of the check with interest pegged at the rate of twelve percent (12%) per annum computed from the time of the filing of the complaint; (2) filing fees in the amount of ₱10,000.00; and (3) attorney's fees in the amount of ₱20,000.00 plus appearance fees of ₱1,500.00 per hearing.[11]

Records show that respondent appealed his conviction to the Regional Trial Court of Guimbal, Iloilo, Branch 67 (RTC), docketed as Criminal Case No. 346.[12] In a Decision[13] dated

---

[4] Entitled "AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDIT AND FOR OTHER PURPOSES," approved on April 3, 1979.

[5] *Rollo*, p. 2.

[6] See *id.* at 78.

[7] *Id.* at 78-80. Issued by 3rd Assistant Provincial Prosecutor Globert J. Justalero and approved by Provincial Prosecutor Bernabe D. Dusaban.

[8] *Id.* at 79.

[9] See *id.* at 6.

[10] *Id.* at 6-19. Penned by Designated Judge Ernesto A. Templanza, Sr.

[11] *Id.* at 18-19.

[12] See *id.* at 72.

[13] *Id.* at 72-73. Penned by Judge Domingo D. Diamante.

March 13, 2009, the RTC affirmed *in toto* the MTC ruling. On April 16, 2009, the RTC Decision became final and executory.[14]

Prior to the promulgation of the RTC Decision, or on February 12, 2009, complainant filed this administrative complaint before the Court, through the Office of the Bar Confidant.

In his defense,[15] respondent denied that he committed dishonesty against complainant, as prior to September 30, 2005, he informed the latter that there were insufficient funds to cover the amount of the check. Respondent claimed that he merely issued the check in order to accommodate a friend in whose favor he obtained the loan, stressing that he did not personally benefit from the proceeds thereof.[16] Unfortunately, said friend had died and respondent had no means by which to pay for the amount of the check.[17] He also claimed that complainant threatened him and used his unfunded check to the latter's personal advantage.[18]

Thereafter, the Court, in its Resolution dated November 14, 2011,[19] referred this administrative case to the Integrated Bar of the Philippines (IBP) for its investigation, report, and recommendation.

---

[14] See Entry of Final Judgment signed by Clerk of Court VI Atty. Aemos Jonathan A. Galuego; *id.* at 30. It appears from the records that respondent elevated the criminal case before the Court of Appeals (CA) through filing of two (2) separate motions for extensions to file petition, which were, however denied by the CA, in its Resolution dated October 1, 2009 for failure to: (*a*) pay full amount of docket and lawful fees; and (*b*) file the petition within the extended period (see *id.* at 74-75). Said CA Resolution became final and executory on October 2, 2010 (see Entry of Judgment signed by Division Clerk of Court May Faith L. Trumata-Rabotiaco; *id.* at 116).

[15] See Counter-Affidavit dated September 2, 2011; *id.* at 43-46.

[16] *Id.* at 43-44.

[17] *Id.* at 44.

[18] *Id.* at 45.

[19] *Id.* at 48. Signed by Division Clerk of Court Wilfredo V. Lapitan.

The IBP's Report and Recommendation

After conducting mandatory conferences, the Commission on Bar Discipline (CBD) of the IBP issued a Report and Recommendation[20] dated June 26, 2013, recommending that respondent be suspended from the practice of law for a period of six (6) months for violation of the lawyer's oath and the Code of Professional Responsibility (CPR), as well as for having been found guilty of a crime involving moral turpitude.[21]

It found that the offense for which respondent was found guilty of, *i.e.*, violation of BP 22, involved moral turpitude, and that he violated his lawyer's oath and the CPR when he committed the said offense. Stressing the importance of the lawyer's oath, the IBP held that by his conviction of the said crime, respondent has shown that he is "unfit to protect the administration of justice or that he is no longer of good moral character"[22] which justifies either his suspension or disbarment.[23]

Subsequently, or on October 10, 2014, the IBP Board of Governors issued a Notice of Resolution[24] adopting and approving with modification the IBP's Report and Recommendation dated June 26, 2013, suspending respondent from the practice of law for a period of two (2) years for having violated the lawyer's oath and the CPR, as well as for having been found guilty of a crime involving moral turpitude.[25]

---

[20] *Id.* at 122-125. Issued by IBP Commissioner Roland B. Beltran.

[21] See *id.* at 125.

[22] *Id.* at 124.

[23] See *id.*

[24] *Id.* at 121, including dorsal portion thereof. Issued by National Secretary Nasser A. Marohomsalic.

[25] See Resolution No. XXI-2014-737 in CBD Case No. 12-3357; *id.*

The Issue Before the Court

The issue advanced for the Court's resolution is whether or not respondent should be administratively disciplined for having been found guilty of a crime involving moral turpitude.

The Court's Ruling

The Court sustains the findings and conclusions of the CBD of the IBP, as approved, adopted, and modified by the IBP Board of Governors.

Section 27, Rule 138 of the Rules of Court provides:

> 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 to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

Canon 1 of the CPR mandates all members of the bar "to obey the laws of the land and promote respect for law x x x." Rule 1.01 thereof specifically provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." By taking the lawyer's oath, a lawyer becomes a guardian of the law and an indispensable instrument for the orderly administration of justice.[26] As such, he can be disciplined for any conduct, in his professional or private capacity, which renders him unfit to continue to be an officer of the court.[27]

---

[26] *Foronda v. Alvarez, Jr.*, AC No. 9976, June 25, 2014, 727 SCRA 155, 164, citing *Manzano v. Soriano*, 602 Phil. 419, 426-427 (2009).

[27] *Id.*, citing *de Chavez-Blanco v. Lumasag, Jr.*, 603 Phil. 59, 65 (2009).

In *Enriquez v. De Vera*,[28] the Court discussed the purpose and nature of a violation of BP 22 in relation to an administrative case against a lawyer, as in this case, to wit:

> [BP] 22 has been enacted in order to safeguard the interest of the banking system and the legitimate public checking account users. The gravamen of the offense defined and punished by [BP] 22 [x x x] is the act of making and issuing a worthless check, or any check that is dishonored upon its presentment for payment and putting it in circulation; the law is designed to prohibit and altogether eliminate the deleterious and pernicious practice of issuing checks with insufficient funds, or with no credit, because the practice is deemed a public nuisance, a crime against public order to be abated.
>
> xxx xxx xxx
>
> Being a lawyer, respondent was well aware of the objectives and coverage of [BP] 22. If he did not, he was nonetheless presumed to know them, for the law was penal in character and application. His issuance of the unfunded check involved herein knowingly violated [BP] 22, and exhibited his indifference towards the pernicious effect of his illegal act to public interest and public order. He thereby swept aside his Lawyer's Oath that enjoined him to support the Constitution and obey the laws.[29]

Clearly, the issuance of worthless checks in violation of BP Blg. 22 indicates a lawyer's unfitness for the trust and confidence reposed on him, shows such lack of personal honesty and good moral character as to render him unworthy of public confidence, and constitutes a ground for disciplinary action.[30]

In this case, respondent's conviction for violation of BP 22, a crime involving moral turpitude, had been indubitably established. Such conviction has, in fact, already become final. Consequently, respondent violated the lawyer's oath, as well

---

[28] See A.C. No. 8330, March 16, 2015, citing *Ong v. Delos Santos*, A.C. No. 10179, March 4, 2014, 717 SCRA 663, 668-669.

[29] See *id.*

[30] *Wong v. Moya II*, 590 Phil. 279, 289 (2008), citing *Cuizon v. Macalino*, 477 Phil. 569, 575 (2004).

as Rule 1.01, Canon 1 of the CPR, as aptly found by the IBP and, thus, must be subjected to disciplinary action.

In *Heenan v. Espejo*,[31] the Court suspended therein respondent from the practice of law for a period of two (2) years when the latter issued checks which were dishonored due to insufficiency of funds. In *A-1 Financial Services, Inc. v. Valerio*,[32] the same penalty was imposed by the Court to respondent who issued worthless checks to pay off her loan. Likewise, in *Dizon v. De Taza*,[33] the Court meted the penalty of suspension for a period of two (2) years to respondent for having issued bouncing checks, among other infractions. Finally, in *Wong v. Moya II*,[34] respondent was ordered suspended from the practice of law for a period of two (2) years, because aside from issuing worthless checks and failure to pay his debts, respondent also breached his client's trust and confidence to his personal advantage and had shown a wanton disregard of the IBP's Orders in the course of its proceedings. Accordingly, and in view of the foregoing instances when the erring lawyer was suspended for a period of two (2) years for the same violation, the Court finds it appropriate to mete the same penalty to respondent in this case.

As a final word, it should be emphasized that membership in the legal profession is a privilege burdened with conditions.[35] A lawyer is required to observe the law and be mindful of his or her actions whether acting in a public or private capacity.[36] Any transgression of this duty on his part would not only diminish his reputation as a lawyer but would also erode the public's faith in the legal profession as a whole.[37] In this case, respondent's

---

[31] A.C. No. 10050, December 3, 2013, 711 SCRA 290.

[32] 636 Phil. 627 (2010).

[33] A.C. 7676, June 10, 2014, 726 SCRA 70.

[34] *Supra* note 30.

[35] *Id.* at 290.

[36] *Enriquez v. De Vera*, *supra* note 28.

[37] *Ong v. Delos Santos*, *supra* note 28, at 671.

conduct fell short of the exacting standards expected of him as a member of the bar, for which he must suffer the necessary consequences.

WHEREFORE, respondent Atty. Orlando S. Paulma is hereby **SUSPENDED** from the practice of law for a period of two (2) years, effective upon his receipt of this Resolution. He is warned that a repetition of the same or similar act will be dealt with more severely.

Let a copy of this Resolution be entered in Atty. Paulma's personal record with the Office of the Bar Confidant, and copies be served to the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all the courts in the land.

SO ORDERED.

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

Peralta, J., on official leave.

EN BANC

[A.C. No. 10781. April 12, 2016]
(Formerly CBD Case No. 10-2764)

COBALT RESOURCES, INC., *complainant, vs.* **ATTY. RONALD AGUADO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT OR SUSPENSION; IN ADMINISTRATIVE CASES FOR

DISBARMENT OR SUSPENSION AGAINST LAWYERS, THE QUANTUM OF PROOF REQUIRED IS CLEARLY PREPONDERANT EVIDENCE AND THE BURDEN OF PROOF RESTS UPON THE COMPLAINANT.— It must be emphasized that a disbarment proceeding, being administrative in nature, is separate and distinct from a criminal action filed against a lawyer and they may proceed independently of each other. A finding of guilt in the criminal case does not necessarily mean a finding of liability in the administrative case. In the same way, the dismissal of a criminal case on the ground of insufficiency of evidence against an accused, who is also a respondent in an administrative case, does not necessarily exculpate him administratively because the quantum of evidence required is different. In criminal cases, proof beyond reasonable doubt is required. "In administrative cases for disbarment or suspension against lawyers, the quantum of proof required is clearly preponderant evidence and the burden of proof rests upon the complainant." Preponderance of evidence means "evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto."

2. ID.; ID.; ID.; IN THE ABSENCE OF SATISFACTORY EXPLANATION, ONE FOUND IN POSSESSION OF AND WHO USED A FORGED DOCUMENT IS THE FORGER AND THEREFORE GUILTY OF FALSIFICATION.— [A]guado committed the act complained of as it was established that he was in possession of a falsified ID showing him as a legal consultant of the PASG and mission order identifying him as the Assistant Team Leader of the anti-smuggling operation. x x x. These falsified documents found in his possession, as certified found in his possession, as certified as evidenced by the PASG, were used to facilitate the commission of the crime. The well-settled rule is that "in the absence of satisfactory explanation, one found in possession of and who used a forged document is the forger and therefore guilty of falsification." Atty. Aguado failed to rebut the allegations. Other than the police blotter showing that he reported the carnapping of his vehicle, Atty. Aguado presented no other convincing evidence to support his denial of the crime. He also failed to show any ill motive on the part of Palmes in testifying against him whom he claimed to have met only in February 2010.

3. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; AS OFFICERS OF THE COURTS AND KEEPERS OF THE PUBLIC'S FAITH, LAWYERS ARE BURDENED WITH THE HIGHEST DEGREE OF SOCIAL RESPONSIBILITY AND SO MANDATED TO BEHAVE AT ALL TIMES IN A MANNER CONSISTENT WITH TRUTH AND HONOR AND ARE EXPECTED TO MAINTAIN NOT ONLY LEGAL PROFICIENCY BUT ALSO THIS HIGH STANDARD OF MORALITY, HONESTY, INTEGRITY AND FAIR DEALING.— It must be emphasized that a membership in the Bar is a privilege laden with conditions, and granted only to those who possess the strict intellectual and moral qualifications required of lawyers as instruments in the effective and efficient administration of justice. As officers of the courts and keepers of the public's faith, lawyers are burdened with the highest degree of social responsibility and so mandated to behave at all times in a manner consistent with truth and honor. They are expected to maintain not only legal proficiency but also this high standard of morality, honesty, integrity and fair dealing. Atty. Aguado has committed acts that showed he was unfit and unable to faithfully discharge his bounden duties as a member of the legal profession. Because he failed to live up to the exacting standards demanded of him, he proved himself unworthy of the privilege to practice law. As vanguards of our legal system, lawyers, are expected at all times to uphold the integrity and dignity of the legal professor and to refrain from any act or omission which might diminish the trust and confidence reposed by the public in the integrity of the legal profession.

4. ID.; ID.; DISBARMENT OR SUSPENSION; PENALTY OF DISBARMENT IMPOSED AGAINST A LAWYER FOUND GUILTY OF DISHONESTY FOR ENGAGING IN UNLAWFUL, DISHONEST, AND DECEITFUL ACTS BY FALSIFYING DOCUMENTS.— In several cases, the Court, after finding the lawyer guilty of gross dishonesty, imposed the supreme penalty of disbarment for engaging in unlawful, dishonest, and deceitful acts by falsifying documents. In *Brennisen v. Atty. Contawi*, the Court disbarred the lawyer when he falsified a special power of attorney so he could mortgage and sell his client's property. In *Embido v. Atty. Pe, Jr.*, the penalty of disbarment was meted out against the

lawyer who authored the falsification of an inexistent court decision.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for complainant.
Herrera Teehankee & Cabrera for respondent.

D E C I S I O N

***PER CURIAM*:**

This is an administrative complaint for disbarment filed by Cobalt Resources, Inc. (*CRI*) against respondent Atty. Ronald C. Aguado (*Atty. Aguado*) before the Integrated Bar of the Philippines (IBP) for violation of Rules 1.01 and 1.02 of the Code of Professional Responsibility and the lawyer's oath.

The Antecedents

In its Complaint,[1] CRI alleged that on March 5, 2010, a group of armed men, clad in vests bearing the mark "PASG" and pretending to be agents of the Presidential Anti-Smuggling Group *(PASG)*, hi-jacked its delivery van which was then loaded with cellular phones worth ₱1.3 million; that Dennis Balmaceda *(Balmaceda)*, the driver of the delivery van, and his companions were all forcibly taken away at gun point and were dropped at the Country Hill and Golf Club; that Balmaceda called Antonio Angeles *(Angeles)*, the Security Director of CRI, who immediately reported the incident to the Philippine National Police-Criminal Investigation Detection Unit *(PNP-CIDU)*; that with the use of Global Positioning Satellite *(GPS)* Tracking Device installed in the cellular phones, Angeles and the PNP-CIDU tracked down the location of the cellular phones to be in front of Pegasus Bar along Quezon Avenue, Quezon City; that the PNP-CIDU, together with Angeles proceeded to Pegasus Bar and found three (*3*) vehicles parked in front of the bar: (1) Toyota Fortuner with

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

Plate No. UNO-68 owned by Atty. Aguado, (2) Chevrolet Optra with Plate No. ZDW-764 and (3) a motorcycle with Plate No. NK-1180; that when the PNP-CIDU approached the vehicles, Anthony Palmes *(Palmes)* ran but he was chased by the police officers and was arrested; that Atty. Aguado who was then standing in the reception area of Pegasus Bar was not arrested as none of the police officers knew, at that time, of his participation in the crime; that the PNP-CIDU searched the vehicles and found the cellular phones, the Identification Card *(ID)* showing Atty. Aguado as Legal Consultant of the PASG, the Mission Order identifying Atty. Aguado as the Assistant Team Leader, and a vest bearing the mark PASG.

CRI further averred that the men who hijacked its delivery van used the fake mission order when it flagged down the delivery van; that the mission order identified Atty. Aguado as the assistant team leader and authorized the armed men to seize CRI's cellular phones; that the PASG issued a certification stating that the mission order was fake; that Atty. Aguado carried an ID bearing his picture and name which showed that he was a PASG legal consultant; and that this ID was likewise fake as evidenced by a certification issued by the PASG.

Based on the *Sinumpaang Salaysay*,[2] dated September 8, 2010, executed by Palmes, CRI concluded that it was Atty. Aguado who prepared the fake mission order and masterminded the crime as he was the one who conceived it and laid down the nitty-gritty details of its execution; and that it was he who recruited the armed men who actually executed the hijacking.

Eventually, two separate Informations for Robbery[3] and Carnapping[4] were filed against Atty. Aguado and several others.

The IBP directed Atty. Aguado to submit his answer but, despite several extensions, he failed to do so.

---

[2] *Id.* at 39-42.

[3] *Id.* at 435-436.

[4] *Id.* at 437-438.

The IBP then set the case for mandatory conference.

In his Conference Brief,[5] Atty. Aguado denied the allegations. He averred that "on March 5, 2010, at about 11:00 to 12:00 in the afternoon,"[6] his Toyota Fortuner with Plate No. UNO-68 was carnapped along Scout Mandarin while in the custody of his driver; that he reported the incident to the police authorities; that on March 7, 2010, he was awakened by relatives informing him that his name was on the front page of several tabloids in a story connecting him to the alleged hijacking; and that he was indicted in the case because of the ID found hanging in his carnapped vehicle.

In its Report and Recommendation,[7] dated May 3, 2011, the IBP-Commission on Bar Discipline (*CBD*) found Atty. Aguado liable for unlawful, dishonest, immoral, and deceitful conduct in falsifying the ID and mission order showing him as the Legal Consultant and the Assistant Team Leader, respectively, of the PASG. The IBP-CBD recommended that he be suspended for two (*2*) years. It, however, deferred the issue of Atty. Aguado's purported participation in the alleged hijacking incident as the issue pertained to a judicial function.

On March 20, 2013, the IBP Board of Governors adopted and approved the report of the CBD, as follows:

> 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 considering that Respondent committed unlawful, dishonest, immoral and deceitful conduct by falsifying the ID and Mission Order, Atty. Ronaldo Aguado is hereby **SUSPENDED from the practice of law for two (2) years**.[8]

---

[5] *Id.* at 70-72.

[6] *Id.* at 70.

[7] *Id.* at 315-318.

[8] *Id.* at 314.

Not satisfied, CRI filed a motion for reconsideration[9] praying that the May 3, 2011 report of the IBP-CBD be set aside and that a new resolution ordering the disbarment of Atty. Aguado be issued. CRI claimed that Atty. Aguado deserved the ultimate penalty of disbarment as the falsification of public documents was sufficiently established and, as the CBD knew, he masterminded the hijacking using his profession to commit the crime.

On July 25, 2013, Atty. Aguado also filed a motion for reconsideration[10] of the March 20, 2013 Resolution praying that it be set aside and a new one be issued dismissing the complaint. He averred that the charges of usurpation of authority and falsification filed against him had been dismissed by the Office of the City Prosecutor of Quezon City; that he could not be presumed to be the author of the falsification because he was never in possession of the falsified ID and mission order; and that he never used, took advantage or profit therefrom. Atty. Aguado asserted that this case should, at the very least, be suspended pending the resolution of the robbery and carnapping charges against him.

In a Resolution,[11] dated September 27, 2014, the IBP Board of Governors denied both motions and affirmed its March 20, 2013 Resolution.

Pursuant to Section 12 (c), Rule 139-B of the Rules of Court, CRI filed a petition for review[12] before the Court. CRI was firm in its stand that Atty. Aguado be meted out the penalty of disbarment for his falsification of a PASG mission order and ID and for his involvement in the hijacking of the CIR delivery van and its cargo.

Similarly, Atty. Aguado filed a petition for review insisting on his innocence and praying for the dismissal of the complaint.

---

[9] *Id.* at 211-216.

[10] *Id.* at 218-223.

[11] *Id.* at 363.

[12] *Id.* at 291-304.

The Court's Ruling

The Court finds merit in the petition of CRI.

It must be emphasized that a disbarment proceeding, being administrative in nature, is separate and distinct from a criminal action filed against a lawyer and they may proceed independently of each other.[13] A finding of guilt in the criminal case does not necessarily mean a finding of liability in the administrative case.[14] In the same way, the dismissal of a criminal case on the ground of insufficiency of evidence against an accused, who is also a respondent in an administrative case, does not necessarily exculpate him administratively because the quantum of evidence required is different. In criminal cases, proof beyond reasonable doubt is required.[15] "In administrative cases for disbarment or suspension against lawyers, the quantum of proof required is clearly preponderant evidence and the burden of proof rests upon the complainant."[16] Preponderance of evidence means "evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto."[17]

Clearly, Atty. Aguado committed the act complained of as it was established that he was in possession of a falsified ID showing him as a legal consultant of the PASG and mission order identifying him as the Assistant Team Leader of the anti-smuggling operation. Although Atty. Aguado claimed in his Conference Brief that he was indicted merely on the basis of an ID found hanging in his carnapped Toyota Fortuner,[18] his counsel, Atty. Letecia Amon (*Atty. Amon*), during the mandatory conference held on February 25, 2011, acknowledged that the

---

[13] *Yu v. Palaña*, 580 Phil. 19, 26 (2008).

[14] *Bengco v. Bernardo*, 687 Phil. 7, 17 (2012).

[15] *Jimenez v. Jimenez*, 517 Phil. 68 (2006).

[16] *Spouses Amatorio v. Yap*, A.C. No. 5914, March 11, 2015, quoting *Cruz v. Centron*, 484 Phil. 671, 675 (2004).

[17] *Aba v. De Guzman, Jr.*, 678 Phil. 588, 601 (2011).

[18] Conference Brief, *rollo*, p. 71.

ID and *mission order* were found in the Toyota Fortuner owned by Atty. Aguado, thus:

ATTY. HARON:

> Is she willing to admit that respondent is the same person referred to in the document called mission order marked as Annex "F" issued by the PASG.

ATTY. AMON:

> I have no exact knowledge on that, Your Honor.

ATTY. HARON:

> I'm showing counsel for respondent with a copy of a mission order marked as Annex "F". . . .

COMM. CACHAPERO:

> Machine copy.

ATTY. HARON:

> This is the copy.

COMM. CACHAPERO:

> Take a look, is that a machine copy?

ATTY. HARON:

> Yes, Your Honor. Annex "F" states that Atty. Ronald C. Aguado is the assistant team leader of the team by mission order.

COMM. CACHAPERO:

> He is only asking, the respondent is the one who owns that document. He is not yet asking whether that document is authentic or not.

ATTY. AMON:

> Yes, Your Honor, as written here.

COMM. CACHAPERO:

> Yes, he is the one.

ATTY. HARON:

Would the respondent also like to admit that the identification card and the mission order were found inside his Toyota Fortuner, Plate No. UNO-68.

ATTY. AMON:

Of which he is the owner, yes.

ATTY. HARON:

Admitted also, Your Honor.

ATTY. HARON:

Would the respondent also like to admit the certifications Annexes "G" and "H" issued by the PASG are genuine and duly executed. I'm showing counsel copies of the certifications, Your Honor, marked as Annexes "G" and "H" which bears the seal of that office, Your Honor.

COMM. CACHAPERO:

What is your proposal Atty. Haron?

xxx xxx xxx.[19] [Emphasis supplied]

Moreover, the *Sinumpaang Salaysay*[20] of Palmes explicitly described Atty. Aguado's participation in the crime as follows:

xxx xxx xxx

2. Alam ko kung sinu-sino ang mga taong kasama sa pagplano at pagsasagawa ng nasabing 'hijacking'. Bagamat may partisipasyon ako sa krimen, hindi ko alam na ang gagawing paghuli sa mga nasabing cellphone ay labag sa batas dahil ako ay pinaniwala na ang gagawin naming paghuli sa mga cellphone ng Cobalt ay isang lehitimong operasyon ng PASG.

3. Bago pa man naganap ang nasabing hijacking ay dati akong empleyado ng Cobalt na nakatalaga sa Delivery Section/Pull Out Service. Ngunit hindi nagtagal ay nag-resign ako.

---

[19] Transcript of Stenographic Notes, dated February 25, 2011. *Rollo*, pp. 162-164.

[20] *Id.* at 39-42.

4. Noong ikalawang lingo ng Pebrero, nilapitan ako ni Jaime "James" Abedes at sinabi sa akin ng kung pwede ay i-monitor ko daw ang ruta ng delivery van ng Cobalt at ako ay bibigyan niya ng "budget" upang ang kanyang grupo ay makapagsagawa ng 'seizure operations.'

5. Noong una ay nag-alangan akong sumangayon sa mungkahi ni James ngunit ako ay pinapanatag niya na lahat ng dokumento at papeles ay kumpleto. Sabi pa ni James, "Si Atty. Aguado ang magbibigay ng complete documents at Mission Order dahil naka-direkta siya sa PASG Malacañang para ma-flag down ang delivery van".

6. Ako ay naniwala sa kanyang sinabi dahil sa pagbanggit niya na may kasama kaming abogado. Dahil dito ay pumayag ako sa mungkahi ni James.

7. Kinabukasan ay nagkita kami ni James sa Caltex Pioneer corner Shaw Boulevard. Nalaman ko kay James na may hawak siyang Security Guard doon. Pinakilala niya ako kay Eliseo De Rosas alias Nonoy na isa ring tauhan ni James. Siya ay may gamit na Honda na motorsiklo na kulay berde na may plakang 1180 NK. Noong araw din na iyon ay nagtungo kami sa Brixton Street upang i-monitor ang warehouse ng Cobalt dahil may warehouse ang Cobalt sa Brixton Street.

8. Pagkatapos naming pumunta sa Brixton Street ay nagtungo naman kami sa P. Tuazon Street kung saan may mga clients ang Cobalt, at doon naming nakita ang delivery van na Mitsubishi L-300 ng Cobalt.

9. Sinimulan namin ni Nonoy ang pagmonitor ng ruta ng delivery van ng Cobalt. Sa aming ginawang pag-monitor ay napansin naming madalas magpakarga ng gas ang nasabing delivery van sa Petron Station sa Ortigas Avenue corner B. Serrano Street. Isang lingo kaming nag-monitor ni Nonoy sa ruta ng Cobalt.

Ipinaalam naming kay James ang nakakalap naming impormasyon. Noong natiyak naming ang ruta ng delivery van ay nagpaschedule si James ng 'meeting' kay Atty. Aguado.

10. Ika-22 ng Pebrero 2010 alas-6 ng gabi sa McDonald's Quezon Avenue ay nag meeting kami. Ang mga kasama sa meeting ay si James, Atty. Aguado, Joe Almonte, at Nonoy. Noong kami ay nandoon ay lumipat ng lamesa si Atty. Aguado, James at Joe Almonte at sila ay nagusap.

11. Pagkatapos ng usapan nila ay pumunta sa amin si James at sinabi sa amin kung ano ang kanilang napagusapan. Sinabi sa amin ni James na mag-iisue daw ng Mission Order si Atty. Aguado. Si Atty. Aguado na rin daw ang magbubuo ng grupo ng mga lalake upang i-flag down ang delivery van ng Cobalt.

12. Noong ika-25 ng Pebrero 2010 alas 7 ng gabi, ay muli kaming nagkita nila James, Nonoy at Joe Almonte sa McDonald's Quezon Avenue. Pagsapit ng alas-8 ng gabi ay tumawag si Atty. Aguado na nasa Starbucks Cafe sa Tomas Morato Avenue daw siya naka-puwesto. Kaya't kaming apat ay sumunod sa Starbucks. Pagdating naming sa Starbucks ay nandoon nga si Atty. Aguado at may kasama siyang isang pulis.

13. Hindi nagtagal ay umalis sila Atty. Aguado at James sakay ng Toyota Fortuner na may plakang UNO-68. Sinabi sa amin ni James na sila ay magsasagawa ng "ocular" ng lugar kung saan gagawin ang pag-flag down ng delivery van. Nang sila ay magbalik, kami ay sinabihan na gagawin namin ang operasyon sa umaga ng kinabukasan (ika-26 ng Pebrero, Biernes).

Ayon pa sa kanila, ako raw ay pupuwesto sa Petron Station sa may Boni Serrano corner Ortigas Avenue ng alas-8 ng umaga upang doon abangan ang pagdaan ng delivery van. Samantalang, ang mga taong magsasagawa ng pag flag down (pawang mga tao ni Atty. Aguado) ay pupuwesto na rin sa may Benitez Street. Kapag nakita ko na raw ang delivery van ay agad akong tumawag kay James upang ipagbigay alam ang pagdaan nito at i-alert ang mga nasabing mga lalake, pagkatapos ay tumungo raw ako sa Benitez Street upang siguraduhin na tama ang delivery van na ipa-flag-down.

Pagkatapos ng meeting ng gabi na iyon ay isa-isa na kaming nagsi-uwian.

14. Kaya't kinabukasan, ika-26 ng Pebrero, alas-8 ng umaga ay nagtungo ako sa nasabing Petron Station. Ngunit tumawag si James na hindi raw matutuloy ang operation dahil kulang sa tao si Atty. Aguado.

15. Kami (ako, Joe Almonte at Nonoy) ay muling pinulong ni James sa McDonald's Quezon Avenue noong ika-1 ng Marso alas-7 ng gabi. Bandang alas-8 ng gabi ay dumating na rin si Atty. Aguado. Sila Atty. Aguado, James at Joe Almonte [ay] nag-usap sa labas ng Smoking Area samantalang kami ni Nonoy ay nanatili sa loob.

16. Nang matapos ang usapan ay sinabi sa amin ni James na nag-set ulit ng operation si Atty. Aguado kinabukasan, ika-2 ng Marso, Martes, ngunit hintayin daw naming ang feedback mula kay Atty. Aguado dahil kelangan daw ng gamit ang mga tao ni Atty. Aguado.

17. Muli akong nagtungo kinabukasan, ika-2 ng Marso, alas-8 ng umaga, ngunit maya-maya lamang ay tumawag sa akin si James at sinabi niya sa akin na hindi na naman daw tuloy ang operation dahil hindi nakakuha ng gamit ang mga tao ni Atty. Aguado.

Sa puntong ito ay sinabi ko na kay James na sana sigurado ang mga papeles ni Atty. Aguado dahil ayaw ko ng illegal na trabaho. Sinabi naman sa akin ni James na kumpleto naman daw ang mga papeles at legal ang gagawing operation.

18. Ika-4 ng Marso 2010, ay tumawag sa akin si James at sinabi niya sa akin na tuloy na daw ang operation kinabukasan (ika-5 ng Marso). Sinabi rin niya sa akin na alas-8 ng umaga ay kailangan daw na naka-puwesto na ako sa Petron Station.

19. Kaya noong ika-5 ng Marso 2010, alas-8 ng umaga, ako ay pumuwesto na sa Petron Gasoline Station sa Boni Serrano corner Ortigas Avenue sakay ng isang motorsiklo. Bandang alas-8:30 ng umaga ay dumating naman si James sakay ng isang Chevrolet na may plakang ZDW 764 at may kasama pa siya na pinakilala sa aking "Larry."

Bandang alas-9 ng umaga ay dumating ang Toyota Fortuner ni Atty. Aguado. Nakita ko na sakay ng nasabing Toyota Fortuner si Atty. Aguado at Joe Almonte. Hindi sila bumaba bagkus ay nagpakarga lamang ito ng gasolina sa nasabing Petron Station. Hindi nagtagal ay umalis na rin sila. Sumunod namang umalis si James at Larry sakay ng Chevrolet.

20. Bandang alas-9:30 ng umaga, nakita ko na dumating ang delivery van ng Cobalt sa Petron upang ito ay magpakarga ng gasolina. Tumawag ako kay James gamit ang aking cellphone at sinabi ko, "*Nandito na ang delivery van na white, may plakang NKQ 734*." Sumagot si James, "*ok nakapuwesto na kami. Andito na kami sa area*."

21. Agad akong umalis patungo sa Benitez Street upang abangan ang pagdaan ng delivery van upang ma-flag down ito. Gamit ang aking motorsiklo, ako ay dali-daling nagtungo sa Benitez Street.

Pagdating ko doon ay nakita ko ang nasabing Chevrolet ni James at isang L-300 van na kulay blue-green na may plakang DFN-733. Nadatnan ko rin ang tatlong lalake na pawang armado at nakasuot ng tsalekong may tatak na PASG at nag-aabang sa gilid ng daan. Mayroon din akong napansin na nakasakay sa loob ng nasabing blue-green na L-300 van ngunit hindi ko na nabilang ang dami nila.

22. Ako ay pumunta sa Chevrolet (driver side), at binuksan naman ni James ang bintana nito. Sinabi ko ulit sa kanya na parating na ang delivery van. Sumagot siya, "*Sige. Timbrehan mo lang sila pag malapit na. Hintayin mo relay kung saan ka susunod*." Pagkatapos noon ay umalis na sila.

23. Pagkaalis nila, kami at nang tatlong nasabing lalake ay nag-abang sa pagdaan ng delivery van. Nang makita ko itong paparating, agad kong sinabi "*approaching na. yang puti, yang puti*." Pagkatapos noon ay agad pinara ng isa sa mga nasabing lalakeng nakasumbrero ang delivery van. Sumenyas ito sa driver ng delivery van na itabi ito sa gilid. Pilit binuksan ng tatlong lalake ang magkabilang pintuan ng delivery van at nang mabuksan ang mga nasabing pintuan ay agad hinila palabas ang tatlo nitong pahinante at agad silang pinosasan.

xxx xxx xxx

From the foregoing, it can be clearly deduced that Atty. Aguado had participation in the crime as charged in the complaint, from the planning stage up to its execution. These falsified documents found in his possession, as certified found in his possession, as certified as evidenced by the PASG, were used to facilitate the commission of the crime. The well-settled rule is that "in the absence of satisfactory explanation, one found in possession of and who used a forged document is the forger and therefore guilty of falsification."[21] Atty. Aguado failed to rebut the allegations. Other than the police blotter showing that he reported the carnapping of his vehicle, Atty. Aguado presented no other convincing evidence to support his denial of the crime. He also failed to show any ill motive on the part of Palmes in testifying against him whom he claimed to have met only in February 2010.

---

[21] *Rural Bank of Silay, Inc. v. Pilla*, 403 Phil. 1, 9 (2001).

Moreover, his story of the carnapping of his Fortuner cannot be given credence considering his inconsistent statements on the matter. In this regard, the Court quotes a portion of the Report and Recommendation of Commissioner Oliver Cachapero. Thus:

> He, too, blabbered about the supposed carnapping of his Fortuner car on the same day the hijacking was staged by supposed PASG personnel suggesting that he was a victim and not a perpetrator. However, his allegations in this regard is put in serious doubt. In the QC PD alarm sheet, Respondent reported that the carnapping took place at 2:30 of March 5, 2010 while in his sworn statement, he claimed that his car was carnapped at 4:31 p.m. the precise time the supposed carnapping was staged is too vital that Respondent could not have overlooked the same in his narration of facts in his counter-affidavit or in his statement before the police authorities especially because he supposedly reported the incident on the very same day it happened. But as correctly observed by the Complainant, even if the report on the time of the carnapping incident would have been properly made, the hijacking took place much earlier and therefore the same does not negate the commission of the crime by the Respondent. Also, the reporting did not prove the fact of carnapping especially where, as in this case, no eyewitness account was presented, no suspect apprehended, and no criminal case was filed.[22]

The Canon 1 of the Code of Professional Responsibility (CPR) explicitly mandates:

> Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> Rule 1.02 — A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

It must be emphasized that a membership in the Bar is a privilege laden with conditions,[23] and granted only to those who possess the strict intellectual and moral qualifications required

---

[22] *Rollo*, pp. 7-8.

[23] *Sebastian v. Atty. Calis*, 372 Phil. 673, 680 (1999).

of lawyers as instruments in the effective and efficient administration of justice.[24] As officers of the courts and keepers of the public's faith, lawyers are burdened with the highest degree of social responsibility and so mandated to behave at all times in a manner consistent with truth and honor.[25] They are expected to maintain not only legal proficiency but also this high standard of morality, honesty, integrity and fair dealing.[26]

Atty. Aguado has committed acts that showed he was unfit and unable to faithfully discharge his bounden duties as a member of the legal profession. Because he failed to live up to the exacting standards demanded of him, he proved himself unworthy of the privilege to practice law. As vanguards of our legal system, lawyers, are expected at all times to uphold the integrity and dignity of the legal profession and to refrain from any act or omission which might diminish the trust and confidence reposed by the public in the integrity of the legal profession.[27]

In several cases, the Court, after finding the lawyer guilty of gross dishonesty, imposed the supreme penalty of disbarment for engaging in unlawful, dishonest, and deceitful acts by falsifying documents. In *Brennisen v. Atty. Contawi*,[28] the Court disbarred the lawyer when he falsified a special power of attorney so he could mortgage and sell his client's property. In *Embido v. Atty. Pe, Jr.*,[29] the penalty of disbarment was meted out against the lawyer who authored the falsification of an inexistent court decision.

WHEREFORE, Atty. Ronald C. Aguado is **DISBARRED** for gross misconduct and violation of Rules 1.01 and 1.02 of

---

[24] *Re: Petition of Al Argosino To Take The Lawyer's Oath*, 336 Phil. 766, 769 (1997).

[25] *Agno v. Atty. Cagatan*, 580 Phil. 1, 17 (2008).

[26] *Yu v. Atty. Palaña*, *supra* note 13, at 24.

[27] *Heirs of Alilano v. Examen*, A.C. No. 10132, March 24, 2015.

[28] 686 Phil. 342 (2012).

[29] A.C. No. 6732, October 22, 2013, 708 SCRA 1.

the Code of Professional Responsibility, and his name is ordered **STRICKEN OFF** the roll of attorneys.

Let copies of this decision be furnished the Office of the Bar Confidant to be made part of his personal records; the Integrated Bar of the Philippines; and the Office of the Court Administrator for circulation to all courts.

SO ORDERED.

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

Peralta, J., on leave.

EN BANC

[A.M. No. 12-8-59-MCTC. April 12, 2016]

RE: FINDINGS ON THE JUDICIAL AUDIT CONDUCTED AT THE 7TH MUNICIPAL CIRCUIT TRIAL COURT, LILOAN-COMPOSTELA, LILOAN, CEBU.

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; THE CODE OF JUDICIAL CONDUCT; THE 90-DAY PERIOD WITHIN WHICH TO DECIDE A CASE IS MANDATORY, AND A JUDGE'S FAILURE TO DECIDE A CASE WITHIN THE PRESCRIBED REGLEMENTARY PERIOD CONSTITUTES GROSS INEFFICIENCY WARRANTING THE IMPOSITION OF ADMINISTRATIVE SANCTIONS.— Article VIII, Section 15 (1) of the 1987 Constitution mandates lower court judges to decide a case within the reglementary period of ninety

(90) days. The Code of Judicial Conduct under Rule 3.05 of Canon 3 likewise directs judges to administer justice without delay and dispose of the courts' business promptly within the period prescribed by law. Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. Thus, the 90-day period is mandatory. In *Re: Cases Submitted for Decision Before Hon. Teresito A. Andoy, former Judge, Municipal Trial Court, Cainta, Rizal,* the Court stressed the importance of deciding cases within the periods prescribed by law and, at the same time, reiterated that a judge's failure to decide a case within the prescribed period constitutes gross inefficiency warranting the imposition of administrative sanctions, x x x. The foregoing notwithstanding, the Court is not unmindful of the heavy dockets of the lower courts. Thus, upon their proper application for extension, especially in meritorious cases involving difficult questions of law or complex issues, the Court grants them additional time to decide beyond the reglementary period. In these situations, the judge would not be subjected to disciplinary action. In this case, Judge Dacanay clearly failed to decide the 99 cases submitted for decision and resolve the 91 cases with pending incidents in his *sala* within the prescribed reglementary period – with some of those cases/incidents taking more than ten (10) years to be decided or resolved.

2. ID.; ID.; ID.; ID.; THE FINE IMPOSED ON EACH JUDGE FOR GROSS INEFFICIENCY MAY VARY DEPENDING ON THE NUMBER OF CASES UNDECIDED OR MATTERS UNRESOLVED BY SAID JUDGE WITHIN THE REGLEMENTARY PERIOD, AND THE PRESENCE OF AGGRAVATING CIRCUMSTANCES.— It is settled that failure to decide or resolve cases within the reglementary period constitutes gross inefficiency. It is a less serious charge and is punishable by either suspension from office without salaries and benefits for not less than one (1) month, but no more than three (3) months, or a fine of more than ₱10,000.00, but not exceeding ₱20,000.00. It must be noted, however, that the fines imposed on each judge may vary, depending on the number of cases undecided or matters unresolved by said judge within the reglementary period, plus the presence of aggravating or mitigating circumstances, such as the damage suffered by

the parties as a result of the delay, the health and age of the judge, and other analogous circumstances. x x x. [T]he Court agrees with the OCA that Judge Dacanay should be fined in the amount of ₱75,000.00 for his failure to decide the 99 cases submitted for decision and resolve the 91 cases with pending incidents in his *sala* within the 90-day mandatory reglementary period provided by law.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

The instant administrative case arose from the judicial audit and physical inventory of court records conducted in the 7th Municipal Circuit Trial Court of Liloan-Compostela, Liloan, Cebu (MCTC), presided by Judge Jasper Jesse G. Dacanay (Judge Dacanay).

The Facts

Following a judicial audit of the MCTC presided by Judge Dacanay, which was conducted on July 17 and 18, 2012, the judicial audit team of the Office of the Court Administrator (OCA) issued its Findings on the Judicial Audit Conducted at the 7th Municipal Circuit Trial Court, Liloan-Compostela, Liloan, Cebu[1] and Report on the Judicial Audit Conducted in the 7th Municipal Circuit Trial Court, Liloan-Compostela, Liloan, Cebu[2] both dated August 1, 2012, revealing that the MCTC had a caseload of 663 cases (415 criminal cases and 248 civil cases) with 103 cases submitted for decision and 93 cases with pending incidents submitted for resolution.[3] 99 out of the 103 cases submitted for decision were all beyond the 90-day reglementary period to decide;[4] and 91 out of the 93 cases with pending

---

[1] *Rollo*, pp. 1-24.

[2] *Id.* at 25-49.

[3] See *id.* at 1 and 25.

[4] See *id.* at 2 and 26.

incidents were also beyond the required period to act upon.[5] The judicial audit team also disclosed that there were also a number of cases where no initial action had been taken since their filing, while there were others which failed to progress after a considerable length of time.[6] In view of the foregoing, the judicial audit team recommended that: (*a*) Judge Dacanay be directed to cease and desist from conducting hearings and to devote his time in deciding and resolving the matters pending before his court, instructed to furnish the Court with copies of the decisions related thereto, and pending full compliance thereof, his salaries, allowances, and other benefits be ordered withheld; (*b*) Judge Dacanay be directed to explain in writing why no administrative sanction should be taken against him for his failure to decide the 99 cases submitted for decision and resolve the 91 cases with pending incidents which were all beyond the reglementary period to decide and act upon; (*c*) Judge Jocelyn G. Uy Po be designated as acting presiding judge of the MCTC; and (*d*) MCTC Clerk of Court II Henry P. Cañete, Jr. (MCTC Clerk of Court Cañete, Jr.) be directed, among others, to submit a monthly report of cases for the MCTC.[7] In a Resolution[8] dated November 12, 2012, the Court adopted the recommendations of the judicial audit team.

In his letter-explanation dated January 23, 2013,[9] Judge Dacanay claimed that his failure to decide and resolve cases on time was not brought about by his laziness, willful neglect of duty or complacency, but was due to the heavy workload in his court which is a circuit court composed of two (2) municipalities with the highest number of cases received every month. He explained that he spends most of his time hearing cases in court and issuing orders[10] and, thus, lacks time to write decisions.

---

[5] See *id.* 6 and 31.

[6] See *id.* at 13 and 37.

[7] See *id.* at 23-24 and 47-48.

[8] *Id.* at 62-65.

[9] *Id.* at 51-52.

[10] See *id.* at 51.

Such delay is further compounded by insufficient staff and cases that lacked stenographic notes.[11] In addition, he likewise claimed that he was suffering from cardiovascular disease, hypertension, impaired glucose tolerance, and chronic back pains; and, in the year 2008, he suffered a stroke while he was attending to his court duties. In this light, Judge Dacanay revealed his plans of retiring early and requested for the release of the withheld salary which he needs to sustain his daily maintenance medicines and travelling expenses.[12]

In its Memorandum,[13] the OCA denied Judge Dacanay's request for the release of his withheld salaries, finding his reasons to be flimsy and irrelevant. Considering that a majority of the cases docketed in Judge Dacanay's *sala* were submitted for decision and resolution even before the year 2008, when he claimed to have suffered a stroke, the OCA concluded that his heavy workload was due to his inefficiency and judicial indolence. In this regard, the OCA noted that from the time the judicial audit was conducted in July 2012 and up to the time he submitted his letter-explanation in January 2013, Judge Dacanay has not submitted a single decision or resolution to show at least partial compliance and proof of his good faith, and neither did he request for any extension of time for the disposition of his cases. Consequently, the OCA directed Judge Dacanay to fully comply with the Court's Resolution dated November 12, 2012 by deciding and resolving the pending cases and resolutions in his *sala* within a non-extendible period of one (1) month from notice and, afterwhich, an evaluation shall be made on his administrative liability.[14]

In connection with a subsequent Resolution[15] dated July 10, 2013 of the Court, MCTC Clerk of Court Cañete, Jr. submitted

---

[11] See *id.* at 52.

[12] See *id.* at 51-52.

[13] Dated May 21, 2013. *Id.* at 71-74.

[14] See *id.* at 72-74.

[15] *Id.* at 81-83.

various letters of Compliance dated August 30, 2013,[16] February 3, 2014,[17] and May 23, 2014,[18] updating the OCA of the status of cases pending before the MCTC, with copies of the decisions, resolutions, and orders related thereto.

The OCA's Report and Recommendation

In a Memorandum[19] dated July 7, 2015, the OCA recommended, *inter alia*, that Judge Dacanay be found guilty of gross inefficiency and, accordingly, be meted a fine in the amount of ₱75,000.00 with a warning that a similar infraction would be dealt with more severely.[20]

While the OCA noted that Judge Dacanay had fully complied with the Court's Resolution dated November 12, 2012 directing him to resolve the pending cases and incidents in his *sala*, it nevertheless found him administratively liable for his failure to decide the 99 cases submitted for decision and resolve the 91 cases with pending incidents for resolution within the reglementary period provided for by law. The OCA concluded that such judicial indolence on the part of Judge Dacanay is considered gross inefficiency in the performance of duties, and as such, administrative sanctions should be imposed upon him.[21]

The Issue before the Court

The sole issue presented for the Court's resolution is whether or not Judge Dacanay should be held administratively liable.

The Court's Ruling

After a careful perusal of the records, the Court agrees with the findings and recommendation of the OCA, and resolves to adopt the same in its entirety.

---

[16] See *id.* at 84-220.

[17] See *id.* at 255-259.

[18] See *id.* at 260-436.

[19] *Id.* at 232-254.

[20] See *id.* at 253-254.

[21] See *id.* at 252-254.

Article VIII, Section 15 (1) of the 1987 Constitution mandates lower court judges to decide a case within the reglementary period of ninety (90) days. The Code of Judicial Conduct under Rule 3.05 of Canon 3[22] likewise directs judges to administer justice without delay and dispose of the courts' business promptly within the period prescribed by law. Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. Thus, the 90-day period is mandatory.[23] In *Re: Cases Submitted for Decision Before Hon. Teresito A. Andoy, former Judge, Municipal Trial Court, Cainta, Rizal*,[24] the Court stressed the importance of deciding cases within the periods prescribed by law and, at the same time, reiterated that a judge's failure to decide a case within the prescribed period constitutes gross inefficiency warranting the imposition of administrative sanctions, to wit:

> Judges are enjoined to decide cases with dispatch. Any delay, no matter how short, in the disposition of cases undermines the people's faith and confidence in the judiciary. It also deprives the parties of their right to the speedy disposition of their cases.
>
> The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. **Every judge should**

---

[22] Rule 3.05, Canon 3 of the Code of Judicial Conduct provides:

> Canon 3
>
> A JUDGE SHOULD PERFORM OFFICIAL DUTIES HONESTLY, AND WITH IMPARTIALITY AND DILIGENCE ADJUDICATIVE RESPONSIBILITIES
>
> xxx xxx xxx
>
> Rule 3.05. — A judge shall dispose of the court's business promptly and decide cases within the required periods.
>
> xxx xxx xxx

[23] See *Re: Cases Submitted for Decision Before Hon. Teresito A. Andoy, former Judge; Municipal Trial Court, Cainta, Rizal*, 634 Phil. 378, 381 (2010), citing *Gachon v. Devera, Jr.*, 340 Phil. 647 (1997).

[24] *Id.*

decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge.[25] (Emphasis and underscoring supplied)

The foregoing notwithstanding, the Court is not unmindful of the heavy dockets of the lower courts. Thus, upon their proper application for extension, especially in meritorious cases involving difficult questions of law or complex issues, the Court grants them additional time to decide beyond the reglementary period. In these situations, the judge would not be subjected to disciplinary action.[26]

In this case, Judge Dacanay clearly failed to decide the 99 cases submitted for decision and resolve the 91 cases with pending incidents in his *sala* within the prescribed reglementary period — with some of those cases/incidents taking more than ten (10) years to be decided or resolved. In an attempt to absolve himself from administrative liability, Judge Dacanay attributed such failure to heavy workload, and mentioned that in 2008, he suffered a stroke which limited his physical capability to decide cases or resolve incidents in his already docket-laden *sala*.[27] However, records show that most of the cases and incidents for decision or resolution in his *sala* were submitted long before he suffered a stroke in 2008. Moreover, records are bereft of any showing that he requested for extensions of the period within which he can decide or resolve the aforesaid cases and incidents, or that he proferred any credible explanation for the delay in their disposition. Hence, the OCA correctly found Judge Dacanay administratively liable.

---

[25] *Id.* at 381-382; citations omitted.

[26] See *Bontuyan v. Villarin*, 436 Phil. 560, 568-569 (2002).

[27] See Judge Dacanay's letter-explanation dated January 23, 2013; *rollo*, pp. 51-52.

It is settled that failure to decide or resolve cases within the reglementary period constitutes gross inefficiency.[28] It is a less serious charge and is punishable by either suspension from office without salaries and benefits for not less than one (1) month, but not more than three (3) months, or a fine of more than ₱10,000.00, but not exceeding ₱20,000.00.[29] It must be noted, however, that the fines imposed on each judge may vary, depending on the number of cases undecided or matters unresolved by said judge within the reglementary period, plus the presence of aggravating or mitigating circumstances, such as the damage suffered by the parties as a result of the delay, the health and age of the judge, and other analogous circumstances.[30]

In *OCA v. Leonida*,[31] the erring judge was fined in the amount of ₱50,000.00 for his failure to decide an aggregate of 145 cases within the reglementary period.[32] Similarly, in *OCA v. Alumbres*,[33] the respondent judge was fined also in the amount of ₱50,000.00 for failing to decide a total of 154 cases on time.[34] On the other hand, in *Pacquing v. Cobarde*,[35] the delinquent judge was fined by the Court the amount of ₱100,000.00 for failing to decide a staggering 191 cases within the allowable period, noting that said judge was previously held administratively liable for the same offense. In view of the foregoing cases and

---

[28] *OCA v. Ismael*, 624 Phil. 275, 278-279 (2010).

[29] *Id.* See also Section 9, in relation to Section 11 (B), of A.M. No. 01-8-10-SC, entitled "RE: PROPOSED AMENDMENT TO RULE 140 OF THE RULES OF COURT RE: DISCIPLINE OF JUSTICES AND JUDGES" (October 1, 2001).

[30] *Re: Report on the Judicial Audit Conducted in the Regional Trial Court, Branches 72 and 22, Narvacan, Ilocos Sur*, 687 Phil. 19, 23 (2012).

[31] 654 Phil. 668 (2011).

[32] *Id.* at 679.

[33] 515 Phil. 348 (2006).

[34] See *id.* at 355-356 and 363.

[35] See Minute Resolution in A.M. No. RTJ-07-2042 dated September 30, 2014.

the circumstances of this case, the Court agrees with the OCA that Judge Dacanay should be fined in the amount of ₱75,000.00 for his failure to decide the 99 cases submitted for decision and resolve the 91 cases with pending incidents in his *sala* within the 90-day mandatory reglementary period provided by law.

WHEREFORE, Judge Jasper Jesse G. Dacanay is found **GUILTY** of gross inefficiency in the performance of his duties and is hereby **FINED** in the amount of ₱75,000.00, with a **STERN WARNING** that the commission of the same or similar act shall be dealt with more severely. His salaries and allowances, after deducting the fine of ₱75,000.00, are ordered **RELEASED** for having fully complied with the directives of the Court contained in the Resolution dated November 12, 2012.

Moreover, Clerk of Court II Henry P. Cañete, Jr. is **DIRECTED** to **COMPLY** with the other directives of the Court in the same Resolution within a non-extendible period of fifteen (15) days from notice and **SUBMIT** proof thereof.

SO ORDERED.

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

Peralta, J., on official leave.

EN BANC

[G.R. No. 175736. April 12, 2016]

JOSE RIZAL L. REMO, REYNALDO G. PANALIGAN, TITA L. MATULIN, ISAGANI CASALME, CIPRIANO P. ROXAS, CESARIO S. GUTIERREZ, CELSO A. LANDICHO, and EDUARDO L. TAGLE, *petitioners, vs.* **ADMINISTRATOR EDITA S. BUENO, NATIONAL ELECTRIFICATION ADMINISTRATION (NEA) BOARD OF ADMINISTRATORS AND MEMBER-CONSUMERS OF BATELEC II,** *respondents.*

[G.R. No. 175898. April 12, 2016]

JOSE RIZAL L. REMO, REYNALDO G. PANALIGAN, TITA L. MATULIN, ISAGANI CASALME, CIPRIANO P. ROXAS, CESARIO S. GUTIERREZ, CELSO A. LANDICHO, and EDUARDO L. TAGLE, *petitioners, vs.* **ADMINISTRATOR EDITA S. BUENO, SEC. RAPHAEL LOTILLA, WILFREDO BILLENA, JOSE VICTOR LOBRIGO, EVANGELITO ESTACA AND MARILYN CAGUIMBAL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEALS FROM THE COURT OF TAX APPEALS AND QUASI-JUDICIAL AGENCIES TO THE COURT OF APPEALS; THE NATIONAL ELECTRIFICATION ADMINISTRATION (NEA) HAS QUASI-JUDICIAL FUNCTIONS; TERM "QUASI-JUDICIAL FUNCTION" EXPLAINED.— That NEA has quasi-judicial functions is recognized by Rule 43 of the 1997 Revised Rules of Civil Procedure, regarding appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals: SEC. 1. *Scope*. – This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any

quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the x x x **National Electrification Administration** x x x. In *United Coconut Planters Bank v. E. Ganzon, Inc.,* we held that: xxx. **A "quasi-judicial function" is a term which applies to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.**

2. **POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. 269 (LAW CREATING THE "NATIONAL ELECTRIFICATION ADMINISTRATION" xxx), AS AMENDED BY PRESIDENTIAL DECREE 1645; NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE NEA ADMINISTRATOR IN IMPLEMENTING THE DECISION OF THE NEA BOARD, AS THE SAME WAS A VALID EXERCISE OF THE AUTHORITY GRANTED TO THE NATIONAL ELECTRIFICATION ADMINISTRATION (NEA) TO SUPERVISE AND CONTROL ELECTRIC COOPERATIVES AND TO CONDUCT INVESTIGATIONS, AND IMPOSE PREVENTIVE OR DISCIPLINARY SANCTIONS OVER THE BOARD OF DIRECTORS OF THE COOPERATIVE.—** The October 9, 2006 Order of respondent Bueno implementing the October 5, 2006 Decision of the NEA Board of Administrators was found by the Court of Appeals to be a valid exercise of both the NEA's Administrator, in charge of the supervision and control aspect, and the Board, in charge of the quasi-judicial function. There was no grave abuse of discretion on respondent Bueno's part. Neither do we find error in the Court of Appeals' appreciation of the facts and the applicable rules and laws. Very recently, this Court had occasion to review the powers and functions of the NEA. In *Zambales II Electric Cooperative, Inc. Board of Directors v. Castillejos Consumers Association, Inc.,* we held: **A. *The NEA's creation and disciplinary jurisdiction*** x x x. In 1979, P.D. No. 1645 amended P.D. No. 269 and **broadened the NEA's regulatory powers,** among others. Specifically, the amendments **emphatically recognized the NEA's power of supervision and control** over electric cooperatives; and **gave it the power to conduct investigations, and impose preventive or**

disciplinary sanctions over the board of directors of regulated entitles. x x x. Likewise, Section 24 of P.D. No. 269, as amended by P.D. No. 1645, stressed that the board of directors of a regulated electric cooperative is subject to the NEA's control and supervision. xxx.

3. ID.; ID.; ID.; SECTION 15 OF THE NEW ADMINISTRATIVE RULES OF PROCEDURE OF THE NATIONAL ELECTRIFICATION ADMINISTRATION (NEA) AND ITS ADMINISTRATIVE COMMITTEE (NEA RULES OF PROCEDURE) WHICH PROVIDES FOR IMMEDIATELY EXECUTORY DECISIONS OF THE NEA ADMINISTRATIVE BOARD DECLARED VALID.— The NEA Rules of Procedures, in providing that the decisions are to be immediately executory, do not contradict the NEA Charter, as petitioner insists. x x x. Rules of procedure of other administrative agencies with quasi-judicial functions likewise provide for immediately executory decisions without prejudice to petitioner's filing of a motion for reconsideration. x x x. Petitioners' contention that Section 15 of the NEA Rules of Procedures should be struck down for being invalid is absurd and would have this Court exercising judicial review and enforcing the same over a rule that does not even, in reality, deprive him of the remedy he wanted – a motion for reconsideration. Petitioner was, in fact, able to file a motion for reconsideration. There was no grave abuse of discretion on the part of the NEA Administrator in issuing the questioned Order, as it did not violate any rule or law and was done in the exercise of the authority granted to the NEA to supervise and control electric cooperatives, under its Charter. The Court does not strike down rules as invalid on a whim. There is nothing pernicious about the provision allowing decisions of the NEA Administrative Board to be "immediately executory."

4. ID.; ID.; ID.; CHARGE OF INDIRECT CONTEMPT NOT PROVED; THE ASSIGNMENT OF A PROJECT SUPERVISOR IS WITHIN THE POWER OF CONTROL AND SUPERVISION OF THE NEA OVER AN ELECTRIC COOPERATIVE.— With regard to G.R. No. 175898, we agree with respondents that petitioners failed to prove their bare allegations of indirect contempt. x x x. With regard to the assignment of a project supervisor, it is within the power of

control and supervision of the NEA over BATELEC II as an electric cooperative organized and existing pursuant to Presidential Decree No. 269 as amended by Presidential Decree No. 1645. x x x. As pointed out by all the respondents x x x, petitioners failed to clearly demonstrate how exactly respondents committed indirect contempt. Thus, we dismiss the petition.

5. LEGAL ETHICS; ATTORNEYS; FAILURE TO COMPLY WITH THE REQUIRED FILING OF EXPLANATION AND COMMENT CONSTITUTES CONTUMACIOUS VIOLATION OF A LAWFUL ORDER OF THE COURT, AND THE PAYMENT OF THE FINE IMPOSED IS NOT EQUIVALENT TO THE FILING OF THE REQUIRED COMMENT.— Since this case is now being disposed of, and it appearing on record that Atty. Layog has, to this date, failed to comply with the filing of explanation and comment on the letter dated January 3, 2012 of Hon. Nicanor M. Briones, Representative, AGAP Party List, and Vice-Chairperson, Committee on Cooperative Development, which comment has been required of him since January 31, 2012, the Court resolves to INFORM Atty. Layog that he is deemed to have waived to filing of the comment. Counsel for private respondent is likewise informed that his payment of the fine imposed upon him is not equivalent to the filing of the required comment, which he twice did without submitting any explanation for his failure to file such comment, and his actions constitute contumacious violation of a lawful order of this Court.

APPEARANCES OF COUNSEL

Ernesto P. Tabao for petitioners.

Manalo Jocson & Enriquez Law Offices for movant-intervenors.

Vic P. Alvaro and *Rossan SJ Rosero-Lee* for respondent.

Erwin M. Layog for private respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court are the consolidated cases G.R. No. 175736 and G.R. No. 175898, filed by the same petitioners against slightly different sets of respondents.

G.R. No. 175736 is a petition for review on *certiorari* under Rule 45 with prayers for the issuance of a temporary restraining order (*status quo ante*) and/or preliminary mandatory injunction. Petitioners therein question the **Decision**[1] of the **Court of Appeals** in **CA-G.R. SP No. 96486** (the questioned Court of Appeals Decision).

G.R. No. 175898 is a petition for indirect contempt under Section 3(a), Rule 71 of the Rules of Court.

Petitioners Jose Rizal L. Remo, Reynaldo G. Panaligan, Tita L. Matulin, Isagani Casalme, Cipriano P. Roxas, Cesario S. Gutierrez, Celso A. Landicho, and Eduardo L. Tagle (petitioners) are members of the Board of Directors of the Batangas II Electric Cooperative, Inc. (BATELEC II).

Public respondent Edita S. Bueno is impleaded as the Administrator of the National Electrification Administration (NEA), an agency created under Presidential Decree No. 269, as amended by Presidential Decree No. 1645.

The members of the Board of Administrators of NEA, at the time of the filing of the petition, were Department of Energy Secretary Raphael Lotilla as Chairman, and Wilfredo Billena, Jose Victor Lobrigo, and Edita Bueno.

The member-consumers of BATELEC II are the private respondents.

The Court of Appeals, in CA-G.R. SP No. 96486, summarized the facts in the following manner:

---

[1] *Rollo* (G.R. No. 175736), pp. 26-40; penned by Associate Justice Mariano C. del Castillo (now a member of this Court) with Associate Justices Conrado M. Vasquez, Jr. and Ricardo S. Rosario concurring.

The antecedent facts show that on May 12, 2005, an administrative complaint for gross mismanagement and corruption was lodged before the Board of Administrators, National Electrification Administra[tion] (NEA) by bonafide members of BATELEC II against petitioners and other members of the Board of Directors of the cooperative.

In a Manifestation and Motion dated April 12, 2006, respondents informed the Office of the Administrative Committee of NEA (Adcom) that they are adopting their Joint Answers filed in two other administrative cases as part of their arguments and evidence in this case. In their Joint Answers, respondents averred among others that the complaints were never subscribed and sworn to before an administering officer, non-payment of filing fees as well as non-submission of a certification against non-forum shopping and, hence, prayed for dismissal. On May 25, 2006, an Order was issued giving the complainant members of the cooperative a period of fifteen (15) days to submit the needed documents in these cases. Respondents moved for a reconsideration of the Order dated May 25, 2006 but the same was denied on June 29, 2006 after the submission of the required documents. Another pleading captioned Motion for Reconsideration and Clarification was filed by respondents which was denied on July 25, 2006.

Meanwhile and undaunted, respondents filed before [the Court of Appeals] on September 21, 2006 a Petition for Certiorari with a plea for Temporary Restraining Order and Preliminary Injunction [CA-G.R. SP No. 96486], alleging therein that the NEA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in not dismissing the complaint in NEA Adm. Case No. 01-05-05 and in accepting token compliance made more than a year after the complaint was filed.

On October 5, 2006, NEA found substantial evidence to hold the respondents administratively liable. The dispositive portion of its decision [the NEA decision] reads:

"WHEREFORE, premises considered, it is hereby ordered:

(1) That pursuant to Section 10, Chapter II of Presidential Decree No. 269, as amended by Section 5(e) of Presidential Decree 1645, Respondents Reynaldo Panaligan, Isagani Casalme, Cesario Gutierrez, Celso Landicho, Tita Matulin, Jose Rizal Remo, Cipriano Roxas and Eduardo Tagle, all

incumbent members of the Board of Directors of BATELEC II, are REMOVED as members of the Board of Directors with disqualification to run for the same position in any future district election of the cooperative, effective immediately;

(2) That Respondents Ruben Calinisan, Gerardo Hernandez, Ireneo Montecer, and Tirso Ramos, who are no longer members of the Board of Directors of BATELEC II, are DISQUALIFIED to run for the same position in any future district election of the cooperative effective immediately; and

(3) That the penalty as recommended above shall be without prejudice to future criminal and/or civil actions that may be taken against the responsible members of the Board by BATELEC II. Accordingly, the present BATELEC II Board of Directors, are directed to file the appropriate criminal and/or civil action against all of the respondent members of the Board of Directors of BATELEC II.

xxx xxx xxx

On October 9, 2006, the Administrator of NEA, Edita S. Bueno ordered seven of the Board of Directors of BATELEC II namely Atty. Natalio M. Panganiban, Mr. Leovino O. Hidalgo, Mr. Gonzalo O. Batugon, Mr. Ruperto H. Manalo, Mr. Adrian G. Ramos, Mr. Dakila P. Atienza, and Mr. Michael Angelo C. Rivera to reorganize and elect a new set of officers for the cooperative effective immediately and ruled that the vacancies in the Board by reason of the NEA Decision x x x shall not be included in the count for the determination of a quorum in the BATELEC II Board.

On October 10, 2006 (not October 9, 2006 as alleged in the Petition) therein respondents moved for a reconsideration of the Decision dated October 5, 2006 arguing that NEA erred in holding respondents guilty of grave misconduct, in making its decision immediately executory, in rendering the decision despite the pendency of a motion to defer proceeding/Petition for Certiorari and Adm. Case Nos. 01-02-06 and 02-02-06, and in directing the filing of criminal and/or civil actions against them.

Without awaiting the resolution of their Motion for Reconsideration, respondents filed before [the Court of Appeals a Petition for Certiorari, which was docketed as CA-G.R. SP No. 96486] on the following grounds:

"A. That the Public Respondent Edita Bueno committed grave abuse of discretion amounting to lack or excess of jurisdiction when she ordered the execution of the assailed decision of the NEA Board of Administrators to which she is a member, during the pendency of a Motion for Reconsideration directed against the said decision; and

B. That the Public Respondent Edita Bueno committed grave abuse of discretion amounting to lack or excess of jurisdiction when she declared in her assailed order that the majority of the Board of Directors of BATELEC II, whom she prematurely ordered removed shall not be considered in the count for the determination of a quorum.[2] (Citations omitted.)

On October 10, 2006, in compliance with the October 9, 2006 NEA Order, the following resolution was issued:

BATELEC II RESOLUTION #001

SERIES: 2006

WHEREAS, a letter dated 09 October 2006 from NEA was received by the undersigned, a portion of which reads as follows:

"*We hereby order the seven (7) above-named Board of Directors to re-organize and accordingly elect a new set of officers for the cooperative effective immediately*"

WHEREAS, in faithful compliance of the above and in order to protect and promote the general welfare and interest of the cooperative, an election was held today, October 10, 2006 and the duly elected set of officers are as follows:

President	-	Ruperto H. Manalo
Vice President	-	Atty. Natalio M. Panganiban
Secretary	-	Dakila P. Atienza
Treasurer	-	Leovino O. Hidalgo

xxx xxx xxx

[2] *Id.* at 27-31.

Adapted this 10th day of October 2006 at Lipa City, Batangas.

[Signed by Manalo, Panganiban, Atienza, Hidalgo, Gonzalo O. Bantugon (Director), Adrian G. Ramos (Director), and Michael Angelo C. Rivera (Director).]

Erwin M. Layog, Notary Public (October 12, 2006)[3]

On October 11, 2006, respondent Bueno wrote to the Board of Directors through Manalo confirming Board Resolution No. 001, Series of 2006, reorganizing and accordingly electing a new set of officers for the electric cooperative Board of Directors.[4]

On October 16, 2006, the Court of Appeals issued a Temporary Restraining Order (TRO), [5] effective for sixty (60) days, ordering the respondents and their representatives to cease and desist from enforcing or otherwise giving effect to the October 5, 2006 Decision of the NEA in NEA ADM. Case No. 01-05-05.

Meanwhile, the petitioners, on December 7, 2006, filed with the Court of Appeals a Motion to Cite Respondents in Contempt of Court.[6]

On December 15, 2006, the **Court of Appeals** rendered its **Decision** in **CA-G.R. SP No. 96486** and held that there was no abuse of discretion on respondent Bueno's part when she issued her October 9, 2006 order, as such was done in the legitimate exercise of her mandate under Presidential Decree No. 269 and pursuant to Section 15 of the New Administrative Rules of Procedures of the NEA and its Administrative Committee. The *fallo* of the decision provides:

WHEREFORE, in light of the foregoing, the instant petition is DISMISSED for lack of merit. The temporary restraining order issued on October 16, 2006 is hereby declared LIFTED and of no further effect.[7]

---

[3] *Id.* at 633.

[4] *Id.* at 634.

[5] *Id.* at 122-123.

[6] *Id.* at 38.

[7] *Id.* at 39.

Undaunted, the petitioners brought their case before this Court via a petition for review on *certiorari* with prayers for the issuance of a temporary restraining order (*status quo ante*) and/or preliminary mandatory injunction.

On **December 29, 2006**, this Court issued a ***Status Quo Ante* Order**,[8] and reiterated in a Resolution issued on July 31, 2007. The pertinent part of the *Status Quo Ante* Order reads as follows:

> Meanwhile, a **STATUS QUO ANTE ORDER** is hereby **ISSUED**, effective immediately and continuing until further orders from this Court, ordering You, parties, your agents, representatives, or persons acting in your place or stead, to maintain the **STATUS QUO** prevailing before the issuance of the Order dated October 5, 2006 of public respondent National Electrification Administration.

Petitioners then filed with this Court a Manifestation and Motion[9] dated January 9, 2007, informing this Court that when they tried to enter the premises of BATELEC II to assume their respective posts, they were refused entry by the security guards, who were allegedly acting upon the orders of NEA's project supervisor Evangelisto Estaca and Acting General Manager Marilyn Caguimbal. Petitioners averred that the respondents appointed caretaker-directors to take the posts petitioners had vacated despite the *Status Quo Ante* Order. The petitioners further averred that the respondents' actions made them guilty of indirect contempt as described under Section 3 (a), Rule 71 of the Rules of Court.

Thus, petitioners, on the same day, filed a **verified petition for indirect contempt**,[10] asking this Court to cite respondents for indirect contempt for their clear disobedience of, or resistance to, a lawful order of this Court, and have them imprisoned and fined according to the Rules of Court. The petition for indirect contempt was docketed as **G.R. No. 175898** and was consolidated with G.R. No. 175736.

---

[8] *Id.* at 300-301.

[9] *Id.* at 308-314.

[10] *Rollo* (G.R. No. 175898), pp. 3-11.

Petitioners submit the following:

ASSIGNMENT OF ERRORS

1. ***THE COURT OF APPEALS COMMITTED GRAVE AND PALPABLE ERROR IN ITS INTERPRETATION OF SECTION 15 OF THE NEW ADMINISTRATIVE RULES OF NEA IN RELATION TO SECTION 58 OF PRESIDENTIAL DECREE NO. 269, THUS ITS ERRONEOUS RULING THAT NEA BOARD OF ADMINISTRATOR'S DECISION IS EXECUTORY EVEN PENDING A MOTION FOR RECONSIDERATION SEASONABLY FILED;***

2. ***THE COURT OF APPEALS COMMITTED GRAVE AND PALPABLE LEGAL ERROR IN ITS INTERPRETATION OF SECTION 24 (D) OF PRESIDENTIAL DECREE NO. 269, WHICH MADE IT TO RULE THAT SEVEN (7) OF THE FIFTEEN MAN BOARD OF DIRECTORS CAN CONSTITUTE A QUORUM TO ELECT OFFICERS AND CONDUCT BUSINESS OF THE COOPERATIVE[.]***[11]

PETITIONERS' ARGUMENTS:

1. THE DECISION OF THE NEA CANNOT BE MADE EXECUTORY PENDING A MOTION FOR RECONSIDERATION, HENCE THE MOVE OF THE PUBLIC RESPONDENT TO EXECUTE THE QUESTIONED DECISION OF NEA DURING THE PENDENCY THEREOF IS A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION, WHICH SHOULD HAVE BEEN CHECKED BY THE COURT OF APPEALS.[12]

Petitioners argue that administrative rules cannot "supplant the dictates and meaning of the law which it seeks to implement."[13] The law in question is Presidential Decree No. 269,[14] which created the NEA.

---

[11] *Rollo* (G.R. No. 175736), pp. 8-9.

[12] *Id.* at 9.

[13] *Id.*

[14] CREATING THE "NATIONAL ELECTRIFICATION ADMINISTRATION" AS A CORPORATION, PRESCRIBING ITS POWERS AND ACTIVITIES,

Petitioners allege that the New Administrative Rules of Procedures of The National Electrification Administration and Its Administrative Committee (the NEA Rules of Procedures)[15] supplanted the clear meaning and intent of Presidential Decree No. 269 when it expressly disallowed judicial review of its decisions by stating in its rules that its decisions are immediately executory.

SECTION 15. ***Execution of Decision***. — The Decision of the NEA shall be immediately executory although the respondent(s) is not precluded from filing a Motion for Reconsideration unless a restraining order or an injunction is issued by the Court of Appeals in which case the execution of the Decision shall be held in abeyance.[16]

Petitioners contend that Section 15 should be invalidated for being in direct contravention of the law which it seeks to implement. Petitioners claim that even granting *arguendo* that NEA's decision may be considered immediately executory, still the Court of Appeals gravely erred in declaring that its execution is proper even during the pendency of a motion for reconsideration.[17]

Petitioners contend that Section 15 of the NEA Rules of Procedures allows the filing of the motion for reconsideration, which motion is specifically required by Section 58 of Presidential Decree No. 269, before any judicial review may be sought. As such, the same can be considered as an exception to the immediately executory nature of the NEA decision. Petitioners

---

APPROPRIATING THE NECESSARY FUNDS THEREFOR AND DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE SAID OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATIONS, THE REPEAL OF REPUBLIC ACT NO. 6038, AND FOR OTHER PURPOSES. (August 6, 1973.)

[15] Approved by the NEA Board of Administrators on May 19, 2005; Table of Offenses and Penalties approved by the NEA Board of Administrators on September 7, 2005.

[16] NEA Rules of Procedure, Rule V.

[17] *Rollo* (G.R. No. 175736), p. 12.

argue that Section 15 recognizes the jurisdiction of the Court of Appeals to issue a TRO and/or Preliminary Injunction to stay the execution of its decision. However, the aggrieved party cannot go to the Court of Appeals to seek the issuance of a TRO and/or preliminary injunction without first filing a motion for reconsideration as required by Section 58 of Presidential Decree No. 269. As such, if the pendency of a motion for reconsideration cannot hold the execution of the questioned decision of the NEA, its rule allowing the effects of the TRO and/or Preliminary Injunction to stay the execution of its questioned decision is rather illusory as it can never be actualized, thereby making the questioned rule absurd, vis-à-vis the requirements of Section 58 of Presidential Decree No. 269.[18]

Petitioners argue that it is basic in this jurisdiction that the filing of a motion for reconsideration stays the execution of the decision.[19]

Petitioners further claim that, even applying by analogy the decisions of the National Labor Relations Commission or other administrative bodies, which by law makes their decisions final and executory, still their decisions are stayed pending a motion for reconsideration, as the only remedy left for the aggrieved party is a Petition for *Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, where they can apply for the issuance of a TRO and/or Preliminary Injunction. Such stay of execution pending a motion for reconsideration is allowed and recognized pursuant to a section of Rule 65 specifically requiring for the filing of a Motion for Reconsideration, just like in the proceedings before the NEA.[20]

2. WITH THE PENDENCY OF A MOTION FOR RECONSIDERATION, THE DECISION OF THE PUBLIC

---

[18] *Id.*

[19] RULES OF COURT, Rule 52, SEC. 4. *Stay of execution*. — The pendency of a motion for reconsideration filed on time and by the proper party shall stay the execution of the judgment or final resolution sought to be reconsidered unless the court, for good reasons, shall otherwise direct.

[20] *Rollo* (G.R. No. 175736), p. 13.

RESPONDENT NEA CAN NEVER BE CONSIDERED FINAL, HENCE THE OFFICE OF HEREIN PETITIONERS CANNOT STILL BE CONSIDERED VACANT AND THEIR NUMBER CONSTITUTING THE MAJORITY OF THE BOARD CANNOT BE UNDETERMINED IN DETERMINING THE QUORUM.[21]

Petitioners assert that the motion for reconsideration they filed on October 10, 2006 relative to the October 5, 2006 decision of the NEA Board of Administrators remains pending and unresolved. As such, the questioned decision has not yet attained finality and therefore cannot yet be executed. Petitioners note that respondent Bueno issued her Order after a mere passage of four days from the date that the questioned decision was issued by the NEA Board of Administrators.[22]

Regarding the declaration of the Court of Appeals that seven of the fifteen (15)-man Board can constitute a quorum, citing Section 24 of Presidential Decree No. 269 as its basis, petitioners aver that it cannot hold water as Section 24 provides that "[a] majority of the board of directors in office shall constitute a quorum." Petitioners further aver that BATELEC II has fifteen (15) members of the Board of Directors; thus, the presence of **eight** of its directors is necessary to constitute a quorum in any of its meetings. The eight members of the Board of Directors who have been summarily ordered dismissed by respondent Bueno have remained in office as their motion for reconsideration has not yet been acted upon. Besides, at the time that their office was declared vacant by respondent Bueno on October 9, 2006, their period to file a motion for reconsideration had not yet lapsed, as they had indeed filed the same on October 10, 2006. Petitioners conclude that the respective positions of herein petitioners cannot be considered vacant, and as such, their number, constituting the majority of the members of the Board of Directors cannot just easily be ignored.[23]

---

[21] *Id.* at 14.

[22] *Id.*

[23] *Id.* at 15.

Petitioners allege that the decision of the Court of Appeals in declaring as valid the removal of the eight directors as early as October 5, 2006, when the questioned decision was issued, is rather misplaced under an erroneous application of the questioned rules of NEA which directly contravene the express provision of Presidential Decree No. 269. As such, its eventual declaration that only seven of the 15 directors were in office on October 9, 2006, suffers legal infirmity for having been based on an erroneous premise.[24]

Petitioners pray for the reversal of the Court of Appeals' decision and a declaration that its interpretation of Section 15 of the NEA Rules of Procedures is contrary to the dictates of Presidential Decree No. 269. Petitioners further pray for the annulment of the Order of the NEA dated October 5, 2006 and that of respondent Bueno dated October 9, 2006 for being violative of the law and applicable rules, including Rule 52, Section 4 of the 1997 Rules of Civil Procedure. Finally, petitioners pray for a declaration that Section 15 of the NEA Rules of Procedures is unlawful as it directly violates Sections 58 and 59 of Presidential Decree No. 269, which it seeks to implement.[25]

In its **Comment**,[26] the NEA presented its version of the facts:

> On May 12, 2005, a complaint, which was sufficient in form and substance, was filed by member-consumers of BATELEC II against the Petitioners before the National Electrification Administrative Committee and was docketed as NEA Administrative Case No. 01-05-05.
>
> On August 29, 2006, Petitioners in the instant case filed its Petition for Certiorari with prayer for the Issuance of Temporary Restraining Order/ or Preliminary Injunction before the third (3rd) Division of the Honorable Court [of] Appeals docketed as CA-G.R. SP No. 95902 ["First Petition"]. This is a special civil action for Certiorari under Rule 65 of the Rules of Court, assailing the NEA Orders dated 25 May 2006 and 14 July 2006 in the NEA Administrative Case No.

---

[24] *Id.* at 15-16.

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

[26] *Id.* at 339-384.

01-05-05 on ground of grave abuse of discretion amounting to lack or excess of jurisdiction.

On September 7, 2006, the First Petition x x x was DISMISSED by the Honorable Third Division of the Court of Appeals for non-compliance of Petitioners of the Rules on Non-forum Shopping in violation of Section 3, Rule 46 in relation to Section 1, Rule 65 of the 1997 Rules of Civil Procedure and in violation of Section 13, Rule 13 of the 1997 Rules of Civil Procedure.

Unable to acquire the desired result, Petitioners on September 21, 2006, filed [their] Petition for Certiorari with Prayer for the Issuance of Temporary Restraining Order/or Preliminary Injunction before the [14th] Division of the Honorable Court of Appeals docketed as CA-G.R. No. 96214 [the "Second Petition"]. This is a special civil action under Rule 65 of the Rules of Court assailing the three (3) NEA Orders dated [May 25, 2006, June 25, 2006, and July 29, 2006, respectively] in NEA Administrative Case No. 01-05-05 on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction.

On October 2, 2006, the Honorable Fourteenth Division of the Court of Appeals in CA-G.R. No. 96214 issued a Resolution which HELD IN ABEYANCE the prayer for issuance of the Temporary Restraining Order of Petitioners.

On October 5, 2006, the NEA promulgated its Decision in the NEA Administrative Case No. 01-05-05 x x x .

xxx xxx xxx

The above NEA Decision is premised on the following [findings of fact] by the NEA Administrative Committee (ADCOM) as supported by substantial evidence which resulted to their dismissal and perpetual disqualification as members of the Board of Directors of BATELEC II, to wit:

1. The herein Petitioners were charged by the member-consumers of BATELEC II for gross mismanagement of the cooperative and corruption for awarding the SEVENTY-FIVE MILLION PESOS (Php75,000,000.00) computerization contract without the requisite bidding to an undercapitalized bidder (I-SOLV Technologies), whose paid-up capitalization is SIXTY-TWO THOUSAND FIVE HUNDRED PESOS (Php62,500.00) only;

2. The herein Petitioners unjustifiably authorized the unprogrammed purchase of ten (10) units boom trucks at 100% overprice after an apparently rigged bidding;

3. As regards the Php75 Million computerization project, the herein Petitioners were found to have grossly mismanaged the cooperative which resulted to the huge financial losses of BATELEC II;

4. In spite of NEA Administrator Bueno's letter advisory dated August 2, 2006, to conduct a comprehensive system study prior to the implementation of the computerization project, herein Petitioners as members of the Board of Directors in open defiance to said letter implemented the Php75 million computerization project;

5. Contrary to NEA Rules, regulations, and policies and without the NEA Approval as required by Section 24(a) of P.D. No. 269 as amended by Section 7 of P.D. No. 1645, the herein Petitioners defiantly implemented the computerization program.

x x x [P]etitioners on October 12, 2006, filed a Petition for Certiorari with Prayer for the Issuance of Temporary Restraining Order/or Preliminary Injunction before the Special Second Division of the Honorable Court of Appeals docketed as CA-G.R. SP No. 96486 [THIRD PETITION]. This is a Special Civil Action for Certiorari under Rule 65 of the Rules of Court this time assailing the Order of Execution by public respondent Bueno pursuant to the above NEA Decision dated October 5, 2006 on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction.[27]

The NEA contends that on November 17, 2006, petitioners registered BATELEC II to the Cooperative Development Authority (CDA)[28] "in their vile attempt to escape the imposition of administrative sanctions of NEA" based on its Administrative Case No. 01-05-05. However, the Court of Appeals found that the NEA did not commit grave abuse of discretion in immediately executing its decision. It is the third petition filed that is the subject of this appeal by *certiorari*.

---

[27] *Id.* at 341-344.

[28] *Id.* at 636-637.

PUBLIC RESPONDENT NEA'S ARGUMENTS:

A. ON PROCEDURAL GROUNDS:

I. THE PETITION DOES NOT REFLECT THE TRUE FACTS WHEN [IT] STATED THAT NEA HURRIEDLY ISSUED ITS DECISION ORDERING THE REMOVAL OF THE PETITIONERS.[29]

The NEA avers that the ADM. Case No. 01-05-05 was filed on May 12, 2005 by member-consumers of BATELEC II against the petitioners before the NEA Committee, while the decision was promulgated on October 5, 2006. On the other hand, the move of the petitioners herein to register BATELEC II with the Cooperative Development Authority (CDA) was done on November 17, 2006, which was primarily designed to escape the imposition of administrative sanctions by NEA.[30] The BATELEC II Certificate of Registration[31] with the CDA stated that BATELEC II "shall operate within its original franchise areas" and it is entitled to rights and privileges granted by Republic Act No. 6938, Cooperative Code of the Philippines, and Republic Act No. 6939, an act creating the CDA, and other laws. On December 2006, the **CDA Board of Administrators** issued **Resolution No. 311, S-2006**, which states that the Board resolved to set aside the effectivity of the Certificate of Registration issued to BATELEC II ***"pending a conduct of an exhaustive investigation to ascertain whether or not fraud or misrepresentation was committed by the ousted members of the BATELEC II Board of Directors when they applied for permanent registration with the CDA."***[32]

---

[29] *Id.* at 347.

[30] *Id.* at 349.

[31] *Id.* at 636.

[32] *Id.* at 637.

II. THE PETITION DOES NOT REFLECT THE TRUE FACTS WHEN [PETITIONERS] STATED THAT NEA THRU ADMINISTRATOR EDITA S. BUENO ISSUED AN ORDER OF EXECUTION DATED 9 OCTOBER 2006 DESPITE PENDENCY OF THEIR MOTION FOR RECONSIDERATION OF THE DECISION DATED 5 OCTOBER 2006.[33]

The NEA argues that petitioners are estopped and can neither allege nor assail in this petition the fact that respondent Bueno issued an Order of Execution dated October 9, 2006 because they filed a petition for *certiorari* under Rule 65 and justified the fact of elevating the matter directly to the Court of Appeals without waiting for the resolution of their motion for reconsideration and should be deemed to have abandoned the latter.

III. PETITIONERS VIOLATED SECTION 2, RULE 42 OF THE 1997 RULES OF COURT ON NON-FORUM SHOPPING RIGHT FROM THE VERY START OF FILING THIS INSTANT PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45.[34]

The NEA alleges that there are commonalities or similarities of the three petitions successively filed with three different Divisions of the Court of Appeals, one of which was elevated and now pending before the Supreme Court by way of Petition for Review under Rule 45.[35] The cases are:

1) CA-G.R. No. 95902 – August 29, 2006 - **dismissed** on September 7, 2006;[36]

---

[33] *Id.* at 351.

[34] *Id.* at 352.

[35] *Id.* at 353-356.

[36] *Id.* at 523-524.

2) CA-G.R. No. 96214 – September 21, 2006 — dismissed; and

3) CA-G.R. SP No. 96486 – Decision is now the subject matter of this petition.

The NEA claims that the ultimate purpose or objective of petitioners in all their petitions was to prevent their eventual removal as members of the board of BATELEC II. Petitioners misled the Court of Appeals and made a mockery of the judicial system by splitting interrelated and inseparable issues but seeking a common objective or relief (restraining the NEA from removing them as members of the Board of BATELEC II) from the different fora (the Court of Appeals and the Supreme Court). This was a clear case of forum shopping. They filed the Certification of Non-Forum Shopping but circumvented the rule. There is forum shopping when the litigant sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending.

IV. PETITIONERS' FILING OF THE PETITION FOR *CERTIORARI* UNDER RULE 65 AT THE HONORABLE COURT OF APPEALS WILL NOT STOP THE RUNNING OF THE REGLEMENTARY PERIOD TO FILE AN APPEAL UNDER RULE 43.[37]

The NEA asserts that the wrong mode of appeal in the Court of Appeals cannot be corrected by another wrong remedy. The October 5, 2006 NEA decision is final and executory and should have been appealed. Resultantly, this Petition for Review under Rule 45 before this Honorable Court must be dismissed.

NEA points at that petitioners should have from the very start availed of the ordinary appeals from quasi-judicial bodies to the Court of Appeals under Rule 43 of the Rules of Court and not an extraordinary remedy of Petition for *Certiorari* under

[37] *Id.* at 361.

Rule 65 of the 1997 Rules of Court on account that a plain and speedy remedy is available.

For NEA, the Court of Appeals in fact, found no grave abuse of discretion. NEA contends that there is an available, plain, speedy and adequate remedy in the ordinary course of law which should have been used by petitioners under Rule 43, so the NEA Decision dated October 5, 2006 and its Order of Execution dated October 6, 2006 are not correctible by Petition for *Certiorari* under Rule 65. The NEA Rules of Procedures proscribe the filing of Petition for *Certiorari*.[38] A special civil action of *certiorari* under Rule 65 of the Rules of Court is a special remedy which cannot be a substitute for lapsed or forgotten appeal. The mere filing of a Petition for Review on *Certiorari* under Rule 43, provided it has form and substance, would stay the execution of judgment, whereas a Petition for *Certiorari* under Rule 65 would stay the execution unless a temporary restraining order or preliminary injunction is issued. The October 5, 2006 Decision of the NEA Board of Administrators is now *finis* for failure of petitioners to appeal within 15 days from receipt. This petition for review under Rule 45 must be dismissed.

B. PUBLIC RESPONDENT NEA'S ARGUMENTS ON SUBSTANTIVE GROUNDS

I. THERE IS NO GRAVE AND PALPABLE ERROR COMMITTED BY THE HONORABLE COURT OF APPEALS WHEN IT APPLIED SECTION 15 OF THE NEW ADMINISTRATIVE RULES OF NEA IN RELATION TO SECTION 58 OF PRESIDENTIAL DECREE NO. 269.[39]

The NEA asserts that there is no conflict between the NEA Rules of Procedures and the provisions of law, but a mere confusion on the part of petitioners on which remedy they should avail of. Section 58, Chapter IV of Presidential Decree No. 269

---

[38] Section 4(e), Rule III.

[39] *Rollo* (G.R. No. 175736), p. 367.

does not expressly preclude the NEA from immediately executing its Administrative Decision pending a Motion for Reconsideration. The NEA Rules of Procedures did not rise above Presidential Decree No. 269. The NEA Charter allows for judicial review and there is no dispute about that. Presidential Decree No. 269, as amended, does not prohibit the NEA from promulgating Rules which would allow immediate execution of its decision pending a Motion for Reconsideration, unless otherwise stated by the Court of Appeals. The filing of a Motion for Reconsideration is not a requisite for judicial review. Petitioners availed of the wrong remedy of Petition for *Certiorari*, which necessarily requires the filing of a Motion for Reconsideration. Petitioners obstinately misread the provisions in order to suit their own favor, but they contradict themselves as they had already availed of and obtained the TRO from the Court of Appeals for 60 days restraining the effect of the adverted NEA Decision.

In order to defeat the principle of presumption of regularity of official acts or orders of government officials and its agents, petitioners should have clear and factual grounds convincing enough to show that there was grave abuse of discretion committed by the NEA amounting to lack or excess of jurisdiction. This they failed to show as correctly ruled by the Special Second Division of the Court of Appeals.

The NEA Decision removed the petitioners; hence, the remaining board members constituted the "board of directors in office," and majority of seven constitutes a quorum. The issues in this petition for review were already resolved on the merits by the Court of Appeals.

II. THERE IS NO GRAVE AND PALPABLE ERROR COMMITTED BY THE HONORABLE COURT OF APPEALS IN APPLYING SECTION 24(D) OF PRESIDENTIAL DECREE NO. 269[40]

The NEA alleges that petitioners misread Section 24 (D) of Presidential Decree No. 269 regarding what constitutes a quorum,

[40] *Id.* at 373.

considering that as of the time the questioned letter dated October 9, 2006 was issued, the October 5, 2006 Decision removing the petitioners as members of the Board of Directors was being executed. The NEA asserts that in effect, petitioners were no longer "Board of Directors in office" and that only the seven remaining directors shall be considered as such. The NEA argues that logically, a majority of seven shall constitute a quorum. The NEA states that when the Court of Appeals issued the TRO on October 16, 2006, restraining the October 5, 2006 NEA decision for sixty (60) days, the petitioners were temporarily installed back as members of the Board of Directors for 60 days until the TRO was automatically dissolved and the Petition for *Certiorari* was dismissed. This, according to the NEA, is why petitioners filed this Petition for Review before this Court, raising issues which have already been resolved on the merits by the Court of Appeals.[41]

III. PETITIONERS' ALLEGATION OF QUESTION OF LAW IN THIS INSTANT PETITION IS UNFOUNDED BUT A PRETEXT IN ORDER TO TAKE SIEGE OVER BATELEC II.[42]

BATELEC II is one of the largest, if not the largest electric cooperative in the country, with more than 190,000 member-consumers and an average of Php300 million monthly gross revenue. The law mandates the NEA to supervise and control the operation of BATELEC II. As a cooperative, the ownership of BATELEC II does not belong to its Board of Directors but to its member-consumers, under the NEA's supervision and control.

The NEA is mandated to take cognizance over all administrative cases against erring Board of Directors and General Managers of electric cooperatives. Presidential Decree No. 269, as amended by Presidential Decree No. 1645, empowers the NEA to discipline and even remove erring Board of Directors that electric

[41] *Id.* at 374-375.

[42] *Id.* at 375.

cooperatives found to be administratively liable. The NEA Charter empowers the NEA to promulgate its own rules of procedure and policies. Thus, the NEA issued and published its Rules of Procedures. The Board of Directors hastily sought refuge to the CDA without the requisite protocol of subjecting such choice in a referendum by the general assembly of member-consumers. They did this to escape administrative liability and still remain in power over the affairs of BATELEC II.

The NEA avers that in administrative proceedings, the Rules of Court are not strictly followed.

GROUNDS TO LIFT *STATUS QUO ANTE* ORDER

1. There is an urgent need to lift the *status quo ante* order and to dismiss the petition.

The continued presence of the petitioners as members of the Board of Directors poses a great threat to BATELEC II's welfare and to the operation of the electric cooperative as a whole considering that member-consumers and employees have lost confidence on petitioners who continue to squander the cooperative funds. Just like when they filed for the TRO issued by the Court of Appeals, petitioners came before this Court with unclean hands, seeking for protection or relief of TRO or injunction, in order to escape liability and be able to continue their caprices as they remain in control of the affairs and funds of BATELEC II. As a result of the TRO issued by the Court of Appeals on October 16, 2006 in CA-G.R. SP No. 96486, petitioners "took siege" of the Cooperative by conducting "massive suspension" of its employees and officers resulting to a "magnified unrest" in the Cooperative. These acts are *indicia* of petitioners' bad faith.[43]

Even during the effectivity of the Court of Appeals-issued TRO, petitioners withdrew Php256,000.00 from BATELEC II funds without being supported by a valid voucher and not used for the benefit of the cooperative. Therefore, the NEA, pursuant to its regulatory power, without necessarily violating the TRO,

[43] *Id.* at 378.

to protect the interests of the member-consumers of BATELEC II and to protect the cooperative from running bankrupt, exercised its enforcement powers provided under Section 5 of Presidential Decree No. 1645 by immediately installing a Project Supervisor who will act as overseer over and above the Board of Directors.

BATELEC II employees conducted a strike calling for the removal of the petitioners due to rampant abuse of power and malversation or conversion of cooperative funds. Petitioners sought relief of injunction in order to escape penalty from the very offense or violation they have committed against the cooperative. The very purpose of the NEA order or Decision commanding for petitioners' removal as members of the Board of Directors of BATELEC II was for the protection of the Electric Cooperative's funds and its member-consumers.[44]

In its **COMMENT**,[45] the Office of the Solicitor General (OSG) wrote:

> 1. The Court of Appeals correctly ruled that the Decision of the NEA Board of Administrators is immediately executory despite a Motion for Reconsideration duly filed, pursuant to Section 15 of the New Administrative Rules of NEA.
>
> xxx xxx xxx
>
> In this jurisdiction, well-settled is the rule that the procedure to be followed before administrative agencies is generally not that prescribed for ordinary civil actions. The procedure may be prescribed in the statute creating the agency, or in the rules promulgated by the agency itself.
>
> xxx xxx xxx
>
> Indeed by its very nature as an administrative agency exercising quasi-judicial functions, NEA is not strictly bound by the rules of procedure in ordinary civil actions. In fact, PD 269, which created

---

[44] BATELEC II's Member-Consumers' Demonstration: NO to CDA; Stop power abuse (*Id.* at 642-656); Complaint for grave threats filed by BATELEC II employees against Remo, Tagle, *et al.* (*Id.* at 661-663).

[45] *Id.* at 666-686.

the NEA, empowered NEA to adopt its own rules to govern the conduct of hearings and investigations of cases brought before it. Besides, the provisions of PD 269 reveal the intention of its framers for NEA to adopt x x x relaxed rules of procedure.[46]

The OSG avers that Section 15 of the New Administrative Rules of Procedures of the NEA and its Administrative Committee is within the power of the NEA to enact. It is valid and not contrary to Presidential Decree No. 269. "Contrary to petitioners' contention, Section 15 did not preclude a judicial review of NEA decisions. That a decision is immediately executory does not prevent a party from questioning the decision before a court of law."[47]

Section 15 is only a take-off from Section 60 of Presidential Decree No. 269.

SECTION 60. *No Stay*. — The institution of a writ of *certiorari* or other special remedies in the Supreme Court shall in no case supersede or stay any order, ruling, or decision of the NEA unless the Court shall so direct, and the appellant may be required by the Court to give bond in such form and of such amount as may be deemed proper.

It is clear from the foregoing that the NEA decisions may not be stayed by the institution of remedies before this Court (now before the Court of Appeals),[48] unless the Court shall so direct. This implies no less than that NEA decisions are immediately executory. Therefore, if the law itself creating the NEA, through Section 60, sanctions the immediately executory nature of NEA decisions, it may not be said that Section 15 of the NEA Rules "rises above its source," as petitioners contend. If petitioners find the rule absurd, they should question the legality of the law itself.[49]

---

[46] *Id.* at 672-675.

[47] *Id.* at 676.

[48] Under the NEA Administrative Rules of Procedures of 2013.

[49] *Id.* at 677.

Finally, petitioners' assertion that in our jurisdiction the filing of a motion for reconsideration stays the motion for execution of the decision, citing Section 4, Rule 52 of the 1997 Rules of Civil Procedure, is misplaced. The Court of Appeals correctly ruled that the Decision of the NEA Board of Administrators is immediately executory despite a Motion for Reconsideration duly filed, pursuant to Section 15.[50] That a decision is immediately executory does not prevent a party from questioning the decision before a court of law.

2. The Court of Appeals correctly ruled that the remaining seven of the fifteen members of the BATELEC II Board of Directors can constitute a quorum.[51]

The OSG claims that since there is now no existing restraining order to hold in abeyance the implementation of said Decision, petitioners are considered removed from office as directors of BATELEC II. As a result of the removal of petitioners, there remain only seven members of the BATELEC II Board of Directors in office, a majority of whom constitutes a quorum to do business.

3. The Court of Appeals correctly held that respondent NEA Administrator Edita Bueno did not act with grave abuse of discretion in issuing the subject October 9, 2006 letter.[52]

The OSG reasons that there was no showing that respondent Bueno supposedly exercised her power in a despotic, capricious or whimsical manner.

In their **Joint Reply**[53] to NEA and OSG, petitioners declare that there is no forum shopping in this case. This is a petition for review of the Court of Appeals Decision on pure questions of law. The Court of Appeals has not dismissed the other cases before it on such ground.

---

[50] *Id.*

[51] *Id.* at 679.

[52] *Id.* at 682.

[53] *Id.* at 692-710.

To show non-forum shopping, petitioners explain that CA-G.R. No. 95902 was filed to question the action of NEA under May 25, 2006 order, violating its own rules of procedures which requires the payment of filing fee and the submission of a certificate of non-forum shopping before it can take cognizance of any complaint. This was filed against the administrative cases filed by the Municipal Mayors under NEA ADM. Case No. 02-02-06 and another administrative case filed by the Employees Association docketed as NEA ADM. Case No. 01-02-06. CA-G.R. No. 96214 is the second petition filed for the Administrative case filed by the Member-Consumers under NEA ADM. Case No. 01-05-05. Finally, CA-G.R. SP No. 96486 was filed relative to the decision of Administrator Edita S. Bueno, regarding NEA ADM. Case No. 01-05-05, which prematurely executes the decision of the NEA Board of Administrators dated October 5, 2006.

Petitioners cannot file an appeal pending a Motion for Reconsideration. This case and CA-G.R. SP No. 96486 center on an *interlocutory order* of respondent Bueno dated October 9, 2006 executing the decision of the Board of Administrators on October 5, 2006. This order cannot be a subject of appeal, but only corrected by a petition for *certiorari* under Rule 65. This is why petitioners filed the case before the Court of Appeals, which is now the subject of this petition for review. When the motion for reconsideration was filed on October 12, 2006 no appeal could be made on the questioned decision pending such motion as the same would be premature. Furthermore, considering that one of the issues in this case is the propriety of the NEA Administrative Rules for its direct violation of Presidential Decree No. 269 which it seeks to implement, the provision of such rules proscribing the filing of a petition for *certiorari* cannot apply as it would undermine the jurisdiction of this Court to decide on such legal question.

Petitioners conclude that the Court of Appeals decision upholding the order of the NEA pursuant to Section 15 of the NEA Administrative Rules is improper and violated Presidential Decree No. 269.

THE COURT OF APPEALS' RULING

The Court of Appeals found petitioners' stance that the NEA decision cannot be executed pending a motion for reconsideration to be without merit. The Court of Appeals said that petitioners' position is not supported by Section 15, Rule V of the New Administrative Rules of Procedures of the NEA and its Administrative Committee, the very Section they are relying on, as the said provision states that decisions of the NEA are immediately executory.[54]

The Court of Appeals also found nothing irregular with respondent Bueno's orders to have the remaining members of the board of BATELEC II reorganize and elect a new set of officers. Citing Section 24 (d) of Presidential Decree No. 269, the Court of Appeals said that a mere majority of directors in an office is sufficient to constitute a quorum and since the petitioners were removed from office, they could no longer claim any right over their positions when respondent Bueno issued such directive.[55] The Court of Appeals held as follows:

> In sum, We hold that public respondent Edita Bueno did not commit abuse of discretion much less grave in issuing the assailed letter of October 9, 2006. Grave abuse of discretion implies capricious and whimsical exercise of judgment amounting to lack of jurisdiction or arbitrary and despotic exercise of power because of passion or personal hostility. The word "capricious," usually held in tandem with the term "arbitrary," conveys the notion of willful and unreasoning action. Thus, when seeking the corrective remedy of certiorari, a clear showing of caprice and arbitrariness in the exercise of discretion is imperative. It is also required that the grave abuse of discretion must be so patent and gross as to amount to an evasion or refusal to perform a duty enjoined by law.[56] (Citations omitted.)

In denying petitioners' motion to cite respondents in contempt of court, the Court of Appeals quoted Section 4, Rule 71 of the

---

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

[55] *Id.* at 35-37.

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

Rules of Court and held that a charge of indirect contempt should be commenced through a verified petition and not by a mere motion.[57]

On February 7, 2007, the NEA issued Guidelines[58] in the implementation of the Supreme Court *Status Quo Ante* Order in G.R. No. 175736. It states that "All members of the Board of Directors shall be allowed entry to the premises of BATELEC II during Board meetings duly called for the purpose and upon proper notice."

Public respondents filed their **MEMORANDUM**[59] on June 4, 2007.

On June 12, 2007, the Court resolved to grant petitioners' Manifestation and Motion dated March 31, 2007 praying, among others, for the enforcement of the *Status Quo Ante* Order anew and ordering the Chief of the Philippine National Police, the Chief of Staff of the Armed Forces of the Philippines, and the Director of the National Bureau of Investigation or other law enforcement agencies to serve and ensure the enforcement of the subject order.

Petitioners filed a Very Urgent Ex Parte Manifestation and Motion[60] on June 25, 2007 stating that respondents were trying to pre-empt the *Status Quo Ante* Order dated December 29, 2006 by calling for the replacement of petitioners, directors of BATELEC II, through self-serving proclamations and calling for another election, even before the actual and effective implantation of the subject *Status Quo Ante* Order. Petitioners prayed anew for the enforcement of said *Status Quo Ante* order, and for an order clearly defining and enumerating all the actions that need to be enforced by the law enforcement agencies.

---

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

[58] *Id.* at 715-721.

[59] *Id.* at 747-783.

[60] *Id.* at 814-827.

This was followed by an Addendum to the Very Urgent Ex Parte Manifestation and Motion[61] alleging that respondents have refused to follow the *Status Quo Ante* Order and to reinstate petitioners as directors, and even called for a special election to replace such directors who were ordered reinstated by this Court. Such special election was approved by the "minority" Board of Directors, without the participation of the eight members of the BATELEC II Board constituting the majority, through its Board Resolution No. 3, Series of 2007. Petitioners prayed that "such illegal call for an election be expressly included in the list of the activities that was restrained by this Most Honorable Court in a *STATUS QUO ANTE* that was issued last December [29, 2006] and confirmed *NUNC PRO TUNC* in an order dated January 16, 2007."[62]

On July 31, 2007, acting on the ADDENDUM TO THE VERY URGENT *EX-PARTE* MANIFESTATION AND MOTION, the Court resolved as follows:

1) To reiterate the *status quo ante* order issued on December 29, 2006;

2) To deputize x x x the Chief of the Philippine National Police and National Bureau of Investigation to enforce the aforesaid *status quo ante* order to ensure the faithful compliance therewith;

3) To require the respondents to comment within ten (10) days from notice on the aforementioned ADDENDUM x x x; and

4) To enjoin the respondents as of August 4, 2007 from calling/ conducting any election of Directors to the Board of BATELEC II.[63]

On August 1, 2007, a Motion for Intervention with Prayer to Admit Attached Comment in Intervention[64] was filed by Rupert

---

[61] *Id.* at 829-843.

[62] *Id.* at 832.

[63] *Id.*, Vol. II, p. 844.

[64] *Id.* at 862-886.

H. Manalo, Natalio M. Panganiban, Dakila P. Atienza, Leovino S. Hidalgo, Adrian C. Ramos, Michael Angelo C. Rivera, and Gonzalo O. Bantugon (Movants-Intervenors) in their capacity as incumbent Board of Directors of BATELEC II. Movants-Intervenors allege that they are the remaining directors of BATELEC II after the October 5, 2006 NEA decision removed petitioners as members of the Board of Directors. They claim that the act of not impleading them as respondents in the two petitions filed by petitioners with the Court of Appeals and this Court is arbitrary and whimsical and betray petitioners' agenda, tainted with malice and bad faith, to deny them the full opportunity to address squarely the issues raised in their Petitions.

Movants-Intervenors claim an outstanding legal interest in the subject matter of the controversy which can be characterized as direct and immediate in the sense that they will stand to lose or benefit in any Decision that this Court will render, in their capacity as Board of Directors, as the Decision will determine if there will be a reorganization and election of officers in BATELEC II. There is no denying that petitioners are seeking the nullification of the NEA's Decision dated October 5, 2006. Assuming *ex gratia argumenti* that this Court would rule in favor of the petitioners, this would in effect render nugatory the valid reorganization and election of new officers undertaken by the remaining members of the Board of Directors of BATELEC II.

Movants-Intervenors allege that majority of the members of the Board of Directors in office is sufficient to constitute a quorum according to Section 24 of Presidential Decree No. 269 and Section 4, Article V of BATELEC II's By-laws. The latter reads as follows:

ARTIKULO V — PULONG LUPON

SEKSIYON 4. ANG NAKAKARAMI SA LUPON AY BUBUO NG [KORUM], pasubali, na kung sa nakakarami sa lupon ay dumalo sa naturang pulong, ang nakakarami sa dumalong lupon ay maaaring magtindig ng pulong sa pana-panahon; at sa pasubali pa rin, na pagtatalastasan ng kalihim ang mga hindi dumalong kagawad ng lupon ng tungkol sa oras at pook ng naturang ititindig na pulong.

Ang mga Gawain ng nakakaraming dumalong kagawad ng lupon sa isang pulong na may korum ay siyang magiging Gawain ng lupon, maliban kung may naiibang itinakda sa alituntuning panloob nito.[65]

Movants-Intervenors allege that petitioners Gutierrez, Panaligan, Remo and Casalme are only holding their positions in a hold-over capacity in view of the expiration of their respective terms of office. The *Status Quo Ante* Order cannot stop the expiration of the term of office of petitioners or the holding of District elections. The petitioners' act of registering with the CDA on November 17, 2006 violated the *Status Quo Ante* Order since the *status quo* prior to the October 5, 2006 Decision was that BATELEC II was not yet registered with the CDA. The laws were therefore not observed in said CDA registration.[66]

Movants-Intervenors submit that they were not impelled or motivated to delay the speedy disposition of the instant case but basically just wanted to protect their legal interest – that when they reorganized and elected a new set of officers on October 12, 2006 pursuant to the October 5, 2006 decision of NEA and the October 9, 2006 directive of respondent Bueno, their number validly constituted a quorum, and that their acts as the incumbent Board of Directors were valid.

Movants-Intervenors interpose additional facts, claiming that on May 12, 2005, concerned member-consumers of BATELEC II filed with the NEA an administrative complaint[67] against petitioners as members of the Board of Directors of BATELEC II based on the Comprehensive Audit Report of NEA dated March 18, 2005 covering the period April 1, 2004-September 30, 2004 for gross mismanagement and corruption, for awarding without bidding the Seventy-Five Million Pesos (₱75,000,000.00) contract of the computerization project of BATELEC II to I-SOLV Technologies, Inc. with Sixty-Two Thousand Five Hundred Pesos (₱62,500.00) paid-up capital, and authorizing, after a questionable

---

[65] *Id.* at 980.

[66] *Id.* at 874-877.

[67] *Id.* at 892-896.

bidding process, the purchase of ten (10) units of boom trucks at an amount of Six Million One Hundred Thousand Pesos (₱6,100,000.00).

Movants-Intervenors aver that on November 17, 2006, petitioners registered BATELEC II with the CDA without the knowledge of movants-intervenors, employees, and members-consumers. This registration was meant to remove the regulatory and supervisory power of the NEA over BATELEC II. Aside from the fact that the registration was done by petitioners who were already dismissed by the NEA as members of the Board of Directors of BATELEC II at the time of registration, it did not also go through the procedure as required by law.[68]

Movants-Intervenors allege that on February 8, 2007, a mediation proceeding was conducted at Southern Police Headquarters Region 4 headed by Gen. Nicassio Radovan and on February 9, 2007, respondent Bueno issued Guidelines in the Implementation of the *Status Quo Ante* Order.[69]

In their **COMMENT IN INTERVENTION**,[70] movants-intervenors aver that:

1. The Court of Appeals did not err in ruling that the 5 October 2006 Decision of the National Electrification Administration (NEA) is executory even pending a Motion for Reconsideration filed by petitioners.[71]

Movants-Intervenors claim that petitioners' assertion that the Court of Appeals erred in its interpretation of Section 15 of the NEA Rules in relation to Section 58 of Presidential Decree No. 269 is devoid of merit. A cursory reading of Section 15 of the NEA Rules is very categorical, too plain to be mistaken that NEA's Decision is immediately executory regardless of the pendency of a Motion for Reconsideration filed by petitioners.

---

[68] *Id.* at 868.

[69] *Id.* at 1003-1009.

[70] *Id.* at 971-984.

[71] *Id.* at 971.

The rule is also clear that although the NEA Decision is immediately executory this should not prejudice petitioners from filing a Motion for Reconsideration, which remedy in fact they availed of. Movants-Intervenors point out that not only Section 58 but also Section 59 of Presidential Decree No. 269 provides judicial review of the NEA's Decision.

Movants-Intervenors lament the absurdity in petitioners' claim that "[w]hile the law allows judicial review of its decision, NEA under its issued rules expressly disallowed the same by stating in its rules that its decision is immediately executory." They assert that petitioners believe that while their Motion for Reconsideration of the NEA Decision is pending, they should remain as members of the Board until the time their Motion for Reconsideration attains finality. Contrary to petitioners' claim, Section 15 of the NEA Rules is not inconsistent with Section 58 of Presidential Decree No 269; hence, the Court of Appeals correctly interpreted those two provisions of law. The former law did not supplant the latter law; the two complement each other.[72]

Movants-Intervenors allege that while petitioners' motion for reconsideration was pending resolution at the NEA, they availed of another remedy and that is a petition for review on *certiorari* under Rule 65 of the Rules of Court with the Court of Appeals assailing the NEA Decision. In doing so, petitioners are deemed to have abandoned their Motion for Reconsideration and cannot fault the NEA from no longer acting on the same.

2. The Court of Appeals did not err in interpreting Section 24 (d) of PD No. 26 and ruling that the remaining members of the Board of Directors of BATELEC can constitute a quorum to elect officers and conduct business in the cooperative.[73]

As regards petitioners' claim that since their Motion for Reconsideration is pending, their office cannot be considered

---

[72] *Id.* at 973.

[73] *Id.* at 975.

vacant and they are still considered the majority in determining quorum of the Board of Directors of BATELEC II, movants-intervenors aver that petitioners were validly terminated under the assailed NEA Decision which is immediately executory and was not stalled by the Motion for Reconsideration. The NEA is a quasi-judicial body not strictly bound by technical rules of procedure and administrative agencies are endowed with delegated rule-making powers. NEA's function as the supervisory and regulatory agency of electric cooperatives like BATELEC II is invested with public interest.

The NEA filed its COMMENT and MANIFESTATION WITH MOTION FOR RECALL on August 13, 2007.[74]

The NEA contends that petitioners' prayer to remove Evangelito S. Estaca as project supervisor of BATELEC II in its Addendum to the very urgent manifestation and motion is off-tangent, if not a usurpation of NEA's power to exercise supervision and control over electric cooperatives, and out of context in the October 5, 2006 NEA Decision and the December 29, 2006 Minute Resolution.

The NEA further contends that Estaca's appointment was by virtue of Office Order No. 2006-131, Series of 2006.[75] It is an administrative remedial measure and instrument for the abatement of "mass actions" of employees and member-consumers, who are more or less 190,000, that were disrupting the operation of the distribution utility. Aside from reinstating petitioners as Directors, NEA voluntarily complied with the *Status Quo Ante* Order in its NEA-GUIDELINES dated February 7, 2007. The NEA is not prohibited from appointing a project supervisor in the exercise of its administrative remedial measure. The project supervisor is vested to exercise management control.

---

[74] *Id.* at 985-1002.

[75] *Id.* at 1010.

G.R. No. 175898

In their **VERIFIED PETITION FOR INDIRECT CONTEMPT**[76] filed on January 10, 2007, petitioners claim that the *Status Quo Ante* Order was served on respondents and their counsel by the process server of the Supreme Court on December 29, 2006. However, on January 2, 2007, petitioners requested the Chief of Police of Lipa City to cause the service of the said order to the representative of the NEA in the person of Project Supervisor Estaca who was holding office in the BATELEC II Compound.

After said service of order, petitioners Remo, Gutierrez, Tagle, Roxas, and Casalme, armed with the Order, attempted to enter the premises of BATELEC II to assume their respective posts, but they were refused entry by the security guards of the compound, who in turn said they were given specific orders by NEA, through its Project Supervisor Estaca as well as by the Acting General Manager of BATELEC II, Marilyn Caguimbal, not to let petitioners in. Their pictures were even posted near the gate of the compound so as to ensure said orders. Petitioners attached photographs of these events as annex "B" and the collective affidavit of petitioners as annex "A."[77]

RESPONDENT MARILYN CAGUIMBAL'S COMMENT TO THE PETITION filed on February 27, 2007[78]

Respondent Caguimbal asserts that she never intended to bring disrepute or disrespect to the Court through a willful and obstinate disobedience of its *Status Quo Ante* Order of December 29, 2006. Respondent Caguimbal contends that petitioners' charge is unkind and wanting of basis in fact and in law and the accusation is plainly predicated on hearsay information and self-serving

---

[76] *Rollo* (G.R. No. 175898), pp. 3-11.

[77] *Id.* at 14-23.

[78] *Id.* at 47-62.

conclusions. The Petition and their Collective Affidavit are devoid of any evidence to prove the fact that respondent Caguimbal had indeed ordered the security guards not to honor the Court's order. Petitioners' allegations and submissions merely indicate a supposed discussion that transpired between them and the security guards; out of the said exchange sprung the identity of the alleged architects of the contumacious act.

Claiming that mere allegation is not evidence, respondent Caguimbal strongly takes exception to petitioners' asseverations and vile allusions that she antedated the questionable appointment of caretaker directors in order to defy this Court's *Status Quo Ante* Order. Save for a self-serving and *non sequitur* conclusion that the antedating evidenced by the "Stamp receipt of the said order which reflects the date of its promulgation,"[79] there is nothing that supports their claim of date-meddling. Neither BATELEC II nor respondent Caguimbal were impleaded as party-respondents in G.R. No. 175736. Consequently, the *Status Quo Ante* Order is inapplicable to her, as neither she nor the company she serves was personally directed to implement said Order.

Respondent Caguimbal undertook measures in good faith and having in mind the need to avoid occurrence of any untoward incident that may arise from the implementation of the *Status Quo Ante* Order. The tension between the petitioners and employees and members of BATELEC II had been on an all-time high. Members of BATELEC II were the complainants against petitioners who ultimately caused the latter's removal from their posts as directors of BATELEC II.

On November 24, 2006, a violent encounter between the petitioners and the employee-members of BATELEC II ensued. This culminated in the filing of criminal charges against said petitioners. At the time petitioners attempted to enter the premises, there was no scheduled board meeting. Under NEA Bulletin No. 35 dated June 18, 1990, members of the Board of Directors of an electric cooperative should not hold regular office hours in the cooperative. Petitioners had no right to demand that they

---

[79] *Id.* at 51.

be allowed entry into the premises on the ostensible reason that they were imposing the *Status Quo Ante* Order of this Court. The NEA guidelines state how they are to assume their post, and it clearly does not entail them entering the premises at will, to the detriment of the peace and order situation in the BATELEC II compound.

Respondent Caguimbal claimed good faith, a sincere desire to forestall any unpleasant incident in the implementation of this Court's *Status Quo Ante* Order, and total lack of intention to impede, obstruct or degrade the administration of justice.

The **COMMENT**[80] of public respondents Department of Energy Secretary Raphael Lotilla, NEA Administrator Bueno, NEA Board Member Wilfredo Villena, NEA Board Member Jose Victor Lobrigo, and Project Supervisor Evangelito Estaca was filed on April 10, 2007.

Public respondents aver that they may not be held guilty of indirect contempt and the petition should be dismissed. NEA Bulletin No. 35 limits and delineates the Board members' authority to avoid conflicts with REC management and staff. Thus, as Board members of BATELEC II, petitioners can only exercise authority when the Board is in session and when any of them has a special assigned duty.

Public respondents further aver that petitioners failed to show that the Board had a session on January 2, 2007 requiring their attendance. Similarly, petitioners did not allege that any of them had a special assigned duty justifying their presence in BATELEC II premises. Considering that Board members are specifically prohibited from involving themselves in management functions, intruding in the day-to-day management and operations of the cooperative and holding regular office hours therein, the *status quo* prevailing prior to October 5, 2006 is that petitioners as members of BATELEC II Board of Directors may enter the premises only when there is a board session or when a Board member has a special assigned duty.

---

[80] *Id.* at 90-123.

PETITIONERS' MEMORANDUM[81]

In **Petitioners' Memorandum** filed on May 21, 2007, the issues according to petitioners are as follows:

1. May the Honorable Court of Appeals be permitted to allow an administrative office created by law to declare its decision as final and executory despite the provision of the same law subjecting its decisions to judicial review?
2. May the Honorable Court of Appeals be permitted to allow a Public Officer to execute a decision while the same is pending consideration of its office?
3. May the Honorable Court of Appeals be permitted to allow a minority of the Board of Directors of a Cooperative to constitute a quorum, while an order dismissing the majority of the Board is still under reconsideration?[82]

In the **Consolidated Memorandum**[83] filed by the **Office of the Solicitor General** on September 21, 2007, they claim that public respondents may not be held guilty of indirect contempt and the petition should be dismissed. Petitioners' allegations are bare and unsubstantiated. The Court's *Status Quo Ante* Order issued in G.R. No. 175736 was specifically addressed to the parties in that case, namely, herein petitioners, Administrator Edita S. Bueno, NEA Board of Administrators and Member-Consumers of BATELEC II. Respondents Caguimbal and Estaca are not parties to the said case and they did not act in any of the parties' place or stead.

On January 7, 2007, the day petitioners claim that the *Status Quo Ante* order was being served on BATELEC II, respondent Estaca did not receive the Order on the belief that he did not have authority to do so as he was not a party to the case wherein it was issued, and consequently, he was not among those enjoined by the Honorable Court's Order to maintain the *status quo*.

---

[81] *Rollo* (G.R. No. 175736), pp. 793-813.

[82] *Id.* at 794-795.

[83] *Id.*, Vol. II, pp. 1091-1125.

Estaca was designated by the NEA Board of Administrators, through its Resolution No. 124[84] passed in its November 30, 2006 meeting, as BATELEC II Project Supervisor pursuant to Section 7 of Presidential Decree No. 1645 and NEA BATELEC II Loan and Mortgage Agreements. As such, his functions are only the following:

1. Oversee the operations and management of BATELEC II;

2. Review, approve/disapprove Board Resolutions and Policies; and

3. Sign checks, withdrawal slips and other banking transactions.

Estaca's honest belief that he had no authority to receive the Order based on his specific functions enumerated above, coupled with the fact that he is not a party to the case where the *Status Quo Ante* Order was issued, negate any intention on his part to disobey the Honorable Court's Order.

As regards respondents NEA Administrator Edita Bueno, DOE Secretary Raphael Lotilla, Wilfredo Billena and Jose Victor Lobrigo, petitioners failed to demonstrate how they are guilty of disobeying or resisting the Court's *Status Quo Ante* Order, or that they even knew of the January 2, 2007 incident.

As a collegial body, respondents-members of the NEA Board of Administrators did not perform any act that would contravene the *Status Quo Ante* Order. Aside from the alleged refusal of respondent Estaca to receive the service of the said Order, nowhere in the petition were there alleged circumstances that would show that the other respondents willfully disregarded the Honorable Court's Order that would tend to bring its authority and the administration of law into disrepute or impede the administration of justice. It appears that the acts of respondents Caguimbal and Estaca were deemed by petitioners to be the acts of the other respondents, which is illogical and unfair.

---

[84] *Rollo* (G.R. No. 175898), pp. 103-104.

The OSG attached as Annex "D" a copy of the letter dated December 28, 2006 of respondents Caguimbal and Estaca to Mayor Felipe A. Marquez of Rosario, Batangas, informing him of the NEA directive to designate caretaker-directors to take the place of the eight (8) ousted members of the BATELEC II Board of Directors, herein petitioners, pending the scheduled election and organization of the Multi-sectoral Electrification Advisory Council. The claim that said letter was antedated was preposterous.

On February 20, 2013, Movants-Intervenors filed a motion asking this Court to clarify the scope of the *Status Quo Ante* Order, *i.e.*, if the proscription on the calling/conduct of an election for BATELEC II's Board of Directors includes a proscription on the appointment and designation of a member to the BATELEC II Board. This Court's resolution dated July 23, 2013 reads in part:

> *"Status Quo Ante"* is a Latin term for "the way things were before." An order of this nature is imposed to maintain the existing state of things before the controversy. In this case, the STATUS QUO ANTE ORDER was issued to maintain the condition prevailing before the National Electrification Administration issued the assailed Order dated October 5, 2006. This naturally includes changes in the composition of the Board of BATELEC II, whether by election, appointment, or designation.
>
> Acting on the Motion for Clarification dated February 4, 2013, filed by Movant-Intervenors, this Court holds that the Status Quo Ante Order includes a proscription on the appointment or designation of a member to the BATELEC Board.[85]

THIS COURT'S RULING

The petition in **G.R. No. 175736** is devoid of merit as the Court of Appeals did not commit reversible error in its assailed Decision. Thus, petition is hereby **DENIED**.

---

[85] *Rollo* (G.R. No. 175736), Vol. III, pp. 1399-1400.

The petition in **G.R. No. 175898** for indirect contempt has no leg to stand on and is based on empty and baseless averments and is hereby **DISMISSED**.

DISCUSSION

The Court of Appeals did not commit reversible error in holding that there was no abuse of discretion on respondent Bueno's part when she issued her October 9, 2006 order, as such was done in the legitimate exercise of her mandate under Presidential Decree No. 269, and pursuant to Section 15 of the NEA Rules of Procedures.

In furtherance of its authority to adopt its own rules of procedure, the NEA Board of Administrators approved on May 19, 2005 the Rules of Procedure. Pertinent provisions of the NEA Rules of Procedures are quoted below:

> THE NEW ADMINISTRATIVE RULES OF PROCEDURES OF THE NATIONAL ELECTRIFICATION ADMINISTRATION and its ADMINISTRATIVE COMMITTEE
>
> Rule V: SECTION 15. Execution of Decision. — The Decision of the NEA shall be immediately executory although the respondent(s) is not precluded from filing a Motion for Reconsideration unless a restraining order or an injunction is issued by the Court of Appeals in which case the execution of the Decision shall be held in abeyance.[86]

On the other hand, the NEA Decree, Presidential Decree No. 269 (1973) contains the following provisions:

> SECTION 24. *Board of Directors*. — (a) The business of a cooperative shall be managed by a board of not less than five directors, each of whom shall be a member of the cooperative or of another which is a member thereof. The by-laws shall prescribe the number of directors, their qualifications other than those prescribed in this Decree, the manner of holding meetings of the board and of electing successors to directors who shall resign, die or otherwise be incapable of acting. The by-laws may also provide for the removal of directors from office and for the election of their successors. Directors shall

[86] Approved by the NEA Board of Directors on May 19, 2005.

not receive any salaries for their services as such and, except in emergencies, shall not receive any salaries for their services to the cooperative in any other capacity without the approval of the members. The by-laws may, however, prescribe a fixed fee for attendance at each meeting of the board and may provide for reimbursement of actual expenses of such attendance and of any other actual expenses incurred in the due performance of a director's duties.

(b) The directors of a cooperative named in any articles of incorporation, consolidation, merger or conversion shall hold office until the next annual meeting of the members and until their successors are elected and qualify. At each annual meeting of, in case of failure to hold the annual meeting as specified in the by-laws, at a special meeting called for that purpose, the members shall elect directors to hold office until the next annual meeting of the members, except as otherwise provided in this Decree. Each director shall hold office for the term for which he is elected and until his successor is elected and qualifies.

(c) Instead of electing all the directors annually, the by-laws may provide that each year half of them or one-third of them, or a number as near thereto as possible, shall be elected on a staggered term basis to serve two-year terms or three-year terms, as the case may be.

(d) A majority of the board of directors in office shall constitute a quorum.

(e) The board shall exercise all of the powers of a cooperative not conferred upon or reserved to the members by this Decree or by its articles of incorporation or by-laws.

SECTION 49. *NEA Rules and Regulations*. — The NEA shall establish appropriate rules and regulations to carry out the provisions of this Chapter IV, including rules for the conduct of NEA investigations, proceedings and hearing; and shall timely publish the same when adopted or amended to the end that all persons affected thereby shall be given reasonable notice thereof.

SECTION 58. *Reconsideration*. — Any interested party may request the reconsideration of any order, ruling, or decision of the NEA by means of a petition filed not later than fifteen (15) days after the date of the notice of the order, ruling, or decision in question. The grounds on which the request for reconsideration is based shall be clearly and specifically stated in the petition. Copies of said petition

shall be served on all parties interested in the matter. It shall be the duty of the NEA to decide the same within thirty (30) days, either denying the petition or revoking or modifying the order, ruling, or decision under consideration. If no petition for reconsideration is filed, no review by the Supreme Court as hereinafter provided shall be allowed.

SECTION 59. *Court Review*. — The Supreme Court is hereby given jurisdiction to review any order, ruling, or decision of the NEA and to modify or set aside such order, ruling, or decision when it clearly appears that there was no evidence before the NEA to support reasonably such order, ruling, or decision, or that the same is contrary to law, or that it was without the jurisdiction of the NEA. The evidence presented to the NEA, together with the record of the proceedings before the NEA, shall be certified by the NEA to the Supreme Court. Any order, ruling, or decision of the NEA may likewise be reviewed by the Supreme Court upon writ of *certiorari* in proper cases. The procedure for review, except as herein provided, shall be prescribed by rules of the Supreme Court. Any order, ruling, or decision of the NEA may be reviewed on the application of any person or public service entity aggrieved thereby and who was a party in the subject proceeding, by *certiorari* in appropriate cases or by a petition for review, which shall be filed within thirty (30) days from the notification of the NEA order, decision or ruling on reconsideration. Said petition shall be placed on file in the office of the Clerk of the Supreme Court who shall furnish copies thereof to the NEA and other interested parties.

We are one with all the respondents, and, more importantly, the Court of Appeals, in ruling against the strained interpretation petitioners assign to Section 15 of the NEA Rules of Procedures so as to make it inconsistent with Presidential Decree No. 269.

That NEA has quasi-judicial functions is recognized by Rule 43 of the 1997 Revised Rules of Civil Procedure, regarding appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals:

SEC. 1. *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among

these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, **National Electrification Administration**, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

In *United Coconut Planters Bank v. E. Ganzon, Inc.*,[87] we held that:

> A quasi-judicial agency or body is an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. **A "quasi-judicial function" is a term which applies to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature.** (Citations omitted. Emphasis added.)

The October 9, 2006 Order of respondent Bueno implementing the October 5, 2006 Decision of the NEA Board of Administrators was found by the Court of Appeals to be a valid exercise of both the NEA's Administrator, in charge of the supervision and control aspect, and the Board, in charge of the quasi-judicial function. There was no grave abuse of discretion on respondent Bueno's part. Neither do we find error in the Court of Appeals' appreciation of the facts and the applicable rules and laws.

---

[87] 609 Phil. 104, 122 (2009).

Very recently, this Court had occasion to review the powers and functions of the NEA. In *Zambales II Electric Cooperative, Inc. Board of Directors v. Castillejos Consumers Association, Inc.*,[88] we held:

A. *The NEA's creation and disciplinary jurisdiction*

The present NEA was created in 1973 under P.D. No. 269 to administer the country's total electrification on an area coverage basis, by organizing, financing and regulating electric cooperatives throughout the country. The NEA's enforcement powers under P.D. No. 269, however, was limited.

In 1979, P.D. No. 1645 amended P.D. No. 269 and **broadened the NEA's regulatory powers**, among others. Specifically, the amendments **emphatically recognized the NEA's power** of **supervision and control** over electric cooperatives; and **gave it the power to conduct investigations, and impose preventive or disciplinary sanctions over the board of directors** of regulated entities. Section 10 of P.D. No. 269, as amended by P.D. No. 1645 reads:

> Section 10. *Enforcement Powers and Remedies.* — **In the exercise of its power of supervision and control over electric cooperatives** and other borrower, supervised or controlled entities, **the NEA is empowered to issue orders, rules and regulations and *motu-prop[r]io* or upon petition of third parties, to conduct investigations, referenda and other similar actions in all matters affecting said electric cooperatives and other borrower, or supervised or controlled entities**.
>
> If the electric cooperative concerned or other similar entity fails after due notice to comply with the NEA orders, rules and regulations and/or decisions, or with any of the terms of the Loan Agreement, the NEA Board of Administrators may avail of any or all of the following remedies:
>
> xxx xxx xxx
>
> **(e) Take preventive and/or disciplinary measures including suspension and/or removal and replacement of any or all of the members of the Board of Directors, officers**

[88] G.R. Nos. 176935-36 (Resolution), October 20, 2014.

or employees of the Cooperative, other borrower institutions or supervised or controlled entities as the NEA Board of Administrators may deem fit and necessary and to take any other remedial measures as the law or the Loan Agreement may provide. (Emphasis supplied.)

Likewise, Section 24 of P.D. No. 269, as amended by P.D. No. 1645, stressed that the board of directors of a regulated electric cooperative is subject to the NEA's control and supervision. That provision reads:

> Section 24. *Board of Directors*. — (a) **The Management of a Cooperative shall be vested in its Board, subject to the supervision and control of the NEA** which shall have the right to be represented and to participate in all Board meetings and deliberations and to approve all policies and resolutions. [Emphasis supplied]

The NEA's **disciplinary jurisdiction** over the petitioners stems from **its power of supervision and control over regulated electric cooperatives** and over the board of directors who manage their operation. In the exercise of this broad power, the NEA may take preventive and/or disciplinary measures including the suspension, removal and replacement of any or all of the members of the board of directors, officers or employees of the cooperative.

xxx xxx xxx

At any rate, the Court judicially notices that on February 4, 2013, Congress enacted R.A. No. 10531, known as the National Electrification Administration Reform Act of 2013. Aware of the effects of restructuring the electric power industry under the EPIRA on electric cooperatives under P.D. No. 269, as amended, and on the responsibilities of the appropriate government agencies, like the NEA and the CDA, Congress enacted R.A. No. 10531 with a declared threefold state policy: *first*, to empower and strengthen the NEA; *second*, to empower and enable electric cooperatives (organized under P.D. No. 269 and its amendments, and the Philippine Cooperative Code of 2008; and related laws) to cope with the changes brought about by the EPIRA; and *third*, to promote the sustainable development in the rural areas through rural electrification.

Towards these ends, Congress further authorized the NEA to "supervise the management and operations of all electric cooperatives."

Pursuant to its power of supervision, Congress granted it the following powers:

xxx xxx xxx

(a) issue orders, rules and regulations, *motu proprio* or upon petition of third parties, **to conduct** investigations, **referenda and other similar actions on all matters affecting the electric cooperatives**;

(b) **issue preventive or disciplinary measures** including, but not limited to, suspension or removal and replacement of any of all of the members of the board of directors and officers of the electric cooperative, as the NEA may deem fit and necessary and to take any other remedial measures as the law or any agreement or arrangement with the NEA may provide, to attain the objectives of this Act: and [Emphasis supplied]

Also, R.A. No. 10531 reiterated Section 57 of the EPIRA, giving the electric cooperative the option either to remain as a non-stock, non-profit cooperative or convert into and register as a stock cooperative under the CDA or a stock corporation under the SEC in accordance with the law's IRR. Unlike the EPIRA's IRR, the IRR of R.A. No. 10531, which was drafted in coordination with the NEA and the CDA, among others, contains a more detailed enumeration of the requirements for conversion to be determined by the NEA itself. This enumeration still includes the conduct of a referendum.

More importantly, R.A. No. 10531 expressly provides that the NEA's power of supervision applies whether an electric cooperative remains as a non-stock cooperative or opts to register with the CDA as a stock cooperative. This only means that even assuming arguendo that the petitioners validly registered ZAMECO II with the CDA in 2007, the NEA is not completely ousted of its supervisory jurisdiction over electric cooperatives under the R.A. No. 10531. This law may be considered as curative statute that is intended to address the impact of a restructured electric power industry under the EPIRA on electric cooperatives, which has not been fully addressed by the Philippine Cooperative Code of 2008. (Citations omitted.)

Even more recently, in *Philippine Federation of Electric Cooperatives (PHILFECO) v. Ermita*,[89] the Court clarified NEA's role, and held:

Republic Act No. 10531 does not distinguish between the electric cooperatives registered with the CDA, the NEA or the SEC, inasmuch as Section 5 expressly subjects all electric cooperatives to the supervisory powers of the NEA. The deliberation on the proposed bill made this legislative intention clear x x x.

xxx xxx xxx

x x x As it now stands, the NEA is vested with the appropriate power of supervision and control over *all* electric cooperatives regardless of the manner of their creation and their option to be registered with the CDA or the SEC.

Supervision and Control are defined under the Administrative Code of 1987, Executive Order No. 292 (1987), to wit:

BOOK IV

Chapter 7 - Administrative Relationships

SECTION 38. *Definition of Administrative Relationship.* — 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:

(1) *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.

(2) *Administrative Supervision.* — (a) Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies

[89] G.R. No. 178082 (Notice), January 27, 2015.

as may be provided by law, shall be limited to the authority of the department or its equivalent to generally oversee the operations of such agencies and to insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them;

(b) Such authority shall not, however, extend to: (1) appointments and other personnel actions in accordance with the decentralization of personnel functions under the Code, except appeal is made from an action of the appointing authority, in which case the appeal shall be initially sent to the department or its equivalent, subject to appeal in accordance with law; (2) contracts entered into by the agency in the pursuit of its objectives, the review of which and other procedures related thereto shall be governed by appropriate laws, rules and regulations; and (3) the power to review, reverse, revise, or modify the decisions of regulatory agencies in the exercise of their regulatory or quasi-judicial functions; and

(c) Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "supervision" shall encompass administrative supervision as defined in this paragraph.

The NEA Rules of Procedures, in providing that the decisions are to be immediately executory, do not contradict the NEA Charter, as petitioner insists.

In much the same way, decisions of the Department of Agrarian Reform (DAR), an administrative agency cloaked with quasi-judicial functions, are immediately executory, as this Court explained in *Manuel v. Department of Agrarian Reform Adjudication Board (DARAB)*,[90] to wit:

[90] 555 Phil. 28, 34 (2007).

Section 17. Quasi-Judicial Powers of the DAR. — The DAR is hereby vested with quasi-judicial powers to determine and adjudicate agrarian reform matters, and shall have exclusive original jurisdiction over all matters involving implementation of agrarian reform, except those falling under the exclusive original jurisdiction of the DENR and the Department of Agriculture (DA).

The DAR shall have powers to punish for contempt and to issue *subpoena duces tecum* and writs to enforce its order or decisions.

The decisions of the DAR may, in proper cases, be appealed to the Regional Trial Courts but shall be **immediately executory** notwithstanding such appeal.

Furthermore, *in Springfield Development Corporation, Inc. v. Presiding Judge of RTC, Misamis Oriental, Br. 40*,[91] this Court ruled:

The DARAB is a quasi-judicial body created by Executive Order Nos. 229 and 129-A. R.A. No. 6657 delineated its adjudicatory powers and functions. The DARAB Revised Rules of Procedure adopted on December 26, 1988 **specifically** provides for the manner of judicial review of its decisions, orders, rulings, or awards. Rule XIV, Section 1 states:

> SECTION 1. *Certiorari* to the Court of Appeals. — Any decision, order, award or ruling by the Board or its Adjudicators on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement or interpretation of agrarian reform laws or rules and regulations promulgated thereunder, may be brought within fifteen (15) days from receipt of a copy thereof, to the Court of Appeals by *certiorari*, except as provided in the next succeeding section. Notwithstanding an appeal to the Court of Appeals the decision of the Board or Adjudicator appealed from, shall be immediately executory.

Further, the prevailing 1997 Rules of Civil Procedure, as amended, expressly provides for an appeal from the DARAB decisions to the CA.

Rules of procedure of other administrative agencies with quasi-judicial functions likewise provide for immediately executory

---

[91] 543 Phil. 298, 310-311 (2007).

decisions without prejudice to petitioner's filing of a motion for reconsideration. The following are further examples:

> Although the Order of the NTC dated May 3, 2000 granting provisional authority to Bayantel was immediately executory, it did not preclude the filing of a motion for reconsideration. Under the NTC Rules, a party adversely affected by a decision, order, ruling or resolution may within fifteen (15) days file a motion for reconsideration. That the Order of the NTC became immediately executory does not mean that the remedy of filing a motion for reconsideration is foreclosed to the petitioner.[92]

> SECTION 5. *Stay of Execution*. — The decision of the Administration shall be stayed during the pendency of the appeal; *Provided* that where the penalty imposed carries the maximum penalty of twelve months suspension or cancellation of license, the decision shall be immediately executory despite the pendency of the appeal.
>
> *Provided further* that where the penalty imposed is suspension of license for one month or less, the decision shall be immediately executory and may only be appealed on ground of grave abuse of discretion.[93]

Petitioners' contention that Section 15 of the NEA Rules of Procedures should be struck down for being invalid is absurd and would have this Court exercising judicial review and enforcing the same over a rule that does not even, in reality, deprive him of the remedy he wanted — a motion for reconsideration. Petitioner was, in fact, able to file a motion for reconsideration. There was no grave abuse of discretion on the part of the NEA Administrator in issuing the questioned Order, as it did not violate any rule or law and was done in the exercise of the authority granted to the NEA to supervise and control electric cooperatives, under its Charter.

---

[92] *Republic of the Philippines v. Express Telecommunication Co., Inc*., 424 Phil. 372, 400 (2002).

[93] POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers, Part VI, Rule V.

The Court does not strike down rules as invalid on a whim. There is nothing pernicious about the provision allowing decisions of the NEA Administrative Board to be "immediately executory." After a careful study of our records, we rule that the petition in G.R. No. 175736 must fail.

With regard to G.R. No. 175898, we agree with respondents that petitioners failed to prove their bare allegations of indirect contempt. We find the following as instructive:

NEA BULLETIN NO. 35
FUNCTIONS AND RESPONSIBILITIES OF THE RURAL ELECTRIC COOPERATIVES BOARD OF DIRECTORS

xxx xxx xxx

PROHIBITIONS

The position of director is a privilege granted by the members to a person whom they think can best represent and protect their interests in the cooperative. Directors have a moral responsibility to perform their jobs in furtherance of the best interests of the REC. Thus, Board members, either collectively or individually —

xxx xxx xxx

3. Should not intrude in the day-to-day management and operations of the cooperative where sufficient policies have been enacted . . . .

4. Should not hold regular office hours in the cooperative.[94] (Emphases ours.)

With regard to the assignment of a project supervisor, it is within the power of control and supervision of the NEA over BATELEC II as an electric cooperative organized and existing pursuant to Presidential Decree No. 269 as amended by Presidential Decree No. 1645.[95]

As correctly discussed by respondent Caguimbal:

---

[94] *Rollo* (G.R. No. 175898), pp. 77-82.

[95] *La Union Electric Cooperative, Inc. v. Yaranon*, 259 Phil. 457, 464 (1989).

The proceedings for punishment of indirect contempt are criminal in nature. The modes of procedure and rules of evidence adopted in contempt proceedings are similar in nature to those used in criminal prosecutions. Thus, any liberal construction of the rules governing contempt proceedings should favor the accused. It can be argued that Soriano has essentially been afforded the right to be heard, as he did comment on the charge of indirect contempt against him. Yet, *since an indirect contempt charge partakes the nature of a criminal charge, conviction cannot be had merely on the basis of written pleadings*. x x x. [96] (Citations omitted.)

As pointed out by all the respondents and discussed above, petitioners failed to clearly demonstrate how exactly respondents committed indirect contempt. Thus, we dismiss the petition.

On September 15, 2015, the Court issued a resolution[97] reiterating its earlier resolution, dated March 17, 2015, directing the Director of the National Bureau of Investigation to (i) arrest and detain counsel for private respondents Atty. Erwin M. Layog until the latter shall have filed the explanation and comment required in the Court's resolution dated August 19, 2014 and (ii) submit a report of NBI's compliance with the resolution within ten (10) days from notice hereof.

Since this case is now being disposed of, and it appearing on record that Atty. Layog has, to this date, failed to comply with the filing of explanation and comment on the letter dated January 3, 2012 of Hon. Nicanor M. Briones, Representative, AGAP Party List, and Vice-Chairperson, Committee on Cooperative Development, which comment has been required of him since January 31, 2012, the Court resolves to INFORM Atty. Layog that he is deemed to have waived the filing of the comment.[98] Counsel for private respondents is likewise informed that his payment of the fine imposed upon him is not equivalent to the filing of the required comment, which he twice did without submitting any explanation for his failure to file such comment,

---

[96] *Soriano v. Court of Appeals*, 474 Phil. 741, 750 (2004).

[97] *Rollo* (G.R. No. 175736), Vol. III, pp. 1458-1459.

[98] *Id.* at 1400-A.

and his actions constitute contumacious violation of a lawful order of this Court.

It appears, based on counsel for respondent Bueno and the NEA Board of Administrators' Compliance, that Hon. Nicanor Briones through his lawyer Atty. Joel C. Aguilar, was able to obtain copies of the pleadings, orders and other documents relative to these cases from NEA's legal services office, which was the subject of the letter dated January 3, 2012.[99]

WHEREFORE, in view of the foregoing, we hereby:

1. **DENY** the petition in G.R. No. 175736 and **AFFIRM** the Decision of the Court of Appeals in CA-G.R. SP No. 96486 as well as the October 9, 2006 Order of Respondent Edita S. Bueno;
2. **LIFT the *Status Quo Ante* Order** issued on December 29, 2006 in G.R. No. 175736; and
3. **DISMISS** the petition for indirect contempt in G.R. No. 175898 for lack of merit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Brion, Bersamin, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Caguioa, JJ.,* concur.

Del Castillo, J., no part.

Jardeleza, J., no part, prior OSG action.

Peralta, J., on official leave.

---

[99] *Id.* at 1418-1419.

FIRST DIVISION

[G.R. No. 202618. April 12, 2016]

CONSULAR AREA RESIDENTS ASSOCIATION, INC., represented by its President BENJAMIN V. ZABAT, ROMEO JUGADO, JR., and NANCY QUINO, *petitioner, vs.* **ARNEL PACIANO D. CASANOVA, ENGR. TOMAS Y. MACROHON, LOCAL HOUSING BOARD OF TAGUIG CITY, and THE CITY GOVERNMENT OF TAGUIG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; PROHIBITION; REQUISITES FOR THE ISSUANCE OF A WRIT OF PROHIBITION.— While the instant petition is denominated as one for prohibition, a careful perusal of the same reveals that it is actually a petition for injunction as it ultimately seeks that a writ of injunction be issued to permanently stop "[r]espondents, or any other person acting under their orders or authority, from carrying out, or causing to carry out, the demolition of [p]etitioner's properties." More significantly, respondents (with the exception of Casanova xxx) are not asked to be prevented from exercising any judicial or ministerial function on account of any lack or excess of jurisdiction, or grave abuse of discretion, which allegation is key in an action for prohibition. Case law dictates that "[f]or a party to be entitled to a writ of prohibition, he must establish the following requisites: (*a*) **it must be directed against a tribunal, corporation, board or person exercising functions, judicial[, quasi-judicial] or ministerial**; (*b*) **the tribunal, corporation, board or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion**; and (*c*) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law."

2. ID.; ID.; PLEADINGS AND PRACTICE; IT IS NOT THE CAPTION OF THE PLEADING THAT DETERMINES THE NATURE OF THE COMPLAINT BUT RATHER ITS ALLEGATIONS; CASE AT BAR IS AN ACTION FOR

INJUNCTION, NOT PROHIBITION.— It is a fundamental rule of procedural law that it is not the caption of the pleading that determines the nature of the complaint but rather its allegations. Hence, xxx , the petition, albeit denominated as one for prohibition, is essentially an action for injunction, which means that Section 4, Rule 65 of the Rules of Court would not apply. Instead, it is Section 21 of RA 7227, which solely authorizes the Supreme Court to issue injunctions to restrain or enjoin "[t]he implementation of the projects for the conversion into alternative productive uses of the military reservations," that would govern.

3. ID.; ID.; SPECIAL CIVIL ACTIONS; PROHIBITION; DOES NOT LIE TO INQUIRE INTO THE VALIDITY OF THE APPOINTMENT OF A PUBLIC OFFICER; THE TITLE TO A PUBLIC OFFICE MAY NOT BE CONTESTED EXCEPT DIRECTLY, BY *QUO WARRANTO* PROCEEDINGS AND IT CANNOT BE ATTACKED COLLATERALLY.— [W]hile the petition asks in the final item of its "PRAYER" that a "writ of prohibition be issued commanding respondents, especially Casanova, from usurping or exercising jurisdiction with which he has not been vested by law", this relief, when read together with the pertinent allegations in the body of the petition, is one which is directed against the title of respondent Casanova as President and Chief Executive Officer of the BCDA. Particularly, it is claimed that respondent Casanova's appointment was "highly anomalous and irregular" as it was made contrary to Section 9 of RA 7227, which purportedly mandates that the Chairman of the BCDA shall also be its President. The Court observes that the collateral attack on respondent Casanova's title as President and Chief Executive Officer, which is a public office by nature, is improper to resolve in this petition. The title to a public office may not be contested except directly, by *quo warranto* proceedings; and it cannot be assailed collaterally. Also, it has already been settled that **prohibition does not lie to inquire into the validity of the appointment of a public officer**.

4. ID.; ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTIONS; GROUNDS FOR THE ISSUANCE OF A WRIT OF INJUNCTION.— Jurisprudence teaches that in order for a writ of injunction to issue, the petitioner should be able to establish: (*a*) a right *in esse* or a clear and unmistakable

right to be protected; (*b*) a violation of that right; and (*c*) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage. In the absence of a clear legal right, the writ must not issue. A restraining order or an injunction is a preservative remedy aimed at protecting substantial rights and interests, and it is not designed to protect contingent or future rights. Verily, the possibility of irreparable damage without proof of adequate existing rights is not a ground for injunction. In this case, the Court finds that petitioner has failed to prove that the structures for which they seek protection against demolition fall within the Diplomatic and Consular Area.

5. ID.; ID.; ID.; ID.; THE DEMOLITIONS AND EVICTIONS MAY BE VALIDLY CARRIED OUT EVEN WITHOUT A JUDICIAL ORDER WHEN GOVERNMENT INFRASTRUCTURE PROJECTS WITH AVAILABLE FUNDING ARE ABOUT TO BE IMPLEMENTED PURSUANT TO SECTION 28 (b) OF RA 7279, OTHERWISE KNOWN AS THE URBAN DEVELOPMENT AND HOUSING ACT (UDHA) OF 1992.— [P]etitioner argues against the legality of the intended demolition, insisting that there should be a court order authorizing the demolition pursuant to Article 536 of the Civil Code and Section 28 of RA 7279, and not a mere Certificate of Compliance on Demolition. However, contrary to petitioner's argument, the Court has already settled, in the case of *Kalipunan ng Damay ang Mahihirap, Inc. v. Robredo,* that **demolitions and evictions may be validly carried out even without a judicial order when, among others, government infrastructure projects with available funding are about to be implemented pursuant to Section 28 (b) of RA 7279,** which reads: Sec. 28. *Eviction and Demolition.* – Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations: x x x. **(b) When government infrastructure projects with available funding are about to be implemented.** x x x. Records show that the demolition of the properties is the precursory step to the conversion of the JUSMAG area into a residential and mixed-use development as provided under the terms of a Joint Venture Agreement dated April 13, 2010 between the BCDA and Megaworld Corporation. As such, it falls within the ambit of Section 28

(b) of RA 7279, which authorizes eviction or demolition without the need of a court order.

6. ID.; EVIDENCE; PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; UNLESS THE PRESUMPTION OF REGULARITY OF OFFICIAL ACTS IS REBUTTED BY AFFIRMATIVE EVIDENCE OF IRREGULARITY OR FAILURE TO PERFORM A DUTY, IT BECOMES CONCLUSIVE, AS EVERY REASONABLE INTENDMENT WILL BE MADE IN SUPPORT OF THE PRESUMPTION AND IN CASE OF DOUBT AS TO AN OFFICER'S ACT BEING LAWFUL OR UNLAWFUL, CONSTRUCTION SHOULD BE IN FAVOR OF ITS LAWFULNESS; ABSENT ANY CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY, A CERTIFICATE OF COMPLIANCE ON DEMOLITION ISSUED BY THE LOCAL HOUSING BOARD SHOULD BE ACCORDED THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES.— [T]here is no merit to petitioner's statement that there was non-compliance with the parameters of just and humane eviction or demolition under the same provision x x x. Particularly, petitioner decries that the demolition is premature as the notice given to them was not issued thirty (30) days prior to the intended date of the same. However, records show that the demolition fully – if not, substantially – complied with all the parameters laid down under Section 28 (b) xxx , including the thirty (30) day prior notice rule, x x x. [I]t is in view of the xxx accomplished acts that respondent Local Housing Board of Taguig City issued a Certificate of Compliance on Demolition dated July 18, 2012 certifying that the BCDA "has complied with the requirement of 'Just and Humane Demolition and Eviction' prescribed under Section 28, pre-relocation phase of [RA] 7279 or the Urban Development and Housing Act (UDHA) of 1992." Hence, bereft of any clear and convincing evidence to the contrary, such certificate should be accorded the presumption of regularity in the performance of the official duties of respondent Local Housing Board of Taguig City. Case law states that "[t]he presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. **The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary.**

Thus, unless the presumption [is] rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness," as in this case.

7. ID.; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; PRAYERS FOR INJUNCTIVE RELIEFS DO NOT LIE TO RESTRAIN AN ACT THAT IS ALREADY *FAIT ACCOMPLI*.— [A]ttention should be drawn to the manifestation of respondents that the demolition and eviction activities in the JUSMAG Area, on which petitioner's claimed structures belong, had already been performed and completed on September 21, 2012. Thus, since prayers for injunctive reliefs do not lie to restrain an act that is already *fait accompli*, there is no other proper course of action but to dismiss the petition.

APPEARANCES OF COUNSEL

Calleja Law Office for petitioner.

Office of the Government Corporate Counsel for respondents Cassanova and Macrohon.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition[1] denominated as one for "Prohibition with plea for the issuance of a Temporary Restraining Order and Injunction" filed by petitioner Consular Area Residents Association, Inc., an association composed of residents of the Diplomatic and Consular Area of Fort Bonifacio, Taguig City, represented by its President Benjamin V. Zabat, Romeo Jugado, Jr., and Nancy Quino (petitioner), against respondents Arnel Paciano D. Casanova (Casanova), President and Chief Executive Officer of the Bases Conversion and Development Authority

[1] *Rollo*, pp. 3-15.

(BCDA), Engr. Tomas Macrohon[2] (Engr. Macrohon), as well as the Local Housing Board of Taguig City, and the City Government of Taguig, seeking that the BCDA be enjoined from demolishing what it claims as the remaining structures in the Joint US Military Army Group (JUSMAG) Area in Fort Bonifacio, Taguig City.

The Facts

In 1992, Congress enacted Republic Act No. (RA) 7227,[3] otherwise known as the Bases Conversion and Development Act of 1992, which, *inter alia*, created the BCDA in order to "accelerate the sound and balanced conversion into alternative productive uses of the Clark and Subic military reservations and their extensions (*i.e.*, John Hay Station, Wallace Air Station, O'Donnell Transmitter Station, San Miguel Naval Communications Station, and Capas Relay Station)" and "to raise funds by the sale of portions of Metro Manila military camps."[4] For this purpose, the BCDA was authorized to own, hold, and administer portions of the Metro Manila military camps that may be transferred to it by the President.[5] In this relation, Executive Order (EO) No. 40, Series of 1992[6] was issued, identifying

---

[2] Engr. Macrohon appears to be an officer of the BCDA, although his actual position/designation at the time the acts complained of is not ascertainable from the records.

[3] Entitled "AN ACT ACCELERATING THE CONVERSION OF MILITARY RESERVATIONS INTO OTHER PRODUCTIVE USES, CREATING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THE PURPOSE, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES," approved on March 13, 1992.

[4] See *id.*

[5] *Republic of the Philippines v. Southside Homeowners Association, Inc.*, 534 Phil. 8, 14 (2006).

[6] Entitled "IMPLEMENTING THE PROVISIONS OF REPUBLIC ACT NO. 7227 AUTHORIZING THE BASES CONVERSION AND DEVELOPMENT AUTHORITY (BCDA) TO RAISE FUNDS THROUGH THE SALE OF METRO MANILA MILITARY CAMPS TRANSFERRED TO BCDA TO FORM PART OF ITS CAPITALIZATION AND TO BE USED FOR THE PURPOSES STATED IN SAID ACT," dated December 8, 1992.

Fort Bonifacio as one of the military camps earmarked for development and disposition to raise funds for BCDA projects.[7]

Located in Fort Bonifacio are the JUSMAG and Diplomatic and Consular Areas subject of this case.[8] The JUSMAG Area is a 34.5-hectare area located along Lawton Avenue where military officers, both in the active and retired services, and their respective families, had occupied housing units and facilities originally constructed by the Armed Forces of the Philippines (AFP).[9] Presently, it is being developed by Megaworld Corporation as the McKinley West.[10] On the other hand, the Diplomatic and Consular Area was declared as alienable and disposable land by virtue of Proclamation No. 1725,[11] signed on February 10, 2009. Its administrative jurisdiction, supervision, and control were transferred to the BCDA, which is likewise responsible for maintaining the usefulness of the area.[12]

On July 18, 2012, the Local Housing Board of Taguig City issued a Certificate of Compliance on Demolition[13] declaring that the BCDA had complied with the requirement of "Just and Humane Demolition and Eviction," prescribed under Section 28 of RA 7279,[14] otherwise known as the "Urban Development

---

[7] *Samahan ng Masang Pilipino sa Makati, Inc. v. Bases Conversion Development Authority*, 542 Phil. 86, 105 (2007).

[8] *Rollo*, p. 23.

[9] See *id.* at 21. See also *Republic of the Philippines v. Southside Homeowners Association, Inc.*, *supra* note 5, at 14.

[10] See http://www.bcda.gov.ph/investments and projects/show/44 (last accessed March 21, 2016); See also http://www.bcda.gov.ph/investments_and_projects/show/50 (last accessed March 21, 2016).

[11] Entitled "DECLARING CERTAIN PARCELS OF LAND AS ALIENABLE AND DISPOSABLE IDENTIFIED AS THE DIPLOMATIC AND CONSULAR AREA SITUATED IN FORT BONIFACIO, TAGUIG, METRO MANILA, ISLAND OF LUZON AND TRANSFERRING TO THE BASES CONVERSION DEVELOPMENT AUTHORITY (BCDA) THE ADMINISTRATION THEREOF."

[12] *Id.*

[13] *Rollo*, p. 37

[14] "AN ACT TO PROVIDE FOR A COMPREHENSIVE AND CONTINUING URBAN DEVELOPMENT AND HOUSING PROGRAM, ESTABLISH THE

and Housing Act of 1992," for the demolition of structures within the JUSMAG Area. Consequently, respondent Casanova, as President and Chief Executive Officer of the BCDA, sent a Letter[15] dated July 20, 2012, informing petitioner and its members that they should, within a seven (7)-day period ending on July 27, 2012, coordinate with BCDA officials should they choose to either accept the relocation package being offered to them, or voluntarily dismantle their structures and peacefully vacate the property.

Petitioner filed the present case to enjoin the demolition of their structures which they claimed are within the Diplomatic and Consular Area, and not the JUSMAG Area. They averred that the BCDA itself declared in its own website that the Diplomatic and Consular Area is not its property,[16] and that its members are occupying the Diplomatic and Consular Area with the consent of the Republic of the Philippines given at the time of their assignments in the military service,[17] and hence, cannot be demolished, especially in the absence of a court order.[18] Furthermore, petitioner posited that Casanova had no authority to act for and in behalf of the BCDA considering his "highly anomalous and irregular" appointment as President thereof.[19]

In their Comment,[20] respondents Casanova and Engr. Macrohon maintained that the clearing operations undertaken by the BCDA covered only the JUSMAG area, on which the structures possessed by petitioner's members are located.[21] They also argued that under Section 28 (b) of RA 7279, eviction or demolition is allowed when government infrastructure projects with available funding

---

MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES," approved on March 24, 1992.

[15] *Rollo*, p. 20.

[16] *Id.* at 8.

[17] *Id.* at 13.

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

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

[20] *Id.* at 40-54.

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

are about to be implemented, even in the absence of a court order.[22] Moreover, they maintained that respondent Casanova acted with authority as President and Chief Executive Officer of the BCDA, having been duly appointed by the President of the Philippines,[23] and in any event, the instant case has already been rendered moot and academic because the act sought to be enjoined, *i.e.*, the demolition of the remaining structures in the JUSMAG Area, was already completed on September 21, 2012.[24]

Respondents Local Housing Board of Taguig City and the City Government of Taguig likewise filed their own Comment,[25] substantially adopting the contentions propounded by respondents Casanova and Engr. Macrohon. Separately, however, they contended that the instant petition should have been filed before the Regional Trial Court (RTC) exercising jurisdiction over the territorial area, instead of the Supreme Court.[26]

The Issue Before the Court

The main issue in this case is whether or not the demolition should be enjoined.

The Court's Ruling

The petition lacks merit.

The Court first resolves the preliminary concerns raised.

For one, respondents Local Housing Board of Taguig City and the City Government of Taguig seek the outright dismissal of the petition on the ground that it should have been filed before the RTC, and not before the Supreme Court. As basis, they cite Section 4, Rule 65 of the Rules of Court, which provision applies to, among others, petitions for prohibition, *viz.*:

---

[22] *Id.* at 46-47.

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

[24] *Id.* at 51-52.

[25] *Id.* at 148-158.

[26] *Id.* at 148-150.

RULE 65
Certiorari, Prohibition and Mandamus

Section 4. When and where to file the petition. —

xxx xxx xxx

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

xxx xxx xxx

While the instant petition is denominated as one for prohibition, a careful perusal of the same reveals that it is actually a petition for injunction as it ultimately seeks that a writ of injunction be issued to permanently stop "[r]espondents, or any other person acting under their orders or authority, from carrying out, or causing to carry out, the demolition of [p]etitioner's properties."[27] More significantly, respondents (with the exception of Casanova as will be herein discussed) are not asked to be prevented from exercising any judicial or ministerial function on account of any lack or excess of jurisdiction, or grave abuse of discretion, which allegation is key in an action for prohibition. Case law dictates that "[f]or a party to be entitled to a writ of prohibition, he must establish the following requisites: *(a)* **it must be directed against a tribunal, corporation, board or person exercising functions, judicial[, quasi-judicial] or ministerial**; *(b)* **the tribunal, corporation, board or person has acted without or in excess of its jurisdiction, or with brave abuse of discretion**; and *(c)* there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law."[28] In his opinion in the

[27] *Rollo*, p. 14.

[28] *Montes v. CA*, 523 Phil. 98, 107 (2006), citing *Longino v. General*, 491 Phil. 600, 616 (2005).

case of *Nuclear Free Philippine Coalition v. National Power Corporation*,[29] former Chief Justice Ramon Aquino discussed the basic distinction between an action for prohibition and one for injunction:

> Prohibition is not the same as injunction. Lawyers often make the mistake of confusing prohibition with injunction. Basically, prohibition is a remedy to stop a tribunal from exercising a power beyond its jurisdiction. x x x.
>
> Prohibition is an extraordinary prerogative writ of a preventive nature, its proper function being to prevent courts or other tribunals, officers, or persons from usurping or exercising a jurisdiction with which they are not vested.

It is a fundamental rule of procedural law that it is not the caption of the pleading that determines the nature of the complaint but rather its allegations.[30] Hence, considering the above-discussed allegations, the petition, albeit denominated as one for prohibition, is essentially an action for injunction, which means that Section 4, Rule 65 of the Rules of Court would not apply.

Instead, it is Section 21 of RA 7227, which solely authorizes the Supreme Court to issue injunctions to restrain or enjoin "[t]he implementation of the projects for the conversion into alternative productive uses of the military reservations," that would govern:[31]

> Section 21. *Injunction and Restraining Order*. — The implementation of the projects for the conversion into alternative productive uses of the military reservations are urgent and necessary and shall not be restrained or enjoined **except by an order issued by the Supreme Court of the Philippines**. (Emphasis supplied)

Notably, while the petition asks in the final item of its "PRAYER" that a "writ of prohibition be issued commanding

---

[29] 225 Phil. 266, 276 (1986), citing 73 C.J.S. 10.

[30] *Anadon v. Herrera*, 553 Phil. 759, 765 (2007).

[31] See *Samahan ng Masang Pilipino sa Makati, Inc. v. Bases Conversion Development Authority*, 542 Phil. 86, 91 (2007).

respondents, especially Casanova, from usurping or exercising jurisdiction with which he has not been vested by law",[32] this relief, when read together with the pertinent allegations in the body of the petition,[33] is one which is directed against the title of respondent Casanova as President and Chief Executive Officer of the BCDA. Particularly, it is claimed that respondent Casanova's appointment was "highly anomalous and irregular" as it was made contrary to Section 9[34] of RA 7227, which purportedly mandates that the Chairman of the BCDA shall also be its President.

The Court observes that the collateral attack on respondent Casanova's title as President and Chief Executive Officer, which is a public office by nature,[35] is improper to resolve in this petition. The title to a public office may not be contested except directly, by *quo warranto* proceedings; and it cannot be assailed collaterally.[36] Also, it has already been settled that **prohibition**

---

[32] *Rollo*, p. 14.

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

[34] SECTION 9. **Board of Directors: Composition**. — The powers and functions of the Conversion Authority shall be exercised by a Board of Directors to be composed of nine (9) members, as follows:

(a) A full-time chairman who shall also be the president of the Conversion Authority; and

(b) Eight (8) other members from the private sector, two (2) of whom coming from the labor sector.

The chairman and members shall be appointed by the President with the consent of the Commission on Appointments. Of the initial members of the Board, three (3) including the chairman, a representative from the private sector and a representative from the labor sector shall be appointed for a term of six (6) years, three (3) for a term of four (4) years and the other three (3) for a term of two (2) years. In case of vacancy in the Board, the appointee shall serve the unexpired term of the predecessor.

[35] "[the] Bases Conversion Development Authority BCDA is a government owned and controlled corporation (GOCC) created under Republic Act No. 7227 or the Bases Conversion and Development Act of 1992, as amended by Republic Act No. 7917." (*Bases Conversion Development Authority v. Provincial Agrarian Reform Officer of Pampanga*, G.R. Nos. 155322-29, June 27, 2012, 675 SCRA 7, 8). Hence, the position of BCDA President and Chief Executive is public in nature.

[36] *Topacio v. Associate Justice of the Sandiganbayan Gregory Santos Ong*, 595 Phil. 491, 503 (2008).

does not lie to inquire into the validity of the appointment of a public officer.[37] In fact, petitioner impliedly recognized the impropriety of raising this issue herein by stating that "until the final resolution regarding the purported authority of [respondent Casanova], he should be prohibited from acting for and on behalf of BCDA and from issuing notices of demolition."[38] Thus, at all events, the foregoing characterization of this action as one for injunction, and the consequent conclusion that it was properly filed before the Court remain. That being said, the Court now proceeds to the main issue in this case.

As earlier mentioned, petitioner ultimately seeks the issuance of a writ of injunction to enjoin the demolition of the structures which they — as opposed to respondents' version — claim to be located in the Diplomatic and Consular Area, and hence, outside of the JUSMAG Area.

Jurisprudence teaches that in order for a writ of injunction to issue, the petitioner should be able to establish: (*a*) a right *in esse* or a clear and unmistakable right to be protected; (*b*) a violation of that right; and (*c*) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage. In the absence of a clear legal right, the writ must not issue. A restraining order or an injunction is a preservative remedy aimed at protecting substantial rights and interests, and it is not designed to protect contingent or future rights. Verily, the possibility of irreparable damage without proof of adequate existing rights is not a ground for injunction.[39]

In this case, the Court finds that petitioner has failed to prove that the structures for which they seek protection against demolition fall within the Diplomatic and Consular Area. Its supposition is anchored on two (2) documents, namely: (***a***) a printed copy of BCDA's declaration in its website that the

---

[37] See *id.*

[38] *Rollo*, p. 10.

[39] *Samahan ng Masang Pilipino sa Makati, Inc. v. Bases Conversion Development Authority*. See *supra* note 7, at 97.

Diplomatic and Consular Area is a non-BCDA property;[40] and (***b***) a map of the South Bonifacio Properties showing the metes and bounds of the properties of the BCDA as well as the properties contiguous to them.[41] However, none of these documents substantiate petitioner's claim: the website posting is a mere statement that the Diplomatic Consular Area is supposedly a non-BCDA property, whereas the map only depicts the metes and bounds of the BCDA's properties.

Plainly, none of them show whether or not the structures to be demolished are indeed within the Diplomatic and Consular Area as petitioner claims. On the other hand, records show that on the basis of Relocation Survey Plan Rel-00-001297[42] approved by the Department of Environment and Natural Resources (DENR), the BCDA came up with a Structural Map of the JUSMAG Area,[43] conducted ground surveys, and tagged the location of informal settlers whose structures will be affected by the demolition.[44] In this relation, the Urban Poor Affairs Office of the City of Taguig assisted the BCDA in the conduct of house tagging and validation of the affected families in the JUSMAG Area as well as a joint inspection to verify the boundaries of the JUSMAG and Diplomatic and Consular Areas.[45] Relying on the *prima facie* credibility of these documents as opposed to petitioner's flimsy argumentation, the Court finds that respondents have correctly identified petitioner's structures as those belonging to the JUSMAG Area. Thus, since petitioner's purported right *in esse* is hinged on the premise that the structures do not fall within the JUSMAG but within the Diplomatic and Consular Area, the petition should already fail.

For another, petitioner argues against the legality of the intended demolition, insisting that there should be a court order

---

[40] *Rollo*, pp. 21-22.

[41] *Id.* at 23.

[42] *Id.* at 58-60.

[43] *Id.* at 61-64.

[44] *Id.* at 43.

[45] *Id.* at 154. See also *id.* at 119-128.

authorizing the demolition pursuant to Article 536[46] of the Civil Code and Section 28 of RA 7279, and not a mere Certificate of Compliance on Demolition.[47] However, contrary to petitioner's argument, the Court has already settled, in the case of *Kalipunan ng Damay ang Mahihirap, Inc. v. Robredo*,[48] that **demolitions and evictions may be validly carried out even without a judicial order when, among others, government infrastructure projects with available funding are about to be implemented pursuant to Section 28 (b) of RA 7279**, which reads:

> Sec. 28. *Eviction and Demolition*. — Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:
>
> (a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;
>
> **(b) When government infrastructure projects with available funding are about to be implemented;** or
>
> (c) When there is a court order for eviction and demolition.
>
> xxx xxx xxx

Records show that the demolition of the properties is the precursory step to the conversion of the JUSMAG area into a residential and mixed-use development[49] as provided under the terms of a Joint Venture Agreement dated April 13, 2010[50] between the BCDA and Megaworld Corporation. As such, it falls within

---

[46] Art. 536. In no case may possession be acquired through force or intimidation as long as there is a possessor who objects thereto. He who believes that he has an action or a right to deprive another of the holding of a thing, must invoke the aid of the competent court, if the holder should refuse to deliver the thing.

[47] *Rollo*, pp. 10-12.

[48] G.R. No. 200903, July 22, 2014, 730 SCRA 322, 337.

[49] *Rollo*, p. 70.

[50] *Id.* at 70-113.

the ambit of Section 28 (b) of RA 7279, which authorizes eviction or demolition without the need of a court order.

Likewise, there is no merit to petitioner's statement that there was non-compliance with the parameters of just and humane eviction or demolition under the same provision, namely:

> Sec. 28. *Eviction and Demolition*. — x x x
>
> xxx xxx xxx
>
> In the execution of eviction or demolition orders involving underprivileged and homeless citizens, the following shall be mandatory:
>
> (1) Notice upon the effected persons or entities at least thirty (30) days prior to the date of eviction or demolition;
>
> (2) Adequate consultations on the matter of settlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;
>
> (3) Presence of local government officials or their representatives during eviction or demolition;
>
> (4) Proper identification of all persons taking part in the demolition;
>
> (5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
>
> (6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
>
> (7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
>
> (8) Adequate relocation, whether temporary or permanent: *Provided, however*, That in cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from service of notice of final judgment by the court, after which period the said order shall be executed: *Provided, further*, That should relocation not be possible within the said period, financial assistance in the

amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.

The Department of the Interior and Local Government and the Housing and Urban Development Coordinating Council shall jointly promulgate the necessary rules and regulations to carry out the above provision.

Particularly, petitioner decries that the demolition is premature as the notice given to them was not issued thirty (30) days prior to the intended date of the same. However, records show that the demolition fully — if not, substantially — complied with all the parameters laid down under Section 28 (b) as above-quoted, including the thirty (30) day prior notice rule, considering the following unrefuted circumstances: (*a*) a Local Inter-Agency Committee consisting of members of the BCDA, local government of Taguig, the Housing and Urban Development Coordinating Council, the Presidential Commission for the Urban Poor, the People's Organization, the Commission on Human Rights, and various barangays of Fort Bonifacio was convened for the purpose of conducting meetings and consultations with the affected settlers;[51] (*b*) after said meetings and consultations, the said Committee came up with a financial compensation and relocation package which it offered to those affected by the demolition and eviction of the JUSMAG Area;[52] and (*c*) affected settlers were given numerous 30-day notices of the impending demolition and eviction activities, with the warning that their failure to heed the same would constitute a waiver of their right to claim anything under the aforesaid financial compensation and relocation package.[53]

In fact, it is in view of the above-enumerated accomplished acts that respondent Local Housing Board of Taguig City issued a Certificate of Compliance on Demolition dated July 18, 2012

---

[51] See *rollo*, pp. 114-123.

[52] *Id.* at 129.

[53] See *id.* See also *id.* at 49-51 and 155.

certifying that the BCDA "has complied with the requirement of 'Just and Humane Demolition and Eviction' prescribed under Section 28, pre-relocation phase of [RA] 7279 or the Urban Development and Housing Act (UDHA) of 1992." Hence, bereft of any clear and convincing evidence to the contrary, such certificate should be accorded the presumption of regularity in the performance of the official duties of respondent Local Housing Board of Taguig City. Case law states that "[t]he presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. **The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption in rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness,**"[54] as in this case.

As a final note, attention should be drawn to the manifestation of respondents that the demolition and eviction activities in the JUSMAG Area, on which petitioner's claimed structures belong, had already been performed and completed on September 21, 2012.[55] Thus, since prayers for injunctive reliefs do not lie to restrain an act that is already *fait accompli*,[56] there is no other proper course of action but to dismiss the petition.

WHEREFORE, the petition is **DISMISSED** for lack of merit.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

---

[54] *Bustillo v. People*, 634 Phil. 547, 556 (2010), citing *People v. De Guzman*, G.R. No. 106025, February 9, 1994, 229 SCRA 795, 799.

[55] *Rollo*, pp. 51-52.

[56] See *Bernardez v. COMELEC*, 628 Phil. 720, 732 (2010), citing *Caneland Sugar Corporation v. Alon*, 559 Phil. 462, 471 (2007).

FIRST DIVISION

[G.R. No. 208066. April 12, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOHN GLEN WILE, EFREN BUENAFE, JR., MARK ROBERT LARIOSA and JAYPEE PINEDA,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE [ARTICLE 266-A(1)(A)]; ELEMENTS.—** The elements of rape committed under Article 266-A(l)(a) of the Revised Penal Code, as amended, are: (a) that the offender, who must be a man, had carnal knowledge of a woman, and (b) that such act is accomplished by using force or intimidation.

2. **ID.; ID.; ID.; DUE TO ITS INTIMATE NATURE, RAPE IS USUALLY A CRIME BEREFT OF WITNESSES, THUS, THE VICTIM'S CREDIBILITY BECOMES A PRIMORDIAL CONSIDERATION; CASE AT BAR.—** This Court bears· in mind that due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. When the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. The credibility of herein victims AAA and BBB is further bolstered by the unique circumstance that AAA and BBB had witnessed the rape of each other on July 26, 2005, and the testimonies they gave in court were consistent with and corroborative of each other.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF THE TRIAL COURT; AND THE PROBATIVE WEIGHT OF THE EVIDENCE ON RECORD WHEN AFFIRMED ON APPEAL ARE ACCORDED RESPECT, IF NOT**

CONCLUSIVE EFFECT; APPLICATION IN CASE AT BAR.— The well-entrenched rule is that the findings of fact of the trial court in the ascertainment of the credibility of witnesses and the probative weight of the evidence on record, affirmed on appeal by the appellate court, are accorded high respect, if not conclusive effect, by the Court, in the absence of any justifiable reason to deviate from the said findings. x x x The aforementioned general rule applies to this case wherein accused- appellants failed to persuade us of any cogent reason to disturb the findings of fact of the RTC, as affirmed by the Court of Appeals, on the actual commission of the rapes at the times and places and manner described by AAA and BBB, the identities of accused-appellants as the perpetrators, and the existence of conspiracy among accused-appellants.

4. **ID.; ID.; ALIBI, AS A DEFENSE; FOR ALIBI TO PROSPER, IT MUST BE PROVED THAT THE ACCUSED WAS AT ANOTHER PLACE WHEN THE CRIME WAS COMMITTED AND IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE BEEN AT THE SCENE OF THE CRIME; NOT ESTABLISHED IN CASE AT BAR.—** For alibi to prosper, it must be proved that the accused was at another place when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. To determine physical impossibility, we take into consideration the distance between the place where the accused was when the crime transpired and the place where the crime was committed, as well as the facility of access between these two places. In the present case, accused-appellants admit being present at the hut in Villa Hergon, as well as the nearby canefield, with AAA and BBB on July 26, 2005, for the conduct of the initiation of their fraternity. Accused-appellants John and Mark likewise conceded being with AAA at the hut in Villa Hergon on September 12, 2005. Accused-appellants were either at the very place or within the immediate vicinity of the place where AAA and BBB were raped on July 26, 2005 and September 12, 2005 at around the same time as when said rapes were committed, so accused-appellants' defense of alibi is completely unavailing.

5. **ID.; ID.; DENIAL, AS A DEFENSE; A NEGATIVE SELF-SERVING EVIDENCE CANNOT STAND AGAINST POSITIVE IDENTIFICATION AND CATEGORICAL**

TESTIMONY OF THE WITNESS; PRESENT IN CASE AT BAR.— That leaves accused-appellants with the defense of denial, which is refuted by the positive identification made by AAA and BBB. As we declared in *People v. Rabago,* "[a] plain denial, which is a negative self- serving evidence, cannot stand against the positive identification and categorical testimony of a rape victim."

6. CRIMINAL LAW; REVISED PENAL CODE; RAPE [ARTICLE 266-A(1)(a)]; IMPOSABLE PENALTY ON MINORS WHO ACTED WITH DISCERNMENT, EXPLAINED.— Under paragraph 2 of Article 266-B of the Revised Penal Code, as amended, whenever the rape is committed by two or more persons, the penalty shall be *reclusion perpetua* to death. x x x As for accused-appellants John, Mark, and Jaypee, the Court takes into account Republic Act No. 9344. Accused-appellants John and Mark were seventeen (17) years old and accused-appellant Jaypee was sixteen (16) years old at the time of commission of the rapes. Section 6 of Republic Act No. 9344 exempts a child above fifteen (15) years but below eighteen (18) years of age from criminal liability, unless he/she had acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with said Act. x x x Since accused-appellants John, Mark, and Jaypee are found to have acted with discernment and are convicted as charged, we shall render the appropriate sentences against them, keeping in mind the privileged mitigating circumstance of minority. Pursuant to Article 68(2) of the Revised Penal Code, as amended, the penalty to be imposed upon a person under eighteen (18) but above fifteen (15) years of age for a crime shall be the penalty next lower than that prescribed by law. We previously determined herein that the imposable penalty for rape committed by two or more persons, without any mitigating or aggravating circumstance, is *reclusion perpetua.* Therefore, the imposable penalty on the three accused-appellants, who were either seventeen (17) or sixteen (16) years old at the time of the rapes, is reduced by one degree from *reclusion perpetua,* which is *reclusion temporal,* for every count. Being a divisible penalty, the Indeterminate Sentence Law is applicable. There being no modifying circumstance attendant to each crime, the maximum of the indeterminate penalty, *i.e., reclusion temporal,* is imposed

in its medium period, which ranges from fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months. To set the minimum of the indeterminate penalty *reclusion temporal* is reduced by one degree to *prision mayor,* which ranges from six (6) years and one (1) day to twelve (12) years. The minimum of the indeterminate penalty is taken from the full range of *prision mayor.*

7. ID.; ID.; REPUBLIC ACT NO. 9344 (JUVENILE JUSTICE AND WELFARE ACT OF 2006); SUSPENSION OF SENTENCE; ALTHOUGH SUSPENSION OF SENTENCE STILL APPLIES EVEN WHEN THE CHILD IN CONFLICT WITH THE LAW IS ALREADY EIGHTEEN (18) YEARS OF AGE OR MORE AT THE TIME THE JUDGMENT OF CONVICTION WAS RENDERED, SUCH SUSPENSION IS ONLY UNTIL THE MINOR REACHES THE MAXIMUM AGE OF TWENTY-ONE (21) YEARS OF AGE; CASE AT BAR.— Accused-appellants John, Mark, and Jaypee may no longer have their sentences suspended under Section 40 of Republic Act No. 9344. Although suspension of sentence still applies even when the child in conflict with the law is already eighteen (18) years of age or more at the time the judgment of conviction was rendered, such suspension is only until the minor reaches the maximum age of twenty-one (21). By now, accused-appellants John and Mark are twenty-seven (27) years old, while accused-appellant Jaypee is twenty-six (26) years old. Nevertheless, accused-appellants John, Mark, and Jaypee are still entitled to the benefit of Section 51 of Republic Act No. 9344 even when they are already beyond twenty-one (21) years of age. Upon order of the court, accused-appellants may serve their sentences at an agricultural camp or any other training facility, controlled by the Bureau of Correction, in coordination with the Department of Social Welfare and Development, in lieu of a regular penal institution.

8. ID.; ID.; CIVIL LIABILITY; AWARD OF CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMGES SHALL EARN LEGAL INTEREST AT THE RATE OF SIX PERCENT (6%) PER ANNUM TO BE RECKONED FROM THE DATE OF FINALITY OF JUDGMENT UNTIL FULLY PAID.— Finally, the civil indemnity and moral damages awarded by the Court of Appeals

in favor of AAA and BBB, each in the amount of ₱75,000.00, are affirmed, in accordance with recent jurisprudence. In addition, exemplary damages in the amount of ₱75,000.00 is also awarded to set a public example and to protect hapless individuals from sexual molestation. All monetary awards herein shall earn legal interest at the rate of six percent (6%) per *annum* to be reckoned from the date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before Us on appeal is the Decision[1] dated February 25, 2013 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00912, which affirmed with modification the Decision[2] dated January 24, 2007 of the Regional Trial Court (RTC) of Silay City, Branch 69 in Criminal Case Nos. 5931-69 to 5938-69, finding accused-appellants John Glen Wile (John),[3] Mark Robert Lariosa (Mark),[4] Jaypee Pineda (Jaypee), and Efren Buenafe, Jr. (Efren)[5] guilty beyond reasonable doubt of several counts of rape as defined in Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997.

---

[1] CA *rollo* pp. 123-152; penned by Associate Justice Carmelita Salandanan-Manahan with Associate Justices Ramon Paul L. Hernando and Maria Elisa Sempio Diy concurring.

[2] CA *rollo* pp. 55-73.

[3] Accused-appellant John Glen Wile's first two names were also sometimes spelled as "Jhon Glen" and "John Glenn."

[4] Accused-appellant Mark Robert Lariosa's first name was also sometimes spelled as "Marc" and "Mart."

[5] Accused-appellant Efren Buenafe, Jr. was also referred to as "Jay-R."

In eight (8) Informations, all dated December 2, 2005, accused-appellants were charged before the RTC with the rapes of minors AAA and BBB,[6] as follows:

1) CRIMINAL CASE NO. 5931-69

That on July 26, 2005, in Silay City, Philippines, and within the Jurisdiction of this Honorable Court, the accused JOHN GLENN WILE y VILLALOBOS, in conspiracy and with the help of EFREN BUENAFE, JR. y AQUINO, MARK ROBERT LARIOSA y JUEN and JAYPEE PINEDA y WILE with force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], a fifteen-year-old minor against her will.[7]

2) CRIMINAL CASE NO. 5932-69

That on July 26, 2005, in Silay City, Philippines, and within the Jurisdiction of this Honorable Court, the accused EFREN BUENAFE, JR. y AQUINO, in conspiracy and with the help of MARK ROBERT LARIOSA y JUEN, JAYPEE PINEDA y WILE and JOHN GLENN WILE y VILLALOBOS with force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], a 15-year-old minor against the latter's will.[8]

3) CRIMINAL CASE NO. 5933-69

That on July 26, 2005, in Silay City, Philippines, and within the Jurisdiction of this Honorable Court, the accused JAYPEE PINEDA y WILE, in conspiracy and with the help of JOHN GLENN WILE y VILLALOBOS, EFREN BUENAFE, JR. y AQUINO and MARK ROBERT LARIOSA y JUEN with force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], a fifteen-year-old minor against her will.[9]

4) CRIMINAL CASE NO. 5934-69

That on July 26, 2005, in Silay City, Philippines, and within the Jurisdiction of this Honorable Court, the accused MARK ROBERT

---

[6] The victims real names are withheld pursuant to *People v. Cabalquinto* (533 Phil. 703 [2006]).

[7] Records (Crim. Case No. 5931-69), p. 1.

[8] Records (Crim. Case No. 5932-69), p. 1.

[9] Records (Crim. Case No. 5933-69), p. 1.

LARIOSA y JUEN, in conspiracy and with the help of JAYPEE PINEDA y WILE, JOHN GLENN WILE y VILLALOBOS and EFREN BUENAFE, JR. y AQUINO with force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], a fifteen-year-old minor against her will.[10]

5) CRIMINAL CASE NO. 5935-69

That on September 12, 2005, in Silay City, Philippines, and within the Jurisdiction of this Honorable Court, the accused JOHN GLENN WILE y VILLALOBOS, in conspiracy with MARK ROBERT LARIOSA y JUEN with force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], a fifteen-year-old minor against her will.[11]

6) CRIMINAL CASE NO. 5936-69

That on September 12, 2005, in Silay City, Philippines, and within the Jurisdiction of this Honorable Court, the accused MARK ROBERT LARIOSA y JUEN, in conspiracy with JOHN GLENN WILE y VILLALOBOS with force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], a fifteen-year-old minor against her will.[12]

7) CRIMINAL CASE NO. 5937-69

That on July 26, 2005, in Silay City, Philippines, and within the Jurisdiction of this Honorable Court, the accused EFREN BUENAFE, JR. y AQUINO, in conspiracy and with the help of MARK ROBERT LARIOSA y JUEN, JAYPEE PINEDA y WILE and JOHN GLENN WILE y VILLALOBOS with force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with [BBB], a fifteen-year-old minor against her will.[13]

8) CRIMINAL CASE NO. 5938-69

That on July 26, 2005, in Silay City, Philippines, and within the Jurisdiction of this Honorable Court, the accused MARK ROBERT LARIOSA y JUEN, in conspiracy and with the help of EFREN

---

[10] Records (Crim. Case No. 5934-69), p. 1.

[11] Records (Crim. Case No. 5935-69), p. 1.

[12] Records (Crim. Case No. 5936-69), p. 1.

[13] Records (Crim. Case No. 5937-69), p. 1.

BUENAFE, JR. y AQUINO, JAYPEE PINEDA y WILE and JOHN GLENN WILE y VILLALOBOS with force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with [BBB], a fifteen-year-old minor against her will.[14]

During their arraignment held on January 5, 2006, accused-appellants pleaded not guilty to the crimes charged.[15]

At pre-trial, the prosecution and the defense jointly admitted the following facts:

1. This Court has jurisdiction to take cognizance of the instant criminal actions;
2. The [accused-appellants] in this case are John Glenn Wile, Efren Buenafe[, Jr.], Mark Robert Lariosa, and Jaypee Pineda;
3. Private complainants, [AAA] and [BBB], are all minors;
4. Private complainants were all students of x x x Memorial High School[16] on the date of the submitted incidents giving rise to the present criminal actions;
5. Private complainants, [AAA] and [BBB], know the [accused-appellants] named;
6. [Accused-appellants] belong to a fraternity known as "Sana Wala Akong Kaaway" or "SWAK;" and

---

[14] Records (Crim. Case No. 5938-69), p. 1.

[15] *Id.* at 30.

[16] Section 44 of Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, requires the confidentiality of all records pertaining to cases of violence against women and their children. Per said section, all public officers and employees are prohibited from publishing or causing to be published in any format the name and other identifying information of a victim or an immediate family member. The penalty of one (1) year imprisonment and a fine of not more than Five Hundred Thousand pesos (₱500,000.00) shall be imposed upon those who violate the provision. Pursuant thereto, in the courts' promulgation of decisions, final resolutions and/or final orders, the names of women and children victims shall be replaced by fictitious initials, and their personal circumstances or any information, which tend to identify them, shall likewise not be disclosed. (Resolution in *BBB v. AAA*, G.R. No. 193225, February 9, 2015)

7. [Accused-appellants] John Glenn Wile, Jaypee Pineda, and Mark Robert Lariosa, were all minors at the time of the incidents giving rise to the present criminal actions.[17]

Thereafter, trial ensued.

The prosecution presented as witnesses AAA and BBB, the private complainants themselves; Doctor Annabelle Ortiz *y* Monroy (Dr. Ortiz); Police Officer (PO) 2 Nanette Laurilla (Laurilla); CCC,[18] AAA's aunt; and DDD,[19] BBB's mother.

As gathered from the collective testimonies of the prosecution witnesses, on July 26, 2005, Juvelyn,[20] a common friend, invited AAA and BBB to join a fraternity called *Sana Wala Akong Kaaway* or SWAK. Accompanied by Juvelyn, AAA and BBB went to a hut in *Sitio* x x x where they spoke with accused-appellant Efren. By touting that SWAK was a good group promoting brotherhood and camaraderie, accused-appellant Efren was able to convince AAA and BBB to join said fraternity. Accused-appellants Efren and Mark blindfolded AAA and BBB, respectively, with handkerchiefs. Thus blindfolded, AAA and BBB were guided to a nearby canefield and instructed to sit on a towel.

Accused-appellant Efren, whose voice BBB recognized, instructed BBB to separate herself from AAA. After BBB sat away from AAA, BBB's blindfold was removed so she saw accused-appellants take turns in raping AAA just a few meters away. AAA, still blindfolded, was seated, at first, but accused-appellant Efren ordered her to lie down. Accused-appellant Jaypee watched over BBB. With accused-appellants John and Mark restraining AAA's hands and legs, respectively, accused-appellant Efren kissed AAA's lips, opened her blouse, removed her bra,

---

[17] Records (Crim. Case No. 5938-69), p. 36.

[18] *BBB v. AAA*, *supra* note 16.

[19] *Id.*

[20] Variously referred to in the TSN as "Juvelyn Bellega" (TSN, March 13, 2006, p. 7), "Gebelyn Gelbaliega" (TSN, May 8, 2006, p. 6), and "Jevielyn Gilbalega" (TSN, August 14, 2006, p. 11).

lifted her skirt, removed her underwear, and inserted his penis into her vagina. After accused-appellant Efren had satisfied his lust, accused-appellant John followed in having coitus with AAA as accused-appellant Efren held AAA's hands and accused-appellant Mark gripped AAA's legs. When accused-appellant John was done, he substituted accused-appellant Jaypee in guarding BBB so that accused-appellant Jaypee could take his turn in copulating with AAA while accused-appellants Efren and Mark continued to hold AAA down. Once he was finished, accused-appellant Jaypee went back to guarding BBB. Accused-appellant John pinned down AAA's legs and accused-appellant Efren kept his hold on AAA's hands, as accused-appellant Mark lastly had sexual intercourse with AAA. All the while, AAA was crying and pleading for accused-appellants to stop but accused-appellants threatened to hit her with a bamboo pole. After all of the accused-appellants had their turns with AAA, they removed AAA's blindfold, so AAA was able to see accused-appellants' faces. When AAA was putting on her clothes, she noticed blood stains on her shirt. Accused-appellants helped AAA to stand up and instructed her to proceed to where BBB was.[21]

Accused-appellant Efren then directed accused-appellant Mark to bring BBB to him. It was now the turn of AAA, who was just a few meters away, to witness BBB's rape by accused-appellants Efren and Mark. Accused-appellant Efren blindfolded BBB and ordered her to lie down. Accused-appellant Efren kissed BBB's lips and breasts, lifted her bra and skirt, and removed her underwear. After accused-appellant Efren finished having sexual intercourse with BBB, BBB was already trying to stand up but accused-appellant Mark also lied on top of her and copulated with her. Meanwhile, AAA was being guarded by accused-appellants John and Jaypee. AAA tried to fight back and escape, but she was already weak. After raping BBB, accused-appellants Efren and Mark removed BBB's blindfold, giving BBB the chance to see their faces.

---

[21] TSN, March 13, 2006, pp. 10-12.

The whole group thereafter left the canefield. Accused-appellants brought AAA and BBB to the house of accused-appellant John's cousin. There, the right pinky fingers of AAA and BBB were burned, a ritual to welcome AAA and BBB to the fraternity. AAA and BBB went home afterwards.

Because AAA's parents were both in Manila, AAA had been in the care of her aunt, CCC. AAA would be home from school either by 4:00 p.m. or 5:30 p.m., but on July 26, 2005, AAA came home late. When CCC asked AAA why she was late, AAA did not answer and went straight to her room. AAA told her older sister that she had a severe headache. AAA's whole body was shaking and she could not get up from the bed. CCC and AAA's sister changed AAA's clothes and they noticed blood and mud stains on AAA's skirt. The following morning, AAA still would not get up from bed nor eat, and would just sleep.

BBB was usually home from school by 5:00 p.m., and was sometimes late by just 15 minutes. On July 26, 2005 though, BBB got home when it was already dim. DDD, BBB's mother, twice asked why BBB got home late but BBB did not answer. BBB headed straight to her room and did not join her family for supper. Since then, DDD brought and fetched BBB from school as BBB seemed to be afraid of something.

In the second week of August 2005, AAA attempted suicide. AAA was already holding a knife. AAA and CCC's husband grappled for the knife and in the end, AAA was wounded in her left hand. CCC asked AAA if she had any problems but AAA stayed silent. CCC inquired at AAA's school and found out that AAA had not been attending her classes. CCC even brought AAA for a session with the Guidance Counselor. The Guidance Counselor related to CCC that AAA missed her parents.

AAA was again raped by accused-appellants John and Mark on September 12, 2005. When classes were canceled due to a transport strike, AAA went to a friend's house to cook *arroz caldo*. As AAA was outside her friend's house looking for a stone she could use for a makeshift stove, she saw accused-appellant John approaching. AAA tried to run away but accused-

appellant John grabbed her arm and dragged her to accused-appellant Mark's hut. Accused-appellant John ordered AAA to sit beside the bed as he stood by the door of the hut. Moments later, accused-appellant Mark entered the hut. AAA tried to escape but accused-appellant Mark pulled her back inside the hut and embraced her. AAA kicked accused-appellant Mark in the leg. Angered, accused-appellant Mark punched AAA in the stomach, causing her to gasp for air and to fall seated on the bed. Accused-appellant Mark forced AAA to lie down, covered her mouth, and removed her clothes. While accused-appellant Mark was undressing himself, accused-appellant John was the one who covered AAA's mouth. Then, accused-appellant Mark lied on top of AAA, spread her legs, and inserted his penis into her vagina. When accused-appellant Mark was done, he took over covering AAA's mouth as accused-appellant John also had sexual intercourse with AAA. Afterwards, accused-appellants John and Mark allowed AAA to get dressed and warned her not to tell anybody about what happened. Accused-appellants John and Mark next brought AAA to accused-appellant John's hut where AAA was able to rest. While at accused-appellant John's hut, AAA saw an unnamed friend approaching them and she ran towards her friend. AAA wanted to tell her friend what happened to her but she could not because accused-appellant John was following them. AAA went home and despite finding her aunt and an older sibling there, she did not tell them what happened.

Meanwhile, BBB likewise exhibited a change in behavior. BBB would come home, go straight to her room, and cry. She also expressed her desire to commit suicide, going as far as draping a rope on a tree to hang herself. On September 26, 2005, BBB's father, EEE, told DDD that something had happened to BBB.

AAA and BBB subjected themselves to separate medical examinations by Dr. Ortiz on September 26 and 27, 2005, which revealed that both girls had healed hymenal lacerations. According to Dr. Ortiz, hymenal lacerations could be caused by an object inserted into the vagina, most commonly a penis.[22] On September

[22] TSN, February 13, 2006, pp. 4-9.

27, 2005, AAA and BBB went to the Women's Desk of the Silay City Police Station and disclosed the rape incidents to PO2 Laurilla.

EEE came by BBB's house on September 27, 2005 and invited CCC to go with him for a conference at the Women's Desk at the police station. It was only there that CCC learned about the gang rape of her niece, AAA.

The defense called all four accused-appellants, as well as Mary Jane Biton (Biton) and Jake Vagalleon (Vagalleon), as witnesses, who depicted a different version of events.

Accused-appellants and BBB were members of a fraternity called SWAK. A person who wished to join SWAK had to undergo an initiation, choosing between "*hirap*" or "*sarap*." In "*hirap*," the applicant was hit with a paddle and/or punched on the shoulders, abdomen, and thighs; and in "*sarap*," the applicant would pick a SWAK member to have sexual intercourse with.

At around 12:00 noon on July 26, 2005, accused-appellants were in a hut in Villa Hergon together with around 20 other fraternity members when AAA, BBB, and Juvelyn arrived. AAA expressed her intention to join SWAK. Accused-appellant Mark, as SWAK adviser, informed AAA about the initiation process and gave AAA the choice between "*hirap*" or "*sarap*." AAA chose "*sarap*" and picked accused-appellant Efren as her initiator. AAA, BBB, and Juvelyn went up a nearby hill, followed by accused-appellants John, Mark, and Jaypee. BBB blindfolded AAA. Accused-appellant Efren arrived a few moments later, and he and AAA were ushered to a nearby canefield where the two were left alone. BBB, Juvelyn, and accused-appellants John, Mark, and Jaypee went back to the hut.

When alone, accused-appellant Efren and AAA talked. AAA maintained her willingness to undergo the initiation process, saying that she had done the same thing when she joined another group called *Katorse Hudas*. AAA already took her panties off, but accused-appellant Efren ordered her to put it back on. Accused-appellant Efren claimed that he lived in the same place as AAA and knew AAA's family so he could not go through

with the initiation. Accused-appellant Efren and AAA just continued talking. About 15 minutes later, accused-appellant Efren and AAA rejoined the others at the hut. After taking their snacks, accused-appellants escorted AAA, BBB, and Juvelyn to Bangga Rizal, from where the three girls went on their way home. Accused-appellants returned to the hut where they continued to talk, going home at about 4:00 p.m.[23]

Biton and Vagalleon were long-time neighbors of accused-appellants John and Mark, respectively. Biton and Vagalleon recalled that AAA and BBB were frequently at the makeshift hut in Villa Hergon, which was near accused-appellant John's house, or at accused-appellant Mark's house, and occasionally at accused appellant Jaypee's house, conversing with the people present, cooking, and watching television.

Biton recounted, in particular, an incident on August 19, 2005 when she went to the house of accused-appellant Jaypee for the birthday celebration of the latter's older sibling. AAA was there and she took off her school shoes and borrowed Biton's slippers. CCC, AAA's aunt, arrived but AAA asked accused-appellant Jaypee to hide her because she was being abused by CCC. In her hurry to hide herself, AAA was unable to put her school shoes back on. However, CCC found AAA, grabbed AAA by the hair, and dragged her home. CCC and AAA's sister merely returned the slippers to Biton the next day.

On September 12, 2005, accused-appellant Mark was sleeping at his house when he was awakened because accused-appellant John, AAA, and BBB were there to invite him to go to the makeshift hut in Villa Hergon. Vagalleon, accused-appellant Mark's neighbor, followed the group all the way to the hut. Accused-appellant Mark gave Vagalleon ₱40.00 and requested him to buy bread for their snacks. When Vagalleon returned from his errand, there were about 20 people at the hut, sitting around and talking to one another. The SWAK members present ate the bread Vagalleon bought and discussed whether or not

---

[23] TSN, September 11, 2006, pp. 10-14.

they should renovate the hut. Subsequently, the group dispersed and each went home.

Accused-appellant Mark denied ever having sexual intercourse with AAA and brought up a letter,[24] purportedly from AAA, advising him to flee because EEE, BBB's father, already knew about the initiation, filed a case against him, and wanted to put him in jail. AAA's letter, translated from the Ilonggo dialect to English, reads:

> Mart, I am writing you this I have something important to tell you. I can no longer go out of our house. Mart, you have to flee now because the father of [BBB] wanted you in jail. He already knew about the initiation. I wanted you to flee because when we meet in court, what will come out would be all lies. They would not tell the truth in Court, that is why, I want to help you now because if you would be apprehended, I can no longer do anything because the father of [BBB] is putting pressure on me. Please flee now because I can no longer leave the house. Last Monday, we filed a case against you. After you read this, please tear this. You must leave and go to other places outside Negros.[25]

The letter was not fully signed but only bore the first letter of AAA's name. Accused-appellant Mark did not heed AAA's advice to flee, asserting that he did nothing wrong.[26]

After receiving all of the evidence, the RTC promulgated its Decision on January 24, 2007 ruling that accused-appellants' guilt was established beyond reasonable doubt and sentencing them as follows:

> WHEREFORE, PREMISES CONSIDERED, in Criminal Case No. 5931-69, this Court finds [accused-appellants] John Glen Wile *y* Villalobos, Efren Buenafe, Jr. *y* Aquino, Mark Robert Lariosa *y* Juen and Jaypee Pineda *y* Wile, Guilty of the crime of Rape as defined in Article 266-A of the Revised Penal Code of the Philippines, as

---

[24] AAA asked a certain Richelle, a SWAK member, to hand the letter to accused-appellant Lariosa. (TSN, August 14, 2006, pp. 20-21.)

[25] TSN, August 7, 2006, pp. 29-30.

[26] *Id.*

amended by Republic Act No. 8353, as the prosecution had established their guilts (sic) beyond any reasonable doubt.

Accordingly, taking into consideration the privilege mitigating circumstance of Minority, and in application of the pertinent provisions of the Indeterminate Sentence Law, this Court sentences [accused-appellants] John Glen Wile *y* Villalobos, Mark Robert Lariosa *y* Juen and Jaypee Pineda *y* Wile to each suffer the penalty of imprisonment for a period of from TEN (10) YEARS of *Prision Mayor* as minimum to FOURTEEN (14) YEARS of *Reclusion Temporal* as maximum, the same to be served by them at the National Penitentiary, Muntinlupa City, Province of Rizal.

[Accused-appellant] Efren Buenafe, Jr. *y* Aquino is sentenced by this Court to suffer the penalty of *Reclusion Perpetua*, the same to be served by him at the National Penitentiary, Muntinlupa City, Province of Rizal.

[Accused-appellants] are, further, ordered by this Court to jointly and severally pay private complainant, [AAA], the sums of [₱]50,000.00, as civil indemnity, and [₱]50,000.00 as moral damages, all in Philippine currency.

In Criminal Case No. 5932-69, this Court finds [accused-appellants] John Glen Wile *y* Villalobos, Efren Buenafe, Jr. *y* Aquino, Mark Robert Lariosa *y* Juen and Jaypee Pineda *y* Wile, Guilty of the crime of Rape as defined in Article 266-A of the Revised Penal Code of the Philippines, as amended by Republic Act No. 8353, as the prosecution had established their guilts (sic) beyond any reasonable doubt.

Accordingly, taking into consideration the privilege mitigating circumstance of Minority, and in application of the pertinent provisions of the Indeterminate Sentence Law, this Court sentences [accused-appellants] John Glen Wile *y* Villalobos, Mark Robert Lariosa *y* Juen and Jaypee Pineda *y* Wile to each suffer the penalty of imprisonment for a period of from TEN (10) YEARS of *Prision Mayor* as minimum to FOURTEEN (14) YEARS of *Reclusion Temporal* as maximum, the same to be served by them at the National Penitentiary, Muntinlupa City, Province of Rizal.

[Accused-appellant] Efren Buenafe, Jr. *y* Aquino is sentenced by this Court to suffer the penalty of *Reclusion Perpetua*, the same to be served by him at the National Penitentiary, Muntinlupa City, Province of Rizal.

[Accused-appellants] are, further, ordered by this Court to jointly and severally pay private complainant, [AAA], the sums of [₱]50,000.00 as civil indemnity, and [₱]50,000.00 as moral damages, all in Philippine currency.

In Criminal Case No. 5933-69, this Court finds [accused-appellants] John Glen Wile *y* Villalobos, Efren Buenafe, Jr. *y* Aquino, Mark Robert Lariosa *y* Juen and Jaypee Pineda y Wile, Guilty of the Crime of Rape as defined in Article 266-A of the Revised Penal Code of the Philippines, as amended by Republic Act No. 8353, as the prosecution had established their guilts (sic) beyond any reasonable doubt.

Accordingly, taking into consideration the privilege mitigating circumstance of Minority, and in application of the pertinent provisions of the Indeterminate Sentence Law, this Court sentences [accused-appellants] John Glen Wile *y* Villalobos, Mark Robert Lariosa *y* Juen and Jaypee Pineda *y* Wile to each suffer the penalty of imprisonment for a period of from TEN (10) YEARS of *Prision Mayor* as minimum to FOURTEEN (14) YEARS of *Reclusion Temporal* as maximum, the same to be served by them at the National Penitentiary, Muntinlupa City, Province of Rizal.

[Accused-appellant] Efren Buenafe, Jr. *y* Aquino is sentenced by this Court to suffer the penalty of *Reclusion Perpetua*, the same to be served by him at the National Penitentiary, Muntinlupa City, Province of Rizal.

[Accused-appellants] are, further, ordered by this Court to jointly and severally pay private complainant, [AAA], the sums of [₱]50,000.00, as civil indemnity, and [₱]50,000.00 as moral damages, all in Philippine currency.

In Criminal Case No. 5934-69, this Court finds [accused-appellants] John Glen Wile *y* Villalobos, Efren Buenafe, Jr. *y* Aquino, Mark Robert Lariosa *y* Juen and Jaypee Pineda *y* Wile, Guilty of the crime of Rape as defined in Article 266-A of the Revised Penal Code of the Philippines, as amended by Republic Act No. 8353, as the prosecution had established their guilts (sic) beyond any reasonable doubt.

Accordingly, taking into consideration the privilege mitigating circumstance of Minority, and in application of the pertinent provisions of the Indeterminate Sentence Law, this Court sentences [accused-appellants] John Glen Wile *y* Villalobos, Mark Robert Lariosa *y*

Juen and Jaypee Pineda *y* Wile to each suffer the penalty of imprisonment for a period of from TEN (10) YEARS of *Prision Mayor* as minimum to FOURTEEN (14) YEARS of *Reclusion Temporal* as maximum, the same to be served by them at the National Penitentiary, Muntinlupa City, Province of Rizal.

[Accused-appellant] Efren Buenafe, Jr. *y* Aquino is sentenced by this Court to suffer the penalty of *Reclusion Perpetua*, the same to be served by him at the National Penitentiary, Muntinlupa City, Province of Rizal.

[Accused-appellants] are, further, ordered by this Court to jointly and severally pay private complainant, [AAA], the sums of [₱]50,000.00 as civil indemnity, and [₱]50,000.00 as moral damages, all in Philippine currency.

In Criminal Case No. 5935-69, this Court finds [accused-appellants] John Glen Wile *y* Villalobos and Mark Robert Lariosa *y* Juen, Guilty of the Crime of Rape as defined in Article 266-A of the Revised Penal Code of the Philippines, as amended by Republic Act No. 8353, as the prosecution had established their guilts (sic) beyond any reasonable doubt.

Accordingly, taking into consideration the privilege mitigating circumstance of Minority, and in application of the pertinent provisions of the Indeterminate Sentence Law, this Court sentences [accused-appellants] John Glen Wile *y* Villalobos and Mark Robert Lariosa *y* Juen, to each suffer the penalty of imprisonment for a period of from TEN (10) YEARS of *Prision Mayor* as minimum to FOURTEEN (14) YEARS of *Reclusion Temporal* as maximum, the same to be served by them at the National Penitentiary, Muntinlupa City, Province of Rizal.

[Accused-appellants] are, further, ordered by this Court to jointly and severally pay private complainant, [AAA], the sums of [₱]50,000.00 as civil indemnity, and [₱]50,000.00 as moral damages, all in Philippine currency.

In Criminal Case No. 5936-69, this Court finds [accused-appellants] John Glen Wile *y* Villalobos and Mark Robert Lariosa *y* Juen, Guilty of the crime of Rape as defined in Article 266-A of the Revised Penal Code of the Philippines, as amended by Republic Act No. 8353, as the prosecution had established their guilts (sic) beyond any reasonable doubt.

Accordingly, taking into consideration the privilege mitigating circumstance of Minority, and in application of the pertinent provisions of the Indeterminate Sentence Law, this Court sentences [accused-appellants] John Glen Wile *y* Villalobos and Mark Robert Lariosa *y* Juen, to each suffer the penalty of imprisonment for a period of from TEN (10) YEARS of *Prision Mayor* as minimum to FOURTEEN (14) YEARS of *Reclusion Temporal* as maximum, the same to be served by them at the National Penitentiary, Muntinlupa City, Province of Rizal.

[Accused-appellants] are, further, ordered by this Court to jointly and severally pay private complainant, [AAA], the sums of [₱]50,000.00 as civil indemnity, and [₱]50,000.00 as moral damages, all in Philippine currency.

In Criminal Case No. 5937-69, this Court finds [accused-appellants] John Glen Wile *y* Villalobos, Efren Buenafe, Jr. *y* Aquino, Mark Robert Lariosa *y* Juen and Jaypee Pineda *y* Wile, Guilty of the crime of Rape as defined in Article 266-A of the Revised Penal Code of the Philippines, as amended by Republic Act No. 8353, as the prosecution had established their guilts (sic) beyond any reasonable doubt.

Accordingly, taking into consideration the privilege mitigating circumstance of Minority, and in application of the pertinent provisions of the Indeterminate Sentence Law, this Court sentences [accused-appellants] John Glen Wile *y* Villalobos, Mark Robert Lariosa *y* Juen and Jaypee Pineda *y* Wile to each suffer the penalty of imprisonment for a period of from TEN (10) YEARS of *Prision Mayor* as minimum to FOURTEEN (14) YEARS of *Reclusion Temporal* as maximum, the same to be served by them at the National Penitentiary, Muntinlupa City, Province of Rizal.

[Accused-appellant] Efren Buenafe, Jr. *y* Aquino is sentenced by this Court to suffer the penalty of *Reclusion Perpetua*, the same to be served by him at the National Penitentiary, Muntinlupa City, Province of Rizal.

[Accused-appellants] are, further, ordered by this Court to jointly and severally pay private complainant, [BBB], the sums of [₱]50,000.00 as civil indemnity, and [₱]50,000.00 as moral damages, all in Philippine currency.

In Criminal Case No. 5938-69, this Court finds [accused-appellants] John Glen Wile *y* Villalobos, Efren Buenafe, Jr. *y* Aquino, Mark

Robert Lariosa *y* Juen and Jaypee Pineda *y* Wile, Guilty of the crime of Rape as defined in Article 266-A of the Revised Penal Code of the Philippines, as amended by Republic Act No. 8353, as the prosecution had established their guilts (sic) beyond any reasonable doubt.

Accordingly, taking into consideration the privilege mitigating circumstance of Minority, and in application of the pertinent provisions of the Indeterminate Sentence Law, this Court sentences [accused-appellants] John Glen Wile *y* Villalobos, Mark Robert Lariosa *y* Juen and Jaypee Pineda *y* Wile to each suffer the penalty of imprisonment for a period of from TEN (10) YEARS of *Prision Mayor* as minimum to FOURTEEN (14) YEARS of *Reclusion Temporal* as maximum, the same to be served by them at the National Penitentiary, Muntinlupa City, Province of Rizal.

[Accused-appellant] Efren Buenafe, Jr. *y* Aquino is sentenced by this Court to suffer the penalty of *Reclusion Perpetua*, the same to be served by him at the National Penitentiary, Muntinlupa City, Province of Rizal.

[Accused-appellants] are, further, ordered by this Court to jointly and severally pay private complainant, [BBB], the sums of [₱]50,000.00 as civil indemnity, and [₱]50,000.00 as moral damages, all in Philippine currency.

In the service of the sentence imposed upon them by this Court, [accused-appellants] shall be given credit for the entire period of their detention pending trial.

[Accused-appellants] John Glen Wile y Villalobos, Efren Buenafe, Jr. *y* Aquino, Mark Robert Lariosa *y* Juen and Jaypee Pineda *y* Wile, are remanded to the custody of the Jail Warden of the Bureau of Jail Management and Penology of Silay City, Negros Occidental, pending their commitment to the National Penitentiary, Muntinlupa City, Rizal, where they shall served (sic) the penalties of imprisonment imposed on them by this Court.[27]

Accused-appellants filed their Notice of Appeal of the foregoing RTC judgment on February 5, 2007.[28]

---

[27] CA *rollo*, pp. 68-73.

[28] Accused-appellants John, Mark, and Jaypee filed a Notice of Appeal on February 5, 2007 while accused-appellant Efren filed his Notice of

Accused-appellants John, Mark, and Jaypee, being minors at the time of commission of the purported crimes,[29] eventually filed on February 13, 2007 a motion for probation[30] under Section 42 of Republic Act No. 9344, otherwise known as the "Juvenile Justice and Welfare Act of 2006," which provides:

> Sec. 42. *Probation as an Alternative to Imprisonment.* — The court may, after it shall have convicted and sentenced a child in conflict with the law, and upon application at any time, place the child on probation in lieu of service of his/her sentence taking into account the best interest of the child. For this purpose, Section 4 of Presidential Decree No. 968, otherwise known as the "Probation Law of 1976," is hereby amended accordingly.

The three accused-appellants filed the next day, on February 14, 2007, a motion to withdraw their appeal.[31]

In an Order dated March 5, 2007,[32] the RTC denied both motions of accused-appellants John, Mark, and Jaypee, rationalizing that:

> The provisions of the Juvenile Justice and Welfare Act of 2006 (Republic Act No. 9344) are not applicable to [accused-appellants] named. The penalty imposed by this Court on them was imprisonment for a period of Ten (10) Years of *Prision Mayor* to Fourteen (14) Years of *Reclusion Temporal*. Under the provisions of Presidential Decree No. 968, otherwise known as the Probation Law of 1976, as amended, offenders sentenced to serve a maximum term of imprisonment of more than six (6) years are disqualified from availing of the benefits of the Law. The amendment made by Republic Act

---

Appeal on February 13, 2007. (Records [Crim. Case No. 5938-69], pp. 152-153.)

[29] Based on their Certificates of Live Birth, accused-appellants John, Mark, and Jaypee were born on May 24, 1988, March 29, 1988, and December 9, 1988, respectively. Thus, John and Mark were both seventeen (17) years old and Jaypee was sixteen (16) years old when they committed the crimes. (*Id.* at 123-125.)

[30] Records (Crim. Case No. 5938-69), pp. 158-159.

[31] *Id.* at 154-155.

[32] *Id.* at 160-161.

No. 9344, Section 42, refers only to the filing of the application for probation even beyond the period for filing an appeal.

Minor [accused-appellants] named, likewise, cannot avail of suspended sentence under the Juvenile Justice and Welfare Act of 2006 (Republic Act No. 9344). The imposable penalty for the crime of Rape committed by two or more persons (Art. 266-A in relation to Art. 266-B, Revised Penal Code of the Philippines, as amended) is *Reclusion Perpetua* to Death. Republic Act No. 9344 merely amended Article 192 of P.D. No. 603, as amended by A.M. No. 02-1-18-SC, in that the suspension of sentence shall be enjoyed by the juvenile even if he is already 18 years of age or more at the time of the pronouncement of his/her guilt. The other disqualifications in Article 192 of P.D. No. 603, as amended, and Section 32 of A.M. No. 02-1-18-SC have not been deleted from Section 38 of Rep. Act No. 9344. Evidently, the intention of Congress was to maintain the other disqualifications as provided in Article 192 of P.D. No. 603, as amended, and Section 32 of A.M. No. 02-1-18-SC. Hence, juveniles who have been convicted of a crime the imposable penalty for which is *reclusion perpetua*, life imprisonment or *reclusion perpetua* to death or death, are disqualified from having their sentences suspended (*Declarador vs. Gubaton*, G.R. No. 159208, August 18, 2006).

On March 6, 2007, the RTC directed the Branch Clerk of Court to forward the case records to the Court of Appeals.[33]

On February 25, 2013, the Court of Appeals rendered its Decision affirming accused-appellants' conviction for all counts of rape but modifying the penal and civil liabilities imposed upon them, thus:

WHEREFORE, premises considered, the appeal is **DENIED**. The 24 January 2007 decision of the Regional Trial Court of Silay City convicting accused-appellants for the crime of rape as defined in Article 266-A of the Revised Penal Code, as amended by RA 8353, is hereby **AFFIRMED with MODIFICATION**.

JOHN GLEN WILE and MARK ROBERT LARIOSA are sentenced to a penalty of six (6) years and one (1) day of *Prision mayor*, as minimum to fourteen (14) years, eight (8) months and one (1) day of *Reclusion temporal*, as maximum for each of the six

[33] *Id.* at 162.

(6) counts of rape committed against AAA and for each of the two (2) counts of rape against BBB.

JAYPEE PINEDA is sentenced to a penalty of six (6) years and one (1) day of *Prision mayor*, as minimum to fourteen (14) years, eight (8) months and one (1) day of *Reclusion temporal*, as maximum for each of the four (4) counts of rape against AAA and for each of the two (2) counts of rape against BBB.

EFREN BUENAFE, JR. is sentenced to a penalty of *RECLUSION PERPETUA* for each of the four (4) counts of rape against AAA and for each of the two (2) counts of rape against BBB.

Accused-appellants are **ORDERED** to pay ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages for each count of rape where each is convicted.

Upon finality of this Decision, the accused-appellants John Glen Wile, Mark Robert Lariosa and Jaypee Pineda shall be confined pursuant to Section 51 of Republic Act 9344.[34]

Hence, accused-appellants come before us via an appeal under Rule 124, Section 13 (c)[35] of the Revised Rules of Court.

In a Resolution[36] dated August 28, 2013, the Court directed both parties to submit their supplemental briefs. However, plaintiff-appellee and accused-appellants filed their respective Manifestations[37] stating that they would no longer file a supplemental brief and that they were adopting the contents and arguments in their appellate briefs.

---

[34] CA *rollo*, pp. 151-152.

[35] Sec. 13. *Certification or appeal of case to the Supreme Court*. — xxx

xxx xxx xxx

(c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

[36] *Rollo*, p. 37.

[37] Plaintiff-appellee's Manifestation (In Lieu of Supplemental Brief) (*Rollo*, pp. 38-40); Accused-appellants' Manifestation in Lieu of Supplemental Brief (*Rollo*, pp. 45-47).

In their appeal brief,[38] accused-appellants make a lone assignment of error on the part of the RTC, *viz.*:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS FOR THE [CRIMES] CHARGED DESPITE THE FACT THAT THE PROSECUTION FAILED TO PROVE [THEIR] GUILT BEYOND REASONABLE DOUBT.[39]

Accused-appellants argue that the prosecution failed to present evidence to overcome the presumption of their innocence and establish their guilt beyond reasonable doubt. Accused-appellants contend that the supposed rapes of AAA and BBB were highly improbable for the following reasons: *First*, all members of the fraternity were present during the alleged rapes. It was unbelievable that only the four accused-appellants would rape AAA and BBB while the rest of the fraternity members would just watch and do nothing. *Second*, the hut where AAA and BBB were purportedly raped by accused-appellants had no walls, was adjacent to a pathway, and near neighboring houses. Passers-by would have had a clear view of the hut making it impossible for said accused-appellants to commit the crime. *Third*, if AAA and BBB were blindfolded, they could not have positively identified accused-appellants as the persons who had sexual intercourse with them. Although BBB testified that her blindfold was removed so she was able to see how accused-appellants took turns in raping AAA, accused-appellants insist that it was highly improbable for them to have allowed BBB to witness her friend AAA being raped. The same thing could be said for AAA's assertion that her blindfold was removed as BBB was being raped. *Fourth*, Juvelyn, a friend of AAA and BBB who was said to be present on July 26, 2005, would have been a vital witness for the prosecution, but she was not presented in court. Also inconceivable was AAA's allegation that she was at her friend's house on September 12, 2005 and accused-appellants John and Mark could not have just grabbed AAA and raped her in the presence of her friend and other persons

---

[38] CA *rollo*, pp. 31-54.

[39] *Id.* at 33.

inside the house. And *fifth*, AAA and BBB did not mention that force or threat was employed by accused-appellants in their rapes. AAA and BBB merely claimed that they tried to resist but they failed to describe the manner of their resistance and the kind of force that was employed on them by accused-appellants. In addition, accused-appellants dispute the finding of the RTC that there was conspiracy among them despite the absence of proof of the same.

Accused-appellants' appeal is bereft of merit.

Article 266-A (1) of the Revised Penal Code, as amended, describes how the crime of rape can be committed:

> 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 circumstances:
>
> a) Through force, threat or intimidation;
>
> b) When the offended party is deprived of reason or is otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority;
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

The elements of rape committed under Article 266-A (1) (a) of the Revised Penal Code, as amended, are: (a) that the offender, who must be a man, had carnal knowledge of a woman, and (b) that such act is accomplished by using force or intimidation.[40]

Both the RTC and the Court of Appeals found that the prosecution was able to establish all the foregoing elements of rape in the case at bar, substantially giving weight and credence to the testimonies of the victims AAA and BBB.

---

[40] *People v. Aaron*, 438 Phil. 296, 309 (2002).

This Court bears in mind that due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. When the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof.[41] The credibility of herein victims AAA and BBB is further bolstered by the unique circumstance that AAA and BBB had witnessed the rape of each other on July 26, 2005, and the testimonies they gave in court were consistent with and corroborative of each other.

The RTC, in its evaluation of the testimonies of AAA and BBB, observed that:

> When a woman, moreso if she is a minor, as [AAA] and [BBB] are, says that she had been raped she, in effect, says all that is necessary to show that rape was, in fact, committed on her. Normally, their testimonies must be given full weight and credit. Youth and immaturity are generally badges of truth and sincerity. No woman, lest a minor, would concoct a story of defloration, allow an examination of her private parts and subject herself to public trial and ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her (*People vs. Guambor*, G.R. No. 152183, 22 January 2004). The private complainants were minors, fifteen (15) years of ages and were third year high school students of the x x x Memorial High School, Silay City, Negros Occidental at that time of the submitted incidents of sexual molestations on their persons. The declarations they gave of the acts done on them by the [accused-appellants] had been consistent, logical, straightforward, thorough, detailed, candid and to this Court's appreciation, taken in sum, credible. Their narrative accounts of the details of acts done on them by each of the [accused-appellants] stood unshaken in the face of rigid cross-examinations and unflawed by inconsistencies or contradictions in their material points as their declarations were, likewise, devoid of omissions/lapses in basic facts. They positively identified the four (4) [accused-appellants], Efren Buenafe, Jr., Mark

---

[41] *People v. Balino*, G.R. No. 194833, July 2, 2014, 729 SCRA 52, 62.

Robert Lariosa, John Glen Wile, and Jaypee Pineda, as the very persons who perpetrated the sexual molestations on them on the dates and places given. They detailed what each of the [accused-appellants] had done and their collective participations in the referred molestations.[42]

On appeal, the Court of Appeals upheld the credibility of the testimonies of AAA and BBB. The supposed loopholes and improbable facts in said testimonies of AAA and BBB pointed out by accused-appellants were already thoroughly considered and addressed by the Court of Appeals, as shown in the following excerpts from its judgment:

> We uphold the conviction of the accused-appellants.
>
> xxx xxx xxx
>
> A careful reading and evaluation of the evidence on record [reveal] that the foregoing elements are sufficiently established by the prosecution. The records, supported by the medical results of the examination conducted on the victims, would show that the four (4) accused-appellants committed carnal knowledge of AAA and BBB with the use of force and intimidation.
>
> When AAA was called to the witness stand, she gave a thorough, detailed and straightforward narration of the incidents that happened on July 26, 2005 and September 12, 2005. She recalled how each of the four (4) accused-appellants successively abused her while the others were holding her legs and hands. She positively identified the four (4) accused-appellants to be the same perpetrators who had carnal knowledge and took advantage of her against her will. The same thing happened with BBB. She categorically recounted each and every detail of the abuses committed against her by the perpetrators.
>
> Thus, contrary to the posturing of the accused-appellants, the corroborative testimonies of the prosecution witnesses established beyond reasonable doubt the commission of the crimes charged herein.
>
> Accused-appellants' insistence that it is highly improbable for the victims to be raped in the presence of all the members of the group and within the premises of the hut which is described to be

---

[42] CA *rollo*, pp. 64-65.

open, located along the highway and had neighboring houses nearby are misplaced. Records are very clear and it was even admitted by the accused-appellants that they conducted the initiation not inside the hut in the presence of all the members of the fraternity, but in the cane field on top of a hill with the presence of the four (4) accused-appellants and the two (2) victims. The pertinent portion of the testimony of Efren Buenafe states:

Q: And after that, what happened?
A: Mart told us to stand.

Q: And what else happened after that?
A: AAA was made to choose from among us.

Q: And what was the purpose of choosing the one of you?
A: We were instructed to stand, the she chose made (sic) that one should be the one to conduct the initiation on her.

Q: After that, what happened, Mr. Witness?
A: They ascended to near the top of the hill.

Q: Who went to the upper portion of the hill?
A: The five of them.

Q: Who were they?
A: BBB, AAA, friend, Mark Robert, and John Glen.

Q: How about you, when these individuals you mentioned went to the upper portion, where were you at the time?
A: I was in the hut.

Q: And then, what did you do after these five persons you mentioned went to the hilly portion?
A: Mark called me.

Q: And what did you do after you were summoned by Mark?
A: They went after us to the cane field.

Q: When you said they, who was with you when they conducted you inside this sugarcane field?
A: The five of them.

The foregoing testimony indubitably showed that indeed the four (4) accused-appellants and two (2) victims went on top of the hill. While accused-appellants' version of the story would show that it was only [accused-appellant Efren] and AAA who were left in the cane field while the others immediately went back to the hut, still

it was not physically impossible for the four (4) accused-appellants to be at the scene of the crime and commit the same against the two (2) victims.

xxx xxx xxx

The testimonies of AAA and BBB were consistent and positive that the commission of the rape unto each of them was consecutive, not simultaneous. Records showed that AAA, who was blindfolded, was raped first while BBB was seated at a distance of about two (2) meters without any blindfolds. Hence, BBB can clearly see the felonious and obscene acts of the four (4) accused-appellants as they took turns in consummating carnal knowledge of AAA. On the other hand, when BBB was raped by the two (2) [accused-appellants], AAA was also present at the scene of the crime and was not blindfolded. Thus, she can clearly see the vulgar and lewd acts committed unto her friend.

xxx xxx xxx

The presentation of [Juvelyn] is not vital for the case of the prosecution. The Supreme Court has ruled that due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. It is settled that when the victim's testimony is straightforward, convincing and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof.

The Supreme Court has likewise ruled that when the offended parties are young and immature girls, as in this case, Courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true. A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her.

Hence, the Court is convinced to give the badge of belief and approval to the categorical, consistent and straightforward testimonies of the two (2) victims.

Accused-appellants' allegation that case record made no mention of any force or intimidation upon the victims during the commission of the crime is also unacceptable. AAA and BBB were consistent and candid in their declarations that they were threatened to be struck with a bamboo pole if they resist the lewd intentions of the four (4) perpetrators. AAA's testimony states:

Q: While these things were happened to you, what did you do?
A: I was also crying, I was pleading not to do these things to me but they did not [heed] me and they threatened that they would [strike] me with the bamboo pole.

Added to that and as discussed earlier, the prosecution clearly showed that during the incident, both hands and legs of both victims were held by the other accused-appellants while the other one consummates the sexual act. This manifested the element of force and intimidation which attended the rape committed unto AAA and BBB.

xxx xxx xxx

The trial court found the presence of conspiracy between the perpetrators and We concur to such findings. The trial court ruled in this wise:

> "[Accused-appellants] named did perform specific individual acts with such closeness and coordination as to indicate a common purpose or design to force the private complainants into sexual intercourse with each of them. They decided on the mode, method and manner on how they intended the sexual molestation of named private complainants was to be done and/or perpetrated as may be inferred from the acts they committed, which unmistakably show a joint purpose and design, concerted action and community of interest. Each of them did their parts so that their acts were, in fact, connected and cooperative, indicating a closeness of personal association and concurrence of sentiments that cannot lead to any conclusion but a conspiracy to commit the offense."

xxx xxx xxx

In this case, records revealed a common design to commit the crime. The four (4) accused-appellants mutually helped each other so that each of them can consummate the crime against the victims. There was indeed a community of purpose as manifested by the holding of the hands and legs of the victims while the other commits the illicit act. Verily, conspiracy is implied when the accused persons had a common purpose and were united in its execution. Spontaneous agreements or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal responsibility. Such acts are extant in the case at bench.

In sum, this Court hereby finds no reversible error on the part of the RTC, in finding accused-appellants Efren Buenafe Jr., Jaypee Pineda, John Glen Wile and Mark Robert Pineda guilty beyond reasonable doubt for the commission of rape against victims AAA and BBB. For the rape committed on July 26, 2005 and September 12, 2005, conspiracy among the four (4) accused-appellants was established. The act of any one was the act of all and each of them is equally guilty of all the crimes committed. Thus, each accused-appellant shall be guilty of rape for each sexual act they each committed against the victims.[43] (Citations omitted.)

The well-entrenched rule is that the findings of fact of the trial court in the ascertainment of the credibility of witnesses and the probative weight of the evidence on record, affirmed on appeal by the appellate court, are accorded high respect, if not conclusive effect, by the Court, in the absence of any justifiable reason to deviate from the said findings.[44] The Court further elaborated in *People v. Regaspi*[45] that:

When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, unless the same is tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Since it had the full opportunity to observe directly the deportment and the manner of testifying of the witnesses

---

[43] CA *rollo*, pp. 140-147.

[44] *People v. Flora*, 585 Phil. 626, 644-645 (2008).

[45] G.R. No. 198309, September 7, 2015.

before it, the trial court is in a better position than the appellate court to properly evaluate testimonial evidence. The rule finds an even more stringent application where the CA sustained said findings, as in this case. (Citations omitted.)

The aforementioned general rule applies to this case wherein accused-appellants failed to persuade us of any cogent reason to disturb the findings of fact of the RTC, as affirmed by the Court of Appeals, on the actual commission of the rapes at the times and places and manner described by AAA and BBB, the identities of accused-appellants as the perpetrators, and the existence of conspiracy among accused-appellants.

In contrast, accused-appellants proffer the defenses of alibi and denial. For alibi to prosper, it must be proved that the accused was at another place when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. To determine physical impossibility, we take into consideration the distance between the place where the accused was when the crime transpired and the place where the crime was committed, as well as the facility of access between these two places.[46] In the present case, accused-appellants admit being present at the hut in Villa Hergon, as well as the nearby canefield, with AAA and BBB on July 26, 2005, for the conduct of the initiation of their fraternity. Accused-appellants John and Mark likewise conceded being with AAA at the hut in Villa Hergon on September 12, 2005. Accused-appellants were either at the very place or within the immediate vicinity of the place where AAA and BBB were raped on July 26, 2005 and September 12, 2005 at around the same time as when said rapes were committed, so accused-appellants' defense of alibi is completely unavailing.

That leaves accused-appellants with the defense of denial, which is refuted by the positive identification made by AAA and BBB. As we declared in *People v. Rabago*,[47] "[a] plain denial, which is a negative self-serving evidence, cannot stand

---

[46] *People v. Ancajas*, G.R. No. 199270, October 21, 2015.

[47] 448 Phil. 539, 550-551 (2003).

against the positive identification and categorical testimony of a rape victim." We also expounded in *People v. Monticalvo*[48] that:

> Denial is an inherently weak defense and has always been viewed upon with disfavor by the courts due to the ease with which it can be concocted. Denial, as a defense crumbles in the light of positive identification of the accused, as in this case. The defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt. Verily, mere denial, unsubstantiated by clear and convincing evidence, is negative self-serving evidence which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters. (Citation omitted.)

Given that accused-appellants' guilt for the rapes of AAA and BBB on July 26, 2005 and September 12, 2005 was established beyond reasonable doubt, we proceed to determining whether the proper penalties were imposed upon them.

The finding of conspiracy among accused-appellants in the rapes of AAA and BBB on July 26, 2005 and between accused-appellants John and Mark in the rapes of AAA on September 12, 2005 makes them responsible not only for their own unlawful acts, but also for those of the other accused-appellants, for in conspiracy, the act of one is the act of the other.[49]

Under paragraph 2 of Article 266-B of the Revised Penal Code, as amended, whenever the rape is committed by two or more persons, the penalty shall be *reclusion perpetua* to death. There being no mitigating or aggravating circumstance in the commission of the crimes in the case at bar, the lesser penalty of *reclusion perpetua* is imposed upon accused-appellant Efren for each of the four (4) counts of rape of AAA and two (2) counts of rape of BBB on July 26, 2005.

As for accused-appellants John, Mark, and Jaypee, the Court takes into account Republic Act No. 9344. Accused-appellants

---

[48] 702 Phil. 643, 664 (2013).

[49] *People v. Juarez and Sabal*, 394 Phil. 345, 363 (2000).

John and Mark were seventeen (17) years old and accused-appellant Jaypee was sixteen (16) years old at the time of commission of the rapes. Section 6 of Republic Act No. 9344 exempts a child above fifteen (15) years but below eighteen (18) years of age from criminal liability, unless he/she had acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with said Act. In *People v. Jacinto*,[50] we determined "discernment" in this wise:

> Discernment is that mental capacity of a minor to fully appreciate the consequences of his unlawful act. Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case.
>
> x x x The surrounding circumstances must demonstrate that the minor knew what he was doing and that it was wrong. Such circumstance includes the gruesome nature of the crime and the minor's cunning and shrewdness.

It is the finding of the RTC, subsequently affirmed by the Court of Appeals, that accused-appellants John, Mark, and Jaypee had acted with discernment. According to the Court of Appeals, such discernment was satisfactorily established by the credible testimonies of the victims and "as obviously shown in the ghastly and dastardly acts they committed to the victims, they were fully knowledgeable of the consequences of their acts." The Court additionally highlights that the three minor accused-appellants were members of the SWAK fraternity in which female applicants were given a choice during initiation between "*hirap*" or "*sarap*," the latter entailing sexual intercourse with a fraternity member. Such initiation process was established by accused-appellants as founding members of SWAK. Said three accused-appellants also willingly and actively participated in the rapes of AAA and BBB on July 26, 2005, helping each other in consummating the rapes by taking turns in holding the victims' hands and legs and guarding one girl while the other was being raped. Accused-appellants John and Mark further exhibited their

---

[50] 661 Phil. 224, 249-250 (2011).

depravity by conspiring with each other to rape AAA once more on September 12, 2005.

Since accused-appellants John, Mark, and Jaypee are found to have acted with discernment and are convicted as charged, we shall render the appropriate sentences against them, keeping in mind the privileged mitigating circumstance of minority. Pursuant to Article 68 (2)[51] of the Revised Penal Code, as amended, the penalty to be imposed upon a person under eighteen (18) but above fifteen (15) years of age for a crime shall be the penalty next lower than that prescribed by law. We previously determined herein that the imposable penalty for rape committed by two or more persons, without any mitigating or aggravating circumstance, is *reclusion perpetua*. Therefore, the imposable penalty on the three accused-appellants, who were either seventeen (17) or sixteen (16) years old at the time of the rapes, is reduced by one degree from *reclusion perpetua*, which is *reclusion temporal*, for every count. Being a divisible penalty, the Indeterminate Sentence Law is applicable. There being no modifying circumstance attendant to each crime, the maximum of the indeterminate penalty, *i.e.*, *reclusion temporal*, is imposed in its medium period, which ranges from fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months. To set the minimum of the indeterminate penalty, *reclusion temporal* is reduced by one degree to *prision mayor*, which ranges from six (6) years and one (1) day to twelve (12) years. The minimum of the indeterminate penalty is taken from the full range of *prision mayor*.[52] In the present case, the penalty imposed by the Court of Appeals on accused-appellants John,

---

[51] Art. 68. *Penalty to be imposed upon a person under eighteen years of age*. — When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of Article 80 of this Code, the following rules shall be observed:

xxx xxx xxx

2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by the law shall be imposed, but always in the proper period.

[52] See *People v. Ancajas, supra* note 46.

Mark, and Jaypee for each count of rape is imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum. Being within the proper range of indeterminate sentence as provided by law, we have no reason to disturb the same.

Accused-appellants John, Mark, and Jaypee may no longer have their sentences suspended under Section 40 of Republic Act No. 9344.[53] Although suspension of sentence still applies even when the child in conflict with the law is already eighteen (18) years of age or more at the time the judgment of conviction was rendered, such suspension is only until the minor reaches the maximum age of twenty-one (21).[54] By now, accused-appellants John and Mark are twenty-seven (27) years old, while accused-appellant Jaypee is twenty-six (26) years old.

Nevertheless, accused-appellants John, Mark, and Jaypee are still entitled to the benefit of Section 51 of Republic Act No. 9344[55] even when they are already beyond twenty-one (21) years of

---

[53] Sec. 40. *Return of the Child in Conflict with the Law to Court*. — If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.

[54] *People v. Ancajas*, *supra* note 46, citing *People v. Jacinto*, *supra* note 50. See also *People v. Sarcia*, 615 Phil. 97, 129-130 (2009).

[55] Sec. 51. *Confinement of Convicted Children in Agricultural Camps and Other Training Facilities*. — A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the [Bureau of Corrections], in coordination with the [Department of Social Welfare and Development].

age. Upon order of the court, accused-appellants may serve their sentences at an agricultural camp or any other training facility, controlled by the Bureau of Correction, in coordination with the Department of Social Welfare and Development, in lieu of a regular penal institution.[56]

Finally, the civil indemnity and moral damages awarded by the Court of Appeals in favor of AAA and BBB, each in the amount of ₱75,000.00, are affirmed, in accordance with recent jurisprudence.[57] In addition, exemplary damages in the amount of ₱75,000.00[58] is also awarded to set a public example and to protect hapless individuals from sexual molestation. All monetary awards herein shall earn legal interest at the rate of six percent (6%) per *annum* to be reckoned from the date of finality of this judgment until fully paid.[59]

WHEREFORE, premises considered, the Decision dated February 25, 2013 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00912 is **AFFIRMED with MODIFICATION**, to read as follows:

Accused-appellants John Glen Wile and Mark Robert Lariosa are sentenced to suffer the penalty of imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, for each of the six (6) counts of rape of AAA and for each of the two (2) counts of rape of BBB.

Accused-appellant Jaypee Pineda is sentenced to suffer the penalty of imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum,

---

[56] *People v. Ancajas*, *supra* note 46, citing *People v. Jacinto*, *supra* note 50. See also *People v. Sarcia*, *supra* note 54.

[57] *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

[58] The amount of exemplary damages for simple rape is now set at ₱75,000.00 (*People v. Jugueta*, *id.*).

[59] *People v. Ancajas*, *supra* note 46.

for each of the four (4) counts of rape of AAA and for each of the two (2) counts of rape of BBB.

On account of the minority of accused-appellants John Glen Wile, Mark Robert Lariosa, and Jaypee Pineda when they came in conflict with the law, they shall serve their sentences in an agricultural camp or training facility in accordance with Section 51 of Republic Act No. 9344. For this purpose, the case is remanded to the Regional Trial Court of Silay City, Branch 69 for the appropriate disposition.

Accused-appellant Efren Buenafe, Jr. is sentenced to suffer the penalty of *reclusion perpetua* for each of the four (4) counts of rape of AAA and two (2) counts of rape of BBB.

Accused-appellants are directed to jointly and severally pay AAA and BBB the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages for each of the four (4) counts of rape of AAA and for each of the two (2) counts of rape of BBB committed on July 26, 2005.

Accused-appellants John Glen Wile and Mark Robert Lariosa are directed to jointly and severally pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, for each of the two (2) counts of rape of AAA committed on September 12, 2005.

All monetary awards herein are subject to six percent (6%) interest per *annum* from the finality of this judgment until they are fully paid.

SO ORDERED.

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

EN BANC

[G.R. No. 209165. April 12, 2016]

LNL ARCHIPELAGO MINERALS, INC., *petitioner, vs.* **AGHAM PARTY LIST (represented by its President Rep. Angelo B. Palmones),** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES (A.M. NO. 09-6-8-SC); WRIT OF KALIKASAN; THE WRIT OF KALIKASAN, CATEGORIZED AS A SPECIAL CIVIL ACTION AND CONCEPTUALIZED AS AN EXTRAORDINARY REMEDY, COVERS ENVIRONMENTAL DAMAGE OF SUCH MAGNITUDE THAT WILL PREJUDICE THE LIFE HEALTH OR PROPERTY OF INHABITANTS IN TWO OR MORE CITIES OR PROVINCES; REQUISITES.—** The Writ of Kalikasan, categorized as a special civil action and conceptualized as an extraordinary remedy, covers environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces. The writ is available against an unlawful act or omission of a public official or employee, or private individual or entity. The following requisites must be present to avail of this remedy: (1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

2. **ID.; ID.; ID.; THINGS WHICH A PETITIONER FOR A WRIT OF KALIKASAN HAS TO PROVE, ENUMERATED; NOT ESTABLISHED IN CASE AT BAR.—** The Rules [Section 2(c), Rule 7, Part III of the Rules of Procedure for Environmental Cases] are clear that in a Writ of Kalikasan petitioner has the burden to prove the (1) environmental law, rule or regulation

violated or threatened to be violated; (2) act or omission complained of; and (3) the environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. Even the Annotation to the Rules of Procedure for Environmental Cases states that the magnitude of environmental damage is a condition *sine qua non* in a petition for the issuance of a Writ of Kalikasan and must be contained in the verified petition. x x x It is well-settled that a party claiming the privilege for the issuance of a Writ of Kalikasan has to show that a law, rule or regulation was violated or would be violated. In the present case, the allegation by Agham that two laws – the Revised Forestry Code, as amended, and the Philippine Mining Act – were violated by LAMI was not adequately substantiated by Agham. Even the facts submitted by Agham to establish environmental damage were mere general allegations.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Francisco G. Tolentino for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on certiorari[1] assailing the Amended Decision dated 13 September 2013[2] of the Court of Appeals in CA-G.R. SP No. 00012.

The Facts

Petitioner LNL Archipelago Minerals, Inc. (LAMI) is the operator of a mining claim located in Sta. Cruz, Zambales.

[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 115-134. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Amelita G. Tolentino and Ramon R. Garcia concurring.

LAMI's mining area is covered by Mineral Production Sharing Agreement[3] No. 268-2008-III dated 26 August 2008 by virtue of an Operating Agreement[4] dated 5 June 2007 with Filipinas Mining Corporation.

LAMI embarked on a project to build a private, non-commercial port in Brgy. Bolitoc, Sta. Cruz, Zambales. A port is a vital infrastructure to the operations of a mining company to ship out ores and other minerals extracted from the mines and make the venture economically feasible. Brgy. Bolitoc, about 25 kilometers away from the mine site, makes it an ideal location to build a port facility. In the area of Sta. Cruz, Shangfil Mining and Trading Corporation (Shangfil)/A3Una Mining Corporation (A3Una) and DMCI Mining Corporation, have been operating their own ports since 2007.

LAMI secured the following permits and compliance certificates for the port project: (1) Department of Environment and Natural Resources (DENR) Environmental Compliance Certificate[5] (ECC) R03-1104-182 dated 2 May 2011 covering the development of causeway, stockpile and related facilities on LAMI's property with an area of 18,142 sq.m.; (2) DENR provisional foreshore lease agreement with LAMI;[6] (3) Philippine Ports Authority (PPA) Clearance to Develop a Port;[7] (4) PPA Permit to Construct a Port;[8] (5) PPA Special Permit to Operate a Beaching Facility; [9] and (6) Tree Cutting Permit/Certification[10] from the Community Environment and Natural Resources Office (CENRO) of the DENR.

---

[3] *Id.* at 395-418.

[4] *Id.* at 419-429.

[5] *Id.* at 449-453.

[6] *Id.* at 454-455.

[7] *Id.* at 1146.

[8] *Id.* at 1186.

[9] *Id.* at 459-460.

[10] *Id.* at 461.

The Zambales Alliance, a group of other mining companies operating in Sta. Cruz, Zambales which do not have their own port, namely Eramen Minerals, Inc.; Zambales Diversified Metals Corporation; Zambales Chromite Mining Corporation, Inc.; BenguetCorp Nickel Mines, Inc., supported the port project of LAMI and issued Letters[11] of Intent to use the port facilities of LAMI upon completion.

The Bolitoc community — the *barangay*, its officials and residents — gave several endorsements[12] supporting the project. Even the *Sangguniang Bayan* of Sta. Cruz gave its consent to the construction of the port.[13]

However, LAMI allegedly encountered problems from the local government of Sta. Cruz, headed by Mayor Luisito E. Marty (Mayor Marty). LAMI stated that Mayor Marty unduly favored some mining companies in the municipality and allegedly refused to issue business and mayor's permits and to receive payment of occupation fees from other mining companies despite the necessary national permits and licenses secured by the other mining companies.

On 24 April 2012, Mayor Marty issued an order[14] directing LAMI to refrain from continuing with its clearing works and directed the Sta. Cruz Municipal Police Chief Generico Biñan to implement his order. On 26 April 2012, LAMI responded through a letter[15] explaining that Mayor Marty's order was illegal and baseless. Chief Biñan, together with two of his deputies, went to LAMI's port site to demand that LAMI cease its clearing works. LAMI's supervisor showed Chief Biñan all of LAMI's

---

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

[12] *Id.* at 550-553; dated 18 May 2012.

[13] Sangguniang Bayan Resolution No. 99-2224, series of 1999, *id.* at 469-470; Letter dated 4 June 2012 signed by all members of the Sangguniang Barangay, *id.* at 630-631; Sangguniang Bayan Resolution No. 12-84 dated 22 October 2012, *id.* at 2303-2305.

[14] *Id.* at 463.

[15] *Id.* at 464-468.

permits. In a Memorandum dated 3 May 2012, Chief Biñan made a report to his supervisor, S/Supt. Francisco DB Santiago, Jr. (S/Supt. Santiago), Zambales Police Provincial Director, that there was no leveling of a mountain on the port site. On 6 May 2012, S/Supt. Santiago made a Special Report re: Police Assistance[16] to the Philippine National Police (PNP) Regional Director citing the findings of Chief Biñan.

Thereafter, Rep. Dan Fernandez, a member of the Committee on Ecology of the House of Representatives, passed House Resolution No. 117 (HR 117) entitled "Resolution Directing the Committee on Ecology to Conduct an Inquiry, in Aid of Legislation, on the Implementation of Republic Act No. 7942, Otherwise Known as the Philippine Mining Act of 1995, Particularly on the Adverse Effects of Mining on the Environment." HR 117 was issued in order to conduct an alleged ocular inspection of the port site in aid of legislation. On 21 May 2012, the Committee on Ecology conducted an ocular inspection of the LAMI port site, as well as the other ports adjacent to LAMI's — those of Shangfil/A3Una and D.M. Consunji, Inc. The Committee allegedly never visited any mining site in the area of Sta. Cruz.

Meanwhile, on 30 April 2012, the DENR Environmental Management Bureau in Region III (DENR-EMB R3) received a letter dated 27 April 2012 from Mayor Marty inquiring if the ECC the DENR issued in favor of LAMI allowed LAMI to cut trees and level a mountain.

On 25 May 2012, representatives from the DENR Provincial Environment and Natural Resources Office (PENRO) in Zambales and the local government of Sta. Cruz conducted an ECC compliance monitoring of LAMI's property. The DENR PENRO team found that LAMI violated some of its conditions under the ECC. Accordingly, a Notice of Violation (NOV) dated 1 June 2012 was issued against LAMI for violation of certain conditions of the ECC with a cease and desist order from further constructing

---

[16] *Id.* at 2199-2200.

and developing until such time that the ECC conditions were fully complied.

On 8 June 2012, a technical conference was held where LAMI presented its reply to the NOV. The DENR-EMB R3 ascertained that LAMI's violations of the four conditions of its ECC constitute minor violations since they only pertain to non-submission of documents. However, the leveling of the elevated portion of the area was a major violation. A penalty was consequently imposed on LAMI, and the DENR-EMB R3 directed LAMI to (1) immediately cause the installation of mitigating measures to prevent soil erosion and siltation of the waterbody, and (2) submit a rehabilitation plan.

On 11 June 2012, LAMI wrote a letter[17] to the DENR-EMB R3 regarding the commitments agreed upon during the technical conference. LAMI signified compliance with the conditions of DENR-EMB R3. Attached to the letter were: (1) Official Receipt of payment of penalties under Presidential Decree (PD) No. 1586, (2) Matrix of Mitigation and Rehabilitation Plan, (3) Designation of Pollution Control Officer dated 6 May 2011, and (4) Tree Cutting Permit dated 17 April 2012 issued by DENR R3 CENRO.[18]

On 20-21 June 2012, the DENR composite team, composed of DENR-EMB R3, Mines and Geosciences Bureau (MGB) R3 and PENRO Zambales, conducted an investigation to determine whether mitigating measures done by LAMI were sufficient. The composite team found that LAMI's activities in its property would not result to any environmental damage to its surrounding communities.

Thereafter, the DENR-EMB R3 lifted the cease and desist order after LAMI was found to have complied with the requirements. In a Letter[19] dated 24 October 2012, Lormelyn

---

[17] *Id.* at 1021.

[18] *Id.* at 1022-1025.

[19] *Id.* at 2249-2250.

E. Claudio (Dir. Claudio), the Regional Director of DENR-EMB R3 wrote:

xxx xxx xxx

The violated ECC conditions have been rectified and clarified while the penalty corresponding to such violation was fully paid and the required rehabilitation and mitigating measures were already implemented as committed. As such, the matter leading to the issuance of the NOV is now resolved.

As ECC holder, you are enjoined to ensure the effective carrying out of your Environmental Management and Monitoring Plan.[20]

Meanwhile, earlier, or on 6 June 2012, respondent Agham Party List (Agham), through its President, former Representative Angelo B. Palmones (Rep. Palmones), filed a Petition[21] for the issuance of a Writ[22] of Kalikasan against LAMI, DENR, PPA, and the Zambales Police Provincial Office (ZPPO).

Agham alleged that LAMI violated: (1) Section 68[23] of PD No. 705,[24] as amended by Executive Order No. 277,[25] or

---

[20] *Id.* at 2250.

[21] Docketed as G.R. No. 201918; *id.* at 227-237.

[22] Rule 7, Part III, A.M. No. 09-6-8-SC or the Rules of Procedure for Environmental Cases; approved on 13 April 2010.

[23] Sec. 68. Cutting, Gathering and/or collecting Timber, or Other Forest Products Without License. Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

xxx xxx xxx

[24] Revising Presidential Decree No. 389, Otherwise Known as the Forestry Reform Code of the Philippines; took effect on 19 May 1975.

[25] Amending Section 68 of Presidential Decree (P.D.) No. 705, as amended, Otherwise Known as the Revised Forestry Code of the Philippines,

the Revised Forestry Code; and (2) Sections 57[26] and 69[27] of Republic Act No. 7942,[28] or the Philippine Mining Act of 1995 (Philippine Mining Act). Agham added that LAMI cut mountain trees and flattened a mountain which serves as a natural protective barrier from typhoons and floods not only of the residents of Zambales but also the residents of some nearby towns located in Pangasinan.

On 13 June 2012, this Court remanded the petition[29] to the Court of Appeals for hearing, reception of evidence and rendition of judgment.

On 25 June 2012, LAMI filed its Verified Return dated 21 June 2012, controverting Agham's allegations. LAMI stated that it did not and was not violating any environmental law, rule or regulation. LAMI argued that: (1) LAMI had the necessary permits and authorization to cut trees in the port site; (2) LAMI had the necessary permits to construct its port; (3) LAMI consulted

---

for the Purpose of Penalizing Possession of Timber or Other Forest Products Without the Legal Documents Required by Existing Forest Laws, Authorizing the Confiscation of Illegally Cut, Gathered, Removed and Possessed Forest Products, and Granting Rewards to Informers of Violations of Forestry Laws, Rules and Regulations; signed on 25 July 1987.

[26] Section 57. Expenditure for Community Development and Science and Mining Technology. — A contractor shall assist in the development of its mining community, the promotion of the general welfare of its inhabitants, and the development of science and mining technology.

[27] Section 69. Environmental Protection. — Every contractor shall undertake an environmental protection and enhancement program covering the period of the mineral agreement or permit. Such environmental program shall be incorporated in the work program which the contractor or permittee shall submit as an accompanying document to the application for a mineral agreement or permit. The work program shall include not only plans relative to mining operations but also to rehabilitation, regeneration, revegetation and reforestation of mineralized areas, slope stabilization of mined-out and tailings covered areas, aquaculture, watershed development and water conservation; and socioeconomic development.

[28] An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization, and Conservation; approved on 3 March 1995.

[29] Docketed as CA-G.R. SP No. 00012.

with and obtained the support of the Sangguniang Barangay and residents of Barangay Bolitoc; (4) LAMI's port site is located on private and alienable land; (5) there is no mountain on the port site; (6) the Philippine Mining Act is irrelevant and inapplicable to the present case; and (7) the other allegations of Agham that LAMI violated environmental laws, rules or regulations are likewise baseless, irrelevant and false. LAMI stated further that there is no environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities and provinces.

Public respondents DENR, PPA and ZPPO, filed with the Court of Appeals their Pre-Trial Brief dated 1 August 2012. In the Pre-Trial Brief, public respondents stated that they will present the following witnesses: (1) Dir. Claudio, Regional Director, DENR-EMB R3; two from the PPA — (2) Engineer Marieta G. Odicta (Engr. Odicta), Division Manager, Engineering Services Division, Port District Office, Manila, Northern Luzon; and (3) Emma L. Susara (Ms. Susara), Department Manager, Commercial Services of the PPA (NCR); and (4) S/Supt. Santiago, Provincial Director of the ZPPO.

The witnesses of public respondents submitted their Judicial Affidavits dated 6 August 2012. The testimonies of the witnesses were offered to prove the facts and allegations in the petition:

(1) Dir. Claudio[30] —

a) That the issues presented by Agham were already subject of the complaint filed by Mayor Marty with the DENR-EMB R3;

b) That the DENR-EMB R3 issued an ECC to LAMI;

c) That the DENR-EMB R3 acted on the complaint of Mayor Marty with regard to construction by LAMI of its port facility;

---

[30] *Rollo*, pp. 934-949.

d) That the DENR-EMB R3 issued a NOV dated 1 June 2012 to LAMI;

e) That the DENR-CENRO issued a tree cutting permit to LAMI;

f) That there is no mountain within or inside the property of LAMI in Brgy. Bolitoc, Sta. Cruz, Zambales;

g) That the cutting of the trees and the partial leveling of a landform (which is determined to be an "elongated mound" but is alleged to be a "mountain" by the petitioner) conducted by LAMI in its property in Brgy. Bolitoc, Sta. Cruz, Zambales do not pose adverse environmental impact on the adjoining communities more so to the larger areas or the entire provinces of Zambales and Pangasinan.

(2) Eng. Odicta[31] —

a) That the PPA issued a permit to construct to LAMI only after due application and submission of the required documents;

b) That other private companies, namely: DMCI Mining Corporation and Shangfil/A3Una constructed port facilities along the Brgy. Bolitoc coastline and contiguous to where the port facility of LAMI is located.

(3) Ms. Susara[32] —

a) That the PPA issued a clearance to develop and a permit to operate to LAMI only after due application and submission of the required documents;

b) That other private port facilities, namely: DMCI Mining Corporation, Shangfil/A3Una are operating

---

[31] *Id.* at 1241-1247.

[32] *Id.* at 1060-1068.

along the Brgy. Bolitoc coastline and contiguous to where the port facility of LAMI is located; and

c) That since the 1970's, the coastline along Brgy. Bolitoc, Municipality of Sta. Cruz, Zambales, has been the location of port facilities necessary for mining operations in the province of Zambales.

(4) S/Supt. Santiago[33] —

a) That the members and officials of the ZPPO did not violate, or threaten with violation, petitioner's right to a balanced and healthful ecology;

b) That the members and officials of the ZPPO did not cover-up any alleged illegal activity of LAMI; and

c) The contents of the Memorandum (Special Report re: Police Assistance) dated 6 May 2012 submitted by S/Supt. Santiago to the PNP Regional Director.

On 10 September 2012, Agham presented its first and only witness, former Rep. Angelo B. Palmones. Rep. Palmones was cross-examined by counsel for LAMI and counsel for public respondents DENR, PPA, and ZPPO.[34]

On 26 September 2012, public respondents presented their witnesses.[35]

On 28 September 2012, LAMI manifested that it was adopting the testimonies of the witnesses of the public respondents. On the same hearing, LAMI presented its witness, Felipe E. Floria, LAMI's Vice-President and General Manager.[36]

---

[33] *Id.* at 1043-1055.

[34] *Id.* at 1311-1498.

[35] *Id.* at 1499-1689.

[36] *Id.* at 1691-1786.

In a Decision[37] dated 23 November 2012, the Court of Appeals decided the case in favor of petitioner. The appellate court found that the government, through the CENRO, authorized LAMI to cut trees and LAMI strictly followed the proper guidelines stated in the permit. The appellate court also stated that there can be no flattening of a mountain when there is no mountain to speak of. Thus, for failing to comply with the requisites necessary for the issuance of a Writ of Kalikasan, the Court of Appeals resolved to deny the petition. The dispositive portion of the Decision states:

WHEREFORE, premises considered, the petition is hereby DENIED.

SO ORDERED.[38]

Agham filed a Motion for Reconsideration with the Court of Appeals. In its Motion for Reconsideration, Agham argued that the alleged leveling of the subject hill by LAMI: (1) was not sanctioned by the DENR since LAMI allegedly had no ECC from the DENR; (2) affected the ecological balance of the affected towns and provinces since such leveling was done without the concurrence of its residents; and (3) instigated the gradual eradication of the strip of land mass in Sta. Cruz, Zambales that serves as protective barrier from floods brought about by the swelling or surging of the coastal water moving inward reaching other towns of Zambales and Pangasinan.[39]

On 4 February 2013, LAMI filed its Comment/Opposition to the Motion for Reconsideration. Agham then filed its Reply dated 21 February 2013.

In a Resolution dated 6 March 2013, the Court of Appeals declared that Agham's Motion for Reconsideration was submitted for resolution. Subsequently, Agham filed a Supplemental Reply dated 29 April 2013 reiterating the same arguments.

---

[37] *Id.* at 137-158. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Amelita G. Tolentino and Ramon R. Garcia concurring.

[38] *Id.* at 158.

[39] *Id.* at 2075.

In a Resolution[40] dated 31 May 2013, the Court of Appeals set Agham's Motion for Reconsideration for hearing on 13 June 2013. At the hearing, all parties were given time to argue their case. Thereafter, the Motion for Reconsideration was submitted for resolution.

Agham then filed a Manifestation dated 17 June 2013 summarizing its arguments. On 4 July 2013, LAMI filed a Motion to Expunge with Ad Cautelam Comment/Opposition. On 11 July 2013, the Court of Appeals, for the last and third time, submitted the Motion for Reconsideration for resolution.

In an Amended Decision dated 13 September 2013, the Court of Appeals reversed and set aside its original Decision dated 23 November 2012. The dispositive portion of the Decision states:

> WHEREFORE, in view of the foregoing, the Decision dated November 23, 2012 is hereby RECONSIDERED and SET ASIDE and, in lieu thereof, another judgment is rendered GRANTING the petition for WRIT OF KALIKASAN as follows, to wit:
>
> (1) respondent LNL Archipelago Minerals, Inc. (LAMI) is directed to PERMANENTLY CEASE and [DESIST] from scraping off the land formation in question or from performing any activity/ies in violation of environmental laws resulting in environmental destruction or damage;
>
> (2) the respondent LAMI as well as the Secretary of Department of Environment and Natural Resources and/or their representatives are directed to PROTECT, PRESERVE, REHABILITATE and/or RESTORE the subject land formation including the plants and trees therein;
>
> (3) the Secretary of DENR and/or his representative is directed to MONITOR strict compliance with the Decision and Orders of the Court; and make PERIODIC REPORTS on a monthly basis on the execution of the final judgment.
>
> SO ORDERED.[41]

---

[40] *Id.* at 2075-2076.

[41] *Id.* at 133.

Hence, the instant petition.

The Issues

The issues for our resolution are (1) whether LAMI violated the environmental laws as alleged by Agham, and (2) whether LAMI flattened any mountain and caused environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

The Court's Ruling

Petitioner contends that it has the necessary permits and authorization to cut trees on the port site, controverting the allegation of Agham that it violated Section 68 of the Revised Forestry Code, as amended. Petitioner also insists that it did not violate nor is it violating the Mining Act as alleged by Agham. Petitioner argues that it is not conducting any mining activity on the port site since the mine site is about 25 kilometers away from the port site. Further, petitioner adds that after filing its Verified Return dated 21 June 2012, Agham never mentioned again the alleged violation of the Revised Forestry Code, as amended, and the Philippine Mining Act. Instead, Agham changed its position and later claimed that LAMI was flattening a mountain on the port site which was allegedly illegal *per se*. Petitioner insists that Agham did not even present evidence to establish any environmental damage which is required for the issuance of the privilege of the Writ of Kalikasan.

Respondents, on the other hand, assert that even if the subject land formation is not a mound, hill or mountain, the fact remains that the scraping and leveling done by petitioner caused serious environmental damage which affects not only the municipality of Sta. Cruz, Zambales but also the nearby towns of Zambales and Pangasinan.

The present case involves the extraordinary remedy of a Writ of Kalikasan which is under the Rules of Procedure for Environmental Cases.[42] Section 1, Rule 7, Part III of the said Rules provides:

---

[42] A.M. No. 09-6-8-SC; approved on 13 April 2010.

Section 1. Nature of the writ. — The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

The Writ of Kalikasan, categorized as a special civil action and conceptualized as an extraordinary remedy,[43] covers environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces. The writ is available against an unlawful act or omission of a public official or employee, or private individual or entity.

The following requisites must be present to avail of this remedy: (1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

In the present case, Agham, in its Petition for a Writ of Kalikasan, cited two laws which LAMI allegedly violated: (1) Section 68 of the Revised Forestry Code, as amended; and (2) Sections 57 and 69 of the Philippine Mining Act.

Section 68 of the Revised Forestry Code, as amended, states:

Sec. 68. Cutting, Gathering and/or Collecting Timber, or Other Forest Products Without License. — Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private

[43] *Paje v. Casiño*, G.R. No. 207257, 3 February 2015.

land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

xxx xxx xxx

There are two distinct and separate offenses punished under Section 68 of PD 705:

(1) Cutting, gathering, collecting and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authorization; and

(2) Possession of timber or other forest products without the legal documents required under existing forest laws and regulations.[44]

In the present case, LAMI was given a Tree Cutting Permit[45] by the CENRO dated 17 April 2012. In the permit, LAMI was allowed to cut 37 trees with a total volume of 7.64 cubic meters within the port site, subject to the condition that the trees cut shall be replaced with a ratio of 1-30 fruit and non-bearing fruit trees. Thereafter, the Forest Management Service and Forest Utilization Unit, both under the DENR, issued a Post Evaluation Report[46] dated 3 May 2012 stating that LAMI properly followed the conditions laid down in the permit. The relevant portions of the Post Evaluation Report state:

x x x the following findings and observations are noted:

---

[44] *Villarin v. People*, 672 Phil. 155 (2011), citing *Aquino v. People*, 611 Phil. 442, 450 (2009).

[45] *Rollo*, p. 461.

[46] *Id.* at 1009.

1. That the tree cutting implemented/conducted by the company was confined inside Lot No. 2999, Cad 316-D situated at Barangay Bolitoc, Sta. Cruz, Zambales and within the area previously granted for tree cutting;

2. It was found that the thirty seven (37) trees of various lesser-known species and fruit bearing trees with a total volume of 7.64 cubic meters as specified in the permit were cut as subject trees are located within the directly affected areas of the port facility project of the company;

3. The other trees previously inventoried and are not directly affected by the project within the same lot are spared; and

4. There are forty four (44) various species of miscellaneous trees counted and left with a computed volume of 6.04 cubic meters.

Relative the above findings and in compliance with the terms and conditions of the permit issued, the company should be reminded to replace the trees cut therein as specified in support with the environmental enhancement program of the DENR.

xxx xxx xxx

Since LAMI strictly followed the permit issued by the CENRO and even passed the evaluation conducted after the issuance of the permit, then clearly LAMI had the authority to cut trees and did not violate Section 68 of the Revised Forestry Code, as amended.

Next, Agham submitted that LAMI allegedly violated Sections 57 and 69 of the Philippine Mining Act.

Sections 57 and 69 of the Philippine Mining Act state:

Section 57. Expenditure for Community Development and Science and Mining Technology. — A contractor shall assist in the development of its mining community, the promotion of the general welfare of its inhabitants, and the development of science and mining technology.

Section 69. Environmental Protection. — Every contractor shall undertake an environmental protection and enhancement program covering the period of the mineral agreement or permit. Such environmental program shall be incorporated in the work program

which the contractor or permittee shall submit as an accompanying document to the application for a mineral agreement or permit. The work program shall include not only plans relative to mining operations but also to rehabilitation, regeneration, revegetation and reforestation of mineralized areas, slope stabilization of mined-out and tailings covered areas, aquaculture, watershed development and water conservation; and socioeconomic development.

These two provisions are inapplicable to this case. First, LAMI is not conducting any mining activity on the port site. LAMI's mine site is about 25 kilometers away from the port site. Second, LAMI secured all the necessary permits and licenses for the construction of a port and LAMI's activity was limited to preparatory works for the port's construction. The Philippine Mining Act deals with mining operations and other mining activities. Sections 57 and 69 deal with the development of a mining community and environmental protection covering a mineral agreement or permit.

Here, Agham reasoned that LAMI was destroying the environment by cutting mountain trees and leveling a mountain to the damage and detriment of the residents of Zambales and the nearby towns of Pangasinan. Agham simply submitted a picture taken on 4 June 2012 where allegedly the backhoes owned by LAMI were pushing the remnants of the mountain to the sea.

This explanation, absent any concrete proof, is untenable.

Clearly, Agham did not give proper justifications for citing Sections 57 and 69 of the Philippine Mining Act. Agham did not even present any evidence that LAMI violated the mining law or any mining undertakings in relation to LAMI's construction of a port facility. Agham only alleged in very general terms that LAMI was destroying the environment and leveling a mountain without conducting any scientific studies or submitting expert testimonies that would corroborate such allegations.

Section 2 (c), Rule 7, Part III of the Rules of Procedure for Environmental Cases provides:

Section 2. Contents of the petition. — The verified petition shall contain the following:

> (c) The environmental law, rule or regulation violated or threatened to be violated, the act or omission complained of, and the environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

The Rules are clear that in a Writ of Kalikasan petitioner has the burden to prove the (1) environmental law, rule or regulation violated or threatened to be violated; (2) act or omission complained of; and (3) the environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Even the Annotation to the Rules of Procedure for Environmental Cases states that the magnitude of environmental damage is a condition *sine qua non* in a petition for the issuance of a Writ of Kalikasan and must be contained in the verified petition.

Agham, in failing to prove any violation of the Revised Forestry Code, as amended, and the Philippine Mining Act, shifted its focus and then claimed that LAMI allegedly flattened or leveled a mountain.

The mountain, according to Agham, serves as a natural protective barrier from typhoons and floods to the residents of Zambales and nearby towns of Pangasinan. Thus, Agham argues that once such natural resources are damaged, the residents of these two provinces will be defenseless and their life, health and properties will be at constant risk of being lost.

However, Agham, in accusing that LAMI allegedly flattened a mountain, did not cite any law allegedly violated by LAMI in relation to this claim. Agham did not present any proof to demonstrate that the local residents in Zambales, and even the nearby towns of Pangasinan, complained of any great danger or harm on the alleged leveling of the land formation which may affect their lives, health or properties. Neither was there

any evidence showing of a grave and real environmental damage to the *barangay* and the surrounding vicinity.

To belie Agham's contentions, the records, from the testimonies of those experts in their fields, show that there is in fact no mountain in Brgy. Bolitoc, Sta. Cruz, Zambales.

First, in the Judicial Affidavit[47] dated 6 August 2012, the Regional Director of DENR EMB R3, Dir. Claudio, categorically declared that there is no mountain on LAMI's property. The relevant portions state:

32. Q: One of the complaints of Mayor Marty in his letter dated 27 April 2012, x x x, is that LAMI is "leveling a mountain" in its property in Barangay Bolitoc, Sta. Cruz, Zambales. Is there really a mountain in the property of LAMI in the said place?

A: None, sir. The subject landform is not considered as a mountain based on commonly accepted description of a mountain as having 300 meters to 2,500 meters height over base. The highest elevation of the project area is 23 meters.

33. Q: Do you have any proof that the landform in LAMI's property is not a mountain?

A: Yes, sir. The Mines and Geosciences Bureau (MGB), Regional Office No. III, through the OIC of the Geosciences Division, issued a Memorandum dated June 26, 2012 proving that there is no mountain in LAMI's property. The proper description of the landform, according to the said memorandum, is an "elongated mound".[48]

Second, LAMI, through the Judicial Affidavit[49] dated 3 August 2012 of Felipe E. Floria, LAMI's Vice-President and General Manager, was able to establish that Brgy. Bolitoc, Sta. Cruz had no mountain. The relevant portions provide:

126. Q: Why do you say that this elevated portion is not a "mountain"?

---

[47] *Id.* at 934-949.

[48] *Id.* at 944.

[49] *Id.* at 807-844.

> A: The port site where the alleged mountain is located is only 1.8 hectares of alienable and disposable land. It is private property, lawfully possessed by LAMI, with the latter exercising rights based on its occupation thereof. The mound and/or ridge within the private property is only about 23 meters high. The base or footing of the mound therein which the Petitioner insists is a mountain is only 1.5 hectares, and the height is approximately 23 meters. I have been advised that a mountain, as described by the United Nations Environment Programme — World Conservation Monitoring Centre ("UNEP-WCMC"), must be, at least, of a height greater than 300 meters or 984 feet in addition to other requirements on slope and local elevation range. In other countries, the United Kingdom for example, the minimum height requirement is 2,000 ft or 609.6 meters.[50]

Third, several government entities and officials have declared that there is no mountain on the port site: (1) in a Letter[51] to LAMI signed by the *Sangguniang Bayan* members of Sta. Cruz dated 4 June 2012, the *Sangguniang Bayan* members stated that there is no mountain in the area; (2) in a Memorandum[52] dated 4 June 2012, the CENRO concluded that the "mountain" is a "hill falling under Block I, Alienable and Disposable land per LC Map 635"; and (3) in a Special Report[53] re: Police Assistance dated 6 May 2012, the Provincial Director of PNP Zambales reported to the PNP Regional Director, citing the findings of the local chief of police, that no leveling of a mountain transpired in the area.

Last, in an Inspection Report[54] dated 26 June 2012, the Mines and Geosciences Bureau, Geosciences Division of the DENR concluded that the "mountain" is only an elongated mound. The findings and conclusion of the report provide:

---

[50] *Id.* at 828.

[51] *Id.* at 630-631.

[52] *Id.* at 645-646.

[53] *Id.* at 2199-2200.

[54] *Id.* at 1010-1012.

FINDINGS

1. The Bolitoc LAMI Port Facility is approximately centered at the intersection of geographic coordinates 15º45'00.4" north latitude and 119º53'19.9" east longitude, x x x. It is bounded on the north by the West Philippine Sea (Bolitoc Bay), on the west and east by the continuation of the elevated landform, and to the south by an unnamed creek and a concrete barangay road connecting the Brgy. Bolitoc to the Zambales National Highway.

Brgy. Bolitoc also hosts the port facilities of the DMCI and the Shangfil Corporation both of which occupy the former loading site of the defunct Acoje Mining Corporation.

2. The landform of interest is characterized by a roughly east-west trending elevated and elongated landmass. Within the LAMI site, the elevated landform measures 164 meters in length and about 94 meters in width and is almost parallel to the coastline. It has a maximum elevation located at its eastern end of 26 meters above mean sea level more or less. Its western end has an elevation of 23 meters above mean sea level more or less x x x. The landform is about 16 meters higher than the barangay road and nearby houses x x x.

From the LAMI area, the landform continues eastwards to the DMCI and the Shangfil Port facilities and also westwards to the vicinity of Brgy. Bolitoc proper.

3. The area is underlain by interbedded calcareous sandstone, shale, and siltstone of the Cabaluan Formation (formerly Zambales Formation), x x x. Rock outcrops show the sedimentary sequence displaying almost horizontal to gently dipping beds cut by a minor fault. These rocks weather into a 1-2 meter silty clay.

DISCUSSION

Considering elevated landform of interest measures 164 meters in length and about 94 meters in width disposed in an elongate manner with a maximum elevation of 26 meters more or less above mean sea level and is about 16 meters higher than the barangay road and nearby houses and using the Glossary of Landforms and Geologic Terms x x x by Hawley and Parsons, 1980 above that **the elevated landform is neither a mountain or hill, but instead it is considered elongated landmass/or elongated mound**.

CONCLUSION

Based on the above geological and landform (geomorphic) classification, **considering its elevation of 23 to 26 meters above mean sea level and which is 16 meters above the barangay road and vicinity, the elevated landform present in the LAMI port facility is neither a hill or mountain. Its elevation of 16 meters above its vicinity is lower than a hill (30 meters). Its height above its vicinity can be possibly categorized as a mound** which is defined by the Dictionary of Geological terms (1976) prepared by the American Geological Institute as which defines a mound as "a low hill of earth, natural or artificial." In the United Kingdom, mounds are also called hillocks or knolls. The term elongated is prefixed as a modifier to describe its east-west disposition. **Hence, the elevated landform of interest is considered as elongated mound**.[55] (Emphasis supplied)

On the other hand, the lone witness of Agham, former Rep. Palmones, admitted in the 10 September 2012 hearing conducted by the Court of Appeals that he was incompetent to prove that the elevated ground located in Brgy. Bolitoc is a mountain. The relevant portions[56] of Rep. Palmones' testimony provide:

Atty. Gallos: Mr. Congressman, you conducted an ocular inspection in Brgy. Bolitoc in Sta. Cruz, Zambales on May 21?
Cong. Palmones: Yes.

xxx xxx xxx

Atty. Gallos: That was the first time you were in Brgy. Bolitoc?
Cong. Palmones: Yes.

Atty. Gallos: That was also the first and the last ocular inspection that you did so far in Brgy. Bolitoc?
Cong. Palmones: Yes.

xxx xxx xxx

Atty. Gallos: What is the name of this mountain?
Cong. Palmones: I really don't know the name of the mountain, Your Honor.

---

[55] *Id.* at 1011-1012.

[56] *Id.* at 1403-1405, 1474-1477.

Atty. Gallos: What is the elevation or height of this mountain?
Cong. Palmones: I really don't know the elevation of that mountain, Your Honors.

Atty. Gallos: What is the base of this mountain?
Cong. Palmones: I really don't know, Your Honors.

Atty. Tolentino: Your Honor, the witness is incompetent to answer the questions.

Cong. Palmones: I'm not competent to answer that question.

Atty. Gallos: Your Honor, that's exactly our point. He is claiming that there is a mountain but he cannot tell us the height, the slope, the elevation, the base, Your Honor. So you admit now that you do not know, you do not have the competence to state whether or not there is a mountain?
Cong. Palmones: I really don't know what is the technical description of a mountain but based on the information that we got from the community during the consultation it's full of vegetation before it was leveled down by the operation, Your Honors. (Emphasis supplied)

Agham, in its Motion for Reconsideration with the Court of Appeals, then asserted that even if the subject land formation is not a mound, hill or mountain, the fact remains that the scraping and leveling done by petitioner caused serious environmental damage which affects not only Sta. Cruz, Zambales but also the nearby towns of Zambales and Pangasinan.

The Court of Appeals, in granting the Motion for Reconsideration embodied in its Amended Decision dated 13 September 2013, held that what LAMI did was not to simply level the subject land formation but scrape and remove a small mountain and, thereafter, reclaim a portion of the adjacent waters with the earth it took therefrom, making out of the soil gathered to construct a seaport. The Court of Appeals stated that the scraping off or the cutting of the subject land formation by LAMI would instigate the gradual eradication of the strip of land mass in Brgy. Bolitoc which serves as protective barrier to floods brought about by the swelling or surging of the coastal water moving inward reaching other towns of Zambales and Pangasinan. The Court of Appeals added that the port site is prone to frequent visits of tropical depression and

that the coastal portions of the "Sta. Cruz Quadrangle — Zambales and Pangasinan province" are touted to be highly susceptible to landslide and flooding.

We do not subscribe to the appellate court's view.

First, the Court of Appeals did not provide any basis, in fact and in law, to support the reversal of its original decision. Agham, in its Motion for Reconsideration, did not present new evidence to refute its claim that LAMI leveled a "mountain" or that there was an environmental damage of considerable significance that will harm the life, health and properties of the residents of the municipality of Sta. Cruz and its neighboring towns or cities, or even the provinces of Zambales and Pangasinan. The pleadings and documents submitted by Agham were just a reiteration of its original position before the original Court of Appeals' decision was promulgated on 23 November 2012.

It is well-settled that a party claiming the privilege for the issuance of a Writ of Kalikasan has to show that a law, rule or regulation was violated or would be violated. In the present case, the allegation by Agham that two laws — the Revised Forestry Code, as amended, and the Philippine Mining Act — were violated by LAMI was not adequately substantiated by Agham. Even the facts submitted by Agham to establish environmental damage were mere general allegations.

Second, Agham's allegation that there was a "mountain" in LAMI's port site was earlier established as false as the "mountain" was non-existent as proven by the testimonies of the witnesses and reports made by environmental experts and persons who have been educated and trained in their respective fields.

Third, contrary to Agham's claim that LAMI had no ECC from the DENR, the DENR restored LAMI's ECC. After LAMI was issued a Notice of Violation of its ECC dated 1 June 2012 by the DENR-EMB R3, LAMI complied with all the requirements and its ECC had been reinstated. In the Letter[57] dated 24 October 2012, Dir. Claudio wrote:

---

[57] *Id.* at 2249-2250.

xxx xxx xxx

Regarding the alleged cutting of trees and leveling of the mountain, we have verified that:

1. There is no illegal cutting of trees since a Tree Cutting Permit was issued by the Community Environment and Natural Resources Office (CENRO). Monitoring of the compliance with the conditions of the said Permit was also undertaken by the CENRO; and

2. There is no leveling of a mountain. As certified by the Mines and Geosciences Bureau Region 3, the landform in the area is an elongated mound which is 164 meters in length and 94 meters in width and its maximum elevation is 26 meters above mean sea level.

Further, we recognize your efforts in revegetating the exposed side slopes of the cut portion of the mound and the construction of drainage system and silt traps to prevent the siltation of the bay.

The violated ECC conditions have been rectified and clarified while the penalty corresponding to such violation was fully paid and the required rehabilitation and mitigating measures were already implemented as committed. As such, the matter leading to the issuance of the NOV is now resolved.

As ECC holder, you are enjoined to ensure the effective carrying out of your Environmental Management and Monitoring Plan.

Even Rep. Dan S. Fernandez, the Chairman of the Committee on Ecology of the House of Representatives, acknowledged that LAMI had fully complied with its ECC conditions. In a Letter[58] dated 26 February 2013 addressed to the DENR Secretary, Rep. Fernandez wrote:

xxx xxx xxx

On 21 February 2013, the Committee on Ecology received a letter from Director Lormelyn E. Claudio, the Regional Director for Region III of the Environment Management Bureau of the DENR. The letter ascertains that, among other things, based on the investigation and monitoring conducted led by Dir. Claudio, LAMI is, to date, in

[58] *Id.* at 2252.

compliance with its environmental commitments as required under the ECC and said Order.

In view thereof, the Committee would like to express its appreciation for the apt and prompt action on the matter. We expect that the subject company's conformity to environmental laws, as well as its activities' impact on the environment, will remain closely monitored and evaluated.

xxx xxx xxx

Last, the alleged scraping off or leveling of land at LAMI's port site is deemed insignificant to pose a detrimental impact on the environment.

Dir. Claudio testified at the hearing conducted by the Court of Appeals on 26 September 2012 that the cut and fill operations of LAMI only affected the port site but not the surrounding area and that the environmental effect was only minimal and insignificant. The relevant portions of Dir. Claudio's testimony provide:

A/Sol. Chua Cheng: Madam Witness, you made mention that the cut and fill operations involved the . . . or the causeway created during the cut and fill operation is 82 meters in length and 8 meters in width. What is the overall environment effect of this cut and fill operation in Barangay Bolitoc?
Dir. Claudio: **It is minimal, insignificant and temporary in nature**, Sir, because as I mentioned, only 11,580 cubic meters had been stripped off and the tree cutting which had been issued with a permit is only less than about 37 trees based on the Post Evaluation Report done by the CENRO, Sir.

A/Sol. Chua Cheng: What about the effect of such cut and fill operations as regards the two provinces, Pangasinan and Zambales, does it have any effect or what is the extent of the effect?
Dir. Claudio: **It is just localized; it is just confined within the project area** because we required them to put up the drainage system, the drainage, the canals and the siltation ponds and the laying of armour rocks for the sea wall and the construction of causeway, Sir, to avoid erosion and sedimentation. We also required them to rehabilitate the exposed slopes which they already did.

xxx xxx xxx

A/Sol. Chua Cheng: Only in the project area specifically located only in Brgy. Bolitoc?

Dir. Claudio: Brgy. Bolitoc, Sta. Cruz, Zambales, Sir. **It does not in any way affect or cannot affect the Province of Pangasinan as alleged, Sir**.[59] (Emphasis supplied)

Even the Geoscience Foundation, Inc., which conducted a scientific study on the port site regarding the possible damage to the environment from the construction of the port facility, found that the landform was too small to protect against typhoons, monsoons and floods due to heavy rains and storm surges. Its Report[60] on the Topographical, Geomorphological and Climatological Characterization of the LAMI Port undertaken in September 2012 stated:

6.0 Findings in Relation to the Petition for Writ of Kalikasan

xxx xxx xxx

1. *The LAMI Port is partly situated in a hill and not a mountain*. The topographic and geologic maps of NAMRIA and the MGB do not show the presence of a mountain where the port is partly located. The detailed topographic survey moreover indicates that this hill had an original elevation of 23 m.MSL in the portion where it was excavated to accommodate the access road leading to the wharf.

Mountains attain much higher elevations than 23 m.MSL. Kendall, et al. (1967), defines a mountain as having a height of at least 900 meters and are usually characterized by a vertical zonation of landscape and vegetation due to increasing elevations.

2. *No leveling of a mountain was done*. The construction of the access road required a V-cut through the hill that lowered it from 23 m.MSL to 7.5 m.MSL. This elevation is still much higher than the flat land surrounding the hill. The hill had an original length of 600 meters through which the V-cut, which has an average width of 26.5 meters, was excavated. Only a small portion of the hill was therefore altered.

---

[59] *Id.* at 1650-1653.

[60] *Id.* at 2207-2234.

The topographic survey further reveals that the total volume of earth material removed is 24,569 cubic meters, which would fit a room that has a length, width and height of 29 meters. This amount of earth material does not constitute the volume of a mountain.

3. *The hill is too small and not in the right location to protect against typhoons*. The hill cannot serve as a natural protective barrier against typhoons in Zambales and some towns of Pangasinan because it is too small compared to the magnitude of typhoons. Typhoons approach the country from east and move in a west to northwest direction through Zambales Province as clarified in Figure 7. They are even able to cross the Sierra Madre Range and the Zambales Range before reaching Zambales Province. Since the port is situated at the western coastline of Zambales, it would be the last thing a typhoon would pass by as it moves through Zambales.

4. *The hill is too small to protect against the Southwest Monsoon*. The hill does not shield any area from the heavy rains that batter the country during the Southwest Monsoon. It is too small to alter the effect of the Southwest Monsoon in the way that the Sierra Madre Range forces the Northwest Monsoon to rise over it and release much of its moisture as orographic precipitation on the windward side of the range such that the leeward side is drier.

5. *The hill is not in the right location to protect against flooding due to heavy rains*. The hill does not protect against the floods that occur from heavy rains. Since Zambales regionally slopes down to the west, flood water during heavy rains will move from east to west following the flow direction of rivers in the area. Flood water from the Zambales Range will inundate the coastal plain first before reaching the coastline where the hill is situated. Figure 11 depicts the flow direction of flood water in the municipality.

6. *The hill is too small to protect against floods due to storm surges*. Storm surges appear as large waves that are caused by the pushing of the wind on the surface of the sea or ocean during storm events. Since the hill has a present length of only 420 meters, it is too small to prevent flooding due to storm surges. The large waves will just skirt the hill and sweep through the low-lying coastland to the west and east of the hill.

The hill shields against the direct impact of large, south-moving waves to several homes located immediately south of the hill. Since the V-cut of the access road is small compared to the rest of the hill

and terminates at a relatively high 7.5 m.MSL, this protection offered by the hill is not significantly diminished.[61]

Further, the DENR composite team, in its Report of Investigation[62] conducted on 20-21 June 2012 on LAMI's port site to ensure that LAMI undertook mitigating measures in its property, found that LAMI's activities posed only a minimal or insignificant impact to the environment. The relevant portions of the Report state:

Findings and Observations:

The composite team gathered data and the following are the initial observations:

1. Site preparation which includes site grading/surface stripping, low ridge cut and fill and reclamation works were observed to have been undertaken within the project area;

2. A total volume of approximately 11,580 cubic meters of soil cut/stripped from low ridge was noted being used for causeway construction. Part of the discarded soil with a volume of 5,843 cubic meters was already used for causeway preparation while the remaining 5,735 cubic meters was noted still on stockpile area;

3. Discarded soil generated from ridge cut and fill consists of clay with sandstone and shale;

4. The partial low ridge cut and fill poses minimal or insignificant impact to the environment due to threats of storm surges, strong winds and flooding because the protective natural barriers against northeast monsoon are the mountain ranges in the eastern part of Zambales and Pangasinan which are geologically and historically effective as in the case of the adjoining and operational ports of the DMCI and Shang Fil.

5. The height of the low ridge is still maintained at an elevation of 23.144 meters above sea level while the constructed access road to the causeway has an elevation of 7.46 meters with a width of 8 meters and length of 80-100 meters only.

Remarks and Recommendation:

---

[61] *Id.* at 2225-2226.

[62] *Id.* at 1028-1031.

The construction of the access road on the low ridge does not pose adverse environmental impact to the adjoining communities more so to the larger areas or the entire province of Zambales and Pangasinan.

It was determined as a result of our verification and based on the above findings supported with field GPS reading that **there had been no leveling of the mountain undertaken in the project site as there is no mountain existing inside the area** covered by the ECC issued by EMB-Region 3. The landform claimed by Mayor Marty to be a mountain is actually an elongated low ridge with a peak of approximately 23 meters above sea level which is located in a private land falling under Block 1, Alienable and Disposable Land per LC Map 635 with Lot No. 2999 originally owned by Mr. Severo Monsalud which was transferred to Sta. Cruz Mineral Port Corporation with a Contract of Lease with LAMI (data provided by CENRO Masinloc through a Memorandum dated June 4, 2012). The proponent (LAMI) only implemented road cutting of low ridge in the middle to make an access way to the proposed marine loading facility. More so, tree cutting done by LAMI is covered by a Permit to Cut issued by DENR-Region 3-CENRO, Masinloc which is responsible for the inventory and monitoring of cut trees.

x x x[63] (Emphasis supplied)

Thus, from all the foregoing, we agree with the appellate court, in its original Decision dated 23 November 2012, when it denied the petition for a Writ of Kalikasan:

As between the too general and very hypothetical allegation of large-scale environmental damage at one hand, and the remarks of government experts on the other, We are inclined to give more credit to the latter. Below is the further articulation of our stance:

Presumption of regularity

It is a legal presumption, born of wisdom and experience, that official duty has been regularly performed. Therefore, the fact that the "remarks and recommendation" of the composite team from EMB R3, MGB R3, and PENRO Zambales were made in the exercise of their government function, the presumption of regularity in the

[63] *Id.* at 1029-1031.

performance of such official duty stands. It is incumbent upon petitioner to prove otherwise, a task which it failed to do here.

Expert findings are afforded great weight

The findings of facts of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings are made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed. x x x.[64]

In sum, contrary to the findings of the appellate court in its Amended Decision dated 13 September 2013, we find that LAMI did not cause any environmental damage that prejudiced the life, health or property of the inhabitants residing in the municipality of Sta. Cruz, the province of Zambales or in the neighboring province of Pangasinan. Agham, as the party that has the burden to prove the requirements for the issuance of the privilege of the Writ of Kalikasan, failed to prove (1) the environmental laws allegedly violated by LAMI; and (2) the magnitude of the environmental damage allegedly caused by LAMI in the construction of LAMI's port facility in Brgy. Bolitoc, Sta. Cruz, Zambales and its surrounding area. Thus, the petition for the issuance of the privilege of the Writ of Kalikasan must be denied.

WHEREFORE, we **GRANT** the petition. We **REVERSE and SET ASIDE** the Amended Decision dated 13 September 2013 of the Court of Appeals and **REINSTATE AND AFFIRM** the original Decision dated 23 November 2012 of the Court of Appeals in CA-G.R. SP No. 00012 which DENIED the petition for the issuance of the privilege of the Writ of Kalikasan.

SO ORDERED.

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

Jardeleza, J., no part, prior OSG action.

---

[64] *Id.* at 155-156. Citations omitted.

FIRST DIVISION

[G.R. No. 214934. April 12, 2016]

PACIFIC REHOUSE CORPORATION, *petitioner, vs.* **JOVEN L. NGO, as represented by OSCAR J. GARCIA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; PARTIES; DEATH OF A PARTY; THE RULES OF COURT ALLOWS THE SUBSTITUTION OF A PARTY-LITIGANT WHO DIES DURING THE PENDENCY OF A CASE BY HIS HEIRS PROVIDED THAT THE CLAIM SUBJECT OF SAID CASE IS NOT EXTINGUISHED BY HIS DEATH; ESTABLISHED IN CASE AT BAR.— Section 16, Rule 3 of the Rules of Court governs the rule on substitution in case of death of any of the parties to a pending suit. x x x Section 16, Rule 3 of the Rules of Court allows the substitution of a party-litigant who dies during the pendency of a case by his heirs, **provided that the claim subject of said case is not extinguished by his death.** As early as in *Bonilla v. Barcena,* the Court has settled that if the claim in an action affects property and property rights, then the action survives the death of a party-litigant. x x x In the instant case, although the CA correctly pointed out that **Civil Case No. 2031-08** involves a complaint for specific performance and damages, a closer perusal of petitioner's complaint reveals that it actually prays for, *inter alia,* the delivery of ownership of the subject land through Bautista's execution of a deed of sale and the turnover of TCT No. T-800 in its favor. This shows that the primary objective and nature of **Civil Case No. 2031-08** is to recover the subject property itself and thus, is deemed to be a real action. In *Gochan v. Gochan,* the Court explained that complaints like this are in the nature of real actions, or actions affecting title to or recovery of possession of real property. x x x Evidently, **Civil Case No. 2031-08** is a real action affecting property and property rights over the subject land. Therefore, the death of a party-litigant, *i.e.,* Bautista, did not render the case dismissible on such ground, but rather, calls for the proper application of

Section 16, Rule 3 of the Rules of Court on substitution of party-litigants. Similarly, in *Carabeo v. Spouses Dingco,* the Court held that an action for specific performance based on the *"Kasunduan sa Bilihan ng Karapatan sa Lupa"* was in pursuit of a property right and, as such, survives the death of a party thereto.

2. ID.; ID.; CONSOLIDATION; CASE LAW STATES THAT CONSOLIDATION OF CASES, WHEN PROPER, RESULTS IN THE SIMPLIFICATION OF PROCEEDINGS, WHICH SAVES TIME, THE RESOURCES OF THE PARTIES AND THE COURTS, AND A POSSIBLE MAJOR ABBREVIATION OF TRIAL; APPLICATION IN CASE AT BAR.— In sum, the CA erred in dismissing **Civil Case No. 2031-08** based solely on Bautista's death. As such, it should be reinstated and consolidated with **LRC Case No. 1117-09**, considering that the two cases involve the same property and, as correctly opined by the court *a quo,* any adjudication in either case would necessarily affect the other. In this relation, case law states that consolidation of cases, when proper, results in the simplification of proceedings, which saves time, the resources of the parties and the courts, and a possible major abbreviation of trial. It is a desirable end to be achieved, within the context of the present state of affairs where court dockets are full and individual and state finances are limited. It contributes to the swift dispensation of justice, and is in accord with the aim of affording the parties a just, speedy, and inexpensive determination of their cases before the courts. Likewise, it avoids the possibility of conflicting decisions being rendered by the courts in two or more cases which would otherwise require a single judgment.

APPEARANCES OF COUNSEL

Sedalaw Defensor Enrile & De Mata for petitioner.
Miriam S. Clorina for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 20, 2014 and the Resolution[3] dated October 8, 2014 of the Court of Appeals (CA) in CA-G.R. SP. No. 122222, which set aside the Omnibus Order[4] dated April 7, 2011 and the Order[5] dated September 30, 2011 of the Regional Trial Court of Imus, Cavite, Branch 20 (RTC), in consolidated **Civil Case No. 2031-08** and **LRC Case No. 1117-09** and consequently dismissed the complaint for specific performance and damages docketed as **Civil Case No. 2031-08**.

The Facts

On February 17, 1994, petitioner Pacific Rehouse Corporation (petitioner) entered into a Deed of Conditional Sale[6] with Benjamin G. Bautista (Bautista) for the purchase of a 52,341-square meter parcel of land located in Imus, Cavite and covered by Transfer Certificate of Title (TCT) No. T-800 issued by the Registry of Deeds of the Province of Cavite (subject property), for a total consideration of ₱7,327,740.00. Under the contract, petitioner was to make a down payment of ₱2,198,322.00 upon its execution, with the balance to be paid upon completion by Bautista of the pertinent documents necessary for the transfer of the said property.[7]

However, despite receipt of payment in the total amount of ₱6,598,322.00 and repeated offers to pay the balance in full,

---

[1] *Rollo*, pp. 30-49.

[2] *Id.* at 51-65. Penned by Associate Justice Ramon A. Cruz with Associate Justices Hakim S. Abdulwahid and Romeo F. Barza concurring.

[3] *Id.* at 67-68.

[4] *Id.* at 213-216. Penned by Presiding Judge Fernando L. Felicen.

[5] *Id.* at 258-259.

[6] *Id.* at 78-80.

[7] See *id.*

Bautista failed and refused to comply with his obligation to execute the corresponding deed of absolute sale and deliver the certificate of title of the subject property, and even sold the property to another buyer.[8] Hence, on April 30, 2008, petitioner filed a complaint[9] for specific performance and damages against Bautista, docketed as **Civil Case No. 2031-08**, praying for the delivery of a deed of transfer and other documents necessary to transfer the title in its favor, as well as the Owner's Copy of TCT No. T-800.[10] Further, on May 9, 2008, petitioner caused the annotation of a Notice of *Lis Pendens* on TCT No. T-800 under Entry No. 9405[11] in order to protect its rights over the subject property pending litigation.[12]

After the parties had filed their respective responsive pleadings,[13] the case was set for pre-trial. However, before the same could proceed, Bautista's counsel filed a Manifestation and Notice of Death[14] informing the RTC that Bautista had died on February 14, 2009. Thus, in an Order[15] dated May 19, 2009, the RTC directed Bautista's counsel to substitute the latter's heirs and/or representatives in the action pursuant to Section 16, Rule 3 of the Rules of Court. Unfortunately, said counsel failed to comply due to lack of personal knowledge of the identities of the heirs of Bautista and their respective residences.[16]

---

[8] *Id.* at 116-117.

[9] *Id.* at 115-118.

[10] *Id.* at 118.

[11] *Id.* at 148.

[12] See also *id.* at 52.

[13] See *id.* at 156-160 (Answer with Compulsory Counterclaim dated July 21, 2008), 161-162 (Reply dated August 8, 2008), 163-166 (Supplemental Answer dated September 26, 2008), and 167-170 (Answer/ Reply to Defendant's Supplemental Answer dated October 8, 2008).

[14] *Id.* at 154 and 171.

[15] *Id.* at 173.

[16] See *id.* at 185-186.

On the other hand, petitioner manifested that it had located Bautista's surviving spouse, Rosita Bautista, and as a result, was directed to amend the complaint to implead her as such.[17] For failure of petitioner to comply with the foregoing directive, however, the RTC issued an **Order**[18] **dated February 23, 2010** dismissing **Civil Case No. 2031-08** pursuant to Section 3, Rule 17 of the Rules of Court.

Upon petitioner's motion for reconsideration,[19] the RTC issued an **Order**[20] **dated September 20, 2010** setting aside its earlier Order dismissing **Civil Case No. 2031-08**. However, it held in abeyance the proceedings in said case until petitioner procures the appointment of an executor or administrator for the estate of Bautista pursuant to Section 16, Rule 3 of the Rules of Court.[21]

Meanwhile, on May 6, 2009, respondent Joven L. Ngo, represented[22] by Oscar J. Garcia (respondent), filed a Verified Petition for Cancellation of Notice of *Lis Pendens*[23] against petitioner and the Register of Deeds of the Province of Cavite before the RTC, docketed as **LRC Case No. 1117-09**. Respondent alleged, *inter alia*, that on July 23, 2007, Bautista obtained a loan from him in the amount of ₱8,000,000.00 secured by a real estate mortgage over the subject property, and that the mortgage was registered with the Registry of Deeds of Cavite and annotated on TCT No. T-800 on July 24, 2007.[24] Upon Bautista's default, the mortgage was foreclosed and the subject property was sold at a public auction, with respondent emerging as the highest bidder. Accordingly, a Certificate of Sale[25] was

---

[17] See *id.* at 186.

[18] *Id.* at 184.

[19] Dated March 30, 2010. *Id.* at 185-188.

[20] *Id.* at 211-212.

[21] *Id.* at 212. See also *id.* at 52-53.

[22] *Id.* at 144-145.

[23] *Id.* at 139-143.

[24] *Id.* at 147.

[25] *Id.* at 284.

issued in his favor, which was likewise registered and annotated[26] on TCT No. T-800 on January 27, 2009. According to respondent, it was only on May 9, 2008 that he discovered petitioner's claimed interest over the subject property when he saw the latter's Notice of *Lis Pendens* in TCT No. T-800 under Entry No. 9405.[27] In view of the said averments, respondent contended that Entry No. 9405 should be removed. He maintained that petitioner was aware of the real estate mortgage that was annotated on TCT No. T-800 in his favor as early as July 24, 2007 and that petitioner may no longer recover the subject property, considering that Bautista had lost ownership thereof when it was sold at a public auction and a certificate of sale was issued in respondent's favor.[28] On February 11, 2010, TCT No. T-1322748[29] was issued in his name with Entry No. 9405 carried over as an annotation.

In its opposition to **LRC Case No. 1117-09**,[30] petitioner countered that respondent was not a mortgagee in good faith, having knowledge of the sale of the subject property to petitioner as early as November 2007 or even prior to the foreclosure proceedings.[31] Likewise, asserting that the petition for cancellation of the notice of *lis pendens* should have been filed instead in **Civil Case No. 2031-08** and not in a land registration case where the RTC exercised limited jurisdiction, petitioner moved for the consolidation of **Civil Case No. 2031-08** and **LRC Case No. 1117-09**.[32]

In an Order[33] dated February 24, 2010, the RTC denied petitioner's motion to consolidate **Civil Case No. 2031-08** and

---

[26] *Id.* at 279.

[27] *Id.* at 140.

[28] *Id.* at 141. See also *id.* at 53.

[29] *Id.* at 287-288.

[30] *Id.* at 175-177.

[31] *Id.* at 176.

[32] *Id.* at 176. See also *id.* at 53.

[33] *Id.* at 189-190.

LRC Case No. 1117-09, holding that while both cases involved the same property and, as such, would adversely affect their respective claims, the former case had already been dismissed in an Order dated February 23, 2010.[34]

Thereafter, on November 3, 2010, respondent filed an Urgent Motion for Cancellation of Notice of *Lis Pendens*[35] praying for the cancellation of Entry No. 9405 carried over to TCT No. T-1322748. Petitioner opposed the said urgent motion[36] and reiterated its prayer for the consolidation of **Civil Case No. 2031-08** and **LRC Case No. 1117-09**.[37]

In an **Omnibus Order**[38] **dated April 7, 2011** (April 7, 2011 Omnibus Order), the RTC denied respondent's motion for being premature and for lack of legal basis, and instead, ordered the consolidation of **Civil Case No. 2031-08** and **LRC Case No. 1117-09**. The RTC ruled that while it had initially denied the consolidation, it was premised on an order of dismissal that was subsequently set aside.[39] In this regard, the RTC opined that the consolidation was necessary in order to fully adjudicate the issues of the two cases, noting that the outcome in **Civil Case No. 2031-08** would adversely affect **LRC Case No. 1117-09** which involved the same subject property; conversely, a decision in the latter case would pre-empt the outcome of the former case. Further, the RTC ruled that **Civil Case No. 2031-08** would survive Bautista's death since it primarily involved property and property rights. Thus, the RTC directed petitioner to comply with its previous Order dated September 20, 2010 to procure the appointment of an administrator pursuant to Section 16, Rule 3 of the Rules of Court within a period of thirty (30) days.[40]

---

[34] See also *id.* at 53.

[35] *Id.* at 191-197.

[36] *Id.* at 198-200.

[37] See *id.* at 54.

[38] *Id.* at 213-216.

[39] *Id.* at 214.

[40] See *id.* at 54.

Respondent's motion for reconsideration[41] therefrom was denied in an **Order**[42] **dated September 30, 2011**.

Accordingly, in compliance with the April 7, 2011 Omnibus Order, petitioner filed on July 20, 2011 a petition[43] for the appointment of an administrator over the estate of Bautista before the RTC, docketed as **Sp. Proc. Case No. 1075-11**. Finding the petition to be sufficient in form and substance, the RTC issued a Notice of Hearing[44] dated September 12, 2011, setting the case for initial hearing on November 14, 2011.[45]

On November 8, 2011, respondent filed an Omnibus Motion to Dismiss[46] **Sp. Proc. Case No. 1075-11** on the grounds that: (*a*) the RTC has no jurisdiction over the subject matter of the case, over the person of Bautista's surviving spouse, and over his person;[47] (*b*) the petition failed to state a proper cause of action;[48] (*c*) petitioner failed to comply with Rule 78 of the Rules of Court;[49] and (*d*) the petition violated the rule on forum shopping and *litis pendentia*.[50]

Thereafter, respondent also filed on December 2, 2011 a petition for *certiorari*[51] before the CA, docketed as CA-G.R. SP No. 122222, claiming that the following orders of the RTC were issued without or in excess of its jurisdiction, or with grave

---

[41] See Omnibus and Urgent Motion for Reconsideration dated June 21, 2011; *id.* at 217-235.

[42] *Id.* at 258-259.

[43] *Id.* at 149-153.

[44] *Id.* at 293. Signed by Clerk of Court V Allan Sly M. Marasigan.

[45] See also *id.* at 54-55.

[46] *Id.* at 267-276.

[47] See *id.* at 269.

[48] See *id.* at 270.

[49] See *id.* at 271.

[50] See *id.* at 272.

[51] *Id.* at 81-111.

abuse of discretion amounting to lack or excess of jurisdiction: (*a*) Order dated February 24, 2010 initially denying the consolidation of **Civil Case No. 2031-08** and **LRC Case No. 1117-09**; (*b*) Order dated September 20, 2010 reinstating **Civil Case No. 2031-08**; (*c*) April 7, 2011 Omnibus Order consolidating **Civil Case No. 2031-08** and **LRC Case No. 1117-09** and ordering the petitioner to procure the appointment of an executor or administrator for the estate of Bautista; (*d*) Order dated September 30, 2011 upholding the April 7, 2011 Omnibus Order upon motion for reconsideration, and (*e*) the Notice of Hearing dated September 12, 2011 in **Sp. Proc. Case No. 1075-11**.

The CA Ruling

In a Decision[52] dated March 20, 2014, the CA gave due course to the petition only with respect to the assailed April 7, 2011 Omnibus Order which ordered the consolidation of **Civil Case No. 2031-08** and **LRC Case No. 1117-09** and dismissed the petition as to the four (4) other assailed orders of the RTC due to procedural lapses.[53] Nevertheless, the CA ruled in favor of respondent and accordingly, set aside the April 7, 2011 Omnibus Order of the RTC and ordered the dismissal of **Civil Case No. 2031-08**.[54]

The CA held that the complaint for specific performance and damages in **Civil Case No. 2031-08** was an action *in personam* since its object was to compel Bautista to perform his obligations under the Deed of Conditional Sale and hence, rendered him pecuniarily liable. As such, the obligations in the contract attached to him alone and did not burden the subject property. Since the action was founded on a personal obligation, it did not survive Bautista's death. Hence, the CA concluded that the dismissal of the complaint by reason thereof, and not a resort to Section 16, Rule 3 of the Rules of Court, was the proper course of action. Consequently, the CA opined that the issue involving the propriety

---

[52] *Id.* at 51-65.

[53] *Id.* at 57-59.

[54] *Id.* at 62.

of the consolidation of the two cases had become moot and academic.[55]

Petitioner moved for reconsideration[56] but was denied in a Resolution[57] dated October 8, 2014; hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CA correctly dismissed **Civil Case No. 2031-08** in view of Bautista's death.

The Court's Ruling

The petition is meritorious.

Section 16, Rule 3 of the Rules of Court governs the rule on substitution in case of death of any of the parties to a pending suit. It reads in full:

> SEC. 16. *Death of party; duty of counsel*. — Whenever a party to a pending action dies, **and the claim is not thereby extinguished**, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.
>
> The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.
>
> The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.
>
> If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified

---

[55] *Id.* at 59-62.

[56] Not attached to the *rollo*.

[57] *Rollo*, pp. 67-68.

time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. (Emphasis and underscoring supplied)

Section 16, Rule 3 of the Rules of Court allows the substitution of a party-litigant who dies during the pendency of a case by his heirs, **provided that the claim subject of said case is not extinguished by his death**. As early as in *Bonilla v. Barcena*,[58] the Court has settled that if the claim in an action affects property and property rights, then the action survives the death of a party-litigant, *viz.*:

The question as to whether an action survives or not depends on the nature of the action and the damage sued for. **In the causes of action which survive the wrong complained affects primarily and principally property and property rights, the injuries to the person being merely incidental**, while in the causes of action which do not survive the injury complained of is to the person, the property and rights of property affected being incidental. x x x.[59] (Emphasis and underscoring supplied)

In the instant case, although the CA correctly pointed out that **Civil Case No. 2031-08** involves a complaint for specific performance and damages, a closer perusal of petitioner's complaint reveals that it actually prays for, *inter alia*, the delivery of ownership of the subject land through Bautista's execution of a deed of sale and the turnover of TCT No. T-800 in its favor. This shows that the primary objective and nature of **Civil Case No. 2031-08** is to recover the subject property itself and thus, is deemed to be a real action.[60]

---

[58] 163 Phil. 516, 521 (1976).

[59] *Id.* at 521. See also *Carabeo v. Spouses Dingco*, 662 Phil. 565, 570 (2011); *Cruz v. Cruz*, 644 Phil. 67, 72 (2010); *Sumaljag v. Spouses Literat*o, 578 Phil. 48, 56 (2008); *Spouses Suria v. Heirs of Tomolin*, 552 Phil. 354, 358 (2007); and *Gonzales v. PAGCOR*, 473 Phil. 582, 591 (2004).

[60] See *Gochan v. Gochan*, 423 Phil. 491, 502 (2001), citing *Ruiz v. J.M. Tuason & Co., Inc*., 117 Phil. 223, 227-228 (1963).

In *Gochan v. Gochan*,[61] the Court explained that complaints like this are in the nature of real actions, or actions affecting title to or recovery of possession of real property, to wit:

> In this jurisdiction, the dictum adhered to is that the nature of an action is determined by the allegations in the body of the pleading or complaint itself, rather than by its title or heading. **The caption of the complaint below was denominated as one for "specific performance and damages." The relief sought, however, is 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 below was actually a real action, affecting as it does title to or possession of real property**.
>
> In the case of *Hernandez v. Rural Bank of Lucena,* this Court held that a real action is one where the plaintiff seeks the recovery of real property or, as indicated in Section 2(a) of Rule 4 (now Section 1, Rule 4 of the 1997 Rules of Civil Procedure), a real action is an action affecting title to or recovery of possession of real property.
>
> **It has also been held that where a complaint is entitled as one for specific performance but nonetheless prays for the issuance of a deed of sale for a parcel of land, its primary objective and nature is one to recover the parcel of land itself and, thus, is deemed a real action**. x x x.
>
> xxx xxx xxx
>
> In the case at bar, therefore, the complaint filed with the trial court was in the nature of a real action, although ostensibly denominated as one for specific performance.[62] (Emphases and underscoring supplied)

Evidently, **Civil Case No. 2031-08** is a real action affecting property and property rights over the subject land. Therefore, the death of a party-litigant, *i.e.*, Bautista, did not render the case dismissible on such ground, but rather, calls for the proper application of Section 16, Rule 3 of the Rules of Court on substitution of party-litigants. Similarly, in *Carabeo v. Spouses Dingco*,[63] the

---

[61] *Id.*

[62] *Id.* at 501-503.

[63] *Supra* note 59, at 570-571.

Court held that an action for specific performance based on the "*Kasunduan sa Bilihan ng Karapatan sa Lupa*" was in pursuit of a property right and, as such, survives the death of a party thereto.

In sum, the CA erred in dismissing **Civil Case No. 2031-08** based solely on Bautista's death. As such, it should be reinstated and consolidated with **LRC Case No. 1117-09**, considering that the two cases involve the same property and, as correctly opined by the court *a quo*, any adjudication in either case would necessarily affect the other.[64] In this relation, case law states that consolidation of cases, when proper, results in the simplification of proceedings, which saves time, the resources of the parties and the courts, and a possible major abbreviation of trial. It is a desirable end to be achieved, within the context of the present state of affairs where court dockets are full and individual and state finances are limited. It contributes to the swift dispensation of justice, and is in accord with the aim of affording the parties a just, speedy, and inexpensive determination of their cases before the courts. Likewise, it avoids the possibility of conflicting decisions being rendered by the courts in two or more cases which would otherwise require a single judgment.[65]

WHEREFORE, the petition is **GRANTED**. The Decision dated March 20, 2014 and the Resolution dated October 8, 2014 of the Court of Appeals in CA-G.R. SP No. 122222, dismissing Civil Case No. 2031-08 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Omnibus Order dated April 7, 2011 and the Order dated September 30, 2011 of the Regional Trial Court of Imus, Cavite, Branch 20, in consolidated cases docketed as Civil Case No. 2031-08 and LRC Case No. 1117-09 are **REINSTATED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

---

[64] See *Spouses Yu v. Basilio G. Magno Construction and Development Enterprises, Inc.*, 535 Phil. 604, 617-619 (2006).

[65] *Id.* at 619.

THIRD DIVISION

[G.R. No. 184933. April 13, 2016]

VIOLETA BALBA, for and in behalf of her minor children ROY VINCE and VIENNA GRACIA, both surnamed Balba, *petitioners, vs.* **TIWALA HUMAN RESOURCES, INC., AND/OR TOGO MARITIME CORP.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; THE FINDINGS OF FACT OF THE COURT OF APPEALS (CA) ARE CONCLUSIVE AND BINDING ON THE SUPREME COURT EXCEPT WHEN THE CA FINDINGS ARE CONTRARY TO THOSE OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC); PRESENT IN CASE AT BAR.— As a general rule, it must be emphasized that this Court is not a trier of facts and a petition for review on *certiorari* under Rule 45 of the Rules of Court must exclusively raise questions of law. In the exercise of its power of review, the findings of fact of the CA are conclusive and binding on this Court and it is not our function to analyze or weigh evidence all over again. It is a recognized exception, however, that when the CA's findings are contrary to those of the NLRC, there is a need to review the records to determine which of them should be preferred and more conformable to evidentiary facts. In the present case, considering the conflicting findings of the LA and CA on one hand, and the NLRC on the other, this Court is impelled to resolve the factual issues along with the legal ones.

2. LABOR AND SOCIAL LEGISLATION; 1996 REVISED PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT TERMS AND CONDITIONS GOVERNING THE EMPLOYMENT OF FILIPINO SEAFARERS ON BOARD OCEAN-GOING VESSELS (POEA-SEC); DEATH BENEFITS; IN ORDER TO AVAIL OF DEATH BENEFITS, THE DEATH OF THE SEAFARER MUST BE WORK-RELATED AND SHOULD OCCUR

DURING EFFECTIVITY OF THE EMPLOYMENT CONTRACT; NOT PRESENT IN CASE AT BAR.— Section 20(A) of the 1996 Revised POEA-SEC provides that in order to avail of death benefits, the death of the seafarer must be work-related and should occur during the effectivity of the employment contract. x x x Also, in *Southeastern Shipping, et al. v. Navarra, Jr.,* the Court declared that in order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract. The death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable. In the more recent case of *Talosig v. United Philippine Lines, Inc.,* the Court again reiterated that the death of a seafarer must have occurred during the term of his contract of employment for it to be compensable. In the present case, it is undisputed that Rogelio succumbed to cancer on July 4, 2000 or almost ten (10) months after the expiration of his contract and almost nine (9) months after his repatriation. Thus, on the basis of Section 20(A) and the above-cited jurisprudence explaining the provision, Rogelio's beneficiaries, the petitioners, are precluded from receiving death benefits.

3. ID.; ID.; ID.; REQUISITES OF COMPENSABILITY; NOT ESTABLISHED IN CASE AT BAR.— Moreover, even if the Court considers the possibility of compensation for the death of a seafarer occurring after the termination of the employment contract on account of a work-related illness under Section 32(A) of the POEA-SEC, the claimant must still fulfill all the requisites for compensability, to wit: 1. The seafarer's work must involve the risks described herein; 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; 4. There was no notorious negligence on the part of the seafarer. In the present case, the petitioners failed to adduce sufficient evidence to show that Rogelio's illness was acquired during the term of his employment with the respondents. Instead, what the petitioners presented were medical certificate issued by Dr. Dungo dated November 12, 1999 attesting that Rogelio consulted him due to weakness and numbness of

> Rogelio's left half body and lower extremities and medical examination results in March and April 2000 showing that he had cancer. The Court, however, finds it not sufficient proof to show a causal connection or at least a work relation between the employment of Rogelio and his cancer. In the absence of substantial evidence, Rogelio's working conditions cannot be assumed to have increased the risk of contracting cancer. x x x In the instant case, Rogelio was repatriated not because of any illness but because his contract of employment expired. There is likewise no proof that he contracted his illness during the term of his employment or that his working conditions increased the risk of contracting the illness which caused his death.

APPEARANCES OF COUNSEL

Linsangan Linsangan & Linsangan Law Office for petitioners.
Soo Gutierrez Leogardo & Lee for respondents.

D E C I S I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, filed by the legal heirs (collectively referred to as the petitioners) of the late Rogelio Balba (Rogelio), seeking to annul and set aside the Decision[2] dated May 31, 2007 and the Resolution[3] dated October 14, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 93606. The CA reversed the Decision[4]

---

[1] *Rollo*, pp. 8-24.

[2] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Fernanda Lampas-Peralta and Myrna Dimaranan Vidal concurring; *id*. at 25-37.

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

[4] Penned by Commissioner Ernesto S. Dinopol, with Commissioners Roy V. Señeres and Romeo L. Go concurring; *id.* at 40-47.

dated December 28, 2004 and Resolution[5] dated December 22, 2005 of the National Labor Relations Commission (NLRC), in NLRC NCR CA No. 033946-02, and reinstated the Decision[6] dated September 25, 2002 of the Labor Arbiter (LA), in NLRC NCR OFW Case No. 00-04-0683-00, which dismissed the claim of Rogelio for disability benefits for lack of merit.

Statement of Facts

Sometime in 1998, Rogelio entered into a 10-month contract of employment with Tiwala Human Resources, Inc. for its foreign principal, Togo Maritime Corporation (respondents), wherein he was employed as chief cook on board the vessel M/V Giga Trans.[7] He was declared fit for work in his pre-employment medical examination and boarded the vessel M/V Giga Trans on November 13, 1998.[8]

Upon the expiration of his contract, Rogelio was repatriated to the Philippines in October 1999.[9]

From October to November 1999, Rogelio was treated by Dr. Benito Dungo (Dr. Dungo) for weakness and numbness of his left half body and lower extremities and was diagnosed to be suffering from moderately severe diabetes.[10]

In 2000, Rogelio was confined at the Seamen's Hospital and was found to have metastatic cancer. As such, he sought disability compensation and benefits from the respondents but these were denied.[11]

---

[5] Penned by Commissioner Perlita B. Velasco, concurred by Commissioner Romeo L. Go and dissented by Commissioner Benedicto Ernesto R. Bitonio, Jr.; *id.* at 48-50.

[6] Issued by Labor Arbiter Jovencio Ll. Mayor, Jr.; *id.* at 51-61.

[7] *Id.* at 26.

[8] *Id.* at 159.

[9] *Id.* at 26.

[10] *Id.*

[11] *Id.*

Consequently, Rogelio filed on April 6, 2000 a complaint against the respondents for disability benefits with damages and attorney's fees.[12]

On April 28, 2000, however, Rogelio was admitted at the Philippine General Hospital for lung cancer. He succumbed to his illness in July 2000. As a result of Rogelio's death, his complaint was subsequently amended and his wife, Violeta Balba, and two children, Roy and Vienna Gracia, were substituted as complainants.[13]

Ruling of the LA

On September 25, 2002, the LA dismissed the complaint after finding that Rogelio's death was not compensable under the Philippine Overseas Employment Administration Standard Employment Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (POEA-SEC).[14] Within the reglementary period, the petitioners appealed to the NLRC.

Ruling of the NLRC

In a Decision dated December 28, 2004, the NLRC reversed the LA's Decision dated September 25, 2002 and declared that Rogelio contracted his illness while on board the vessel and during the existence of his contract.[15] The dispositive portion thereof states:

> WHEREFORE, in view of the foregoing, the appealed Decision is hereby REVERSED and SET ASIDE and a new one ENTERED ordering respondents to jointly and severally pay [the petitioners] the amount of US$60,000.00 representing the death benefits of [Rogelio] plus US$7,000.00 each for the two minor children and US$1,000.00 as burial benefits or in a total amount of US$75,000.00, plus 5% thereof as attorney's fees.

---

[12] *Id.*

[13] *Id.*

[14] *Id.* at 51-61.

[15] *Id.* at 40-47.

SO ORDERED.[16]

The respondents filed a motion for reconsideration but the same was denied in a Resolution[17] dated December 22, 2005. Aggrieved, the respondents filed a petition with the CA and alleged that there was grave abuse of discretion on the part of NLRC in awarding benefits to the petitioners.

Ruling of the CA

On May 31, 2007, the CA issued a Decision[18] granting the petition. It declared that the evidence on record is bereft of any proof linking Rogelio's cancer with his work as chief cook. The dispositive portion of the CA's decision reads:

WHEREFORE, premises considered, the petition for certiorari is hereby **GRANTED**. The assailed Decision dated December 28, 2004 and the Resolution dated December 22, 2005 of the [NLRC] in NLRC NCR CA NO. 033946-02 (NLRC NCR OFW CASE NO. 00-04-0683-00) are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.[19]

The petitioners filed a motion for reconsideration, which the CA denied in its Resolution[20] dated October 14, 2008. Undaunted, the petitioners filed the instant petition assailing the ruling of the CA.

The Issue

The petitioners assign the sole issue to be resolved:

WHETHER OR NOT THE HONORABLE CA COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING THE RESPONDENTS' PETITION FOR *CERTIORARI* AND DENYING THE PETITIONERS' MOTION FOR

---

[16] *Id.* at 46.

[17] *Id.* at 48-50.

[18] *Id.* at 25-37.

[19] *Id.* at 36.

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

RECONSIDERATION BY REVERSING AND SETTING ASIDE THE NLRC DECISION IN AWARDING DEATH BENEFITS UNDER THE POEA-SEC.[21]

Ruling of the Court

A careful perusal of the petition shows that it fundamentally assails the findings of the LA, as affirmed by the CA, that the evidence on record is insufficient to establish the petitioners' entitlement to death and burial benefits as a result of Rogelio's death. This clearly involves a factual inquiry, the determination of which is the statutory function of the labor tribunals.

As a general rule, it must be emphasized that this Court is not a trier of facts and a petition for review on *certiorari* under Rule 45 of the Rules of Court must exclusively raise questions of law.[22] In the exercise of its power of review, the findings of fact of the CA are conclusive and binding on this Court and it is not our function to analyze or weigh evidence all over again. It is a recognized exception, however, that when the CA's findings are contrary to those of the NLRC, there is a need to review the records to determine which of them should be preferred and more conformable to evidentiary facts.[23]

In the present case, considering the conflicting findings of the LA and CA on one hand, and the NLRC on the other, this Court is impelled to resolve the factual issues along with the legal ones.

Essentially, the fundamental issue to be resolved in this petition is whether or not the petitioners are entitled to death and burial benefits on account of Rogelio's death.

The Court rules in the negative.

---

[21] *Id.* at 14.

[22] *Sarona v. NLRC*, *et al.*, 679 Phil. 394, 414 (2012).

[23] *Esguerra v. United Philippine Lines, Inc.*, G.R. No. 199932, July 3, 2013, 700 SCRA 687, 696.

In *Masangcay v. Trans-Global Maritime Agency, Inc., et al.*,[24] the Court held:

> As with all other kinds of worker, the terms and conditions of a seafarers employment is governed by the provisions of the contract he signs at the time he is hired. But unlike that of others, deemed written in the seafarers contract is a set of standard provisions set and implemented by the POEA, called the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, which are considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels. x x x.[25]

Taking into consideration that Rogelio was employed on November 13, 1998, it is the 1996 Revised POEA-SEC that is considered incorporated in his contract of employment and is controlling for purposes of resolving the issue at hand.

Section 20 (A) of the 1996 Revised POEA-SEC provides that in order to avail of death benefits, the death of the seafarer must be work-related and should occur during the effectivity of the employment contract. The provision reads:

> 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:

---

[24] 590 Phil. 611 (2008).

[25] *Id.* at 626.

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. (Emphases supplied)

Also, in *Southeastern Shipping, et al. v. Navarra, Jr.*,[26] the Court declared that in order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract. The death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable.[27]

In the more recent case of *Talosig v. United Philippine Lines, Inc.*,[28] the Court again reiterated that the death of a seafarer must have occurred during the term of his contract of employment for it to be compensable.

In the present case, it is undisputed that Rogelio succumbed to cancer on July 4, 2000 or almost ten (10) months after the

[26] 635 Phil. 350 (2010).

[27] *Id.* at 360.

[28] G.R. No. 198388, July 28, 2014, 731 SCRA 180.

expiration of his contract and almost nine (9) months after his repatriation. Thus, on the basis of Section 20 (A) and the above-cited jurisprudence explaining the provision, Rogelio's beneficiaries, the petitioners, are precluded from receiving death benefits.

Moreover, even if the Court considers the possibility of compensation for the death of a seafarer occurring after the termination of the employment contract on account of a work-related illness under Section 32 (A) of the POEA-SEC, the claimant must still fulfill all the requisites for compensability, to wit:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
4. There was no notorious negligence on the part of the seafarer.[29]

In the present case, the petitioners failed to adduce sufficient evidence to show that Rogelio's illness was acquired during the term of his employment with the respondents. Instead, what the petitioners presented were medical certificate issued by Dr. Dungo dated November 12, 1999 attesting that Rogelio consulted him due to weakness and numbness of Rogelio's left half body and lower extremities and medical examination results in March and April 2000 showing that he had cancer. The Court, however, finds it not sufficient proof to show a causal connection or at least a work relation between the employment of Rogelio and his cancer. In the absence of substantial evidence, Rogelio's working conditions cannot be assumed to have increased the risk of contracting cancer.

---

[29] *Klaveness Maritime Agency, Inc., et al. v. Beneficiaries of the Late Second Officer Anthony S. Allas*, 566 Phil. 579, 588 (2008).

In *Medline Management, Inc., et al. v. Roslinda, et al.*,[30] the Court held:

> Indeed, the death of a seaman several months after his repatriation for illness does not necessarily mean that: a) the seaman died of the same illness; b) his working conditions increased the risk of contracting the illness which caused his death; and c) the death is compensable, unless there is some reasonable basis to support otherwise. x x x.[31]

In the instant case, Rogelio was repatriated not because of any illness but because his contract of employment expired. There is likewise no proof that he contracted his illness during the term of his employment or that his working conditions increased the risk of contracting the illness which caused his death.

Based on these considerations, it is apparent that the instant petition is without merit and that the CA was correct when it reversed and set aside the NLRC award of death benefits to the petitioners as heirs of Rogelio. While the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, we cannot allow claims for compensation based on surmises. When the evidence presented negates compensability, the Court has no choice but to deny the claim, lest we cause injustice to the employer.[32]

WHEREFORE, the petition is **DENIED**. The Decision dated May 31, 2007 and Resolution dated October 14, 2008 of the Court of Appeals in CA-G.R. SP No. 93606 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Perez, Leonen*,[*] and *Jardeleza, JJ.,* concur.

---

[30] 645 Phil. 34 (2010).

[31] *Id.* at 52.

[32] *Supra* note 26, at 360.

[*] Additional Member per Raffle dated February 18, 2015 *vice* Associate Justice Diosdado M. Peralta.

THIRD DIVISION

[G.R. No. 193554. April 13, 2016]

SPOUSES RODRIGO IMPERIAL, JR. and JOCELYN IMPERIAL, and FE IMPERIAL, *petitioners, vs.* **SPOUSES ROGELIO AND ASUNCION PINIGAT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; JUDGMENTS; A FINAL AND EXECUTORY DECISION OF THE COURT IS APPLICABLE NOT ONLY TO THE PARTIES THERETO BUT ALSO TO THEIR SUCCESSORS-IN-INTEREST; APPLICATION IN CASE AT BAR.— Indeed, Civil Case No. 627 was between Rodrigo Sr. and the respondents. A final and executory decision of the court, however, is applicable not only to the parties thereto but also to their successors-in-interest. Thus, in *Cabresos v. Tiro*, the Court upheld the validity of the writ of execution issued against the successors-in-interest of the losing litigant despite the fact that these successors-in-interest were not mentioned in the judgment and were never parties to the case. The Court explained that an action is binding on the privies of the litigants even if such privies are not literally parties to the action. Their inclusion in the writ of execution does not vary or exceed the terms of the judgment. x x x In Civil Case No. 627, the MTC dismissed Rodrigo Sr.'s claim of ownership after failing to establish the veracity of his allegation that a contract of sale over the subject property was executed between him and Isabelo. Hence, Rodrigo Jr. may not anchor his claim of title on that supposed purchase by his father. The only possibility that Rodrigo Jr. may be entitled to a portion of the property is by means of succession, his deceased father being the nephew of Isabelo who died without any children. As a mere successor, however, Rodrigo, Jr. only succeeds to that portion of the estate that the decedent did not dispose of during his lifetime. It is crystal clear from the facts that at the time of Isabelo's death, he is the owner of only one-half of the subject property, having disposed the other

half by virtue of an absolute sale to his brother, Juan. Rodrigo Jr. cannot now repudiate the conclusiveness of the judgment in Civil Case No. 627, which delineated the portion of the subject property still owned by Isabelo and that which he had already disposed to the respondents. Rodrigo Jr., having merely stepped into the shoes of his predecessor, cannot claim that the decision does not apply to him. *Nemo dat quod non habet*. In *Barcelona, et al. v. Barcelona and CA*, the Court emphasized that hereditary successors merely step into the shoes of the decedent by operation of law and are merely the continuation of the personality of their predecessor in interest. Hence, they acquire rights and interests not more than what their predecessors have at the time of their death.

2. CIVIL LAW; PROPERTY; RELOCATION SURVEY OF PROPERTY; THERE BEING NEITHER RESISTANCE NOR CHALLENGE TO THE SURVEY CONDUCTED, IT IS ONLY REASONABLE FOR THE COURT TO ASSUME THAT THE SAME WAS CONDUCTED PROPERLY AND TO CONCLUDE THAT THE PETITIONERS WERE MERELY FORMULATING ISSUES IN ORDER TO FURTHER DELAY THE EXECUTION OF THE FINAL DECISION; CASE AT BAR.— Finally, the petitioners cannot evade the enforceability of the decision by merely claiming that the relocation survey conducted on the property was done without their participation. It appears from the records, that the geodetic engineer who conducted the survey was appointed by the court and did his undertaking in the presence of the parties. x x x The petitioners never disputed the statement of Sheriff Guevara throughout the proceedings in the RTC and CA. If they had any question on the propriety of the survey, they should have raised them at the time that the survey was being conducted or, at least, noted their disagreement in the pleadings they submitted before the trial court. Considering that the survey was undertaken to divide the property, it is only expected from the parties to raise a protest should the same be conducted irregularly or with manifest partiality to one party. There being neither resistance nor challenge to the survey conducted, it is only reasonable for the Court to assume that the same was conducted properly and to conclude that the petitioners were merely formulating issues in order to further delay the execution of the final decision of the MTC. The Court

will not countenance such a deliberate effort to prevent the prevailing party from reaping the fruits of litigation.

APPEARANCES OF COUNSEL

Raquel Sirios Payte for petitioners.
Expedito B. Mapa for respondents.

R E S O L U T I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] filed under Rule 45 of the Rules of Court, assailing the Decision[2] dated March 25, 2010 and Resolution[3] dated September 27, 2010 of the Court of Appeals (CA) in CA-G.R. SP. No. 98950, which reversed and set aside the Decision[4] dated March 29, 2007 of the Regional Trial Court (RTC) of Iriga City, Branch 37.

The instant case stemmed from Civil Case No. 627 for Quieting of Title, Recovery of Possession and Damages filed by Rodrigo Imperial, Sr. (Rodrigo Sr.) against Betty Imperial (Betty), involving a 248-square-meter residential lot with improvements, situated in San Roque, Baao, Camarines Sur. The subject property was formerly declared for tax purposes in the name of Isabelo Imperial (Isabelo), brother of Betty's husband, Juan Imperial (Juan) and of Rodrigo Sr.'s mother, Beatriz.[5]

Rodrigo Imperial, Jr. (Rodrigo Jr.), testifying for Rodrigo Sr., claimed that the subject property was sold by his grandfather,

---

[1] *Rollo*, pp. 28-40.

[2] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Vicente S. E. Veloso and Francisco P. Acosta concurring; *id.* at 41-52.

[3] *Id.* at 53-54.

[4] Issued by Presiding Judge Rogelio Ll. Dacara; *id.* at 140-143.

[5] *Id.* at 60.

Isabelo, to his father, as evidenced by an Absolute Deed of Sale dated September 28, 1979. Following the sale, however, Isabelo stayed in the house with him while his father left for Manila. When the time came that Rodrigo Jr. needed to go to Manila to pursue college studies, Isabelo allowed Juan and Betty to stay with him in the house, with the agreement that they will leave upon demand. In 1985, Isabelo died. Rodrigo Sr. asked Juan and Betty to stay in the house until Rodrigo Jr. finishes college. Soon, thereafter, Spouses Rogelio and Asuncion Pinigat (respondents), who were the son-in-law and daughter of Juan and Betty, respectively, were also allowed to move in to the house.[6]

In 1997, Rodrigo Jr. and his father were surprised to learn that there was already a deed of sale over one-half portion of the subject property in favor of the respondents registered with the Registry of Deeds of Camarines Sur. Rodrigo Sr. lodged a complaint with Barangay Captain Edwin Bedural of Baao, Camarines Sur but the parties failed to reach an amicable settlement of their dispute.[7]

For her part, Betty alleged that Isabelo, during his lifetime, sold one-half portion of the subject property to Juan for ₱10,000.00.[8] Upon the death of Juan, she sold the said portion of the property to Rogelio, who thereafter registered the same and paid taxes thereon.[9]

On October 28, 2002, the Municipal Trial Court (MTC) of Baao, Camarines Sur, rendered a Decision,[10] recognizing the respondents' ownership of one-half portion of the subject property. The pertinent portion of the decision reads:

---

[6] *Id.* at 60-61.

[7] *Id.* at 61-62.

[8] *Id.* at 63A.

[9] *Id.* at 62.

[10] Issued by Judge Dominador A. Agor; *id.* at 60-65A.

And, the court after carefully scrutinizing the evidences submitted in the record finds the preponderance of the evidence in favor of the defendants. If it is true the plaintiff had bought the property in question in 1979, why is it that from that time and up to the present, he never took steps to register the document and to caused [sic] the transfer of the covering tax declaration in his name? He did not even pay the real property taxes as they accrue annually. As shown by his exhibits C-1 to C-2, it was [Isabelo] who paid the real property taxes of the property. If it is true, [Isabelo] had already sold to the plaintiff the property in 1979, why is it that the former was still able to mort[g]aged [sic] the same to Modesto Padua in January 1980 as shown by the Deed of Real Estate Mortgage (exhibit 5)? xxx.

xxx xxx xxx

x x x [T]he court is more inclined to believe [Betty's] version that of having purchased one-half of the property in-question from [Isabelo] for the sum of [₱10,000.00] and that no document was executed to evidenced [sic] the sale. As testified to by [Betty], she and her late husband-[Juan] lived together in the house and lot in question. In fact, after such sale, Isabelo [and] Juan had the property relocated and sub-divided by Geodetic Engineer Ramon Camposano, who prepared/made a sketch plan x x x.

xxx xxx xxx

Be that as it may, since as [Betty] herself admitted the remaining half of the house and lot in question still belongs to [Isabelo], then, plaintiff should content himself of that remaining half. The other half which was already sold to [the respondents] should be recognized and respected. x x x.[11]

The foregoing decision became final and executory after the RTC of Iriga City dismissed the appeal of Rodrigo Sr. In the course of the execution, however, a survey on the subject property revealed that portions of the existing houses of Spouses Rodrigo Jr. and Jocelyn Imperial and Roberto Ballesteros and Fe Imperial (Fe) (petitioners) stood within the portion pertaining to the respondents. The respondents demanded that the petitioners vacate the encroached portions. Initially, the petitioners acceded to

[11] *Id.* at 64-65A.

the demand and started demolishing walls of their houses but later ceased from doing so notwithstanding the respondents' repeated demands.[12] The parties failed to reach an amicable settlement of their differences which prompted the respondents to file a Complaint[13] for Unlawful Detainer with Damages against the petitioners, which was docketed as Civil Case No. 845. The respondents alleged that the petitioners unjustifiably refused to vacate the subject property and remove structures erected therein.[14]

On June 16, 2006, the MTC rendered a Decision[15] in favor of the respondents, the dispositive portion of which reads, as follows:

> WHEREFORE, in view of all of the foregoing, on preponderance of evidence, this Court finds in favor of the [respondents] and against the [petitioners] who are ordered to:
>
> 1.) Peacefully vacate and remove the structures constructed on the portion of the parcel of land subject of this case as declared under Tax Declaration (A.R.P.) # 94-020-0236 with an area of 124 sq.m. (i.e., ½ of the total 248 sq. m.) and turnover the same to the [respondents];
>
> 2.) Jointly and severally pay the [respondents] the amount of Php500.00 per month from the date of judicial demand until they have effectively vacated the land in question as reasonable rentals.
>
> 3.) Pay the costs of suit.
>
> All other claims and counter-claims by the [respondents] and the [petitioners] against each other are all denied.
>
> SO ORDERED.[16]

---

[12] *Id.* at 56-57.

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

[14] *Id.* at 57.

[15] Rendered by Judge-Designate Timotea A. Panga, Jr., *id.* at 122-126.

[16] *Id.* at 126.

Unyielding, the petitioners appealed from the decision of the MTC. And, in a Decision[17] dated March 29, 2007, the RTC reversed the decision of the MTC. The dispositive portion of the decision reads:

> WHEREFORE, the [petitioners'] contention[s] are sustained and the decision of the lower court dated June 16, 2006 is hereby ordered reversed for lack of jurisdiction and cause of action. No damages are imposed against the [respondents] in favor of the [petitioners].
>
> SO ORDERED.[18]

The RTC held that the respondents' complaint failed to state the fact that the petitioners' possession was lawful from the beginning but became illegal when their right to possess had expired or terminated. It also noted that the complaint failed to aver the facts constitutive of forcible entry or unlawful detainer particularly the manner of entry; hence, the proper remedy should be either an *accion publiciana* or *accion reivindicatoria* which must be filed with the proper RTC. The RTC further observed that the dispositive portion of the decision in Civil Case No. 627 did not mention that the respondents are entitled to the possession of the property nor did it order the petitioners to vacate the same.[19]

The respondents elevated the case to the CA on petition for review under Rule 42 of the Rules of Court. Then, on March 25, 2010, the CA rendered a Decision,[20] reversing the decision of the RTC, the dispositive portion of which reads:

> **WHEREFORE**, the Decision of the [RTC] of Iriga City, Branch 37, dated March 29, 2007 is **REVERSED** and **SET ASIDE**. The Decision of the [MTC] of Baao, Camarines Sur, dated June 16, 2006, is **REINSTATED**.
>
> **SO ORDERED.**[21]

---

[17] *Id.* at 140-143.

[18] *Id.* at 143.

[19] *Id.* at 142.

[20] *Id.* at 41-52.

[21] *Id.* at 51.

The petitioners filed a motion for reconsideration but the CA denied the same in its Resolution[22] dated September 27, 2010. Hence, this petition.

The petitioners claim that the decision of the MTC in Civil Case No. 627 does not apply to them as they were not made parties thereto. They likewise question the validity of the relocation survey that was conducted to divide the subject property, claiming that the same was done unilaterally.

The petition lacks merit.

The respondents' right to one-half portion of the subject property had long been settled in the MTC's Decision dated October 28, 2002 in Civil Case No. 627. The MTC acknowledged the entitlement of the respondents to half of the subject property, holding that they were able to clearly establish the source of their right and found their claims adequately supported by convincing and credible evidence. It also noted the fact that the property was already registered in the name of the respondents and that they have been religiously paying real property taxes due the same. Its decision became final and executory but the petitioners, in disregard thereof, refused to yield the possession of the portion owned by the respondents on the pretext that the decision did not specifically order them to vacate the house. Thus, the respondents were constrained to file another case for unlawful detainer, to compel the petitioners to vacate the premises. For the second time, the MTC recognized the respondents' right to one-half portion of the subject property and ordered the petitioners to peaceably surrender the possession of the same to the former. Still, the petitioners were adamant and asserted that the MTC's Decision dated October 28, 2002 would not bind them as they were not parties thereto.

The petitioners' argument is misplaced.

Indeed, Civil Case No. 627 was between Rodrigo Sr. and the respondents. A final and executory decision of the court, however, is applicable not only to the parties thereto but also

---

[22] *Id.* at 53-54.

to their successors-in-interest. Thus, in *Cabresos v. Tiro*,[23] the Court upheld the validity of the writ of execution issued against the successors-in-interest of the losing litigant despite the fact that these successors-in-interest were not mentioned in the judgment and were never parties to the case. The Court explained that an action is binding on the privies of the litigants even if such privies are not literally parties to the action. Their inclusion in the writ of execution does not vary or exceed the terms of the judgment.[24] The Court ratiocinated:

> By "third party" is meant a person who is not a party to the action under consideration. We agree with the private respondents that the petitioners are privies to the case for recovery of ownership and possession filed by the former against the latter's predecessors-in-interest, the latter being the daughter-in-law and grandchildren of the losing party in Civil Case No. 3150. By the term "privies" is meant those between whom an action is deemed binding although they are not literally parties to the said action. There is no doubt that the assailed decision is binding on the petitioners.[25]

In Civil Case No. 627, the MTC dismissed Rodrigo Sr.'s claim of ownership after failing to establish the veracity of his allegation that a contract of sale over the subject property was executed between him and Isabelo. Hence, Rodrigo Jr. may not anchor his claim of title on that supposed purchase by his father. The only possibility that Rodrigo Jr. may be entitled to a portion of the property is by means of succession, his deceased father being the nephew of Isabelo who died without any children. As a mere successor, however, Rodrigo, Jr. only succeeds to that portion of the estate that the decedent did not dispose of during his lifetime. It is crystal clear from the facts that at the time of Isabelo's death, he is the owner of only one-half of the subject property, having disposed the other half by virtue of an absolute sale to his brother, Juan. Rodrigo Jr. cannot now repudiate the conclusiveness of the judgment in Civil Case No. 627, which

---

[23] G.R. No. L-46843, October 18, 1988, 166 SCRA 400.

[24] *Id.* at 405-406.

[25] *Id.*

delineated the portion of the subject property still owned by Isabelo and that which he had already disposed to the respondents. Rodrigo Jr., having merely stepped into the shoes of his predecessor, cannot claim that the decision does not apply to him. *Nemo dat quod non habet*.

In *Barcelona, et al. v. Barcelona and CA*,[26] the Court emphasized that hereditary successors merely step into the shoes of the decedent by operation of law and are merely the continuation of the personality of their predecessor in interest.[27] Hence, they acquire rights and interests not more than what their predecessors have at the time of their death.

On the other hand, Fe failed to present any basis for her claim of title over the subject property. She, being the widow of the eldest son of Juan, Virgilio Imperial, cannot succeed directly from Isabelo and had absolutely no business staying in the subject property.

Finally, the petitioners cannot evade the enforceability of the decision by merely claiming that the relocation survey conducted on the property was done without their participation. It appears from the records, that the geodetic engineer who conducted the survey was appointed by the court and did his undertaking in the presence of the parties. In the Affidavit[28] dated August 12, 2005 of Salvador Guevara (Sheriff Guevara), the implementing sheriff of the court in Civil Case No. 627 stated:

> That in the execution of the aforementioned decision, Alfredo Samper, a Geodetic Engineer by profession was appointed by the Court to conduct the subdivision survey in equal shares of the land subject of the case;
>
> That on June 3, 2004 at around 9:30 o'clock in the morning, Engr. Alfredo Samper, the undersigned together with Sheriff Rolando T. Sergio and in the presence of the parties of the case, including the spouses [Rodrigo Jr.] and Jocelyn Imperial, the person of Roberto Ballesteros and other members of the family conducted the actual

---

[26] 100 Phil. 251 (1956).

[27] *Id.* at 257.

[28] *Rollo*, p. 85.

subdivision survey of the land in question, dividing the property into two (2) equal portions, for which the share where the building structure of Rogelio Pinigat was constructed, and which actually identified and segreg[a]ted from the entire landholding.

xxx xxx xxx

That on the actual survey, I came to know that that the house of Roberto Ballesteros (part) and also the spouses [Rodrigo Jr.] and Jocelyn Imperial (part) whose portion of their houses likewise encroached in the identified property of Rogelio Pinigat, hence I filed a report on the matter with the [MTC] of Baao, Camarines Sur x x x.[29]

The petitioners never disputed the statement of Sheriff Guevara throughout the proceedings in the RTC and CA. If they had any question on the propriety of the survey, they should have raised them at the time that the survey was being conducted or, at least, noted their disagreement in the pleadings they submitted before the trial court. Considering that the survey was undertaken to divide the property, it is only expected from the parties to raise a protest should the same be conducted irregularly or with manifest partiality to one party. There being neither resistance nor challenge to the survey conducted, it is only reasonable for the Court to assume that the same was conducted properly and to conclude that the petitioners were merely formulating issues in order to further delay the execution of the final decision of the MTC. The Court will not countenance such a deliberate effort to prevent the prevailing party from reaping the fruits of litigation.

WHEREFORE, the Decision dated March 25, 2010 and Resolution dated September 27, 2010 of the Court of Appeals in CA-G.R. SP. No. 98950 are **AFFIRMED**.

SO ORDERED.

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

Peralta, J., on official leave.

---

[29] *Id.*

THIRD DIVISION

[G.R. No. 194119. April 13, 2016]

SONIA F. MARIANO, *petitioner, vs.* **MARTINEZ MEMORIAL COLLEGES, INC., and/or FERDINAND A. MARTINEZ/DR. ELIZABETH M. DEL RIO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; VALID EXERCISE OF MANAGEMENT PREROGATIVE; THE COURT HAS OFTEN DECLINED TO INTERFERE IN LEGITIMATE BUSINESS DECISIONS OF EMPLOYERS, AS LONG AS THE COMPANY'S EXERCISE OF THE SAME IS IN GOOD FAITH TO ADVANCE ITS INTEREST AND NOT FOR THE PURPOSE OF DEFEATING OR CIRCUMVENTING THE RIGHTS OF EMPLOYEES UNDER THE LAWS OR VALID AGREEMENTS; APPLICATION IN CASE AT BAR.— The Court, however, finds hat the CA correctly ruled that MMC's act of transferring the petitioner from the Cashier's Office to the OVP for Finance is a **valid exercise of management prerogative.** The Court has often declined to interfere in legitimate business decisions of employers, as long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements. In this case, the MMC's exercise of its management prerogative was done for the advancement of its interest and not for the purpose of defeating the lawful rights of the petitioner. It was within MMC's discretion to allow husband and wife to be in one department and there is no express prohibition on this matter. The Board of Directors' decision to transfer the petitioner to her husband's department did not cause any conflict at all and the same was on an interim basis only. Moreover, the petitioner's transfer was akin to a reassignment pending an investigation, which, as ruled in *Endico v. Quantum*

Foods Distribution Center, is a valid exercise of management prerogative to discipline its employees.

2. **ID.; ID.; ID.; JUST AND VALID CAUSES FOR DISMISSAL, ENUMERATED.—** Article 296(c) (formerly Article 282[c]) of the Labor Code enumerates the just and valid causes for the dismissal of an employee, *viz.:* (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with her work; (b) gross and habitual neglect by the employee of her duties; (c) fraud or willful breach by the employee of the trust reposed in her by her employer or duly authorized representative; (d) commission of a crime or offense by the employee against the person of her employer or any immediate member of her family or her duly authorized representatives; and (e) other causes analogous to the foregoing.

3. **ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE, AS A GROUND; IN DISMISSING THE CASHIER ON THE GROUND OF LOSS OF CONFIDENCE, IT IS SUFFICIENT THAT THERE IS SOME BASIS FOR THE SAME OR THAT THE EMPLOYER HAS A REASONABLE GROUND TO BELIEVE THAT THE EMPLOYEE IS RESPONSIBLE FOR MISCONDUCT, THUS MAKING HIM UNWORTHY OF THE TRUST AND CONFIDENCE REPOSED ON HIM; PRESENT IN CASE AT BAR.—** A review of the records shows that the petitioner failed to rebut the findings in the System Review Report and insisted that she did not have the opportunity to contest these because she was not furnished a copy. She also denied any knowledge whatsoever regarding the alleged opening of said non-essential accounts, which, according to her, were actually sanctioned by the MMC Board of Directors. The System Review Report, however, clearly showed that there was an improper handling of MMC's cash accounts and that there was a separate account called non-essential accounts in which some of the collections of MMC were deposited and diverted from the general fund. Being the Assistant Cashier, it is doubtful that she had no knowledge of the alleged opening of the "non-essential accounts" because her tasks include acceptance of payments and the issuance of receipts and bank deposit slips to MMC's students. In fact, records show that she even issued bank deposit slips to students for deposit of

certain payments to these "non-essential accounts." By and large, the petitioner's acts constituted dishonesty that ultimately led to a breach of the trust reposed in her by MMC. As held in *Gargoles v. Del Rosario,* an act of dishonesty by an employee who has been put in charge of the employer's money and property amounts to breach of the trust reposed by the employer, and normally leads to loss of confidence in her, and such dishonesty comes within the just and valid causes for the termination of employment under the Labor Code. In the same vein, the Court has ruled that in dismissing a cashier on the ground of loss of confidence, **it is sufficient that there is some basis for the same or that the employer has a reasonable ground to believe that the employee is responsible for the misconduct, thus making him unworthy of the trust and confidence reposed in him.** Courts cannot justly deny the employer the authority to dismiss him for employers are allowed wider latitude in dismissing an employee for loss of trust and confidence.

4. ID.; ID.; ID.; DUE PROCESS IN LABOR CASES; IT IS SUFFICIENT THAT AN EMPLOYEE HAS THE MEANINGFUL OPPORTUNITY TO CONTROVERT THE CHARGES AGAINST HIM AND TO SUBMIT EVIDENCE IN SUPPORT THEREOF; ESTABLISHED IN CASE AT BAR.— Records show that Martinez, through MMC's counsel, sent a letter to the petitioner ordering her to explain in writing her possible involvement in the diversion of MMC's funds. The foregoing notice complies with the first written notice requirement as it specified the ground for termination and gave the petitioner an opportunity to explain her side. The due process mandate does not require that the entire report from which the termination is based should be attached to the notice. What is essential is that the particular acts or omissions for which her dismissal is sought are indicated in the letter. The petitioner also argues that while it may be that her termination comes within the purview of a management prerogative, Martinez should have called for a meeting or conference with the other affected officials. Her position, however, is untenable considering that a letter was already sent to them where they were ordered to explain within five days their possible involvement in the alleged diversion of funds, and they were able to explain their side in a joint letter-answer dated May 6, 2008. A hearing does not strictly mean

a personal or face-to-face confrontation. It is sufficient that an employee has the meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.

APPEARANCES OF COUNSEL

Verzosa Gutierrez Nolasco Montenegro and Associates for petitioner.

The Law Firm of Rolando P. Manalo and Associates for respondents.

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 Sonia F. Mariano (petitioner) seeking to annul and set aside the Decision[2] dated July 19, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 110663. The CA affirmed the Decision[3] dated June 30, 2009 and Resolution[4] dated August 18, 2009 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 11-003867-08, which reversed the Decision[5] dated September 8, 2008 of the Labor Arbiter (LA) in NLRC NCR Case No. 04-06111-08, declaring the petitioner's dismissal from employment as illegal.

Facts of the Case

Martinez Memorial Colleges, Inc. (MMC) is a private educational institution located in Caloocan City, with Ferdinand

---

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

[2] Penned by Associate Justice Isaias Dicdican, with Associate Justices Stephen C. Cruz and Danton Q. Bueser concurring; *id.* at 35-48.

[3] Rendered by Presiding Commissioner Alex A. Lopez, with Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr. concurring; CA *rollo*, pp. 277-290.

[4] *Id.* at 331-332.

[5] Issued by Labor Arbiter Eduardo G. Magno; *rollo*, pp. 87-94.

A. Martinez (Martinez) as the College incumbent President and Dr. Elizabeth M. Del Rio (Del Rio) as the College Executive Vice-President (respondents).[6] On the other hand, the petitioner was MMC's Assistant Cashier since April 15, 1976 and had been in service for 32 years. Part of her job was to accept payments and issue receipts and deposit slips to MMC students.[7]

On March 12, 2008, the petitioner went on a one month authorized leave of absence, as she and her husband Dario Mariano (Dario), Director for Finance of MMC, would be vacationing in the United States.[8] When the petitioner reported hack to work on April 14, 2008, she received a Memorandum[9] dated April 8, 2008 signed by the respondents, stating that in line with the streamlining activities of MMC, the petitioner would be transferred from the Cashier's Office to the Office of the Vice-President (OVP) for Finance, her husband's office, effective April 15, 2008. Eugene Bitancur was assigned to handle all the collections of MMC. The petitioner alleged that the copies of the said memorandum had already been distributed to all concerned immediately after the respondents signed it while she and her husband were still on vacation.[10]

On the same day, Dario was invited to attend a special meeting of the Board of Directors of MMC[11] where he had the opportunity to request for the petitioner's reinstatement to the Cashier's Office, in deference to her long period of service to MMC. MMC, however, denied his request. Dario then advised the petitioner to file an extended leave of absence until April 21, 2008, which was granted.[12]

---

[6] *Id.* at 96.

[7] *Id.* at 36.

[8] *Id.*, CA *rollo*, p. 84.

[9] CA *rollo*, p. 85.

[10] *Rollo*, p. 36.

[11] CA *rollo*, p. 86.

[12] *Id.* at 87.

On April 22, 2008, the petitioner went to MMC to file another application for leave as she was not feeling well but this was denied by the Human Resources. When her leave form was returned, there was a note from Del Rio, which reads: "Extension disapproved until further notice due to on-going audit."[13] In the afternoon of the same day, she consulted Dr. Arthur Torio, the resident physician on duty at Martinez Memorial Hospital, who recommended her confinement.[14] She was hospitalized until April 24, 2008.[15]

In the meantime, the Special Assistant to the President, Evelyn Muallil (Muallil), who was tasked to conduct an audit review of MMC's Finance Department, concluded her review which covered the period from 2004 to summer of 2008. Evelyn submitted her report and findings dated April 23, 2008 to Martinez, and the report showed the petitioner's improper handling of cash accounts of MMC. A separate account called "non-essential accounts" in which some collections of MMC were deposited and diverted from MMC's general fund was likewise discovered. The non-essential accounts contained the total amount of ₱40,490,619.26.[16]

On April 28, 2008, the petitioner filed with the NLRC a Complaint[17] for constructive dismissal against MMC and the respondents. The day after, or on April 29, 2008, Dario received a letter[18] dated April 28, 2008 from Martinez, through MMC's counsel, addressed to the petitioner, where the latter was asked to explain in writing, within five days, her possible involvement in the diversion of MMC's funds. Aside from the petitioner, her husband Dario, Roberto Martinez (Roberto), Daisy Martinez (Daisy) and Eloida Cordero (Cordero), received similar letters.[19]

---

[13] *Id.* at 88.

[14] *Rollo*, p. 37.

[15] *Id.* at 36-37.

[16] *Id.* at 39.

[17] CA *rollo*, pp. 49-51.

[18] *Id.* at 92.

[19] *Rollo*, pp. 37-38.

In their letter-answer[20] dated May 6, 2008, they explained that the MMC Board of Directors sanctioned the non-essential account. Thinking that said letter-answer was sufficient, the petitioner did not submit any separate reply.[21]

On May 14, 2008, the petitioner received a letter[22] dated May 7, 2008 from Martinez, informing her that her employment has been terminated on the ground of serious or gross dishonesty in relation to the discovered misappropriation and diversion of funds of MMC, and aggravated by her continuous absence from office without leave or any explanation. Thereafter, the petitioner amended her complaint[23] with the NLRC to one of illegal dismissal.

In response to the complaint, the respondents contended that before the end of the last quarter of 2007, Martinez, in his capacity as President and Chief Executive of MMC, came to know of the irregularities perpetuated in MMC related to the collections and disbursements of the funds in which, the petitioner, in her capacity as Assistant Cashier, was directly involved. In an effort to improve the operations of MMC and to correct the improper and inappropriate handling of duties, Martinez initiated its reorganization and streamlining of activities. Among those affected by the streamlining was the petitioner, who was temporarily transferred to the OVP for Finance. The last time she went to work was on April 14, 2008.[24]

On September 8, 2008, the LA rendered its Decision,[25] the dispositive portion of which reads:

WHEREFORE, Judgment is hereby rendered declaring the dismissal of the [petitioner] as illegal. Respondent [MMC] is [h]ereby ordered to pay [the petitioner] her backwages from date of dismissal

---

[20] CA *rollo*, pp. 93-94.

[21] *Rollo*, p. 38.

[22] CA *rollo*, p. 105.

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

[24] *Rollo*, pp. 38-39.

[25] *Id.* at 87-94.

to date of decision in the amount of ₱100,000.00; separation pay in the amount of ₱800,000.00, and attorney's fees equivalent to 10% of the total award.

The backwages shall stop only upon payment of separation pay.

SO ORDERED.[26]

The LA found the petitioner's dismissal as illegal for failure of the respondents to prove lawful or just cause for the termination of her employment and for their failure to accord her due process.[27]

On appeal, the NLRC vacated and set aside the LA's decision. The dispositive portion of NLRC's Decision[28] dated June 30, 2009 provides:

WHEREFORE, premises considered, the appeal of respondents is hereby GRANTED. The decision of the [LA] dated 8 September 2008 is hereby VACATED and SET ASIDE.

The [petitioner] is DISMISSED for lack of merit.

SO ORDERED.[29]

The petitioner filed a Motion for Reconsideration[30] on August 3, 2009, which was denied by the NLRC in its Resolution[31] dated August 18, 2009.

The petitioner then went to the CA,[32] which denied her petition for lack of merit.[33] The CA agreed with the NLRC and found that the System Review Report prepared by Muallil provided sufficient grounds for MMC to terminate the petitioner from

---

[26] *Id.* at 94.

[27] *Id.* at 93.

[28] CA *rollo*, pp. 277-290.

[29] *Id.* at 290.

[30] *Id.* at 291-308.

[31] *Id.* at 331-332.

[32] *Id.* at 11-48.

[33] *Rollo*, p. 47.

employment for serious or gross dishonesty. The CA said that the petitioner was the Assistant Cashier who performs the duties of a cashier, position that requires a high degree of trust and confidence, and her infraction reasonably taints the trust and confidence reposed upon her by her employer.[34]

Unsatisfied, the petitioner instituted the present petition predicated on the ground that —

THE HONORABLE CA COMMITTED GRAVE AND SERIOUS ERROR IN UPHOLDING THE DECISION OF THE NLRC THAT THE DISMISSAL OF THE PETITIONER IS LEGAL DESPITE THE EXISTENCE OF SUBSTANTIAL AND CONVINCING EVIDENCE OF BAD FAITH IN THE ILLEGAL DISMISSAL OF THE PETITIONER.[35]

The petitioner contends that she was illegally dismissed; that the respondents were not able to comply with the twin requirements of notice and hearing as mandated by law; that her transfer rests merely on Martinez's arbitrariness, whims, caprices or suspicion; and that the loss of trust and confidence cannot be used against her as there exist no solid and substantial grounds against her but merely suspicion.

Ruling of the Court

The Court has consistently adhered to the principle that the standard of review of a CA decision in a labor case, brought to the Court *via* Rule 45 of the Rules of Court, is limited to a review of errors of law.[36] The Court has to examine the CA decision from the perspective of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, and not on the basis of whether the NLRC decision on the merits of the case was correct.[37]

---

[34] *Id.* at 44.

[35] *Id.* at 19.

[36] *Bani Rural Bank, Inc., et al. v. De Guzman*, *et al.*, 721 Phil. 84, 98 (2013).

[37] *Id.*, citing *Montoya v. Transmed Manila Corp./Mr. Ellena*, *et al.*, 613 Phil. 696, 707 (2009).

The issue to be resolved, therefore, is whether the CA committed a reversible error in ruling that the NLRC did not commit any grave abuse of discretion in upholding the petitioner's dismissal from MMC.[38]

Firstly, the petitioner argues that her transfer from the Cashier's Office to the OVP for Finance placed her in a situation that was inconvenient, unreasonable and prejudicial to her, and which provoked her to file a case for constructive dismissal. She said that the transfer was allegedly in line with the ongoing streamlining activities of MMC and based on a valid sound business policy, but husband and wife in the same department especially in the Finance Department is not a healthy business practice as this has an adverse effect on the check and balance principle. The petitioner also contends that there was bad faith in her transfer because the memorandum did not state any corresponding work assignments.[39]

The Court, however, finds that the CA correctly ruled that MMC's act of transferring the petitioner from the Cashier's Office to the OVP for Finance is a **valid exercise of management prerogative**.[40] The Court has often declined to interfere in legitimate business decisions of employers,[41] as long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements.[42] In this case, the MMC's exercise of its management prerogative was done for the advancement of its interest and not for the purpose of defeating the lawful rights of the petitioner.[43] It was within MMC's discretion to allow husband and wife to be in

---

[38] *Rollo*, p. 19.

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

[40] *Id.* at 45.

[41] *Tinio v. CA*, 551 Phil. 972, 981 (2007).

[42] *Union Carbide Labor Union v. Union Carbide Phils., Inc.*, G.R. No. 41314, November 13, 1992, 215 SCRA 554, 557.

[43] *Pantoja v. SCA Hygiene Products Corp*., 633 Phil. 235, 236 (2010).

one department and there is no express prohibition on this matter. The Board of Directors' decision to transfer the petitioner to her husband's department did not cause any conflict at all and the same was on an interim basis only. Moreover, the petitioner's transfer was akin to a reassignment pending an investigation, which, as ruled in *Endico v. Quantum Foods Distribution Center*,[44] is a valid exercise of management prerogative to discipline its employees. The Court stated:

> Reassignments made by management pending investigation of violations of company policies and procedures allegedly committed by an employee fall within the ambit of management prerogative. The decision of Quantum Foods to transfer Endico pending investigation was a valid exercise of management prerogative to discipline its employees. The transfer, while incidental to the charges against Endico, was not meant as a penalty, but rather as a preventive measure to avoid further loss of sales and the destruction of Quantum Foods' image and goodwill. It was not designed to be the culmination of the then on-going administrative investigation against Endico.[45] (Citation omitted)

As regards the petitioner's dismissal from employment, the Court also affirms the CA ruling that the NLRC did not commit any grave abuse of discretion in declaring its validity.

Article 296 (c) (formerly Article 282[c]) of the Labor Code enumerates the just and valid causes for the dismissal of an employee, *viz.*: (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with her work; (b) gross and habitual neglect by the employee of her duties; (c) fraud or willful breach by the employee of the trust reposed in her by her employer or duly authorized representative, (d) commission of a crime or offense by the employee against the person of her employer or any immediate member of her family or her duly authorized representatives; and (e) other causes analogous to the foregoing.

---

[44] 597 Phil. 295 (2009).

[45] *Id.* at 306-307.

In this case, MMC's ground for terminating the petitioner's employment was "serious or gross dishonesty and for having committed an offense against [MMC],"[46] which was based on the findings in the System Review Report submitted by Muallil. Another basis was the alleged diversion of MMC's funds wherein non-essential accounts or accounts payable to and for MMC were deposited to "private accounts" in the names of Roberto and Cordero, and Cordero and Daisy. In upholding the validity of the petitioner's dismissal on these grounds, the NLRC ruled:

> As shown in the System Review (Report for short) of [MMC], x x x, it was the finding that [the petitioner] have been actually doing the work of a cashier, like collecting, signing and issuing official receipts and issuing student assessment. She is the one actually receiving payment and preparing the daily cashier's report. It was further reported and we quote: "When she was subjected to a spot cash count, she asked an accounting staff to print a Cashier's Report, opened her cabinet drawer and counted money and gave the exact amount stated in the cashier's report and handed them to the undersigned. When asked what the other cash in the drawer are for, she immediately said that the examiner should not touch them as they are from private business. When questioned why they are co-mingled with the [MMC's] collection, she [the petitioner] said "syempre, ako ang nagma-manage nuon!" x x x. The Report further said and we quote: "The exercise of the cash count showed that custodian of collections was not aware of the standard auditing and accounting practices of cashiering, that is, company cash and monies, held on trust with such custodian shall be clearly and fully accounted for, at anytime and not mixed up with personal and other employee's business transactional proceeds." x x x. More so, it was likewise admitted by [the petitioner] that the collection in her possession on that day is actually from the previous day's collection but was not able to turn over the same to Mr. Cordero as they run out of time. The Audit was done at 2:00 p.m. x x x. The above findings were never rebutted nor denied by [the petitioner] hence, it is considered true and would be prejudicial to the claim of [the petitioner] that she was being accused of baseless wrong doings. In fact she was

---

[46] CA *rollo*, p. 105.

caught red handed on the spot that she was remiss in the performance of their duties. x x x.[47]

The CA agreed with the NLRC that the System Review Report prepared by Muallil provided sufficient grounds for MMC to terminate the petitioner from employment of serious or gross dishonesty,[48] and the Court finds no reversible error on the part of the CA in doing so.

A review of the records shows that the petitioner failed to rebut the findings in the System Review Report and insisted that she did not have the opportunity to contest these because she was not furnished a copy. She also denied any knowledge whatsoever regarding the alleged opening of said non-essential accounts, which, according to her, were actually sanctioned by the MMC Board of Directors.[49] The System Review Report, however, clearly showed that there was an improper handling of MMC's cash accounts and that there was a separate account called non-essential accounts in which some of the collections of MMC were deposited and diverted from the general fund.[50] Being the Assistant Cashier, it is doubtful that she had no knowledge of the alleged opening of the "non-essential accounts" because her tasks include acceptance of payments and the issuance of receipts and bank deposit slips to MMC's students.[51] In fact, records show that she even issued bank deposit slips to students for deposit of certain payments to these "non-essential accounts." By and large, the petitioner's acts constituted dishonesty that ultimately led to a breach of the trust reposed in her by MMC. As held in *Gargoles v. Del Rosario*,[52] an act of dishonesty by an employee who has been put in charge of the employer's money and property amounts to breach of the trust reposed by the

---

[47] *Id.* at 283-284.

[48] *Rollo*, p. 44.

[49] *Id.* at 23.

[50] *Id.* at 39.

[51] CA *rollo*, p. 283.

[52] G.R. No. 158583, September 10, 2014, 734 SCRA 558.

employer, and normally leads to loss of confidence in her, and such dishonesty comes within the just and valid causes for the termination of employment under the Labor Code. In the same vein, the Court has ruled that in dismissing a cashier on the ground of loss of confidence, **it is sufficient that there is some basis for the same or that the employer has a reasonable ground to believe that the employee is responsible for the misconduct, thus making him unworthy of the trust and confidence reposed in him**. Courts cannot justly deny the employer the authority to dismiss him for employers are allowed wider latitude in dismissing an employee for loss of trust and confidence.[53]

Finally, the petitioner contends that she had no opportunity to defend herself from the charges as MMC deliberately failed to provide her a copy of the System Review Report.[54]

In *Sang-an v. Equator Knights Detective and Security Agency, Inc.*,[55] the Court held:

> [T]he guarantee of due process, requiring the employer to furnish the employee with two written notices before termination of employment can be effected: a **first written notice** that informs the employee of the particular acts or omissions for which his or her dismissal is sought, and a **second written notice** which informs the employee of the employer's decision to dismiss him. In considering whether the charge in the first notice is sufficient to warrant dismissal under the second notice, the employer must afford the employee ample opportunity to be heard.[56]

Records show that Martinez, through MMC's counsel, sent a letter to the petitioner ordering her to explain in writing her possible involvement in the diversion of MMC's funds. The letter reads:

---

[53] *P.J. Lhuillier, Inc. and Mario Ramon Ludeña v. Flordeliz Velayo*, G.R. No. 198620, November 12, 2014.

[54] *Rollo*, p. 24.

[55] 703 Phil. 492 (2013).

[56] *Id.* at 502.

It has been disclosed through the audit report rendered by [Muallil], Special Assistant to the President, MMC, that the non-essential accounts (NE) which are account payable to and for the college are ordered to be deposited to "private accounts" in the bank which are in the names of [Roberto] and [Cordero] for Account No. 3801-022-09, and of [Cordero] and [Daisy] for Account No. 3801-0058-44. This is a clear act of diversion of funds of the college constituting misappropriation or estafa for which you, as assistant cashier, and as the one who issues the deposit slips to the students can be held liable with other persons who are either directly or indirectly involved in said criminal act.[57]

The foregoing notice complies with the first written notice requirement as it specified the ground for termination and gave the petitioner an opportunity to explain her side. The due process mandate does not require that the entire report from which the termination is based should be attached to the notice. What is essential is that the particular acts or omissions for which her dismissal is sought are indicated in the letter.

The petitioner also argues that while it may be that her termination comes within the purview of a management prerogative, Martinez should have called for a meeting or conference with the other affected officials.[58] Her position, however, is untenable considering that a letter was already sent to them where they were ordered to explain within five days their possible involvement in the alleged diversion of funds, and they were able to explain their side in a joint letter-answer[59] dated May 6, 2008. A hearing does not strictly mean a personal or face-to-face confrontation. It is sufficient that an employee has the meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.[60]

---

[57] CA *rollo*, p. 92.

[58] *Rollo*, pp. 19-20.

[59] CA *rollo*, pp. 93-94.

[60] *New Puerto Commercial, et al. v. Lopez, et al.*, 639 Phil. 437, 445-446 (2010), citing *Perez, et al. v. Philippine Telegraph and Telephone Co., et al.*, 602 Phil. 522, 538 (2009).

Accordingly, the CA's denial of the petitioner's petition must be upheld.

WHEREFORE, the petition is **DENIED** for lack of merit.

SO ORDERED.

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

Peralta, J., on official leave.

THIRD DIVISION

[G.R. No. 194260. April 13, 2016]

HEIRS OF FELICIANO YAMBAO, namely: CHONA YAMBAO, JOEL YAMBAO, WILLY YAMBAO, LENNIE YAMBAO and RICHARD YAMBAO, and all other persons acting under their authority, *petitioners, vs.* **HEIRS OF HERMOGENES YAMBAO, namely: ELEANOR YAMBAO, ALBERTO YAMBAO, DOMINIC YAMBAO, ASESCLO YAMBAO, GERALD DANTIC and MARIA PILAR YAMBAO, who are all represented by their Attorney-in-Fact, MARIA PILAR YAMBAO,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; CO-OWNERSHIP; AS A RULE, PRESCRIPTION DOES NOT RUN IN FAVOR OF A CO-HEIR OR CO-OWNER AS LONG AS HE EXPRESSLY OR IMPLIEDLY RECOGNIZES THE CO-OWNERSHIP; APPLICATION IN CASE AT BAR.— A co-ownership is a form of trust, with each owner being a trustee for each other. Mere actual possession by one will not give rise to the

inference that the possession was adverse because a co-owner is, after all, entitled to possession of the property. Thus, as a rule, prescription does not run in favor of a co-heir or co-owner as long as he expressly or impliedly recognizes the co-ownership; and he cannot acquire by prescription the share of the other co-owners, absent a clear repudiation of the co-ownership. An action to demand partition among co-owners is imprescriptible, and each co-owner may demand at any time the partition of the common property. x x x Although OCT No. P-10737 was registered in the name of Feliciano on November 29, 1989, the prescriptive period within which to demand partition of the subject property, contrary to the claim of the heirs of Feliciano, did not begin to run. At that time, the heirs of Hermogenes were still in possession of the property. It was only in 2005 that the heirs of Feliciano expressly prohibited the heirs of Hermogenes from entering the property. Thus, as aptly ruled by the CA, the right of the heirs of Hermogenes to demand the partition of the property had not yet prescribed. Moreover, when Feliciano registered the subject property in his name, to the exclusion of the other heirs of Hermogenes, an implied trust was created by force ·of law and he was considered a trustee of the undivided shares of the other heirs of Hermogenes in the property. As trustees, the heirs of Feliciano cannot be permitted to repudiate the trust by relying on the registration. "A trustee who obtains a Torrens title over a property held in trust for him by another cannot repudiate the trust by relying on the registration."

2. ID.; ID.; ID.; PRESCRIPTION MAY RUN AGAINST A CO-OWNER IF THERE IS ADVERSE, OPEN, CONTINUOUS AND EXCLUSIVE POSSESSION OF THE CO-OWNED PROPERTY BY THE OTHER CO-OWNER/S; REQUISITES.— Prescription may nevertheless run against a co-owner if there is adverse, open, continuous and exclusive possession of the co-owned property ·by the other co-owner/s. In order that a co-owners possession may be deemed adverse to the *cestui que trust* or other co-owners, the following requisites must concur: (1) that he has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust* or other co-owners; (2) that such positive acts of repudiation have been made known to the *cestui que trust* or other co-owners; and (3) that the evidence thereon must be clear and convincing.

> The issuance of the certificate of title would constitute an open and clear repudiation of any trust. In such a case, an action to demand partition among co-owners prescribes in 10 years, the point of reference being the date of the issuance of certificate of title over the property. But this rule applies only when the plaintiff is not in possession of the property, since if a person claiming to be the owner thereof is in actual possession of the property, the right to demand partition does not prescribe.

APPEARANCES OF COUNSEL

Roel K. Romero for petitioners.
Jose Torres Pacis for respondents.

R E S O L U T I O N

REYES, *J.*;

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated October 22, 2010 issued by the Court of Appeals (CA) in CA-G.R. CV No. 92755, which reversed and set aside the Decision dated December 23, 2008 of the Regional Trial Court (RTC) of Iba, Zambales, Branch 69, in SP. Civil Case No. RTC-88-I.

Facts

The subject of this case is a parcel of land located in Barangay Bangan, Botolan, Zambales, which was originally possessed by Macaria De Ocampo (Macaria). Macaria's nephew, Hermogenes Yambao (Hermogenes), acted as the administrator of the property and paid realty taxes therefor. Hermogenes has eight children, namely: Ulpiano, Dominic, Teofilo, Feliciano, Asesclo, Delia, Amelia, and Melinda, all surnamed Yambao.[3]

---

[1] *Rollo*, pp. 9-23.

[2] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Francisco P. Acosta and Samuel H. Gaerlan concurring; *id.* at 26-36.

[3] *Id.* at 27.

After Hermogenes died, it was claimed that all of his heirs were free to pick and harvest from the fruit-bearing trees planted on the subject property. Eleanor Yambao (Eleanor), Ulpiano's daughter, even constructed a house on the subject property. However, sometime in 2005, the communal and mutual use of the subject property by the heirs of Hermogenes ceased when the heirs of Feliciano, herein petitioners, prohibited them from entering the property. The heirs of Feliciano even ejected Eleanor from the subject property.[4]

This prompted the heirs of Hermogenes, herein respondents, to file with the RTC a complaint for partition, declaration of nullity of title/documents, and damages against the heirs of Feliciano. The heirs of Hermogenes alleged that they and the heirs of Feliciano are co-owners of the subject property, having inherited the right thereto from Hermogenes.[5]

The heirs of Feliciano denied the allegations of the heirs of Hermogenes and claimed that their father, Feliciano, was in possession of the subject property in the concept of owner since time immemorial. Accordingly, Feliciano was awarded a free patent thereon for which Original Certificate of Title (OCT) No. P-10737 was issued. They also averred that the cause of action in the complaint filed by the heirs of Hermogenes, which questioned the validity of OCT No. P-10737, prescribed after the lapse of one year from its issuance on November 29, 1989.[6]

Ruling of the RTC

On December 23, 2008, the RTC rendered a Decision dismissing the complaint filed by the heirs of Hermogenes. The RTC opined that the heirs of Hermogenes failed to show that the subject property is owned by Macaria, stating that tax declarations and receipts in Macaria's name are not conclusive evidence of ownership. The RTC further held that even if Macaria owned the subject property, the heirs of Hermogenes failed to

---

[4] *Id.* at 28.

[5] *Id.* at 27.

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

show that Hermogenes had the right to succeed over the estate of Macaria.

Ruling of the CA

On appeal, the CA, in its Decision[7] dated October 22, 2010, reversed and set aside the RTC's Decision dated December 23, 2008. The CA found that the RTC, in hastily dismissing the complaint for partition, failed to determine first whether the subject property is indeed co-owned by the heirs of Hermogenes and the heirs of Feliciano. The CA pointed out that:

> [A] review of the records of the case shows that in Feliciano's application for free patent, he acknowledged that the source of his claim of possession over the subject property was Hermogenes's possession of the real property in peaceful, open, continuous, and adverse manner and more importantly, in the concept of an owner, since 1944. Feliciano's claim of sole possession in his application for free patent did not therefore extinguish the fact of co-ownership as claimed by the children of Hermogenes.[8] (Citation omitted and emphasis deleted)

Accordingly, the CA, considering that the parties are co-owners of the subject property, ruled that the RTC should have conducted the appropriate proceedings for partition.[9]

Aggrieved, the heirs of Feliciano filed with the Court this petition for review alleging that the CA erred in ruling that there is co-ownership between them and the heirs of Hermogenes. The heirs of Feliciano likewise averred that the CA also erred in ordering the partition of the subject property since it amounts to a collateral attack on the validity of OCT No. P-10737.[10]

Ruling of the Court

The petition is denied.

---

[7] *Id.* at 26-36.

[8] *Id.* at 34.

[9] *Id.* at 35.

[10] *Id.* at 14.

As pointed out by the CA, the RTC overlooked the fact that the subject property is co-owned by the parties herein, having inherited the same from Hermogenes. Feliciano's free patent application indicated that he merely tacked his possession of the subject property from Hermogenes, his father, who held the property in peaceful, open, continuous, and adverse manner in the concept of an owner since 1944. This is an implicit recognition of the fact that Feliciano merely co-owns the subject property with the other heirs of Hermogenes. Indeed, the heirs of Feliciano have not presented any evidence that would show that Hermogenes bequeathed the subject property solely to Feliciano.

A co-ownership is a form of trust, with each owner being a trustee for each other. Mere actual possession by one will not give rise to the inference that the possession was adverse because a co-owner is, after all, entitled to possession of the property. Thus, as a rule, prescription does not run in favor of a co-heir or co-owner as long as he expressly or impliedly recognizes the co-ownership; and he cannot acquire by prescription the share of the other co-owners, absent a clear repudiation of the co-ownership. An action to demand partition among co-owners is imprescriptible, and each co-owner may demand at any time the partition of the common property.[11]

Prescription may nevertheless run against a co-owner if there is adverse, open, continuous and exclusive possession of the co-owned property by the other co-owner/s. In order that a co-owners possession may be deemed adverse to the *cestui que trust* or other co-owners, the following requisites must concur: (1) that he has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust* or other co-owners; (2) that such positive acts of repudiation have been made known to the *cestui que trust* or other co-owners; and (3) that the evidence thereon must be clear and convincing.[12]

---

[11] *Fangonil-Herrera v. Fangonil*, 558 Phil. 235, 261-262 (2007).

[12] See *Heirs of Juanita Padilla v. Magdua*, 645 Phil. 140, 151 (2010).

The issuance of the certificate of title would constitute an open and clear repudiation of any trust.[13] In such a case, an action to demand partition among co-owners prescribes in 10 years, the point of reference being the date of the issuance of certificate of title over the property. But this rule applies only when the plaintiff is not in possession of the property, since if a person claiming to be the owner thereof is in actual possession of the property, the right to demand partition does not prescribe.[14]

Although OCT No. P-10737 was registered in the name of Feliciano on November 29, 1989, the prescriptive period within which to demand partition of the subject property, contrary to the claim of the heirs of Feliciano, did not begin to run. At that time, the heirs of Hermogenes were still in possession of the property. It was only in 2005 that the heirs of Feliciano expressly prohibited the heirs of Hermogenes from entering the property. Thus, as aptly ruled by the CA, the right of the heirs of Hermogenes to demand the partition of the property had not yet prescribed. Accordingly, the RTC committed a reversible error when it dismissed the complaint for partition that was filed by the heirs of Hermogenes.

There is likewise no merit to the claim that the action for partition filed by the heirs of Hermogenes amounted to a collateral attack on the validity of OCT No. P-10737. The complaint for partition filed by the heirs of Hermogenes seeks first, a declaration that they are a co-owners of the subject property, and second, the conveyance of their lawful shares. The heirs of Hermogenes do not attack the title of Feliciano; they alleged no fraud, mistake, or any other irregularity that would justify a review of the registration decree in their favor. Their theory is that although the subject property was registered solely in Feliciano's name, they are co-owners of the property and as such is entitled to the

---

[13] *Pangan v. Court of Appeals*, G.R. No. L-39299, October 18, 1988, 166 SCRA 375, 383, citing *Lopez, et al. v. Gonzaga*, *et al.*, 119 Phil. 424 (1964).

[14] *Heirs of Jose Olviga v. Court of Appeals*, G.R. No. 104813, October 21, 1993, 227 SCRA 330, 334.

conveyance of their shares. On the premise that they are co-owners, they can validly seek the partition of the property in co-ownership and the conveyance to them of their respective shares.[15]

Moreover, when Feliciano registered the subject property in his name, to the exclusion of the other heirs of Hermogenes, an implied trust was created by force of law and he was considered a trustee of the undivided shares of the other heirs of Hermogenes in the property. As trustees, the heirs of Feliciano cannot be permitted to repudiate the trust by relying on the registration.[16] "A trustee who obtains a Torrens title over a property held in trust for him by another cannot repudiate the trust by relying on the registration."[17]

WHEREFORE, in light of the foregoing disquisitions, the petition is hereby **DENIED**. The Decision dated October 22, 2010 issued by the Court of Appeals in CA-G.R. CV No. 92755 is **AFFIRMED**.

SO ORDERED.

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

Peralta, J., on official leave.

---

[15] See *Mallilin, Jr. v. Castillo*, 389 Phil. 153, 165 (2005).

[16] See *Vda. de Figuracion, et al. v. Figuracion-Gerilla*, 703 Phil. 455, 472 (2013).

[17] *Ringor v. Ringor*, 480 Phil. 141, 161 (2004).

THIRD DIVISION

[G.R. No. 195155. April 13, 2016]

DIVINE WORD COLLEGE OF LAOAG, *petitioner, vs.* **SHIRLEY B. MINA, as heir-substitute of the late DELFIN A. MINA,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; *CERTIORARI*; IN A PETITION FOR REVIEW ON CERTIORARI ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTION.— In a petition for review on *certiorari* under Rule 45, only questions of law may be raised. The *raison d'être* is that the Court is not a trier of facts. The rule, however, admits of certain exceptions, such as when the factual findings of the LA differ from those of the NLRC, as in the instant case, which opens the door to a review by this Court.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; IF THE EMPLOYER CANNOT OVERCOME THE BURDEN OF PROVING THAT ITS CONDUCT AND ACTION ARE FOR VALID AND LEGITIMATE GROUNDS, THE EMPLOYEE'S TRANSFER SHALL BE TANTAMOUNT TO UNLAWFUL CONSTRUCTIVE DISMISSAL; EXPLAINED.— The Constitution and the Labor Code mandate that employees be accorded security of tenure. The right of employees to security of tenure, however, does not give the employees vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them. In cases of transfer of an employee, the employer is charged with the burden of proving that its conduct and action are for valid and legitimate grounds such as genuine business necessity and that the transfer is not unreasonable, inconvenient or prejudicial to the employee. If the employer cannot overcome this burden of proof, the employee's transfer shall be tantamount to unlawful constructive dismissal. Constructive dismissal is a dismissal in disguise. There is cessation of work in constructive dismissal because

"'continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits." To be considered as such, an act must be a display of utter discrimination or insensibility on the part of the employer so intense that it becomes unbearable for the employee to continue with his employment. The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.

3. ID.; ID.; ID.; THE BASIS FOR THE PAYMENT OF BACKWAGES IS DIFFERENT FROM THAT OF THE AWARD OF SEPARATION PAY; ELUCIDATED.— The Court has repeatedly stressed that the basis for the payment of backwages is different from that of the award of separation pay. "The basis for computing separation pay is usually the length of the employee's past service, while that for backwages is the **actual period when the employee was unlawfully prevented from working**." x x x The award of separation pay is also distinct from the grant of retirement benefits. These benefits are not mutually exclusive as "[r]etirement benefits are a form of reward for an employee's loyalty and service to an employer and are earned under existing laws, [Collective Bargaining Agreements], employment contracts and company policies." Separation pay, on the other hand, is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he is looking for another employment. In the computation of separation pay, **the Court stresses that it should not go beyond the date an employee was deemed to have been actually separated from employment, or beyond the date when reinstatement was rendered impossible**.

4. ID.; ID.; ID.; AWARD OF DAMAGES IS JUSTIFIED ON THE FINDINGS THAT THE EMPLOYEE WAS NOT TREATED WITH UTMOST GOOD FAITH; CASE AT BAR.— The award of damages was also justified given the CA and NLRC's finding that DWCL acted in a manner wherein Mina was not treated with utmost good faith. The intention of the school to erase him out of employment is too apparent. The Court upholds the CA's finding that when DWCL's act of unceremoniously demoting and giving Mina contractual

employment for one year and citing him for numerous violations of school regulations when he rejected the school's offer to voluntarily retire is constitutive of bad faith.

5. ID.; ID.; TERMINATION OF EMPLOYMENT; RETIREMENT; THE EMPLOYEE HAS THE BURDEN OF PROOF TO SHOW COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN RETIREMENT PLANS; NOT ESTABLISHED IN CASE AT BAR.— The Court affirms the NLRC's findings that the eight years of service rendered by Mina in ASJ shall not be included in the computation of his retirement benefits. No adequate proof is shown that he has complied with the portability clause of the DWEA Retirement Plan. The employee has the burden of proof to show compliance with the requirements set forth in retirement plans, being in the nature of privileges granted to employees. Failure to overcome the burden of proof would necessarily result in the employee's disqualification to receive the benefits.

APPEARANCES OF COUNSEL

Fernandez Law Office for petitioner.
Manolo A. Flor for respondent.

D E C I S I O N

REYES, *J.*:

Assailed in this petition for review[1] under Rule 45 of the Rules of Court is the Decision[2] dated July 19, 2010 and Resolution[3] dated January 13, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 107749 declaring respondent Delfin A. Mina (Mina) to have been constructively dismissed by petitioner Divine Word College of Laoag (DWCL) and awarding him backwages, damages and attorney's fees.

---

[1] *Rollo*, pp. 11-34.

[2] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ramon R. Garcia and Manuel M. Barrios concurring; *id.* at 35-46.

[3] *Id.* at 47-50.

Antecedent Facts

DWCL is a non-stock educational institution offering catholic education to the public. It is run by the Society of Divine Word (SVD), a congregation of Catholic priests that maintains several other member educational institutions throughout the country.[4]

On July 1, 1969, the Society of Divine Word Educational Association (DWEA) established a Retirement Plan to provide retirement benefits for qualified employees of DWEA's member institutions, offices and congregations.[5] The DWEA Retirement Plan[6] contains a clause about the portability of benefits, to wit:

> When a member who resigns or is separated from employment from one Participating Employer and who is employed by another Participating Employer, the member will carry the credit he earned under his former Participating Employer to his new Employer and the length of service in both will be taken into consideration in determining his total years of continuous service on the following conditions:
>
> a. The transfer is approved by both the Participating Employer whose service he is leaving and the new Participating Employer;
>
> b. The Retirement Board is notified of the transfer; and
>
> c. The member is employed by another Participating Employer on the next working day after his resignation.[7]

Mina was first employed in 1971 as a high school teacher, and later on a high school principal, at the Academy of St. Joseph (ASJ), a school run by the SVD. On June 1, 1979, he transferred to DWCL and was accorded a permanent status after a year of probationary status.[8] He was subsequently transferred

---

[4] *Id.* at 36, 198.

[5] *Id.* at 199.

[6] *Id.* at 178-190.

[7] *Id.* at 161.

[8] *Id.* at 147.

in 2002 to DWCL's college department as an Associate Professor III. Thereafter, on June 1, 2003, Mina was assigned as the College Laboratory Custodian of the School of Nursing and was divested of his teaching load, effective June 1, 2003 until May 31, 2004, subject to automatic termination and without need for any further notification.[9] He was the only one among several teachers transferred to the college department who was divested of teaching load.[10]

In early June 2004, Mina was offered early retirement by Professor Noreen dela Rosa, Officer-in-Charge of DWCL's School of Nursing. He initially declined the offer because of his family's dependence on him for support. He later received a Memorandum[11] dated July 27, 2004 from the Office of the Dean enumerating specific acts of gross or habitual negligence, insubordination, and reporting for work under the influence of alcohol. He answered the allegations against him;[12] sensing, however, that it was pointless to continue employment with DWCL, he requested that his retirement date be adjusted to September 2004 to enable him to avail of the 25-year benefits. He also requested for the inclusion of his eight years of service in ASJ, to make his total years of service to 33 years pursuant to the portability clause of the retirement plan, which was denied by DWCL. Instead, he was paid ₱275,513.10 as retirement pay.[13] It was made to appear that his services were terminated by reason of redundancy to avoid any tax implications. Mina was also made to sign a deed of waiver and quitclaim[14] stating that he no longer has any claim against DWCL with respect to any matter arising from his employment in the school.[15]

---

[9] *Id.* at 148.

[10] *Id.* at 36.

[11] *Id.* at 149.

[12] *Id.* at 150-151.

[13] *Id.* at 195.

[14] *Id.* at 197.

[15] *Id.* at 36-38.

On September 21, 2004, he filed a case for illegal dismissal and recovery of separation pay and other monetary claims.[16] Pending resolution of his case, Mina passed away on June 18, 2005.[17]

Ruling of the Labor Arbiter

On August 26, 2005, the Labor Arbiter (LA) rendered its Decision,[18] ruling that the actuation of DWCL is not constitutive of constructive dismissal. The LA ratiocinated, however, that the computation of Mina's retirement pay based on redundancy is illegal; hence, it was modified, and the number of years he worked for ASJ was added to the years he worked for DWCL thus making his creditable number of years of service to 33 years. According to the LA, his length of service in both institutions will be taken into consideration in determining his total years of continuous service since the DWEA Retirement Plan has a provision on portability, which allows a member to carry the earned credit for his number of years of service from his former participating employer to his new employer. Moreover, the LA held that there is no showing that Mina ceased to be a member of the plan when he left the ASJ as there was not a day that he was separated from any school that is the member of the plan. The LA's computation of Mina's retirement benefits is as follows:

Monthly salary:	₱13,006.23
Date hired:	June 1971
Years in service:	33 years
Birth day:	24 December 1950

Monthly pay/26.22 x 22.2 x 33 years x 100%	
₱13,006.23/26.23 x 22.2 [x] 33 years x 100%	= ₱363,400.29
Less: Severance benefits received:	= ₱275,513.10
Deficiency	= ₱87,887.19[19]

[16] *Id.* at 206.

[17] Mina was substituted by his widow, Shirley B. Mina; *id.* at 223.

[18] Issued by Executive Labor Arbiter Irenarco R. Rimando; *id.* at 198-217.

[19] *Id.* at 212-213.

The LA disposed thus:

IN VIEW THEREOF, judgment is hereby rendered with the following dispositions:

1. Finding that [Mina] was underpaid in his retirement benefits pursuant to the DWEA Retirement Plan. Consequently, [DWCL] must pay the deficiency in his retirement benefits in the amount of ₱87,887.19.
2. Finding that the respondents were harsh on him. Consequently, the DWCL must be adjudged to pay him ₱50,000 as moral damages and ₱50,000 as exemplary damages.
3. That his claims for additional separation pay for his future services are denied.
4. [DWCL] must pay [Mina] 10% of the total award as attorney's fees for his having been forced to litigate to protect his rights as an employee.

SO ORDERED.[20]

Both DWCL and Mina appealed to the National Labor Relations Commission (NLRC), with DWCL mainly questioning the LA's decision making Mina's creditable years of service 33 years, and awarding moral and exemplary damages.[21]

Ruling of the NLRC

The NLRC ruled that Mina was constructively dismissed when he was appointed as College Laboratory Custodian and divested of his teaching load without any justification.[22] It also ruled that Mina was not deemed to have waived all his claims against DWCL as quitclaims cannot bar employees from demanding benefits to which they are legally entitled.[23] The NLRC, however,

---

[20] *Id.* at 216-217.

[21] *Id.* at 218-231.

[22] *Id.* at 101.

[23] *Id.* at 103.

disregarded Mina's eight years of service in ASJ in the computation of his retirement pay because of his failure to show compliance with the portability provision.[24] The dispositive portion of the NLRC Decision dated July 10, 2008 provided:

> **WHEREFORE**, We grant in partly [sic] the appeals of both [Mina] and [DWCL]. The decision dated August 26, 200[5] is hereby modified to delete the order adding the length of service rendered by [Mina] to the [ASJ] in the computation of the latter's retirement pay from the former. **Accordingly, [DWCL] is held liable to pay [Mina] full backwages and separation pay, in lieu of reinstatement and to his full compulsory retirement pay, less the amount already received by him representing his optional retirement**.
>
> **SO ORDERED**.[25] (Emphasis ours)

DWCL sought reconsideration of the NLRC decision but it was denied in a Resolution[26] dated November 28, 2008.

DWCL thus filed a petition for *certiorari* before the CA, seeking to reverse and set aside the NLRC decision and resolution.[27] DWCL primarily asserted that the NLRC committed grave abuse of discretion in holding that Mina was constructively dismissed from work, in holding DWCL liable for moral and exemplary damages, and in ordering the payment of separation pay as well as retirement pay computed up to the age of 60.[28]

Ruling of the CA

On July 19, 2010, the CA rendered the assailed Decision, denying the petition but modifying the award. It sustained the NLRC's ruling that Mina was indeed constructively dismissed from work. The CA also held that Mina is entitled to receive backwages, to be computed from the time of hiring on June 1,

---

[24] *Id.* at 103-104.

[25] *Id.* at 105-106.

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

[27] *Id.* at 63-82.

[28] *Id.* at 71.

1979 until the time of his death on June 18, 2005, as he was constructively dismissed from work, as follows:

Monthly Salary	Php13,006.23 x 26 (1 June 1979-18 June 2005)
Backwages	Php338,161.98[29]

The dispositive portion of the CA decision provided:

WHEREFORE, the petition is **DENIED**, granting to [Mina] substituted by his heirs in addition to the full retirement benefits at Php275,513.10, the following:

1. backwages in the amount of Php338,161.98;
2. moral and exemplary damages at Php50,000.00; and
3. attorney's fees at ten percent (10%) of the amount due herein.

SO ORDERED.[30]

DWCL's motion for reconsideration was denied by the CA in its Resolution[31] dated January 13, 2011.

Hence, the present petition, anchored on the following grounds:

I.

The Honorable [CA] erred in upholding [NLRC's] findings that [Mina] was constructively dismissed.

II.

The Honorable [CA] erred in holding [DWCL] liable for moral and exemplary damages and attorney's fees.

III.

Even assuming, without admitting that [Mina] was constructively dismissed, the Honorable [CA] erred in ordering the payment

---

[29] *Id.* at 45.

[30] *Id.* at 46.

[31] *Id.* at 47-50.

of his backwages "computed from the time of hiring, 1 June 1979 until the time of his death 18 June 2005."

IV.

Even assuming, without admitting, that [Mina] was constructively dismissed, the Honorable [CA] has no legal basis in awarding him full retirement benefits since it invalidated Mina's retirement for which the retirement benefits were given to him.[32]

Ruling of the Court

In a petition for review on *certiorari* under Rule 45, only questions of law may be raised. The *raison d'être* is that the Court is not a trier of facts.[33] The rule, however, admits of certain exceptions, such as when the factual findings of the LA differ from those of the NLRC, as in the instant case, which opens the door to a review by this Court.[34]

The Constitution[35] and the Labor Code[36] mandate that employees be accorded security of tenure. The right of employees to security of tenure, however, does not give the employees vested rights to their positions to the extent of depriving management of its prerogative to change their assignments or to transfer them.[37] In cases of transfer of an employee, the employer is charged with the burden of proving that its conduct and action

---

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

[33] *Norkis Trading Co., Inc. and/or Albos, Jr. v. Gnilo*, 568 Phil. 256, 265 (2008).

[34] *Perez v. The Medical City General Hospital*, 519 Phil. 129, 133 (2006).

[35] Article XIII, Section 3 of the 1987 Constitution states that workers shall be entitled to security of tenure, humane conditions of work, and a living wage.

[36] Art. 3. *Declaration of basic policy*. — The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

[37] *Philippine Japan Active Carbon Corporation v. NLRC*, 253 Phil. 149, 153 (1989).

are for valid and legitimate grounds such as genuine business necessity and that the transfer is not unreasonable, inconvenient or prejudicial to the employee.[38] If the employer cannot overcome this burden of proof, the employee's transfer shall be tantamount to unlawful constructive dismissal.[39]

Constructive dismissal is a dismissal in disguise.[40] There is cessation of work in constructive dismissal because "'continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits."[41] To be considered as such, an act must be a display of utter discrimination or insensibility on the part of the employer so intense that it becomes unbearable for the employee to continue with his employment.[42] The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer.[43]

In this case, Mina's transfer clearly amounted to a constructive dismissal. For almost 22 years, he was a high school teacher enjoying a permanent status in DWCL's high school department. In 2002, he was appointed as an associate professor at the college department but shortly thereafter, or on June 1, 2003, he was appointed as a college laboratory custodian, which is a clear relegation from his previous position. Not only that. He was also divested of his teaching load. His appointment even became contractual in nature and was subject to automatic termination

---

[38] *Morales v. Harbour Centre Port Terminal, Inc.*, 680 Phil. 112, 121 (2012).

[39] *Westmont Pharmaceuticals, Inc. v. Samaniego*, 518 Phil. 41, 51 (2006).

[40] *Dimagan v. Dacworks United, Inc. and/or Cancino*, 677 Phil. 472, 481 (2011).

[41] *Verdadero v. Barneys Autolines Group of Companies Transport, Inc.*, 693 Phil. 646, 656 (2012).

[42] *Gemina, Jr. v. Bankwise. Inc. (Thrift Bank)*, G.R. No. 175365, October 23, 2013, 708 SCRA 403, 416.

[43] *Dimagan v. Dacworks United, Inc. and/or Cancino*, *supra* note 40.

after one year "without any further notification."[44] Aside from this, Mina was the only one among the high school teachers transferred to the college department who was divested of teaching load. More importantly, DWCL failed to show any reason for Mina's transfer and that it was not unreasonable, inconvenient, or prejudicial to him.[45]

Also, the CA correctly ruled that Mina's appointment as laboratory custodian was a demotion. There is demotion when an employee occupying a highly technical position requiring the use of one's mental faculty is transferred to another position, where the employee performed mere mechanical work — virtually a transfer from a position of dignity to a servile or menial job. The assessment whether Mina's transfer amounted to a demotion must be done in relation to his previous position, that is, from an associate college professor, he was made a keeper and inventory-taker of laboratory materials. Clearly, Mina's new duties as laboratory custodian were merely perfunctory and a far cry from his previous teaching job, which involved the use of his mental faculties. And while there was no proof adduced showing that his salaries and benefits were diminished, there was clearly a demotion in rank. As was stated in *Blue Dairy Corporation v. NLRC*,[46] "[i]t was virtually a transfer from a position of dignity to a servile or menial job."[47]

Given the finding of constructive dismissal, Mina, therefore, is entitled to reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement.[48] The Court

---

[44] *Rollo*, p. 148.

[45] See *Peckson v. Robinsons Supermarket Corporation*, G.R. No. 198534, July 3, 2013, 700 SCRA 668, 678-679, citing *Rural Bank of Cantilan, Inc. v. Julve*, 545 Phil. 619, 624-625 (2007).

[46] 373 Phil. 179 (1999).

[47] *Id.* at 188.

[48] See *Bani Rural Bank, Inc. v. De Guzman*, G.R. No. 170904, November 13, 2013, 709 SCRA 330.

notes that aside from full compulsory retirement pay, the NLRC awarded full backwages and separation pay, in lieu of reinstatement.[49] The CA, however, computed the amount to be awarded as backwages from the time of Mina's hiring on June 1, 1979 until the time of his death on June 18, 2005, apparently interchanging backwages and separation pay.[50] Aside from this, the CA omitted to include a separate award of separation pay.

The Court has repeatedly stressed that the basis for the payment of backwages is different from that of the award of separation pay. "The basis for computing separation pay is usually the length of the employee's past service, while that for backwages is the *actual period when the employee was unlawfully prevented from working*."[51] Thus, the Court explained in *Bani Rural Bank, Inc. v. De Guzman*[52] that:

> [U]nder Article 279 of the Labor Code and as held in a catena of cases, an employee who is dismissed without just cause and without due process is entitled to backwages and reinstatement *or* payment of separation pay in lieu thereof:
>
> xxx xxx xxx
>
> The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed *from the time compensation was withheld up to the date of actual reinstatement*. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.[53] (Emphasis and underscoring deleted, and italics ours)

---

[49] *Rollo*, p. 105.

[50] *Id.* at 45.

[51] *Wenphil Corp. v. Abing*, G.R. No. 207983, April 7, 2014, 721 SCRA 126, 141.

[52] G.R. No. 170904, November 13, 2013, 709 SCRA 330.

[53] *Id.* at 349-350, citing *Macasero v. Southern Industrial Gases Philippines and/or Lindsay*, 597 Phil. 494, 500-501 (2009).

Thus, the computation of Mina's backwages should be from the time he was constructively dismissed on June 1, 2003.

Aside from the foregoing, the CA should have also awarded separation pay since reinstatement is no longer viable due to Mina's death in 2005. As stated before, the award of separation pay is distinct from the award of backwages. The award of separation pay is also distinct from the grant of retirement benefits. These benefits are not mutually exclusive as "[r]etirement benefits are a form of reward for an employee's loyalty and service to an employer and are earned under existing laws, [Collective Bargaining Agreements], employment contracts and company policies."[54] Separation pay, on the other hand, is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he is looking for another employment.[55] In the computation of separation pay, *the Court stresses that it should not go beyond the date an employee was deemed to have been actually separated from employment, or beyond the date when reinstatement was rendered impossible*.[56] The period for the computation of separation pay Mina is entitled to shall therefore begin to run from June 1, 1979, when he was transferred to DWCL from ASJ, until his death on June 18, 2005, or for a period of 26 years.

The award of damages was also justified given the CA and NLRC's finding that DWCL acted in a manner wherein Mina was not treated with utmost good faith. The intention of the school to erase him out of employment is too apparent.[57] The Court upholds the CA's finding that when DWCL's act of unceremoniously demoting and giving Mina contractual employment for one year and citing him for numerous violations

---

[54] *Goodyear Philippines, Inc. and Remegio M. Ramos v. Marina L. Angus*, G.R. No. 185449, November 12, 2014.

[55] *Id.*

[56] *Bordomeo, et al. v. CA, et al.*, 704 Phil. 278, 300 (2013).

[57] *Rollo*, p. 44.

of school regulations when he rejected the school's offer to voluntarily retire is constitutive of bad faith.[58]

Lastly, the Court affirms the NLRC's findings that the eight years of service rendered by Mina in ASJ shall not be included in the computation of his retirement benefits. No adequate proof is shown that he has complied with the portability clause of the DWEA Retirement Plan. The employee has the burden of proof to show compliance with the requirements set forth in retirement plans, being in the nature of privileges granted to employees. Failure to overcome the burden of proof would necessarily result in the employee's disqualification to receive the benefits.

WHEREFORE, the Decision dated July 19, 2010 and Resolution dated January 13, 2011 of the Court of Appeals in CA-G.R. SP No. 107749 are **MODIFIED** in that, in addition to the award of attorney's fees, and moral and exemplary damages, petitioner Divine Word College of Laoag is **ORDERED** to pay Shirley B. Mina, as heir-substitute of the late Delfin Mina, the following:

(1) backwages, to be computed from June 1, 2003 until June 18, 2005, or ₱13,006.23 x 24 (months) = ₱312,149.52; and

(2) separation pay, to be computed from June 1, 1979 until June 18, 2005, or ₱13,006.23 x 26 (years) = ₱338,161.98.

The monetary awards granted shall earn legal interest at the rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid.

SO ORDERED.

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

Peralta, J., on official leave.

---

[58] *Id.* at 43.

THIRD DIVISION

[G.R. No. 207662. April 13, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff and appellee, vs.* **FABIAN URZAIS *Y* LANURIAS, ALEX BAUTISTA, AND RICKY BAUTISTA,** *accused.* **FABIAN URZAIS *Y* LANURIAS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; FAILURE OF PROSECUTION TO PROVE THE ELEMENTS OF THE CRIME AND THAT THE ACCUSED IS THE PERPETRATOR OF THE CRIME RESULTS TO AN ACQUITTAL BASED ON REASONABLE DOUBT; EXPLAINED.— Every criminal conviction requires the prosecution to prove two (2) things: 1. The fact of the crime, *i.e.* the presence of all the elements of the crime for which the accused stands charged; and (2) the fact that the accused is the perpetrator of the crime. The Court finds the prosecution unable to prove both aspects, thus, it is left with no option but to acquit on reasonable doubt. x x x The basis of the acquittal is reasonable doubt, which simply means that the evidence of the prosecution was not sufficient to sustain the guilt of accused-appellant beyond the point of moral certainty. Proof beyond reasonable doubt, however, is a burden particular to the prosecution and does not apply to exculpatory facts as may be raised by the defense; the accused is not required to establish matters in mitigation or defense beyond a reasonable doubt, nor is he required to establish the truth of such matters by a preponderance of the evidence, or even to a reasonable probability. It is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion. What is required of it is to justify the conviction of the accused with moral certainty. Upon the prosecution's failure to meet this test, acquittal becomes the constitutional duty of the Court, lest its mind be tortured with

the thought that it has imprisoned an innocent man for the rest of his life. The constitutional right to be presumed innocent until proven guilty can be overthrown only by proof beyond reasonable doubt.

2. CRIMINAL LAW; ANTI-CARNAPPING ACT (REPUBLIC ACT NO. 6539 AS AMENDED BY REPUBLIC ACT NO. 7659); WHERE THE ELEMENTS OF CARNAPPING ARE NOT PROVED, THE PROVISIONS OF THE ANTI-CARNAPPING ACT WOULD CEASE TO BE APPLICABLE AND THE HOMICIDE OR MURDER (IF PROVEN) WOULD BE PUNISHABLE UNDER THE REVISED PENAL CODE.— [I]n Section 20 of R.A. No. 7659, three amendments have been made to the original Section 14 of the Anti-Carnapping Act: (1) the penalty of life imprisonment was changed to *reclusion perpetua*, (2) the inclusion of rape, and (3) the change of the phrase "*in the commission of the carnapping*" to "*in the course of the commission of the carnapping or on the occasion thereof*." This third amendment clarifies the law's intent to make the offense a special complex crime, by way of analogy *vis-a-vis* paragraphs 1 to 4 of the Revised Penal Code on robbery with violence against or intimidation of persons. Thus, under the last clause of Section 14 of the Anti-Carnapping Act, the prosecution has to prove the essential requisites of carnapping and of the homicide or murder of the victim, and more importantly, it must show that the original criminal design of the culprit was carnapping and that the killing was perpetrated "*in the course of the commission of the carnapping or on the occasion thereof*." Consequently, where the elements of carnapping are not proved, the provisions of the Anti-Carnapping Act would cease to be applicable and the homicide or murder (if proven) would be punishable under the Revised Penal Code.

3. ID.; ID.; CONVICTION; GUIDELINES WHEN CIRCUMSTANTIAL EVIDENCE MAY SUSTAIN CONVICTION, ENUMERATED; NOT ESTABLISHED IN CASE AT BAR.— Both lower courts solely based accused-appellant's conviction of the special complex crime on **one** circumstantial evidence and that is, the fact of his possession of the allegedly carnapped vehicle. The Court notes that the prosecution's evidence only consists of the fact of the victim's disappearance, the discovery of his death and the details surrounding accused-appellant's arrest

on rumors that the vehicle he possessed had been carnapped. Theres is absolutely **no** evidence supporting the prosecution's theory that the victim's vehicle had been carnapped, much less that the accused-appellant is the author of the same. Certainly, it is not only by direct evidence that an accused may be convicted, but for circumstantial evidence to sustain a conviction, following are the guidelines: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is as such as to produce a conviction beyond reasonable doubt. Decided cases expound that the circumstantial evidence presented and proved must constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person. All the circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rationale except that of guilt. In the case at bar, notably there is only one circumstantial evidence. And this sole circumstantial evidence of possession of the vehicle does not lead to an inference exclusively consistent with guilt. Fundamentally, prosecution did not offer any iota of evidence detailing the seizure of the vehicle, much less with accused-appellant's participation.

4. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTION THAT A PERSON IN POSSESSION OF THE THING TAKEN IS THE TAKER AND DOER OF THE WHOLE ACT; ONCE THE EXPLANATION IS MADE FOR THE POSSESSION, THE PRESUMPTION ARISING FROM THE UNEXPLAINED POSSESSION MAY NOT ANYMORE BE INVOKED AND THE BURDEN SHIFTS ONCE MORE TO THE PROSECUTION TO PRODUCE EVIDENCE THAT WOULD RENDER THE DEFENSE OF THE ACCUSED IMPROBABLE; APPLICATION IN CASE AT BAR.— The application of disputable presumption found in Section 3 (j), Rule 131 of the Rules of Court, that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and doer of the whole act, in this case the alleged carnapping and the homicide/murder of its owner, is limited to cases where such possession is either unexplained or that the proffered explanation is rendered implausible in

view of independent evidence inconsistent thereto. In the instant case, accused-appellant set-up a defense of denial of the charges and adhered to his unrebutted version of the story that the vehicle had been sold to him by the brothers Alex and Ricky Bautista. Though the explanation is not seamless, once the explanation is made for the possession, the presumption arising from the unexplained possession may not anymore be invoked and the burden shifts once more to the prosecution to produce evidence that would render the defense of the accused improbable. x x x Evidently, the disputable presumption cannot prevail over accused-appellant's explanation for his possession of the missing vehicle. The possession having been explained, the legal presumption is disputed and thus, cannot find application in the instant case. To hold otherwise would be a miscarriage of justice as criminal convictions necessarily require proof of guilt of the crime charged beyond reasonable doubt and in the absence of such proof, should not be solely based on legal disputable presumptions.

5. ID.; ID.; EQUIPOISE RULE; THE EQUIPOISE RULE PROVIDES THAT WHERE THE EVIDENCE IN A CRIMINAL CASE IS EVENLY BALANCED, THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE TILTS THE SCALES IN FAVOR OF THE ACCUSED.— The equipoise rule states that where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfil the test of moral certainty and is not sufficient to support a conviction. The equipoise rule provides that where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scales in favor of the accused.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff and appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

Before us for review is the Decision[1] of the Court of Appeals (CA) in C.A. G.R. CR.-H.C. No. 04812 dated 19 November 2012 which dismissed the appeal of accused-appellant Fabian Urzais y Lanurias and affirmed with modification the Judgment[2] of the Regional Trial Court (RTC) of Cabanatuan City, Branch 27, in Criminal Case No. 13155 finding accused-appellant guilty beyond reasonable doubt of the crime of carnapping with homicide through the use of unlicensed firearm.

Accused-appellant, together with co-accused Alex Bautista and Ricky Bautista, was charged with Violation of Republic Act (R.A.) No. 6539, otherwise known as the Anti-Carnapping Act of 1972, as amended by R.A. No. 7659, with homicide through the use of an unlicensed firearm. The accusatory portion of the Information reads as follows:

> That on or about the 13th day of November, 2002, or prior thereto, in the City of Cabanatuan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating with and abetting one another, with intent to gain and by means of force, violence and intimidation, did then and there, wilfully, unlawfully and feloniously take, steal and carry away, a Isuzu [Highl]ander car, colored Forest Green, with Plate No. UUT-838 of one MARIO MAGDATO, valued at FIVE HUNDRED THOUSAND PESOS (₱500,000.00) Philippine Currency, owned by and belonging to said MARIO MAGDATO, against his will and consent and to his damage and prejudice in the aforestated amount of ₱500,000.00, and on the occasion of the carnapping, did assault and use personal violence upon the person of one MARIO MAGDATO, that is, by shooting the latter with an unlicensed firearm, a Norinco cal. 9mm Pistol with Serial No. 508432, thereby inflicting upon him gunshot wound on the head which caused his death.[3]

---

[1] *Rollo*, pp. 2-16; Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Mario V. Lopez and Socorro B. Inting concurring.

[2] Records, pp. 216-226; Presided by Presiding Judge Angelo C. Perez.

[3] *Id.* at 1.

At his arraignment, accused-appellant pleaded not guilty. The trial proceeded against him. His two co-accused remain at large.

The prosecution presented as witnesses Shirley Magdato (Shirley), Senior Police Officer 2 Fernando Figueroa (SPO2 Figueroa) and Dr. Jun Concepcion (Dr. Concepcion).

Shirley, the widow of the victim, testified mainly regarding her husband's disappearance and discovery of his death. She narrated that her husband used to drive for hire their Isuzu highlander with plate number UUT-838 from Pulilan, Bulacan to the LRT Terminal in Metro Manila. On 12 November 2002, around four o'clock in the morning, her husband left their house in Pulilan and headed for the terminal at the Pulilan Public Market to ply his usual route. When her husband did not return home that day, Shirley inquired of his whereabouts from his friends to no avail. Shirley went to the terminal the following day and the barker there told her that a person had hired their vehicle to go to Manila. Shirley then asked her neighbors to call her husband's mobile phone but no one answered. At around 10 o'clock in the morning of 13 November 2002, her husband's co-members in the drivers' association arrived at their house and thereafter accompanied Shirley to her husband's supposed location. At the Sta. Rosa police station in Nueva Ecija, Shirley was informed that her husband had passed away. She then took her husband's body home.[4] Shirley retrieved their vehicle on 21 November 2002 from the Cabanatuan City Police Station. She then had it cleaned as it had blood stains and reeked of a foul odor.[5]

SPO2 Figueroa of the Philippine National Police (PNP), Cabanatuan City, testified concerning the circumstances surrounding accused-appellant's arrest. He stated that in November 2002, their office received a "flash alarm" from the Bulacan PNP about an alleged carnapped Isuzu Highlander in forest green color. Thereafter, their office was informed that

---

[4] TSN, 20 January 2004, pp. 3-6, 13; Testimony of Shirley.

[5] *Id.* at 6-9.

the subject vehicle had been seen in the AGL Subdivision, Cabanatuan City. Thus, a team conducted surveillance there and a checkpoint had been set up outside its gate. Around three o'clock in the afternoon of 20 November 2002, a vehicle that fit the description of the carnapped vehicle appeared. The officers apprehended the vehicle and asked the driver, accused-appellant, who had been alone, to alight therefrom. When the officers noticed the accused-appellant's waist to be bulging of something, he was ordered to raise his shirt and a gun was discovered tucked there. The officers confiscated the unlicensed 9mm Norinco, with magazine and twelve (12) live ammunitions. The officers confirmed that the engine of the vehicle matched that of the victim's. Found inside the vehicle were two (2) plates with the marking "UUT-838" and a passport. Said vehicle contained traces of blood on the car seats at the back and on its flooring. The officers detained accused-appellant and filed a case for illegal possession of firearm against him. The subject firearm was identified in open court.[6]

Dr. Concepcion testified about the wounds the victim sustained and the cause of his death. He stated that the victim sustained one (1) gunshot wound in the head, the entrance of which is at the right temporal area exiting at the opposite side. The victim also had several abrasions on the right upper eyelid, the tip of the nose and around the right eye. He also had blisters on his cheek area which could have been caused by a lighted cigarette.[7]

Accused-appellant testified in his defense and interposed the defense of denial.

Accused-appellant testified that he had ordered in October 2002 from brothers Alex and Ricky Bautista, an owner-type jeepney worth ₱60,000.00 for use in his business. The brothers, however, allegedly delivered instead a green Isuzu Highlander around half past three o'clock in the afternoon of 13 November 2002. The brothers told accused-appellant that his ₱60,000.00

---

[6] TSN, 13 August 2004, pp. 3-8; TSN, 12 September 2006, p. 7; Testimony of SPO2 Figueroa.

[7] TSN, 18 April 2006, pp. 5-7; Testimony of Dr. Concepcion.

would serve as initial payment with the remaining undetermined amount to be paid a week after. Accused-appellant agreed to this, amazed that he had been given a new vehicle at such low price. Accused-appellant then borrowed money from someone to pay the balance but the brothers never replied to his text messages. On 16 November 2002, his friend Oscar Angeles advised him to surrender the vehicle as it could be a "hot car." Accused-appellant was initially hesitant to this idea as he wanted to recover the amount he had paid but he eventually decided to sell the vehicle. He removed its plate number and placed a "for sale" sign at the back. On 18 November 2002, he allegedly decided to surrender the vehicle upon advice by a certain Angie. But when he arrived home in the afternoon of that day, he alleged that he was arrested by Alex Villareal, a member of the Criminal Investigation and Detection Group (CIDG) of Sta. Rosa, Nueva Ecija.[8] Accused-appellant also testified that he found out in jail the owner of the vehicle and his unfortunate demise.[9] On cross-examination, accused-appellant admitted that his real name is "Michael Tapayan *y* Baguio" and that he used the name Fabian Urzais to secure a second passport in 2001 to be able to return to Taiwan.[10]

The other defense witness, Oscar Angeles (Angeles), testified that he had known the accused-appellant as Michael Tapayan when they became neighbors in the AGL subdivision. Accused-appellant also served as his computer technician. Angeles testified that accused-appellant previously did not own any vehicle until the latter purchased the Isuzu Highlander for ₱30,000.00 from the latter's friends in Bulacan. Angeles advised accused-appellant that the vehicle might have been carnapped due to its very low selling price. Angeles corroborated accused-appellant's testimony that he did not want to surrender the car at first as he wanted to recover his payment for it.[11]

---

[8] TSN, 9 December 2008, pp. 4-9; Testimony of Accused-Appellant.

[9] TSN, 8 January 2009, pp. 8 and 13.

[10] TSN, 9 December 2008, pp. 10-12.

[11] TSN, 10 August 2010, pp. 3-5; Testimony of Angeles.

On 18 October 2010, the RTC rendered judgment finding accused-appellant guilty of the crime charged. The RTC anchored its ruling on the disputable presumption that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act.[12] It held that the elements of carnapping were proven by the prosecution beyond reasonable doubt through the recovery of the purportedly carnapped vehicle from the accused-appellant's possession and by his continued possession thereof even after the lapse of one week from the commission of the crime.[13] The dispositive portion of the RTC Decision reads:

> **WHEREFORE**, in view of all the foregoing, the Court finds accused Fabian Urzais alias Michael Tapayan y Lanurias **GUILTY** beyond reasonable doubt of the crime of carnapping as defined and penalized by Republic Act 6539 (Anti-Carnapping Act of 1972) as amended by R.A. 7659 with homicide thru the use of unlicensed firearm. Accordingly, he is hereby sentenced to suffer imprisonment of forty (40) years of *reclusion perpetua*.
>
> In the service of the sentence, accused shall be credited with the full time of his preventive detention if he agreed voluntarily and in writing to abide by the disciplinary rules imposed upon convicted prisoners pursuant to Article 29 of the Revised Penal Code.
>
> Accused is further sentenced to indemnify the heirs of Mario Magdato the sum of Php50,000.00 as death indemnity, Php50,000.00 as moral damages, and Php672,000.00 as loss of earning capacity.[14]

Accused-appellant filed a Notice of Appeal on 22 December 2010.[15]

On 19 November 2012, the CA rendered the assailed judgment affirming with modification the trial court's decision. The CA noted the absence of eyewitnesses to the crime yet ruled that sufficient circumstantial evidence was presented to prove

---

[12] Section 3 (j), Rule 131 of the Revised Rules of Court.

[13] Records, p. 221.

[14] *Id.* at 226.

[15] *Id.* at 229-231.

accused-appellant's guilt, solely, accused-appellant's possession of the allegedly carnapped vehicle.

Accused-appellant appealed his conviction before this Court. In a Resolution[16] dated 12 August 2013, accused-appellant and the Office of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. Accused-appellant filed a Supplemental Brief[17] while the OSG manifested[18] that it adopts its Brief[19] filed before the CA for the purpose of the instant appeal.

Before the Court, accused-appellant vehemently maintains that there is no direct evidence that he robbed and murdered the victim; and that the lower courts erred in convicting him based on circumstantial evidence consisting only of the fact of his possession of the allegedly carnapped vehicle. Accused-appellant decries the appellate court's error in relying on the disputable presumption created by law under Section 3 (j), Rule 131 of the Rules of Court to conclude that by virtue of his possession of the vehicle, he is considered the author of both the carnapping of the vehicle and the killing of its owner. Accused-appellant asserts that such presumption does not hold in the case at bar.

The Court agrees.

Every criminal conviction requires the prosecution to prove two (2) things: 1. The fact of the crime, *i.e.*, the presence of all the elements of the crime for which the accused stands charged; and (2) the fact that the accused is the perpetrator of the crime. The Court finds the prosecution unable to prove both aspects, thus, it is left with no option but to acquit on reasonable doubt.

R.A. No. 6539, or the Anti-Carnapping Act of 1972, as amended, defines carnapping as the taking, with intent to gain,

---

[16] *Rollo*, pp. 23-24.

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

[18] *Id.* at 25-27.

[19] CA *rollo*, pp. 91-108.

of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation against persons, or by using force upon things.[20] By the amendment in Section 20 of R.A. No. 7659, Section 14 of the Anti-Carnapping Act now reads:

> SEC. 14. *Penalty for Carnapping*. Any person who is found guilty of carnapping, as this term is defined in Section two of this Act, shall, irrespective of the value of the motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months, when the carnapping is committed without violence or intimidation of persons, or force upon things, and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence or intimidation of any person, or force upon things; *and the penalty of reclusion perpetua to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof*. (Emphasis supplied)

Three amendments have been made to the original Section 14 of the Anti-Carnapping Act: (1) the penalty of life imprisonment was changed to *reclusion perpetua*, (2) the inclusion of rape, and (3) the change of the phrase "*in the commission of the carnapping"* to *"in the course of the commission of the carnapping or on the occasion thereof*." This third amendment clarifies the law's intent to make the offense a special complex crime, by way of analogy *vis-a-vis* paragraphs 1 to 4 of the Revised Penal Code on robbery with violence against or intimidation of persons. Thus, under the last clause of Section 14 of the Anti-Carnapping Act, the prosecution has to prove the essential requisites of carnapping and of the homicide or murder of the victim, and more importantly, it must show that the original criminal design of the culprit was carnapping and that the killing was perpetrated "*in the course of the commission of the carnapping or on the occasion thereof*." Consequently, where the elements of carnapping are not proved, the provisions of

---

[20] Section 2, R.A. No. 6539.

the Anti-Carnapping Act would cease to be applicable and the homicide or murder (if proven) would be punishable under the Revised Penal Code.[21]

In the instant case, the Court finds the charge of carnapping unsubstantiated for failure of the prosecution to prove all its elements. For one, the trial court's decision itself makes no mention of any direct evidence indicating the guilt of accused-appellant. Indeed, the CA confirmed the lack of such direct evidence.[22] Both lower courts solely based accused-appellant's conviction of the special complex crime on **one** circumstantial evidence and that is, the fact of his possession of the allegedly carnapped vehicle.

The Court notes that the prosecution's evidence only consists of the fact of the victim's disappearance, the discovery of his death and the details surrounding accused-appellant's arrest on rumors that the vehicle he possessed had been carnapped. There is absolutely **no** evidence supporting the prosecution's theory that the victim's vehicle had been carnapped, much less that the accused-appellant is the author of the same.

Certainly, it is not only by direct evidence that an accused may be convicted, but for circumstantial evidence to sustain a conviction, following are the guidelines: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is as such as to produce a conviction beyond reasonable doubt.[23] Decided cases expound that the circumstantial evidence presented and proved must constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person. All the circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty and at

---

[21] *People v. Santos*, 388 Phil. 993, 1005-1006 (2000).

[22] *Rollo*, p. 10.

[23] Section 4, Rule 133, Revised Rules of Court.

the same time inconsistent with the hypothesis that he is innocent, and with every other rationale except that of guilt.[24]

In the case at bar, notably there is only one circumstantial evidence. And this sole circumstantial evidence of possession of the vehicle does not lead to an inference exclusively consistent with guilt. Fundamentally, prosecution did not offer any iota of evidence detailing the seizure of the vehicle, much less with accused-appellant's participation. In fact, there is even a variance concerning how accused-appellant was discovered to be in possession of the vehicle. The prosecution's uncorroborated evidence says accused-appellant was apprehended while driving the vehicle at a checkpoint, although the vehicle did not bear any license plates, while the latter testified he was arrested at home. The following testimony of prosecution witness SPO2 Figueroa on cross-examination raises even more questions:

Q: You mentioned the car napping incident, when was that, Mr. witness?

ATTY. GONZALES:

Your Honor, I noticed that every time the witness gave his answer, he is looking at a piece of paper and he is not testifying on his personal knowledge.

xxx xxx xxx

COURT:

The witness is looking at the record for about 5 min. now. Fiscal, here is another witness who has lapses on the mind.

FISCAL MACARAIG:

I am speechless, Your Honor.

---

[24] *People v. Geron*, 346 Phil. 14, 24 (1997); *People v. Quitorio*, 349 Phil. 114, 129 (1998); *People v. Reyes*, 349 Phil. 39, 58 (1998) citing *People v. Binamira*, G.R. No. 110397, 14 August 1997, 277 SCRA 232, 249-250 citing *People v. Adofina*, G.R. No. 109778, 8 December 1994, 239 SCRA 67, 76-77. See also *People v. Payawal*, 317 Phil. 507, 515 (1995).

WITNESS:

It was not stated in my affidavit, sir the time of the carnapping incident.

ATTY. GONZALES:

Your Honor, if he can no longer remember even the simple matter when this car napping incident happened then he is an incompetent witness and we are deprive (sic) of the right to cross examine him. I move that his testimony would be stricken off from the record.

xxx xxx xxx

Q: Mr. Witness, what is the date when you arrested the accused Fabian Urzais?

A: It was November 20, 2002 at around 3 o'clock in the afternoon, sir.

Q: You said earlier that on November 3, 2002 that you met the accused is that correct, Mr. Witness?

A: Yes, sir.

Q: Why did you see the accused on November 3, 2002, Mr. Witness?

A: During that time, we conducted a check point at AGL were (sic) the highlander was often seen, sir.

Q: So, since on November 3, 2002, you were conducting this check point at AGL, it is safe to assume that the carnapping incident happened earlier than November 3, 2002?

A: Yes, sir.

Q: Were you present when this vehicle was car napped, Mr. Witness?

A: No, sir.

Q: Since you were not present, you have no personal knowledge about this car napping incident, right, Mr. Witness?

A: Yes, sir.

Q: No further question, Your Honor.[25]

---

[25] TSN, 4 October 2006, pp. 3-5.

Considering the dearth of evidence, the subject vehicle is at best classified as "missing" since the non-return of the victim and his vehicle on 12 November 2002. Why the check-point had begun before then, as early 3 November 2002, as stated by the prosecution witness raises doubts about the prosecution's version of the case. Perhaps, the check-point had been set up for another vehicle which had gone missing earlier. In any event, accused-appellant's crime, if at all, was being in possession of a missing vehicle whose owner had been found dead. There is perhaps guilt in the acquisition of the vehicle priced so suspiciously below standard. But how this alone should lead to a conviction for the special complex crime of carnapping with homicide/murder, affirmed by the appellate court is downright disturbing.

The application of disputable presumption found in Section 3 (j), Rule 131 of the Rules of Court, that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and doer of the whole act, in this case the alleged carnapping and the homicide/murder of its owner, is limited to cases where such possession is either unexplained or that the proffered explanation is rendered implausible in view of independent evidence inconsistent thereto.[26] In the instant case, accused-appellant set-up a defense of denial of the charges and adhered to his unrebutted version of the story that the vehicle had been sold to him by the brothers Alex and Ricky Bautista. Though the explanation is not seamless, once the explanation is made for the possession, the presumption arising from the unexplained possession may not anymore be invoked and the burden shifts once more to the prosecution to produce evidence that would render the defense of the accused improbable. And this burden, the prosecution was unable to discharge. In contrast to prosecution witness SPO2 Figueroa's confused, apprehensive and uncorroborated testimony accused-appellant unflinchingly testified as follows:

Q: Will you please tell us how you came into possession of this Isuzu Highlander with plate number UTT 838?

---

[26] *People v. Geron, supra* note 23 at 25.

A: That vehicle was brought by Ricky Bautista and Alex Bautista, sir.

xxx xxx xxx

Q: Do you know why Alex and Ricky Bautista gave you that Isuzu Highlander?
A: Actually that was not the vehicle I ordered form (sic) them, I ordered an owner type jeep worth Php60,000 but on November 13, 2002 they brought that Isuzu Highlander, sir.

Q: Why did you order an owner type jeep from them?
A: Because I planned to install a trolley, cause I have a videoke for rent business, sir.

xxx xxx xxx

Q: What happened upon the arrival of this Alex and Ricky Bautista on that date and time?
A: I was a little bit surprise (sic) because Alex alighted from an Isuzu Highlander colored green, sir.

Q: What happened after that?
A: I told them that it was not I ordered from you and my money is only Php60,000, sir.

Q: What did he told (sic) you?
A: He told me to give them the Php60,000 and they will leave the vehicle and when I have the money next week I will send text message to them, sir.

Q: What was your reaction?
A: I was amazed because the vehicle is brand new and the price is low, sir.

xxx xxx xxx

Q: Did you find out anything about the Isuzu highlander that they left to you?
A: When I could not contact them I went to my friend Oscar Angeles and told him about the vehicle then he told me that you better surrender the vehicle because maybe it is a hot car, sir. "Nung hindi ko na po sila makontak ay nagpunta ako sa kaibigan kong si Oscar Angeles at sinabi ko po yung

problema tungkol sa sasakyan at sinabi nya sa akin na isurrender na lang at baka hot car yan"[27]

xxx xxx xxx

Q: Mr. Witness, granting for the sake that what you are saying is true, immediately on the 16th, according to your testimony, and upon confirming it to your friend, you then decided to surrender the vehicle, why did you not do it on the 16th, why did you still have to wait until you get arrested?

A: Because I was thinking of my Sixty Thousand Pesos (Php60,000.00) at that time, and on how I can take it back, sir. ("Kasi nanghinayang po ako sa Sixty Thousand (Php60,000.00) ko nung oras na un.. pano ko po yun mabawi sabi ko".)

xxx xxx xxx

Q: So Mr. Witness, let us simplify this, you have purchased a carnapped vehicle, your intention is to surrender it but you never did that until you get caught in possession of the same, so in other words, that is all that have actually xxx vehicle was found dead, the body was dumped somewhere within the vicinity of Sta. Rosa, those are the facts in this case?

A: I only came to know that there was a dead person when I was already in jail, sir.

Q: What about the other facts that I have mentioned, are they correct or not?

A: When I gave the downpayment, I do not know yet that it was a hot car and I came to know it only on the 16th, sir.[28]

Significantly, accused-appellant's testimony was corroborated by defense witness Angeles who had known accused-appellant by his real name "Michael Tapayan *y* Baguio," to wit:

Q: Do you know if this Michael Tapayan owns any vehicle sometime in 2002?

A: At first none, sir, he has no vehicle.

---

[27] TSN 09 December 2008, pp. 4-8.

[28] TSN dated 8 January 2009, pp. 11-13.

Q: What do you mean when you say at first he has no vehicle?
A: Later, sir, I saw him riding in a vehicle.

xxx xxx xxx

Q: Did Michael Tapayan tell you how much he bought that vehicle?
A: I remember he told me that he bought that vehicle for Thirty Thousand (Php30,000.00) Pesos, sir.

Q: What was your reaction when you were told that the vehicle was purchased for only Thirty Thousand Pesos (Php30,000.00)?
A: I told him that it's very cheap and also told him that it might be a carnap (sic) vehicle.

Q: What was the reaction of Michael Tapayan when you told him that?
A: He thought about it and he is of the belief that the person who sold the vehicle to him will come back and will get the additional payment, sir.

Q: Aside from this conversation about that vehicle, did you have any other conversation with Michael Tapayan concerning that vehicle?
A: After a few days, sir, I told him to surrender the said vehicle to the authorities because the persons who sold it to him did not come back for additional payment.

Q: What was the reaction of Michael Tapayan to this suggestion?
A: He told me that he will think about it because he was thinking about the money that he already gave to them.[29]

Evidently, the disputable presumption cannot prevail over accused-appellant's explanation for his possession of the missing vehicle. The possession having been explained, the legal presumption is disputed and thus, cannot find application in the instant case. To hold otherwise would be a miscarriage of justice as criminal convictions necessarily require proof of guilt of the crime charged beyond reasonable doubt and in the absence of such proof, should not be solely based on legal disputable presumptions.

[29] TSN dated 10 August 2010, pp. 4-5.

The carnapping not being duly proved, the killing of the victim may not be treated as an incident of carnapping. Nonetheless, even under the provisions of homicide and murder under the Revised Penal Code, the Court finds the guilt of accused-appellant was not established beyond reasonable doubt.

There were no eyewitnesses to the killing of the victim, Mario Magdato. Again, both courts relied only on the circumstantial evidence of accused-appellant's possession of the missing vehicle for the latter's conviction. Shirley, the widow, testified that her husband and their vehicle went missing on 12 November 2002. Dr. Concepcion gave testimony on the cause of death of Mario Magdato and the injuries he had sustained. Most glaringly, no connection had been established between the victim's gunshot wound which caused his death and the firearm found in the person of accused-appellant. Only SPO2 Figueroa's testimony gave light on how allegedly accused-appellant was found to have been in possession of the missing vehicle of the victim. But even if this uncorroborated testimony was true, it does not link accused-appellant to the carnapping, much less, the murder or homicide of the victim. And it does not preclude the probability of accused-appellant's story that he had merely bought the vehicle from the Bautista brothers who have themselves since gone missing.

The equipoise rule states that where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfil the test of moral certainty and is not sufficient to support a conviction. The equipoise rule provides that where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scales in favor of the accused.[30]

The basis of the acquittal is reasonable doubt, which simply means that the evidence of the prosecution was not sufficient to sustain the guilt of accused-appellant beyond the point of moral certainty. Proof beyond reasonable doubt, however, is a

---

[30] *People v. Erguiza*, 592 Phil. 363, 388 (2008).

burden particular to the prosecution and does not apply to exculpatory facts as may be raised by the defense; the accused is not required to establish matters in mitigation or defense beyond a reasonable doubt, nor is he required to establish the truth of such matters by a preponderance of the evidence, or even to a reasonable probability.[31]

It is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion. What is required of it is to justify the conviction of the accused with moral certainty. Upon the prosecution's failure to meet this test, acquittal becomes the constitutional duty of the Court, lest its mind be tortured with the thought that it has imprisoned an innocent man for the rest of his life.[32] The constitutional right to be presumed innocent until proven guilty can be overthrown only by proof beyond reasonable doubt.[33]

In the final analysis, the circumstances narrated by the prosecution engender doubt rather than moral certainty on the guilt of accused-appellant.

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals dated 19 November 2012 in C.A. G.R. CR.-H.C. No. 04812 is **REVERSED** and **SET ASIDE**. FABIAN URZAIS Y LANURIAS alias Michael Tapayan y Baguio is **ACQUITTED** on reasonable doubt of the crime of carnapping with homicide, without prejudice to investigation for the crime of fencing penalized under Presidential Decree 1612. His immediate release from confinement is hereby ordered, unless he is being held for some other lawful cause.

SO ORDERED.

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

Peralta, J., on official leave.

---

[31] *People v. Geron*, *supra* note 23 at 29 citing 23 C.J.S. 195-196.

[32] *People v. Cabalse*, G.R. No. 146274, 17 August 2004, 436 SCRA 629, 640.

[33] *People v. Asis*, 439 Phil. 707, 728 (2002).

[*] Additional Member per Raffle dated 24 February 2016.

THIRD DIVISION

[G.R. No. 208648. April 13, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNALDO UMANITO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; THE LONE TESTIMONY OF THE VICTIM IN A PROSECUTION FOR RAPE, IF CREDIBLE, IS SUFFICIENT TO SUSTAIN A VERDICT OF CONVICTION; APPLICATION IN CASE AT BAR.— When a woman says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. Thus, the lone testimony of the victim in a prosecution for rape, if credible, is sufficient to sustain a verdict of conviction. The rationale is that, owing to the nature of the offense, the only evidence that can be adduced to establish the guilt of the accused is usually only the offended party's testimony. In the case of mentally-deficient rape victims, mental retardation *per se* does not affect credibility. A mental retardate may be a credible witness. The acceptance of her testimony depends on the quality of her perceptions and the manner she can make them known to the court. In fact, in *People v. Suansing*, the Court held that it is highly improbable that a mental retardate would fabricate the rape charge against appellant. It is likewise unlikely that she was instructed into accusing appellant given her limited intellect. Due to her mental condition, only a very traumatic experience would leave a lasting impression on her so that she would be able to recall it when asked. This Court will not contradict the RTC's assessment of AAA's credibility, which was affirmed by the Court of Appeals. The observance of the witnesses' demeanor during an oral direct examination, cross-examination, and during the entire period that he or she is present during trial is indispensable especially in rape cases because it helps establish the moral conviction that an accused is guilty beyond reasonable doubt of the crime charged. Trial provides judges with the opportunity to detect, consciously or unconsciously, observable cues and micro expressions that could, more than the words said and taken as a whole, suggest sincerity

or betray lies and ill will. These important aspects can never be reflected or reproduced in documents and objects used as evidence.

2. ID.; ID.; ID.; CARNAL KNOWLEDGE OF A WOMAN WHO IS A MENTAL RETARDATE IS RAPE UNDER THE REVISED PENAL CODE; ESTABLISHED IN CASE AT BAR.— Carnal knowledge of a woman who is a mental retardate is rape under Article 266-A, paragraph 1(b) of the Revised Penal Code, as amended. This is because a mentally deficient person is automatically considered incapable of giving consent to a sexual act. Thus, what needs to be proven are the facts of sexual intercourse between the accused and the victim, and the victim's mental retardation. The prosecution has sufficiently established that AAA is a mental retardate. Through AAA and corroborated by her mother BBB, the element of carnal knowledge was proven. In fact, there was no denying that AAA became pregnant and she pointed to no other than appellant as the culprit.

3. ID.; ID.; ID.; WHEN QUALIFIED; PERPETRATOR'S KNOWLEDGE OF THE VICTIM'S MENTAL DISABILITY, AT THE TIME HE COMMITTED THE RAPE, QUALIFIES THE CRIME AND MAKES IT PUNISHABLE BY DEATH; REQUIREMENT NOT PRESENT IN CASE AT BAR.— Perpetrator's knowledge of the victim's mental disability, at the time he committed the rape, qualifies the crime and makes it punishable by death under Article 266-B, paragraph 10. x x x However, an allegation in the information of such knowledge of the offender is necessary as a crime can only be qualified by circumstances pleaded in the indictment. In this case, there was none. Moreover, the lower courts did not make any specific finding on the said qualifying circumstance.

4. ID.; CIVIL LIABILITY; AWARD OF PROPER DAMAGES; CASE AT BAR.— This Court finds the award of civil indemnity and moral damages as modified by the Court of Appeals proper. But prevailing jurisprudence on simple rape likewise awards exemplary damages in order to set a public example and to protect hapless individuals from sexual molestation. Finally, all damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

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.*:

This is an appeal from the Decision[1] dated 30 May 2013 of the Court of Appeals, Cagayan de Oro City in CA-G.R. CR-H.C. No. 00739-MIN affirming the Judgment[2] of the Regional Trial Court (RTC) of Tacurong City, Branch 20, finding appellant Reynaldo Umanito guilty of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

Appellant was charged with rape in an Information, the accusatory portion of which reads as follows:

> That sometime on March, 2005 or prior thereto at Purok Rosas, Barangay San Jose, Municipality of President Quirino, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd designs and by means of force and intimidation, did then and there, willfully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA],[3] a mute and mentally retarded nineteen (19) year old girl against her will and consent.[4]

Appellant pleaded not guilty on arraignment. Trial on the merits ensued. AAA, assisted by an interpreter, testified using a sign language. She pointed to appellant as the one who raped

---

[1] *Rollo*, pp. 3-12; Penned by Associate Justice Renato C. Francisco with Associate Justices Romulo V. Borja and Oscar V. Badelles concurring.

[2] Records, pp. 229-254; Presided by Judge Milanio M. Guerrero.

[3] The real name of the victim and her immediate family members are withheld to protect her identity and privacy pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262 and Section 40 of A.M. No. 04-10-11-SC. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] Records, p. 1.

and impregnated her. When asked what appellant did to her, AAA responded by tapping her thigh with her two fingers, which was interpreted as sexual intercourse. BBB, AAA's mother, testified that sometime in August 2005, she noticed that AAA's belly was growing. She called a *hilot* (midwife) who confirmed that AAA has been pregnant for seven (7) months. AAA gave birth to a baby boy on 10 December 2005. When BBB asked AAA who impregnated her, AAA took BBB's hand and brought her to the house of appellant which was located some 50 meters away from their house. Upon learning the identity of the culprit, BBB immediately sought help from the *barangay*. AAA was made to undergo a medical examination. Dr. Jocelyn Tadena issued a medical certificate[5] confirming that AAA is mute and suffering from mental retardation. AAA was also diagnosed to be pregnant.

Appellant testified in his own behalf and denied that he had raped AAA. Appellant alleged that he only came to know that he was being accused of rape when he was summoned by the *barangay* captain. Upon arriving at the *barangay* captain's residence, he was confronted by AAA's accusation. Appellant denied the charge. Thereafter, he was detained at the police station.

Appellant admitted in court that AAA is a mental retardate and that AAA delivered a baby boy.

On 30 April 2007, the RTC rendered judgment finding appellant guilty and imposing the penalty of *reclusion perpetua*. The RTC also ordered appellant to pay ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, to support his child with AAA and to pay the costs.[6]

The Court of Appeals affirmed *in toto* the decision of the trial court.

---

[5] *Id.* at 15.

[6] *Id.* at 253-254.

Appellant filed a Notice of Appeal.[7] In a Resolution[8] dated 11 November 2013, the parties were required to simultaneously submit their respective supplemental briefs if they so desired. The Office of the Solicitor-General (OSG) manifested that it is adopting its brief filed before the appellate court.[9]

On the other hand, appellant filed a Supplemental Brief[10] reiterating his innocence. Appellant contends that AAA's testimony is vague to warrant his conviction. He elaborates that proof of carnal knowledge, an essential element of rape, could not be deduced from AAA's gesture of tapping her two fingers. Appellant argues that carnal knowledge is present only upon showing of penile penetration or contact with vagina which the prosecution failed to prove. In his Brief[11] filed before the Court of Appeals, appellant invokes the case of *People v. Guillermo*[12] where the Supreme Court acquitted the accused because the private complainant, who is a mental retardate, merely testified in gestures. Appellant also claims that he was singled out as the perpetrator when AAA pointed to the direction of his house. Moreover, appellant asserts that the fact that AAA knew him does not prove that he was the one who had sexual intercourse with her. Appellant reasons that AAA never conveyed any categorical sign language to prove that he had sexual intercourse with her.

The OSG maintains that AAA's testimony clearly identified appellant as the rapist. The OSG argues that the case of *People v. Guillermo* is not in all fours because in said case, the testimony of the accused was corroborated by three other witnesses while in the instant case, the testimony of the accused is uncorroborated. The OSG also points out that in *Guillermo*, the victim testified only that she knew the accused while in this case, AAA

---

[7] *Rollo*, pp. 13-14.

[8] *Id.* at 18-19.

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

[10] *Id.* at 27-30.

[11] CA *rollo*, pp. 6-23.

[12] 461 Phil. 543 (2003).

consistently pointed to appellant as the one who impregnated her.

When a woman says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed.[13] Thus, the lone testimony of the victim in a prosecution for rape, if credible, is sufficient to sustain a verdict of conviction. The rationale is that, owing to the nature of the offense, the only evidence that can be adduced to establish the guilt of the accused is usually only the offended party's testimony.[14]

In the case of mentally-deficient rape victims, mental retardation *per se* does not affect credibility. A mental retardate may be a credible witness. The acceptance of her testimony depends on the quality of her perceptions and the manner she can make them known to the court.[15]

In fact, in *People v. Suansing*,[16] the Court held that it is highly improbable that a mental retardate would fabricate the rape charge against appellant. It is likewise unlikely that she was instructed into accusing appellant given her limited intellect. Due to her mental condition, only a very traumatic experience would leave a lasting impression on her so that she would be able to recall it when asked.

This Court will not contradict the RTC's assessment of AAA's credibility, which was affirmed by the Court of Appeals. The observance of the witnesses' demeanor during an oral direct examination, cross-examination, and during the entire period that he or she is present during trial is indispensable especially in rape cases because it helps establish the moral conviction that an accused is guilty beyond reasonable doubt of the crime charged. Trial provides judges with the opportunity to detect, consciously or unconsciously, observable cues and micro

---

[13] *People v. Gahi*, G.R. No. 202976, 19 February 2014, 717 SCRA 209, 227.

[14] *People v. Bitangcor*, 441 Phil. 758, 768 (2002).

[15] *People v. Rosales*, G.R. No. 197537, 24 July 2013, 702 SCRA 297, 307.

[16] G.R. No. 189822, 2 September 2013, 704 SCRA 515, 529.

expressions that could, more than the words said and taken as a whole, suggest sincerity or betray lies and ill will. These important aspects can never be reflected or reproduced in documents and objects used as evidence.[17]

We find no cogent reason to overturn the findings of the lower courts.

As observed by the trial court, AAA was consistent in identifying appellant as the one who had carnal knowledge of her and consequently impregnated her, thus:

PROSECUTOR	
Q	Do you know the accused Reynaldo Umanito also known as Dong?
INTERPRETER	Witness bowing her head.
PROSECUTOR	
Q	Will you please tell us what this Reynaldo Umanito did, if there was any?
INTERPRETER	Witness making a sign with her left finger and her left thigh by tapping her thigh using her two (2) fingers.
COURT	Anyway, we all know what the accused communicated (to sign language which) means sexual intercourse.
PROSECUTOR	
Q	Will you please tell us what happened especially on your belly after this Reynaldo Umanito or after Reynaldo Umanito sexually abused you or what this Dong did to you like this, indicating the tapping on your left thigh like this, making a semi-circle motion to indicate that her belly became enlarged. Are you telling us that you became pregnant?

[17] *People v. Quintos*, G.R. No. 199402, 12 November 2014.

INTERPRETER	Witness bowing her head.
PROSECUTOR	
Q	Is your baby a girl or a boy?
INTERPRETER	Witness said "baye" but not so audible.
PROSECUTOR	
Q	Anyway, Your Honor, the mother handed to the court a machine copy of the birth certificate of a certain Dennis Jake Laza.
COURT	Attach the birth certificate to the record.
PROSECUTOR	In this birth certificate appears that his mother is a certain Jovelyn Toquero Laza which the Court directs that the record of the case and be marked as Exh. "X", Your Honor.
Q	You said that this Reynaldo Umanito did like this, how did Reynaldo Umanito did that to you?
COURT	Fiscal, she demonstrated by tapping her fingers to her left thigh.
INTERPRETER	Only once, the witness raised her finger, which means only once.
PROSECUTOR	
Q	Before he did this to you, what first did he do?
INTERPRETER	Witness making again a sign on her left thigh with her fingers indicating that Reynaldo Umanito has sexual intercourse with her.
PROSECUTOR	
Q	Did Reynaldo Umanito box you?
INTERPRETER	Witness shaking her head.
PROSECUTOR	
Q	Did this Reynaldo Umanito slap you?

INTERPRETER	Witness nodding her head which means, yes.
PROSECUTOR	
Q	Where did he hit you when he slapped you?
INTERPRETER	On her left face, witness touching her left face.
PROSECUTOR	
Q	How many times Dong slapped you on the left face?
A	Witness making a sign of one.
COURT	
Q	After Dong slapped you once on your face, what did he do?
INTERPRETER	Witness making a sign by making a circular motion meaning pregnant.
PROSECUTOR	
Q	Why did you become pregnant?
INTERPRETER	Witness pointing to the door with her mouth (sic) where the accused went out a while ago.
PROSECUTOR	
Q	You said Dong is in Court, will you point to him if he is in Court?
INTERPRETER	Witness is pointing towards the direction of the door.
COURT	Guard, will you call the accused to get inside the courtroom.
INTERPRETER	The accused is getting inside the courtroom with the sheriff.
COURT	
Q	Who is Dong between the two getting inside the courtroom?

INTERPRETER	The witness pointing to the accused who is wearing orange t-shirt when asked his name [he] answered Reynaldo Umanito.
COURT	
Q	Are you also know as Dong?
INTERPRETER	Witness nodding her head.
PROSECUTOR	
Q	Could you tell us again what this Dong did to you?
INTERPRETER	The witness making a sign which means she was sexually abused.
PROSECUTOR	That is all, Your Honor.[18]

Carnal knowledge of a woman who is a mental retardate is rape under Article 266-A, paragraph 1 (b) of the Revised Penal Code, as amended. This is because a mentally deficient person is automatically considered incapable of giving consent to a sexual act. Thus, what needs to be proven are the facts of sexual intercourse between the accused and the victim, and the victim's mental retardation.[19]

The prosecution has sufficiently established that AAA is a mental retardate. Through AAA and corroborated by her mother BBB, the element of carnal knowledge was proven. In fact, there was no denying that AAA became pregnant and she pointed to no other than appellant as the culprit.

Perpetrator's knowledge of the victim's mental disability, at the time he committed the rape, qualifies the crime and makes it punishable by death under Article 266-B, paragraph 10, to wit:

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:

---

[18] TSN, 18 October 2006, pp. 6-9.

[19] *People v. Caoile*, G.R. No. 203041, 5 June 2013, 697 SCRA 638, 654.

xxx xxx xxx

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

However, an allegation in the information of such knowledge of the offender is necessary as a crime can only be qualified by circumstances pleaded in the indictment.[20] In this case, there was none. Moreover, the lower courts did not make any specific finding on the said qualifying circumstance.

This Court finds the award of civil indemnity and moral damages as modified by the Court of Appeals proper. But prevailing jurisprudence on simple rape likewise awards exemplary damages in order to set a public example and to protect hapless individuals from sexual molestation.[21] Finally, all damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.[22]

WHEREFORE, the 30 May 2013 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00739-MIN finding appellant Reynaldo Umanito guilty beyond reasonable doubt of the crime of simple rape and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED** with **MODIFICATION** in that appellant is further ordered to pay AAA the amount of ₱30,000.00 as exemplary damages and interest at the legal rate of six percent (6%) *per annum* on all the amounts of damages awarded, commencing from the date of finality of this Resolution until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *del Castillo,*[*] and *Reyes, JJ.,* concur.

Peralta, J., on official leave.

---

[20] *People v. Dela Paz*, 569 Phil. 684, 705 (2008).

[21] *People v. Delfin*, G.R. No. 190349, 10 December 2014.

[22] *People v. Suarez*, G.R. No. 201151, 14 January 2015.

[*] Additional member per Raffle dated 24 February 2016.

THIRD DIVISION

[G.R. No. 208676. April 13, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALLAN MENALING *y* CANEDO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE (AS AMENDED BY REPUBLIC ACT NO. 8353); RAPE; ELEMENTS; PENALTY.—** Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353, define and punish rape as follows: 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. x x x Article 266-B. *Penalties*- Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.* x x x The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant 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.

2. **ID.; ID.; ID.; THE ACCUSED MAY BE CONVICTED OF RAPE ON THE BASIS OF THE VICTIM'S SOLE TESTIMONY PROVIDED SUCH TESTIMONY IS LOGICAL, CREDIBLE, CONSISTENT AND CONVINCING; PRESENT IN CASE AT BAR.—** Rape is a crime that is almost always committed in isolation or in secret, usually leaving only the victim to testify about the commission of the crime. Thus, the accused may be convicted of rape on the basis of the victim's sole testimony provided such testimony is logical, credible, consistent and convincing. Moreover, the testimony of a young rape victim is given full weight and credence considering that

her denunciation against him for rape would necessarily expose herself and her family to shame and perhaps ridicule. The initial testimony of AAA appears to be truthful, candid and spontaneous. The oft-repeated adage that no young Filipina would publicly admit that she had been criminally abused and ravished unless it is the truth, for it is her natural instinct to protect her honor finds application in this case. No young girl would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial, unless she was, in fact, raped. That the incident was done in the presence of AAA's mother, BBB, who herself seemed to have had no reaction to the grave matter, does not diminish or affect the credibility of AAA's testimony nor render her narration improbable. BBB might have been in a state of shock at the time, reason for the non-reaction. x x x Notably, Dr. Ortis's medical findings corroborate AAA's testimony that she had been sexually abused. When a victim's testimony is corroborated by the medical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place.

3. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; THE RECANTATION, LIKE ANY OTHER TESTIMONY, IS SUBJECT TO THE TEST OF CREDIBILITY BASED ON THE RELEVANT CIRCUMSTANCES, INCLUDING THE DEMEANOR OF THE RECANTING WITNESS ON THE STAND.—** A retraction is looked upon with considerable disfavor by the courts. It is exceedingly unreliable for there is always the probability that such recantation may later on be repudiated. It can easily be obtained from witnesses through intimidation or monetary consideration. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand. Before allowing the recantation, the court must not be too willing to accept it, but must test its value in a public trial with sufficient opportunity given to the party adversely affected to cross-examine the recanting witness both upon the substance of the recantation and the motivations for it. The recantation, like any other testimony, is subject to the test of credibility based on the relevant circumstances, including the demeanor of the recanting witness on the stand.

In that respect, the finding of the trial court on the credibility of witnesses is entitled to great weight on appeal unless cogent reasons necessitate its re-examination, the reason being that the trial court is in a better position to hear first-hand and observe the deportment, conduct and attitude of the witnesses.

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.*:

Before us for review is the Decision[1] of the Court of Appeals in CA G.R. CR.-H.C. No. 04819 dated 26 November 2012 which dismissed the appeal of appellant Allan Menaling y Canedo and affirmed with modification the Judgment[2] of the Regional Trial Court (RTC) of Olongapo City, Branch 73, in Criminal Cases Nos. 353-2006 and 354-2006, finding appellant guilty beyond reasonable doubt of the crime of Qualified Rape.

Appellant was charged with two (2) counts of qualified rape, to wit:

Criminal Case No. 353-2006

That on or about the twenty-first (21st) day of January, 2006, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the biological/ natural father of [AAA[3]], a 12-year old minor and having moral ascendancy over the latter and with lewd design did then and there

---

[1] *Rollo*, pp. 2-21; Penned by Associate Justice Ramon R. Garcia with Associate Justices Amelita G. Tolentino and Dante Q. Bueser concurring.

[2] Records, pp. 179-186; Presided by Presiding Judge Consuelo Amog-Bacar.

[3] The victim's real name as well as the members of her immediate family is withheld to protect her privacy pursuant to *People v. Cabalquinto*, 533 Phil. 703 (2006).

wilfully, unlawfully, and feloniously and with force, threat and said intimidation, have sexual intercourse with said [AAA], by then and there inserting his penis to the vagina of said [AAA] against her will and consent to her damage and prejudice.[4]

Criminal Case No. 354-2006

That on or about the twenty-six[th] (26th) day of January, 2006, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the biological/natural father of AAA, a 12-year old minor and having moral ascendancy [over] the latter and with lewd design did then and there wilfully, unlawfully, and feloniously and with force, threat and said intimidation, have sexual intercourse with said AAA, by then and there inserting his penis to the vagina of said AAA against her will and consent to her damage and prejudice.[5]

Appellant pleaded not guilty to the charges. At the pre-trial conference, the parties stipulated that AAA is a twelve-year old minor at the time of the alleged crime and that appellant is her natural/biological father.

Trial on the merits ensued.

The prosecution presented four (4) witnesses: the victim, AAA; Dr. Rolando Marfel Ortis (Dr. Ortis); psychologist Dr. Naila dela Cruz (Dr. dela Cruz); and BBB, AAA's mother. The appellant was the sole witness for the defense.

AAA, who was only twelve (12) years old at the time of the commission of the crimes, recounted that in the evening of 21 January 2006, she was sleeping with her sibling and BBB on a bed in her house when her father, appellant, woke her up by tapping her foot and asked her transfer to the floor where he was sleeping. AAA sat down, refused his request, and cried. But appellant held her hands. Then he directed her to remove her clothing. When AAA refused this, appellant himself removed her clothing, kissed her and inserted his male organ into her. AAA cried in pain. Appellant threatened AAA with harm if she

---

[4] Records, p. 1.

[5] *Id.* at 179.

would tell BBB about the incident. BBB woke up shortly and asked AAA to transfer to the bed.[6]

In the afternoon of 26 January 2006, AAA and her four siblings were sleeping when appellant again woke her up and sexually assaulted her. Her brother woke up and witnessed the incident. He ran away and told his aunt about it until word reached BBB.[7]

BBB cried when she learned of the incidents from her sister on 28 February 2006. BBB immediately reported the crime to the police resulting in the filing of charges against appellant.[8]

Dr. Ortiz was able to examine AAA on 1 March 2006. Per his Medico Legal Certificate[9] dated 3 March 2006, AAA's hymen was not intact and was found to have old healed lacerations at 7 o'clock position and her female anatomy admits of two fingers with ease. On the witness stand, Dr. Ortis stated that the hymen laceration was thirty (30) days old or more; and that two (2) fingers could be inserted with ease into AAA's female anatomy indicates previous multiple sexual intercourse. AAA also had some infection from a previous sexual intercourse.[10]

Dr. dela Cruz, the psychologist testified that AAA was referred to her for protective custody. At the time of the interview, AAA appeared disturbed by the abuse committed against her by her father. Further, AAA was observed to harbor intense feelings of hatred, dissatisfaction and resentment against her father.[11] In the report of her findings, Dr. dela Cruz made the following remarks:

x x x She has transparent and vocal manifestations of resentment and indignation towards her experience. Client is agitated for thinking that she will not regain anymore her loss (sic) relationship with her

---

[6] TSN, 16 March 2007, pp. 2-17.

[7] *Id.*

[8] TSN, 17 July 2007, pp. 2-12.

[9] Records, p. 12.

[10] TSN, 16 February 2007, pp. 3-5.

[11] TSN, 8 June 2007, pp. 1-7.

siblings as well as her mother because of this case filed. She is helpless, unhappy, and insecure and has no emotional security and satisfaction. x x x[12]

The prosecution filed their Formal Offer of Evidence[13] on 26 December 2007 with the RTC and rested their case. On 1 February and 18 April 2008, AAA and BBB were respectively called back to the witness stand by the defense counsel and the two recanted their previous testimonies against appellant. AAA declared that the real perpetrator was her grandfather, the uncle of her mother, now deceased.[14] BBB stated that she had told lies when she first testified. BBB also admitted that she loves her husband very much and would do anything to have the charges against him dismissed.[15]

Appellant, for his part, denied raping his daughter AAA. Appellant claimed that AAA was a problem child who had a relationship with a lesbian. Appellant confessed though that he always created trouble every time he went home drunk which may have prompted AAA to charge him of rape.[16] Appellant also asserted that he could not have possibly raped AAA because his wife, BBB, always stayed home. Appellant first came to know of the charges against him when he came home from work on 4 March 2006 when he was invited by the policemen to their station.[17]

In an Order[18] dated 12 January 2009, the RTC rejected AAA and BBB's recantations. The RTC noted that the alleged real culprit had died in 2004, two (2) years before the commission of the rape charges in 2006. The trial court dismissed the recantations as incredulous and unworthy of belief.

---

[12] Records, p. 104.

[13] Records, p. 102.

[14] TSN, 1 February 2008, p. 3.

[15] TSN, April 2008, pp. 4-5.

[16] TSN, August 2009, pp. 2-4.

[17] TSN, 11 January 2010, p. 3.

[18] Records, p. 132.

On 23 November 2010, appellant was found guilty beyond reasonable doubt of qualified rape. The dispositive portion of the RTC Decision reads:

> **WHEREFORE**, the foregoing considered, judgment is hereby rendered finding accused Allan Menaling guilty beyond reasonable doubt for the crime of qualified rape in Criminal Case No. 353-2006, for which he is sentenced to suffer the maximum penalty of reclusion perpetua.
>
> On the other hand, due to reasonable doubt, said accused is acquitted of the same crime in Criminal Case No. 354-2006.[19]

Appellant filed a Notice of Appeal on 21 December 2010.[20]

On 26 November 2012, the Court of Appeals rendered the assailed decision affirming with modification the trial court's judgment, *viz.*:

> **WHEREFORE**, premises considered, the instant appeal is hereby **DENIED**. The Decision dated November 23, 2010 of the RTC, Branch 73, Olongapo City is **AFFIRMED with MODIFICATION** in that in addition to the maximum penalty of *reclusion perpetua*, accused-appellant Allan Menaling y Canedo is further **ORDERED** to pay private complainant AAA Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Thirty Thousand Pesos (₱30,000.00) as exemplary damages.[21]

Appellant filed the instant appeal. In a Resolution[22] dated 11 November 2013, appellant and the Officer of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. OSG manifested that it was adopting its brief filed before the appellate court[23] while appellant filed his Supplemental Brief arguing that AAA's initial testimony

---

[19] *Id.* at 185-186.

[20] *Id.* at 189.

[21] *Rollo*, p. 20.

[22] *Id.* at 27.

[23] *Id.* at 32.

regarding the rape incident is incredulous. Appellant asserts that AAA's narration that she was raped by her father in the presence of her mother is preposterous because no mother would keep quiet and act nonchalantly after having witnessed the abuse of her daughter. Appellant also points out that AAA's mother testified that she was in Batangas on the day of the alleged rape. Appellant also questions the actuations of AAA during the rape incident. Appellant asks why AAA did not scream or offer any resistance despite the proximity of her siblings at that time. Appellant stresses that AAA and BBB had the motive to falsely charge him because they feared him.[24]

It is a well-settled rule that appellate courts will generally not disturb the factual findings of the trial court considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[25]

We have carefully reviewed the records of the case and we find no reason to depart from this established rule.

Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353,[26] define and punish rape as follows:

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

---

[24] *Id.* at 37-44.

[25] See *People v. Paculba*, 628 Phil. 662, 673 (2010).

[26] Effective on 22 October 1997.

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

Article 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 attendant 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.

It is extant in the records that the prosecution has successfully proven beyond reasonable doubt that appellant had carnal knowledge of his twelve (12) year old daughter, AAA, through force and intimidation. AAA described the harrowing details of her experience, to wit:

PROS. PARCO —

Q Do you know the accused in this case?
A Yes, sir.

Q Why do you know the accused in this case?
A Because he was the one who did this thing to me.

Q How is he related to you?
A He is my father.

Q Do you recall madam witness where you were (sic) on January 21, 2006 in the evening?
A I was in the house.

Q What were you then doing in the evening?
A We were then sleeping.

Q When you said "kami" who were these persons?
A My mother and my siblings.

Q When you were sleeping, what happened?
A He woke me up.

Q Who woke you up?
A My father.

Q The accused in this case?
A Yes, sir.

Q After you woke up, what happened?
A He told me to remove my clothing but I refused, that's why he was the one who took off my clothes and he kissed me and inserted his organ to my organ.

Q How did you feel when he inserted his organ to your organ?
A I felt pain.

Q Did you not shout?
A No, sir I just cried.

Q After that, what happened?
A My mother woke up and she told me to transfer to the bed.

Q Also on January 26, 2006 in the afternoon, do you recall any incident that happened to you?
A Yes, sir.

Q What was this incident?
A The same incident as in January 21.

Q What do you mean the same?
A He again told us to sleep. My mother was not there and after that, he again did what he did to me the last time.[27]

xxx xxx xxx

ATTY. GUILARAN —

Q You testified that in the evening of January 26, 2006, you were sleeping then with your father and your mother and your other siblings?
A Yes, Ma'am.

Q What part of the house did you sleep on January 21, 2006 together with your father, your mother and your siblings?

---

[27] TSN, 16 March 2007, pp. 3-5.

A On the bed.

Q How many siblings do you have?
A We are all 5, Ma'am.

Q Plus your mother and your father, you are all seven (7)?
A Yes, Ma'am.

Q And you were sleeping in one bed, the 7 of you?
A No, Ma'am.

Q Where did you sleep then?
A We slept on the bed with my mother, my younger sister and me.

Q Three (3) of you slept in the bed?
A Yes, Ma'am.

Q Where were the others slept?
A In the other bed.

Q Do you want to impress this Court that your room has two beds?
A Yes, Ma'am.

Q How big is your room?
A It's just a small room.

Q Could you approximate the area of your room?
A From that wall to this wall.

Q And the beds are single?
A Single, Ma'am.

Q Who slept at the other bed?
A My three other siblings.

Q Where did you[r] father sleep then?
A Beside our bed.

Q On the floor?
A Yes, Ma'am.

Q You testified that your father woke you up on January 21, 2006 and he instructed you to pull down your pants, where was your mother then?
A She was sleeping on the bed because my father asked me to transfer to where he was then sleeping.

Q He was sleeping on the floor beside the bed where you, your mother and your younger sister slept and you transferred. How big was the space where your father slept?
A As big as the table, Ma'am.

INTERPRETER —

The witness is referring to the table in the courtroom which is about 2 meters by 1 meter.

ATTY. GUILARAN —

Q How did your father wake you up on January 21, 2006?
A He slept on the bed where my three other siblings are sleeping and then he tapped my foot.

Q What was your reaction when your father tapped your foot?
A I was awakened.

Q What did you do thereafter, when you were awakened by the tapping of your foot by your father?
A I sat down.

Q What did your father do after you sat down?
A He called me to transfer to where he was sleeping.

Q And you immediately heeded?
A No, Ma'am.

Q What did you do in refusing to the order of your father?
A I cried.

Q Loud?
A No, Ma'am because he told me not to make noise.

Q I thought, he only tapped your foot and you were awakened?
A Yes, ma'am he tapped my foot and called for me to ask me to transfer.

Q And you refused?
A Yes, ma'am.

Q You cried not loud?
A Yes, ma'am.

Q What happened?
A He held my hands.

Q Where was your mother?
A She was sleeping.

Q Beside you?
A No, Ma'am.

Q You were beside your sister?
A Yes, ma'am.

Q You were allegedly sexually assaulted by your father at the room of your mother and father and your siblings were sleeping?
A Yes, Ma'am.

Q For how long did the accused sexually assault you?
A Maybe 5 to 6 minutes and my mother awakened.

Q You did not tell your mother what your father did to you?
A No, Ma'am I really want to tell her but I was afraid.

Q Were you threatened by your father?
A Yes, Ma'am.

Q How?
A He told me if I tell my mother and if he will be incarcerated I will also be detained and he will kill my mother.

Q Where were your pants then when your mother was awakened?
A Just below my knee.

Q And your mother saw it?
A Yes, Ma'am.

Q And she did nothing?
A Yes, Ma'am.[28]

Rape is a crime that is almost always committed in isolation or in secret, usually leaving only the victim to testify about the commission of the crime. Thus, the accused may be convicted of rape on the basis of the victim's sole testimony provided such testimony is logical, credible, consistent and convincing. Moreover, the testimony of a young rape victim is given full weight and credence considering that her denunciation against

[28] *Id.* at 9-13.

him for rape would necessarily expose herself and her family to shame and perhaps ridicule.[29]

The initial testimony of AAA appears to be truthful, candid and spontaneous. The oft-repeated adage that no young Filipina would publicly admit that she had been criminally abused and ravished unless it is the truth, for it is her natural instinct to protect her honor[30] finds application in this case. No young girl would concoct a tale of defloration, allow the examination of her private parts and undergo the expense, trouble and inconvenience, not to mention the trauma and scandal of a public trial, unless she was, in fact, raped.[31]

That the incident was done in the presence of AAA's mother, BBB, who herself seemed to have had no reaction to the grave matter, does not diminish or affect the credibility of AAA's testimony nor render her narration improbable. BBB might have been in a state of shock at the time, reason for the non-reaction. Or this fact could speak of how dysfunctional the family has become that a father can boldly rape his own daughter in the presence of the latter's mother who herself will not feel repulsed by the same. Lust indeed respects neither time nor place.[32]

AAA's behaviour during and immediately after the ordeal also do not affect the veracity of her testimony that she was raped. As supported by prevailing jurisprudence, one could not expect a twelve (12)-year old to act like an adult or mature and experienced woman who would know what to do under such difficult circumstances and who would have the courage and intelligence to disregard a threat on her life and the members of her family and complain immediately that she had been forcibly deflowered, no less, by her own father.[33] Moreover, rape is nothing

---

[29] *People v. Gallano*, G.R. No. 184762, 25 February 2015.

[30] *People v. Avero*, 247-A Phil. 216, 221 (1988).

[31] *People v. Espenilla*, G.R. No. 192253, 18 September 2013, 706 SCRA 134, 147.

[32] *People v. Alviz*, 477 Phil. 188, 199 (2004).

[33] See *People v. Oydoc*, 210 Phil. 214, 220-221 (1983) quoted in *People v. Avero*, *supra* note 30 at 220-221.

more than a conscious process of intimidation by which a man keeps a woman in a state of fear and humiliation. Thus, it is not even impossible for a rape victim not to make an outcry against an unarmed assailant. In fact the moral ascendancy and influence of appellant, being the victim's father, can take the place of threat and intimidation.[34]

Notably, Dr. Ortis's medical findings corroborate AAA's testimony that she had been sexually abused. When a victim's testimony is corroborated by the medical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place.[35]

We uphold the appellate court's declaration that victim's recantation is unreliable. In her testimony, AAA intimated that she was not raped by her father, but was actually raped by her grandfather who had already passed away.

A retraction is looked upon with considerable disfavor by the courts. It is exceedingly unreliable for there is always the probability that such recantation may later on be repudiated. It can easily be obtained from witnesses through intimidation or monetary consideration. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and, especially, on the demeanor of the witness on the stand.[36]

Before allowing the recantation, the court must not be too willing to accept it, but must test its value in a public trial with sufficient opportunity given to the party adversely affected to cross-examine the recanting witness both upon the substance of the recantation and the motivations for it. The recantation, like any other testimony, is subject to the test of credibility based on the relevant circumstances, including the demeanor of the recanting witness on the stand. In that respect, the finding

---

[34] *People v. Aguilar*, 643 Phil. 643, 656 (2010).

[35] *People v. Sabal*, G.R. No. 201861, 2 June 2014, 724 SCRA 407, 412 citing *People v. Perez* 595 Phil. 1232, 1258 (2008).

[36] *People v. Bulagao*, 674 Phil. 535, 544 (2011) citing *People v. Sumingwa*, 618 Phil. 650, 663 (2009).

of the trial court on the credibility of witnesses is entitled to great weight on appeal unless cogent reasons necessitate its re-examination, the reason being that the trial court is in a better position to hear first-hand and observe the deportment, conduct and attitude of the witnesses.[37]

Guided by the preceding precept, we do not ascribe any weight to the recantation of the victim. In this regard, very telling is the following portion of the cross-examination of BBB's own recantation, to wit:

Q And accused in this case, are you legally married?
A No madam.

Q You love him so much?
A Yes.

Q And you will do anything to help him so that the charges against him will be dismissed?
A Yes.

Q That will include telling lies?
A I am not telling a lie.

Q That will also be helping him that will also include forcing your daughter to recant her testimony?
A Yes.[38] (Emphasis supplied)

We find unmeritorious appellant's defense of denial. Denial could not prevail over the victim's direct, positive and categorical assertion.[39]

All told, appellant's guilt of the crime charged was established beyond reasonable doubt.

The lower courts correctly reduced the penalty from death penalty to *reclusion perpetua*. The passage of R.A. No. 9346 debars the imposition of the death penalty without declassifying

---

[37] *People v. Teodoro*, G.R. No. 175876, 20 February 2013, 691 SCRA 324, 344-345.

[38] TSN, 18 April 2008, p. 5.

[39] *People v. Sabal*, *supra* note 35.

the crime of qualified rape as heinous. It must be stated however, that the accused shall suffer the penalty of *reclusion perpetua* without eligibility for parole.[40]

Also, we however, modify the appellate court's award of damages and increase it as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence.[41] Further, the amount of damages awarded should earn interest at the rate of 6% *per annum* from the finality of this judgment until said amounts are fully paid.[42]

WHEREFORE, premises considered, the Decision dated 26 November 2012 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04819, finding appellant Allan Menaling y Canedo guilty in Criminal Case No. 353-2006, is hereby **AFFIRMED** with **MODIFICATION**. Appellant shall suffer the penalty of *reclusion perpetua* without eligibility for parole. Appellant is ordered to pay the private offended party as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. He is **FURTHER** ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment.

No pronouncement as to costs.

SO ORDERED.

Sereno,[*] *C.J., Velasco, Jr.,* and *Reyes, JJ.,* concur.

Peralta, J., on official leave.

---

[40] Section 2, A.M. No. 15-08-02-SC (Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties.)

[41] *People v. Gambao*, G.R. No. 172707, 1 October 2013, 706 SCRA 508.

[42] *People v. Vitero*, G.R. No. 175327, 3 April 2013, 695 SCRA 54, 69.

[*] Additional Member per Raffle dated 21 March 2016.

THIRD DIVISION

[A.C. No. 7447. April 18, 2016]

RENE B. HERMANO, *complainant, vs.* **ATTY. IGMEDIO S. PRADO, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISCIPLINE OF ATTORNEYS; FROM THE TIME A LAWYER ACCEPTS A CASE, HE BINDS HIMSELF TO SERVE AND PROTECT THE CLIENT'S INTEREST TO THE BEST OF HIS ABILITY; EXPLAINED.— It bears stressing that from the time a lawyer accepts a case, he binds himself to serve and protect his client's interest to the best of his ability. He undertakes to exert all legal efforts to pursue the cause of his client and help him exhaust all available remedies. x x x Upon engagement of his services, it is incumbent upon a lawyer to thoroughly study the circumstances of the case in order to determine the most suitable course of action or defense for his client. He must survey the facts and the parties involved so that he may be able to trace the source of his client's predicament and devise a legal strategy in order to resolve the same. He must take appropriate action out of his investigation and prepare the necessary pleading in court and file it on time. In performing his responsibilities, he must be mindful of the prescriptive period in taking an action because failing to do so could lose the client his case.

2. ID.; ID.; ID.; FAILURE OF RESPONDENT TO DISCHARGE HIS DUTIES AS COUNSEL; ESTABLISHED IN CASE AT BAR.— In the instant case, the respondent failed to discharge his duties as counsel. He failed to prepare and file a memorandum on the complainant's behalf despite the RTC's order to do so. The memorandum could have been a helpful medium for the complainant to establish his claim of self-defense in the criminal cases charged against him. x x x Barely two days before the lapse of the period of filing the appellant's brief, however, the respondent was nowhere to be found and did not even bother to communicate with the complainant to

inform him of the status of his case. x x x Due to the respondent's negligence, the complainant was constrained to immediately scout for a new lawyer who can prepare and file the appellant's brief for his case. With the short period of time before the lapse of the period to file the appellant's brief, the complainant had a tough time looking for a lawyer who will salvage him from his quandary. The complainant's concern was not baseless as the respondent had previously reneged on his responsibility as counsel when he failed to file the memorandum required by the RTC. Luckily for the complainant, he was able to engage the services of Atty. Panes despite the latter's initial hesitation because of the work entailed in the drafting of the appellant's brief and the little time remaining to prepare and file the same. The seriousness of the respondent's negligence cannot be overemphasized. Under the Rules of Court, the failure to file the appellant's brief within the reglementary period may warrant the dismissal of an appeal. The respondent's laxity could have cost the complainant his liberty, and his family, a source of living. It could have amounted to some agonizing years in prison for the complainant for doing something that is justified under the law. The respondent's negligence is gross and inexcusable. It is exactly the opposite of what is required of him as an officer of the court.

3. ID.; ID.; A LAWYER'S FAILURE TO ACCOUNT FOR THE MONEY HE RECEIVED AND TO RETURN THE SAME TO HIS CLIENT IS INDICATIVE OF LACK OF INTEGRITY AND PROPRIETY AND A VIOLATION OF THE TRUST REPOSED ON HIM; PRESENT IN CASE AT BAR.— The Court also notes that the respondent's failure to return the money given to him by the complainant despite non-performance of the agreed legal services is in violation of Canon 16 of the CPR. x x x For his supposed professional fees, the respondent charged the complainant the amount of Pl0,000.00 for the preparation and filing of memorandum with the RTC. Subsequently, he asked the complainant the amount of ₱l5,000.00 to handle his appeal with the CA, particularly to prepare his appellant's brief. The respondent, however, failed to render the legal services he undertook to perform. More lamentably, he did not even have the decency to return the money to the complainant despite the dismal manner by which he handled his case. His failure to account for the money

he received or to return the same to the complainant is indicative of lack of integrity and propriety and a violation of the trust reposed on him. His unjustified withholding of money belonging to the complainant warrants the imposition of disciplinary action.

4. ID.; ID.; FAILURE TO LIVE UP TO THE STANDARDS OF COMPETENCE, DILIGENCE AND INTEGRITY EXPECTED OF HIM AS A LAWYER; IMPOSABLE PENALTY.— Indisputably, the respondent miserably failed to live up to the standards of competence, diligence and integrity expected of him. It bears remembering that "[l]awyers are expected to always live up to the standards embodied in the [CPR] because an attorney-client relationship is highly fiduciary in nature and demands utmost fidelity and good faith. Those who violate the [CPR] must be disciplined." Considering the seriousness of his negligence, the Court finds that the recommended penalty of three (3) months of suspension from the practice of law is too light for the violations committed by the respondent. In *Talento, et al. v. Atty. Paneda,* the Court imposed a penalty of one (1) year of suspension from the practice of law for therein respondent's failure to file the appeal brief for his client and for failure to return the money paid for legal services that were not performed. On the other hand, in *Atty. San Jose,* therein respondent's negligence in handling his client's cause merited a suspension of six (6) months from the practice of law. Likewise, in *Spouses Rabanal v. Atty. Tugade,* therein respondent's failure to file the appellant's brief meted out a penalty of suspension for six (6) months. There were even cases when the penalty imposed was two (2) years of suspension from the practice of law. It is clear therefore that in the previous rulings of this Court, those found guilty of the same or similar acts were suspended for not less than six (6) months from the practice of law. Accordingly, the Court modifies the respondent's penalty to six (6) months of suspension from the practice of law.

D E C I S I O N

REYES, *J.*:

This is an administrative complaint[1] filed by Rene B. Hermano (complainant) against Atty. Igmedio S. Prado, Jr. (respondent) for violating the Code of Professional Responsibility (CPR).

The Facts

The complainant engaged the services of the respondent as his defense counsel in Criminal Case Nos. 97-493 and 97-494, both for Homicide, for the death of Bonifacio Arante, Jr. and Dante Aguacito, respectively, on December 18, 1996, while he was in the performance of his duty as a police officer. On February 5, 1998, he was arraigned and pleaded not guilty of both charges before the Regional Trial Court (RTC) of Barotac Viejo, Iloilo, Branch 66. Thereafter, the two cases were jointly heard.[2]

In 2003, after the presentation of evidence, the RTC ordered the parties to submit their respective memoranda. The respondent then charged the complainant the amount of Ten Thousand Pesos (₱10,000.00) for the preparation and filing of the memorandum, which the latter promptly paid.[3]

On April 5, 2005, the RTC promulgated its Decision[4] in Criminal Case Nos. 97-493 and 97-494, finding the complainant guilty of both charges. On the same day, the complainant found out that the respondent did not file the required memorandum despite receipt of the full payment for its preparation and filing.[5]

Thereafter, the complainant conferred with the respondent and he was told that there is a good chance that the decision of the RTC will be reversed by the Court of Appeals (CA) on

---

[1] *Rollo*, pp. 1-7.

[2] *Id.* at 1.

[3] *Id.* at 2.

[4] Rendered by Judge Rogelio J. Amador; *id.* at 8-25.

[5] *Id.* at 2.

appeal. For the preparation of the appellant's brief, the respondent asked the complainant the amount of Fifteen Thousand Pesos (₱15,000.00), way ahead of the notice from the CA to file the same.[6]

Subsequently, the complainant received a notice dated August 8, 2005 from the CA, pertaining to CA-G.R. CEB-CR No. 00206, entitled "*People of the Philippines v. SPO1 Rene Hermano*," requiring the filing of appellant's brief within 30 days from receipt thereof. He thus visited the respondent in his office to secure a copy of the appellant's brief but was informed by the respondent's secretary that he had filed a motion for an extension of time to file the said pleading.[7]

On October 13, 2005, barely two days before the lapse of the period to comply with the order of the CA, the complainant went to Iloilo City to confer with the respondent and to follow up on his request for a copy of the appellant's brief. The complainant was informed, however, by the respondent's secretary that she did not know the whereabouts of the respondent and had no idea whether the appellant's brief for the case had already been filed. The complainant tried calling the respondent through his cellular phone but he could not be reached.[8]

On the following day, the complainant went back to Iloilo City to see if he could finally meet the respondent but to no avail. Aware that he only had two days left to submit the appellant's brief, he went around the city to look for a lawyer who would draft his appellant's brief so that it can be filed on time. However, no lawyer would accept his case. Fortunately, one lawyer referred him to Atty. Cornelio Panes (Atty. Panes). He went to the office of Atty. Panes and relayed to him his predicament. At first, Atty. Panes was hesitant to accept his case because of the short period of time remaining to file the appellant's brief and because the respondent was his good friend.

---

[6] *Id.*

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

[8] *Id.* at 3.

Atty. Panes tried contacting the respondent but he still could not be reached. Ultimately, upon his persistent pleas, the complainant managed to convince Atty. Panes to prepare the appellant's brief for him.[9]

Eventually, Atty. Panes was able to finish the appellant's brief[10] and filed it within the reglementary period. He also gave a copy of the said pleading to the complainant whom he allowed to pay his professional fees of Ten Thousand Pesos (₱10,000.00) by installment.[11]

Sometime thereafter, the complainant learned that the Office of the Solicitor General (OSG) had filed a motion to dismiss his appeal[12] before the CA. He only learned of the existence of the said motion in a spontaneous visit to the respondent's office on February 2, 2006. With the respondent still out of reach, the complainant contacted Atty. Panes and informed him about the motion. Atty. Panes thereafter filed a Comment[13] thereto and attached the necessary documents. The CA denied the OSG's motion to dismiss and gave due course to the appeal in Resolution[14] dated April 21, 2006.[15]

On November 8, 2006, the complainant received a call from Atty. Panes, informing him that the CA had rendered a Decision[16] dated October 26, 2006, setting aside the appealed decision of the RTC and acquitting him of the two (2) counts of homicide filed against him.[17]

---

[9] *Id.*

[10] *Id.* at 27-50.

[11] *Id.* at 4.

[12] *Id.* at 52-57.

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

[14] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Isaias P. Dicdican and Apolinario D. Bruselas, Jr. concurring; *id.* at 63.

[15] *Id.* at 5.

[16] Penned by Associate Justice Agustin S. Dizon, with Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla concurring; *id.* at 66-81.

[17] *Id.* at 6.

On February 23, 2007, the complainant filed the present administrative complaint against the respondent for failing to live up to his responsibilities as counsel under the CPR. He asseverates that due to the respondent's negligence, he almost lost his appeal and could have been sent to prison had he not sought the help of Atty. Panes, who promptly prepared and filed his appellant's brief. He likewise laments the fact that the respondent collected professional fees from him but failed to file the necessary pleadings required by the court.

In his Comment,[18] the respondent denied neglecting the complainant's case and claimed that he had consistently informed him of the status of the case. He alleged that when he informed the complainant about the extension of time to file his appeal, the latter told him that he had already found a new lawyer to represent him. He added that he even sent the complainant a text message regarding the OSG's filing of a motion to dismiss his appeal with the CA.

Subsequently, the Court referred the instant administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[19]

In the Report and Recommendation[20] dated August 27, 2008, the Investigating Commissioner recommended that the respondent be suspended for a period of three (3) months and be ordered to return the fees he collected for services that he failed to perform.[21]

On September 20, 2008, the IBP Board of Governors (the Board) issued Resolution No. XVIII-2008-483,[22] disposing thus:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, **with modification**, the

---

[18] *Id.* at 88-93.

[19] Court's Resolution dated August 13, 2007; *id.* at 102.

[20] *Id.* at 113-119.

[21] *Id.* at 119.

[22] *Id.* at 112.

Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's failure to inform complainant about the status of his case, Atty. Igmedio S. Prado, Jr. is hereby **SUSPENDED** from the practice of law for three (3) months and **Ordered to Return** to complainant the amount of Twenty Five Thousand (₱25,000.00) Pesos representing the fees for legal services that were not performed.[23]

Aggrieved, the respondent filed a motion for reconsideration of the foregoing resolution.[24] Then, on June 26, 2011, the Board denied the motion in its Resolution No. XIX-2011-456,[25] which held:

RESOLVED to unanimously DENY Respondent's Motion for Reconsideration, there being no cogent reason to reverse the findings of the Board and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, for lack of substantial ground or reason to disturb it, the Board of Governor's *Resolution No. XVIII-2008-483 dated September 20, 2008* is hereby **AFFIRMED**.[26]

Ruling of the Court

The Court sustains the findings and recommendation of the IBP with modification.

The CPR provides:

Canon 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

Canon 18 — A lawyer shall serve his client with competence and diligence.

xxx xxx xxx

---

[23] *Id.*

[24] *Id.* at 120-124.

[25] *Id.* at 160.

[26] *Id.*

> Rule 18.02 — A lawyer shall not handle any legal matter without adequate preparation.
>
> Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.
>
> Rule 18.04 — A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

It bears stressing that from the time a lawyer accepts a case, he binds himself to serve and protect his client's interest to the best of his ability. He undertakes to exert all legal efforts to pursue the cause of his client and help him exhaust all available remedies.

In *Belleza v. Atty. Macasa*,[27] the Court emphasized:

> A lawyer who accepts professional employment from a client undertakes to serve his client with competence and diligence. He must conscientiously perform his duty arising from such relationship. He must bear in mind that by accepting a retainer, he impliedly makes the following representations: that he possesses the requisite degree of learning, skill and ability other lawyers similarly situated possess; that he will exert his best judgment in the prosecution or defense of the litigation entrusted to him; that he will exercise reasonable care and diligence in the use of his skill and in the application of his knowledge to his client's cause; and that he will take all steps necessary to adequately safeguard his client's interest.[28] (Citations omitted)

Upon engagement of his services, it is incumbent upon a lawyer to thoroughly study the circumstances of the case in order to determine the most suitable course of action or defense for his client. He must survey the facts and the parties involved so that he may be able to trace the source of his client's predicament and devise a legal strategy in order to resolve the same. He must take appropriate action out of his investigation and prepare

---

[27] 611 Phil. 179 (2009).

[28] *Id.* at 188.

the necessary pleading in court and file it on time. In performing his responsibilities, he must be mindful of the prescriptive period in taking an action because failing to do so could lose the client his case.

In the instant case, the respondent failed to discharge his duties as counsel. He failed to prepare and file a memorandum on the complainant's behalf despite the RTC's order to do so. The memorandum could have been a helpful medium for the complainant to establish his claim of sell-defense in the criminal cases charged against him. However, due to the respondent's negligence, the complainant lost the opportunity and was convicted of the charges. This was notwithstanding the fact that the complainant paid him the amount of ₱10,000.00 to prepare the said memorandum.

The respondent's negligence did not end here. He had the temerity to insinuate to the complainant that there is a good chance that the decision of the RTC will be overturned by the CA should they appeal the case. Out of desperation of his plight, the complainant readily acquiesced and willingly paid out the amount of ₱15,000.00, which the respondent required as his professional fees. Barely two days before the lapse of the period of filing the appellant's brief, however, the respondent was nowhere to be found and did not even bother to communicate with the complainant to inform him of the status of his case.

In *The Heirs of Ballesteros, Sr. v. Atty. Apiag*,[29] the Court stated:

> The Court has repeatedly stressed that the lawyer-client relationship is highly fiduciary. There is always a need for the client to receive from the lawyer periodic and full updates on developments affecting the case. The lawyer should apprise the client on the mode and manner that the lawyer is utilizing to defend his client's interests.[30] (Citations omitted)

---

[29] 508 Phil. 113 (2005).

[30] *Id.* at 126.

Due to the respondent's negligence, the complainant was constrained to immediately scout for a new lawyer who can prepare and file the appellant's brief for his case. With the short period of time before the lapse of the period to file the appellant's brief, the complainant had a tough time looking for a lawyer who will salvage him from his quandary. The complainant's concern was not baseless as the respondent had previously reneged on his responsibility as counsel when he failed to file the memorandum required by the RTC. Luckily for the complainant, he was able to engage the services of Atty. Panes despite the latter's initial hesitation because of the work entailed in the drafting of the appellant's brief and the little time remaining to prepare and file the same.

The seriousness of the respondent's negligence cannot be overemphasized. Under the Rules of Court, the failure to file the appellant's brief within the reglementary period may warrant the dismissal of an appeal.[31] The respondent's laxity could have cost the complainant his liberty, and his family, a source of living. It could have amounted to some agonizing years in prison for the complainant for doing something that is justified under the law. The respondent's negligence is gross and inexcusable. It is exactly the opposite of what is required of him as an officer of the court.

In *Vda. de Enriquez v. Atty. San Jose*,[32] the Court emphasized, thus:

> [W]hen a lawyer takes a client's cause, he covenants that he will exercise due diligence in protecting the latter's rights. Failure to exercise that degree of vigilance and attention expected of a good father of a family makes the lawyer unworthy of the trust reposed in him by his client and makes him answerable not just to his client but also to the legal profession, the courts and society. Until the lawyer's withdrawal is properly done, the lawyer is expected to do his or her best for the interest of the client.[33]

---

[31] RULES OF COURT, Rule 50, Section 1 (e).

[32] 545 Phil. 379 (2007).

[33] *Id.* at 383-384.

Moreover, in *Fernandez v. Atty. Cabrera II*,[34] the Court reiterated that:

> The failure to exercise that degree of vigilance and attention expected of an Officer of the Court makes such lawyer unworthy of the trust reposed in him by his clients and makes him answerable not just to his client but also to the legal profession, the courts, and the Society. x x x.[35]

The Court also notes that the respondent's failure to return the money given to him by the complainant despite non-performance of the agreed legal services is in violation of Canon 16[36] of the CPR. In *Meneses v. Atty. Macalino*,[37] the Court underscored, thus:

> The Code mandates that every "lawyer shall hold in trust all moneys and properties of his client that may come into his possession." The Code further states that "[a] lawyer shall account for all money or property collected or received for or from the client." Furthermore, "[a] lawyer shall deliver the funds and property of his client when due and upon demand."
>
> When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for the intended purpose. Consequently, if the lawyer does not use the money for the intended purpose, the lawyer must immediately return the money to the client.[38] (Citations omitted)

For his supposed professional fees, the respondent charged the complainant the amount of ₱10,000.00 for the preparation

---

[34] 463 Phil. 352 (2003).

[35] *Id.* at 357.

[36] Canon 16 — A lawyer shall hold in trust all moneys and properties of his client that may come into his profession.

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

xxx xxx xxx

[37] 518 Phil. 378 (2006).

[38] *Id.* at 385.

and filing of memorandum with the RTC. Subsequently, he asked the complainant the amount of ₱15,000.00 to handle his appeal with the CA, particularly to prepare his appellant's brief. The respondent, however, failed to render the legal services he undertook to perform. More lamentably, he did not even have the decency to return the money to the complainant despite the dismal manner by which he handled his case. His failure to account for the money he received or to return the same to the complainant is indicative of lack of integrity and propriety and a violation of the trust reposed on him. His unjustified withholding of money belonging to the complainant warrants the imposition of disciplinary action.[39]

Indisputably, the respondent miserably failed to live up to the standards of competence, diligence and integrity expected of him. It bears remembering that "[l]awyers are expected to always live up to the standards embodied in the [CPR] because an attorney-client relationship is highly fiduciary in nature and demands utmost fidelity and good faith. Those who violate the [CPR] must be disciplined."[40]

Considering the seriousness of his negligence, the Court finds that the recommended penalty of three (3) months of suspension from the practice of law is too light for the violations committed by the respondent. In *Talento, et al. v. Atty. Paneda*,[41] the Court imposed a penalty of one (1) year of suspension from the practice of law for therein respondent's failure to file the appeal brief for his client and for failure to return the money paid for legal services that were not performed. On the other hand, in Atty. San Jose,[42] therein respondent's negligence in handling his client's cause merited a suspension of six (6) months from the practice of law. Likewise, in *Spouses Rabanal v. Atty. Tugade*,[43] therein

---

[39] *Id.* at 386.

[40] *Villanueva v. Atty. Gonzales*, 568 Phil. 379, 389 (2008).

[41] 623 Phil. 662 (2009).

[42] *Supra* note 32.

[43] 432 Phil. 1064 (2002).

respondent's failure to file the appellant's brief meted out a penalty of suspension for six (6) months. There were even cases when the penalty imposed was two (2) years of suspension from the practice of law.[44] It is clear therefore that in the previous rulings of this Court, those found guilty of the same or similar acts were suspended for not less than six (6) months from the practice of law.

Accordingly, the Court modifies the respondent's penalty to six (6) months of suspension from the practice of law.

WHEREFORE, the Court finds respondent Atty. Igmedio S. Prado, Jr. **GUILTY** of violation of Canon 16, Rule 16.01, Canons 17 and 18, Rules 18.02, 18.03 and 18.04 of the Code of Professional Responsibility. Accordingly, the Court **SUSPENDS** him from the practice of law for six (6) months effective upon finality of this Decision and **ORDERS** him to return the amount of ₱25,000.00 to complainant Rene B. Hermano for legal services he failed to render within thirty (30) days from receipt of this Decision. He is further **WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Igmedio S. Prado, Jr. as an attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

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

---

[44] *Villanueva v. Atty. Gonzales*, *supra* note 40; *Small v. Atty. Banares*, 545 Phil. 226 (2007).

SECOND DIVISION

[A.C. No. 10677. April 18, 2016]

RUDENIA L. TIBURDO, *complainant, vs.* **ATTY. BENIGNO M. PUNO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISBARMENT AND DISCIPLINE OF ATTORNEYS; THE RIGHT TO INSTITUTE DISBARMENT PROCEEDINGS IS NOT CONFINED TO CLIENTS NOR IS IT NECESSARY THAT THE COMPLAINANT SUFFERED INJURY FROM THE ALLEGED WRONGDOING; EXPLAINED.— We have held time and again that the right to institute disbarment proceedings is not confined to client nor is it necessary that the complainant suffered injury from the alleged wrongdoing. As explained in *Rayos-Ombac v. Rayos*: A proceeding for suspension or disbarment is not in any sense a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice. Thus, it is of no moment that Tiburdo was not Atty. Puno's client in the Civil Case. What matters is whether or not the acts complained of are proven by the evidence on record.

2. ID.; ID.; A LAWYER'S FAILURE TO FILE THE REQUIRED PLEADINGS ON BEHALF OF HIS CLIENT CONSTITUTES GROSS NEGLIGENCE IN VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY WHICH SUBJECTS HIM TO DISCIPLINARY ACTION.— Lawyers, as officers of the court, are particularly called upon

to obey court orders and processes and are expected to stand foremost in complying with court directives. The Lawyer's Oath expressly mandates lawyers to obey the legal orders of the duly constituted authorities. In this case, Atty. Puno was mandated, in accordance with his lawyer's oath and duty to the courts, to obey the orders of the RTC and submit the necessary documents accordingly. This he repeatedly failed to do. This Court has held that a lawyer's failure to file the required pleadings on behalf of his client constitutes gross negligence in violation of the Code of Professional Responsibility and subjects him to disciplinary action. Analogously, Atty. Puno's repeated failure to produce the necessary Affidavit of Publication, in accordance with the orders of the court, should render him liable for the proper penalty.

3. **ID.; ID.; THE ATTORNEY-CLIENT RELATION DOES NOT TERMINATE FORMALLY UNTIL THERE IS A WITHDRAWAL OF THE LAWYER'S APPEARANCE ON RECORD; CASE AT BAR.—**Rule 18.04 of the Code of Professional Responsibility provides that "a lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information." The records show that the office of Atty. Puno duly received the Order of the RTC dismissing the Civil Case. However, he never informed Marquard or Tiburdo of the Order, causing such dismissal to attain finality. Atty. Puno merely argues that he had no responsibility to interfere in the case as he was no longer the counsel of Marquard. The records are bereft, however, of any indication that Atty. Puno has indeed withdrawn himself as counsel for Marquard in the Civil Case. Until the withdrawal of a counsel has been approved by the court, he remains counsel of record and is expected by his client, as well as by the court, to do what the interests of his client require. This Court has held that the attorney-client relation does not terminate formally until there is a withdrawal of his appearance on record. Based on the records, it seems that Atty. Puno never filed such withdrawal with the court – he merely relies on the letter of Tiburdo terminating his services to support his argument that he was no longer the counsel for Marquard. However, to the courts, the letter is not enough to severe their attorney-client relationship. Until the withdrawal as counsel is made of record, any judicial notice sent to the counsel is binding upon the

client, even though as between them, the professional relationship may have been terminated. x x x This Court has held that a lawyer mindful of the interest of his client should inform his client of the court's order addressed to him, especially if he considered himself discharged, in order for the client and the new counsel to be guided accordingly.

4. ID.; ID.; NON-COMPLIANCE WITH THE ORDERS OF THE COURT AND VIOLATION OF DUTY TO INFORM THE CLIENT OF THE STATUS OF THE CASE, WHEN ESTABLISHED; IMPOSABLE PENALTY.— The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts. In previous cases, when a lawyer ignores the lawful orders of duly constituted authorities, as required by the Lawyer's Oath, this Court imposed the penalty of suspension when the lawyer is also guilty of violating his duties as a lawyer. Atty. Puno, in addition to his non-compliance with the orders of the RTC, also violated his duty to inform his client of the status of the case. In analogous cases where lawyers failed in their duty to inform their clients of the status of their cases, we have meted out the penalty of suspension, usually for a period of six (6) months. In this case, however, a more severe sanction is required. We note that this is not the first instance that Atty. Puno has been suspended by this Court. On 17 April 2013, Atty. Puno was suspended from the practice of law for a period of one (1) year, as Atty. Puno misrepresented himself to the courts that he had authority to appear on behalf of the complainant therein, Julian M. Tallano, when he did not possess such authority. Atty. Puno was found guilty for violations of Section 27, Rule 138 of the Rules of Court and Rule 10.01 of Canon 10 of the Code of Professional Responsibility. Taking into consideration the facts in this case, as well as his previous violations of the Rules of Court and the Code of Professional Responsibility, this Court deems it proper to impose on Atty. Puno a longer suspension period of one (1) year.

APPEARANCES OF COUNSEL

Cristal Tenorio Law Offices for complainant.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a complaint for disbarment filed by Rudenia L. Tiburdo (Tiburdo) against Atty. Benigno M. Puno (Atty. Puno) for gross misconduct and gross immoral conduct in accordance with Section 27, Rule 138 of the Rules of Court.

The Facts

The Complaint stems from Civil Case No. 2633-G for Quieting of Title, Reconveyance and Damages (the Civil Case) filed in the Regional Trial Court (RTC) of Gumaca, Quezon by Gerd Robert Marquard (Marquard) against Spouses Antonino and Imelda Macaraeg, Fr. Rodrigo F. San Pedro and Araceli Emor.[1] Atty. Puno was the counsel for Marquard.

Due to the absence of summons to one of the defendants in the Civil Case, the hearing was reset to enable the service of summons by publication.[2] At the subsequent hearing, Atty. Puno manifested that this has been duly complied with.[3] However, as Atty. Puno did not have the Affidavit of Publication to prove such manifestation, the RTC required him to present the affidavit at the next hearing.[4] Despite repeated orders from the RTC, and more than sufficient time to comply with such orders,[5] Atty. Puno failed to present the required Affidavit of Publication. Thus, the counsel for defendant moved to dismiss the case on the ground that the case has been postponed several times due to the fault of the plaintiff, which shows lack of interest.[6] The

---

[1] *Rollo*, pp. 6-10.

[2] *Id.* at 14.

[3] *Id.* at 17.

[4] *Id.* at 23.

[5] *Id.* at 18 and 21.

[6] *Id.* at 23.

RTC denied this motion and gave Atty. Puno a final chance to comply with its orders requiring the submission of the Affidavit of Publication.[7] Unfortunately, Atty. Puno still failed to comply. Thus, on 3 June 2009, the RTC eventually dismissed the case in accordance with Section 3, Rule 17 of the Rules of Court.[8] As no action was further taken on the order dismissing the Civil Case, the dismissal attained finality on 1 July 2009.[9]

On 4 June 2010, Tiburdo filed her Complaint-Affidavit[10] for the disbarment of Atty. Puno alleging that: (1) Atty. Puno intentionally and deliberately failed to submit the Affidavit of Publication to cause great damage and prejudice to Marquard; (2) Atty. Puno failed to inform her (as the duly authorized attorney-in-fact of Marquard)[11] or Marquard of the dismissal of the Civil Case despite receipt of the order containing such dismissal; and (3) the actuations and demeanor of Atty. Puno constituted gross misconduct and gross immoral conduct which is a ground for his disbarment in accordance with Section 27, Rule 138 of the Rules of Court.[12]

---

[7] *Id.*

[8] Rules of Court, Rule 17, Section 3. *Dismissal due to fault of plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

[9] *Rollo*, p. 25.

[10] *Id.* at 2-5.

[11] *Id.* at 44.

[12] Rule 138, 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

In an Order dated 4 June 2010,[13] the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) required Atty. Puno to submit his Answer within fifteen (15) days from receipt of the Order, failure of which would result in his default and the ex-parte hearing of the case. Atty. Puno failed to file his Answer. Nonetheless, Atty. Puno attended the Mandatory Conference before the Investigating Commissioner. During the Mandatory Conference, Atty. Puno clarified whether the true complainant in the case was Tiburdo or Marquard, and whether there was a possible conflict with another disbarment case against him, CBD Case No. 10-2693.[14] Atty. Donnabel Cristal Tenorio (Atty. Tenorio), counsel for Tiburdo, manifested that the true complainant was her client Tiburdo. As the parties failed to arrive at a common issue, the Mandatory Conference was terminated on 17 June 2011 and both parties were required to submit their respective verified position papers within thirty (30) days therefrom.[15] Tiburdo filed her position paper on 24 July 2011.[16] Atty. Puno, on the other hand, failed to submit his.

IBP Investigation, Report and Recommendation

In the Report and Recommendation dated 30 September 2011,[17] the Investigating Commissioner found Atty. Puno guilty of gross misconduct under Section 27, Rule 138 of the Rules of Court, in connection with the express mandate of the Lawyer's Oath of obeying the legal orders of duly constituted authorities. The Investigating Commissioner reasoned:

Nonetheless, the facts presented and evidence adduced warrant a proper finding of gross misconduct. The pieces of evidence presented

---

court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. x x x.

[13] *Rollo*, p. 30.

[14] *Id.* at 38.

[15] *Id.* at 40.

[16] *Id.* at 41-49.

[17] *Id.* at 53-62.

by the complainant clearly and convincingly proved that respondent Atty. Puno's act of continuously ignoring the direct orders of the trial court to submit the Affidavit of Publication sans satisfying explanation by Atty. Puno for his failure to do so despite repeated demands is evocative of this gross misconduct. x x x.

xxx xxx xxx

Yet in spite of said directive and final Notice, the records of the case, particularly the subsequent June 3, 2009 Order of the trial court dismissing the case under Rule 17, Section 3 of the Rules of Court shows the respondent's failure to comply. This deliberate and patent non-compliance [with] the trial court's Orders is in direct violation of the Lawyer's Oath i.e., to "obey the laws as well as the legal orders of the duly constituted authorities therein."

Moreover, the Code of Professional Responsibility clearly mandates for every lawyer to "serve his client with competence and diligence." In fact, Rule 18.04 of Canon 18 states that: "A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information." Time and time again the Supreme Court has held that "as an officer of the court, it is the duty of an attorney to inform his client of whatever information he may have acquired which is important that the client should have knowledge of. He should notify his client of any adverse decision to enable his client to decide whether to seek an appellate review thereof. Keeping the client informed of the developments of the case will minimize misunderstanding and los[s] of trust and confidence in the attorney."[18]

While Atty. Puno failed to file any pleadings with the IBP, the Investigating Commissioner still took note of the argument raised by Atty. Puno during the Mandatory Conference — that Tiburdo was not the proper party to this disbarment case. In addressing this issue, the Investigating Commissioner held:

The respondent's query on proper standing is of no moment. "Rule 139.B, Section 1 of the Rules of Court state[s] that: Proceedings for disbarment, suspension or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person."

---

[18] *Id.* at 59-61.

Correspondingly, the Supreme Court in the case of *Navarro v. Meneses III*, as reiterated in *Ilusorio-Bildner v. Lokin*, held that: "x x x The right to institute a disbarment proceeding is not confined to clients nor is it necessary that the person complaining suffered injury from the alleged wrongdoing. Disbarment proceedings are matters of public interest and the only basis for judgment is the proof or failure of proof of the charges. The evidence submitted by complainant before the Commission on Bar Discipline sufficed to sustain its resolution and recommended sanctions."[19]

Finding Atty. Puno guilty of gross misconduct, the Investigating Commissioner made the following recommendation:

WHEREFORE, in view of the foregoing, it is respectfully recommended that Atty. Benigno M. Puno be SUSPENDED from [the] practice of law for three (3) months for gross misconduct under Rule 138, Section 27 of the Rules of Court in connection with the express mandate of the Lawyer's Oath of obeying the legal orders of the duly constituted authorities, herein Regional Trial Court of Quezon Branch 61 to file the Affidavit of Publication and of Canon 18, Rule 18.04 of the Code of Professional Responsibility for his failure to timely and immediately apprise his client of the adverse decision regarding their case.[20]

In Resolution No. XX-2012-583 dated 29 December 2012, the Board of Governors of the IBP adopted and approved, with modification, the Report and Recommendation of the Investigating Commissioner:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, with modification, 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 considering that Respondent violated Rule 138, Section 27 of the Rules of Court and Canon 18, Rule 18.04 of the Code of Professional Responsibility, Atty. Benigno M. Puno is hereby ADMONISHED with Warning

---

[19] *Id.* at 57.

[20] *Id.* at 62.

that repetition of the same of [sic] similar acts shall be dealt with more severely.[21]

On 22 March 2013, Atty. Puno filed a Motion for Reconsideration arguing that the IBP failed to include his defense that he was no longer the counsel of Marquard when the RTC issued the orders. He alleged that he had no more obligation to interfere in the cases:

> x x x [T]he ground that the RECOMMENDATION upon which the said Resolution is based had OMITTED herein respondent's DEFENSE that he was already UNCEREMONIOUSLY REMOVED as counsel of the complainant in the several cases in one of which, the trial Court [sic] had dismissed one of the complainant's Complaint in which respondent had no more obligation to interfere in said cases in which he was already DISCHARGED from handling said case as early as April 13, 2009.[22]

To support his argument, Atty. Puno attached the letter of Tiburdo dated 13 April 2009,[23] terminating his services as counsel for Marquard. Atty. Puno also attached his Position Paper[24] for CBD Case No. 10-2586[25] where he argued, among others, that: (1) Tiburdo had no personal knowledge of the facts complained of and thus had no cause of action against him; and (2) he was already "unceremoniously, unjustifiably discharged or terminated, in an uncivilized way" before the Civil Case was dismissed.

On 2 May 2014, the Board of Governors of the IBP denied the Motion for Reconsideration of Atty. Puno and adopted the recommendation of the Investigating Commissioner suspending him from the practice of law for three (3) months:

> RESOLVED, to DENY Respondent's Motion for Reconsideration, finding gross misconduct on his part. Thus, the Board hereby SET

---

[21] *Id.* at 52.

[22] *Id.* at 63.

[23] *Id.* at 66.

[24] *Id.* at 67-78.

[25] Entitled "*Gerd Robert Marquard, represented by Loida Marquard and Rudina L. Tiburdo v. Benigno M. Puno*."

ASIDE Resolution No. XX-2012-583 dated December 29, 2012 and ADOPT and APPROVE the Report and Recommendation of the Investigating Commissioner SUSPENDING Atty. Benigno M. Puno from the practice of law for three (3) months.[26]

The Ruling of the Court

The Court finds the report of the IBP in order, with modification as to the penalty.

On a preliminary note, we agree with the report of the Investigating Commissioner as to proper standing. While Tiburdo did not present any evidence to prove that she was indeed the attorney-in-fact of Marquard, this does not affect a disbarment case. We have held time and again that the right to institute disbarment proceedings is not confined to clients nor is it necessary that the complainant suffered injury from the alleged wrongdoing.[27] As explained in *Rayos-Ombac v. Rayos*:[28]

> A proceeding for suspension or disbarment is not in any sense a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.

Thus, it is of no moment that Tiburdo was not Atty. Puno's client in the Civil Case. What matters is whether or not the acts complained of are proven by the evidence on record.

---

[26] *Rollo*, p. 99.

[27] *Figueras v. Jimenez*, A.C. No. 9116, 12 March 2014, 718 SCRA 450, citing *Heck v. Judge Santos*, 467 Phil. 798, 822 (2004). See also *Agno v. Cagatan*, 580 Phil. 1 (2008), citing *Navarro v. Meneses III*, 349 Phil. 520 (1998) and *Ilusorio-Bildner v. Lokin, Jr.*, 514 Phil. 15 (2005).

[28] 349 Phil. 7, 15 (1998).

Failure to obey RTC orders to present Affidavit of Publication

On several occasions, the RTC ordered Atty. Puno to produce the necessary Affidavit of Publication. We note that based on the records, the affidavit had already been duly executed and Atty. Puno merely had to present the same to the court.[29] However, despite repeated orders from the trial court, he failed to present such affidavit.

Lawyers, as officers of the court, are particularly called upon to obey court orders and processes and are expected to stand foremost in complying with court directives.[30] The Lawyer's Oath expressly mandates lawyers to obey the legal orders of the duly constituted authorities. In this case, Atty. Puno was mandated, in accordance with his lawyer's oath and duty to the courts, to obey the orders of the RTC and submit the necessary documents accordingly. This he repeatedly failed to do.

This Court has held that a lawyer's failure to file the required pleadings on behalf of his client constitutes gross negligence in violation of the Code of Professional Responsibility and subjects him to disciplinary action.[31] Analogously, Atty. Puno's repeated failure to produce the necessary Affidavit of Publication, in accordance with the orders of the court, should render him liable for the proper penalty.

Failure to inform client; Withdrawal as counsel

Aside from Atty. Puno's failure to obey the orders of the court and present the necessary affidavit, he also failed to perform his duty to inform his client of the dismissal of the Civil Case. Rule 18.04 of the Code of Professional Responsibility provides that "a lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information." The records show that the office of

---

[29] *Rollo*, p. 26.

[30] *Sibulo v. Ilagan*, 486 Phil. 197, 203-304 (2004).

[31] *Tejano v. Baterina*, A.C. No. 8235, 27 January 2015, citing *Villaflores v. Limos*, 563 Phil. 453, 463 (2007).

Atty. Puno duly received the Order of the RTC dismissing the Civil Case.[32] However, he never informed Marquard or Tiburdo of the Order, causing such dismissal to attain finality. Atty. Puno merely argues that he had no responsibility to interfere in the case as he was no longer the counsel of Marquard.

The records are bereft, however, of any indication that Atty. Puno has indeed withdrawn himself as counsel for Marquard in the Civil Case. Until the withdrawal of a counsel has been approved by the court, he remains counsel of record and is expected by his client, as well as by the court, to do what the interests of his client require.[33] This Court has held that the attorney-client relation does not terminate formally until there is a withdrawal of his appearance on record.[34] Based on the records, it seems that Atty. Puno never filed such withdrawal with the court — he merely relies on the letter of Tiburdo terminating his services to support his argument that he was no longer the counsel for Marquard. However, to the courts, the letter is not enough to severe their attorney-client relationship. Until the withdrawal as counsel is made of record, any judicial notice sent to the counsel is binding upon the client, even though as between them, the professional relationship may have been terminated.[35]

The Order of the RTC dismissing the Civil Case has been sent accordingly to Atty. Puno.[36] Despite receipt of this Order, Atty. Puno failed to inform Marquard that the case has been dismissed. If he truly considered himself discharged as counsel, it is with more reason that Atty. Puno should have informed Marquard of the dismissal, to enable the latter and his new counsel to take the necessary and appropriate actions, if any. This Court has held that a lawyer mindful of the interest of his client should inform his client of the court's order addressed to

---

[32] *Rollo*, p. 28.

[33] *Orcino v. Atty. Gaspar*, 344 Phil. 792 (1997).

[34] *Anastacio-Briones v. Atty. Zapanta*, 537 Phil. 218 (2006).

[35] *Aromin v. Boncavil*, 373 Phil. 612 (1999).

[36] *Rollo*, p. 28.

him, especially if he considered himself discharged, in order for the client and the new counsel to be guided accordingly.[37]

Proper Penalty

The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[38] In previous cases, when a lawyer ignores the lawful orders of duly constituted authorities, as required by the Lawyer's Oath, this Court imposed the penalty of suspension when the lawyer is also guilty of violating his duties as a lawyer.[39] Atty. Puno, in addition to his non-compliance with the orders of the RTC, also violated his duty to inform his client of the status of the case. In analogous cases where lawyers failed in their duty to inform their clients of the status of their cases, we have meted out the penalty of suspension, usually for a period of six (6) months.[40]

In this case, however, a more severe sanction is required. We note that this is not the first instance that Atty. Puno has been suspended by this Court. On 17 April 2013, Atty. Puno was suspended from the practice of law for a period of one (1) year, as Atty. Puno misrepresented himself to the courts that he had authority to appear on behalf of the complainant therein, Julian M. Tallano, when he did not possess such authority.[41] Atty. Puno was found guilty for violations of Section 27, Rule 138 of the Rules of Court[42] and Rule 10.01[43] of Canon 10 of the Code of Professional Responsibility.

---

[37] *Anastacio-Briones v. Atty. Zapanta*, *supra*.

[38] *Id.*

[39] *Sibulo v. Ilagan*, *supra* note 30.

[40] *Tan v. Diamante*, A.C. No. 7766, 5 August 2014, 732 SCRA 1, citing *Atty. Mejares v. Atty. Romana*, 469 Phil. 619 (2004) and *Penilla v. Alcid, Jr.*, A.C. No. 9149, 4 September 2013, 705 SCRA 1.

[41] See *Julian M. Tallano v. Atty. Benigno M. Puno*, A.C. No. 6512, 17 April 2013.

[42] *Supra* note 12.

[43] 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 mislead by any artifice.

Taking into consideration the facts in this case, as well as his previous violations of the Rules of Court and the Code of Professional Responsibility, this Court deems it proper to impose on Atty. Puno a longer suspension period of one (1) year.

WHEREFORE, we find Atty. Benigno M. Puno **GUILTY** of gross misconduct. Accordingly, we **SUSPEND** him from the practice of law for one (1) year. He is **STERNLY WARNED** that a repetition of the same or similar act in the future shall merit a more severe sanction.

This Decision shall take effect immediately upon receipt by Atty. Benigno M. Puno of a copy of this Decision. Atty. Puno shall inform this Court and the Office of the Bar Confidant in writing of the date he received a copy of this Decision. Copies of this Decision shall be furnished the Office of the Bar Confidant, to be appended to respondent's personal record, and the Integrated Bar of the Philippines.

The Office of the Court Administrator is directed to circulate copies of this Decision to all courts.

SO ORDERED.

Brion, del Castillo, Mendoza, and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 175869. April 18, 2016]

ROBINA FARMS CEBU/UNIVERSAL ROBINA CORPORATION, *petitioner, vs.* **ELIZABETH VILLA,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; AMENDED NATIONAL LABOR RELATIONS COMMISSION (NLRC) RULES OF PROCEDURE; THE VERIFICATION IS A MERE FORMAL REQUIREMENT INTENDED TO SECURE AND TO GIVE ASSURANCE THAT THE MATTER ALLEGED IN THE PLEADING ARE TRUE AND CORRECT; SUBSTANTIAL COMPLIANCE IN CASE AT BAR.—** Section 4(a), Rule VI of the *Amended NLRC Rules of Procedure* requires an appeal to be verified by the appellant herself. The verification is a mere formal requirement intended to secure and to give assurance that the matters alleged in the pleading are true and correct. The requirement is complied with when one who has the ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, or when the matters contained in the petition have been alleged in good faith or are true and correct. Being a mere formal requirement, the courts may even simply order the correction of improperly verified pleadings, or act on the same upon waiving the strict compliance with the rules of procedure. It is the essence of the *NLRC Rules of Procedure* to extend to every party-litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Accordingly, the substantial compliance with the procedural rules is appreciated in favor of Villa.

2. **ID.; ID.; THE FILING OF THE CERTIFICATION OF NON-FORUM SHOPPING WITH THE INITIATORY PLEADING WAS MANDATORY AND THE FAILURE TO DO SO COULD NOT BE CURED BY A LATER SUBMISSION.—** The filing of the certification with the initiatory pleading was mandatory, and the failure to do so could not be cured by a later submission. The non-submission of the certification, being a ground for dismissal, was fatal to the petition. There is no question that the non-compliance with the requirement for the certification, or a defect in the certification, would not be cured by the subsequent submission or the correction of the certification, except in cases of substantial compliance or upon compelling reasons.

3. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETIREMENT; IN CASE OF EARLY RETIREMENT PROGRAMS, THE OFFER OF BENEFITS MUST BE CERTAIN WHILE THE ACCEPTANCE TO BE RETIRED SHOULD BE ABSOLUTE; RATIONALE.— Retirement is the result of a bilateral act of both the employer and the employee based on their *voluntary* agreement that upon reaching a certain age, the employee agrees to sever his employment. The difficulty in the case of Villa arises from determining whether the retirement was voluntary or involuntary. The line between the two is thin but it is one that the Court has drawn. On one hand, voluntary retirement cuts the employment ties leaving no residual employer liability; on the other, involuntary retirement amounts to a discharge, rendering the employer liable for termination without cause. The employee's intent is decisive. In determining such intent, the relevant parameters to consider are the fairness of the process governing the retirement decision, the payment of stipulated benefits, and the absence of badges of intimidation or coercion. In case of early retirement programs, the offer of benefits must be certain while the acceptance to be retired should be absolute. The acceptance by the employees contemplated herein must be explicit, voluntary, free and uncompelled.

4. ID.; ID.; WORKING CONDITIONS; OVERTIME PAY; ENTITLEMENT TO OVERTIME PAY MUST FIRST BE ESTABLISHED BY PROOF THAT THE OVERTIME WORK WAS ACTUALLY PERFORMED BEFORE THE EMPLOYEE MAY PROPERLY CLAIM THE BENEFIT; NOT ESTABLISHED IN CASE AT BAR.— Entitlement to overtime pay must first be established by proof that the overtime work was actually performed before the employee may properly claim the benefit. The burden of proving entitlement to overtime pay rests on the employee because the benefit is not incurred in the normal course of business. Failure to prove such actual performance transgresses the principles of fair play and equity. x x x The NLRC's reliance on the daily time records (DTRs) showing that Villa had stayed in the company's premises beyond eight hours was misplaced. The DTRs did not substantially prove the actual performance of overtime work. The petitioner correctly points out that any employee could render overtime work only when there was a

prior authorization therefor by the management. Without the prior authorization, therefore, Villa could not validly claim having performed work beyond the normal hours of work.

5. ID.; ID.; ID.; SERVICE INCENTIVE LEAVE PAY; THE EMPLOYER IS OBLIGED TO PROVE THAT IT FULLY PAID THE ACCRUED SERVICE INCENTIVE LEAVE PAY TO THE EMPLOYEE; RATIONALE.— Although the grant of vacation or sick leave with pay of at least five days could be credited as compliance with the duty to pay service incentive leave, the employer is still obliged to prove that it fully paid the accrued service incentive leave pay to the employee. The Labor Arbiter originally awarded the service incentive leave pay because the petitioner did not present proof showing that Villa had been justly paid. The petitioner submitted the affidavits of Zanoria explaining the payment of service incentive leave after the Labor Arbiter had rendered her decision. But that was not enough, for evidence should be presented in the proceedings before the Labor Arbiter, not after the rendition of the adverse decision by the Labor Arbiter or during appeal. Such a practice of belated presentation cannot be tolerated because it defeats the speedy administration of justice in matters concerning the poor workers.

APPEARANCES OF COUNSEL

Wee Lim & Salas Law Firm for petitioner.
Nathaniel N. Clarus for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The employer appeals the decision promulgated on September 27, 2006,[1] whereby the Court of Appeals (CA) dismissed its petition for *certiorari* and affirmed with modification the adverse

[1] *Rollo*, pp. 48-60: penned by Associate Justice Marlene Gonzales-Sison, with the concurrence of Associate Justice Arsenio J. Magpale (retired/deceased) and Associate Justice Antonio L. Villamor (retired).

decision of the National Labor Relations Commission (NLRC) declaring it liable for the illegal dismissal of respondent employee.

Antecedents

Respondent Elizabeth Villa brought against the petitioner her complaint for illegal suspension, illegal dismissal, nonpayment of overtime pay, and nonpayment of service incentive leave pay in the Regional Arbitration Branch No. VII of the NLRC in Cebu City.

In her verified position paper,[2] Villa averred that she had been employed by petitioner Robina Farms as sales clerk since August 1981; that in the later part of 2001, the petitioner had enticed her to avail herself of the company's special retirement program; that on March 2, 2002, she had received a memorandum from Lily Ngochua requiring her to explain her failure to issue invoices for unhatched eggs in the months of January to February 2002; that she had explained that the invoices were not delivered on time because the delivery receipts were delayed and overlooked; that despite her explanation, she had been suspended for 10 days from March 8, 2002 until March 19, 2002; that upon reporting back to work, she had been advised to cease working because her application for retirement had already been approved; that she had been subsequently informed that her application had been disapproved, and had then been advised to tender her resignation with a request for financial assistance; that she had manifested her intention to return to work but the petitioner had confiscated her gate pass; and that she had since then been prevented from entering the company premises and had been replaced by another employee.

The petitioner admitted that Villa had been its sales clerk at Robina Farms. It stated that on December 12, 2001, she had applied for retirement under the special privilege program offered to its employees in Bulacan and Antipolo who had served for at least 10 years; that in February 2002, her attention had been called by Anita Gabatan of the accounting department to explain

---

[2] *Id.* at 103-109.

her failure to issue invoices for the unhatched eggs for the month of February; that she had explained that she had been busy; that Gabatan had referred the matter to Florabeth Zanoria who had in turn relayed the matter to Ngochua; and that the latter had then given Villa the chance to explain, which she did.

The petitioner added that after the administrative hearing Villa was found to have violated the company rule on the timely issuance of the invoices that had resulted in delay in the payment of buyers considering that the payment had depended upon the receipt of the invoices; that she had been suspended from her employment as a consequence; that after serving the suspension, she had returned to work and had followed up her application for retirement with Lucina de Guzman, who had then informed her that the management did not approve the benefits equivalent to 86% of her salary rate applied for, but only ½ month for every year of service; and that disappointed with the outcome, she had then brought her complaint against the petitioners.[3]

Ruling of the Labor Arbiter

On April 21, 2003, Labor Arbiter Violeta Ortiz-Bantug rendered her decision[4] finding that Villa had not been dismissed from employment, holding thusly:

> Complainant's application, insofar the benefits are concerned, was not approved which means that while her application for retirement was considered, management was willing to give her retirement benefits equivalent only to half-month pay for every year of service and not 86% of her salary for every year of service as mentioned in her application. Mrs. De Guzman suggested that if she wanted to pursue her supposed retirement despite thereof, she should submit a resignation letter and include therein a request for financial assistance. We do not find anything illegal or violative in the suggestion made by Mrs. De Guzman. There was no compulsion since the choice was left entirely to the complainant whether to pursue it or not.[5]

---

[3] *Id.* at 86-87.

[4] *Id.* at 85-93.

[5] *Id.* at 89-90.

Although ordering Villa's reinstatement, the Labor Arbiter denied her claim for backwages and overtime pay because she had not adduced evidence of the overtime work actually performed. The Labor Arbiter declared that Villa was entitled to service incentive leave pay for the period of the last three years counted from the filing of her complaint because the petitioner did not refute her claim thereon. Thus, the Labor Arbiter disposed as follows:

> **WHEREFORE**, premises considered, judgment is hereby rendered ordering respondents ROBINA FARMS CEBU (a Division of UNIVERSAL ROBINA CORPORATION) and LILY NGOCHUA to REINSTATE complainant to her former position without loss of seniority rights and privileges within ten (10) days from receipt of this decision but without payment of backwages. Respondents are also ordered to pay complainant SEVEN THOUSAND ONE HUNDRED NINETY FOUR PESOS (₱7,194.00) as service incentive leave pay benefits.
>
> The other claims are dismissed for lack of merit.
>
> SO ORDERED.[6]

The parties respectively appealed to the NLRC.

Judgment of the NLRC

On February 23, 2005, the NLRC rendered its judgment dismissing the appeal by the petitioner but granting that of Villa,[7] to wit:

> **WHEREFORE**, premises considered, the appeal of respondents is hereby **DISMISSED** for non-perfection while the appeal of complainant is hereby **GRANTED**. The decision of the Labor Arbiter is **REVERSED** and **SET ASIDE**; and a new one **ENTERED** declaring complainant to have been illegally dismissed. Consequently, respondents are hereby directed to immediately reinstate complainant to her former position without loss of seniority rights and other privileges within ten (10) days from receipt of this decision and to pay complainant the following sums, to wit:

---

[6] *Id.* at 92.

[7] *Id.* at 117-130.

1. Backwages	-	₱119,900.00
2. SILP	-	₱ 7,194.00
3. Overtime Pay	-	₱ 3,445.00
Total		₱130,539.01
4. Attorney's fees (10%)		13,053.90
Grand Total		**₱143,592.91**

SO ORDERED.[8]

According to the NLRC, the petitioner's appeal was fatally defective and was being dismissed outright because it lacked the proper verification and certificate of non-forum shopping. The NLRC held the petitioner liable for the illegal dismissal of Villa, observing that because Villa's retirement application had been subject to the approval of the management, her act of applying therefor did not indicate her voluntary intention to sever her employment relationship but only her opting to retire by virtue of her having qualified under the plan; that upon informing her about the denial of her application, the petitioner had advised her to tender her resignation and to request for financial assistance; that although she had signified her intention to return to work, the petitioner had prevented her from doing so by confiscating her gate pass and informing her that she had already been replaced by another employee; and that the petitioner neither disputed her allegations thereon, nor adduced evidence to controvert the same.[9]

After the denial of its motion for reconsideration,[10] the petitioner filed a petition for *certiorari* in the CA.

Decision of the CA

The petitioner alleged in its petition for *certiorari* the following jurisdictional errors of the NLRC, to wit:

---

[8] *Id.* at 130.

[9] *Id.* at 117-130.

[10] *Id.* at 137-141.

I

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT DISMISSED PETITIONERS APPEAL MEMORANDUM ON A MERE TECHNICALITY AND NOT RESOLVE IT ON THE MERITS.

II.

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT DID NOT DISMISS PRIVATE RESPONDENT'S MEMORANDUM ON APPEAL EVEN THOUGH IT LACKED THE PROPER VERIFICATION AND PROCEEDED TO RESOLVE HER APPEAL ON THE MERITS.

III.

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT RULED THAT THERE WAS ILLEGAL DISMISSAL AND THAT PRIVATE RESPONDENT BE IMMEDIATELY REINSTATED WITHOUT LOSS OF SENIORITY RIGHTS.

IV.

PUBLIC RESPONDENT NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT DIRECTED PETITIONERS INCLUDING PETITIONER LILY NGOCHUA TO PAY PRIVATE RESPONDENT BACKWAGES, SERVICE INCENTIVE LEAVE PAY, OVERTIME PAY AND ATTORNEY'S FEES.[11]

On September 27, 2006, the CA promulgated its assailed decision dismissing the petition for *certiorari*,[12] decreeing as follows:

WHEREFORE, premises considered, the instant petition is hereby ordered **DISMISSED** for lack of merit. The assailed decision is **AFFIRMED** with **MODIFICATION**, in that petitioner Lily Ngochua

---

[11] *Id.* at 52-53.

[12] *Supra* note 1.

should not be held liable with petitioner corporation. The other aspects of the assailed decision remains. Consequently, the prayer for a temporary restraining order and/or preliminary injunction is **NOTED**.

SO ORDERED.[13]

The CA treated the petitioner's appeal as an unsigned pleading because the petitioner did not present proof showing that Florabeth P. Zanoria, its Administrative Officer and Chief Accountant who had signed the verification, had been authorized to sign and file the appeal. It opined that the belated submission of the secretary's certificate showing the authority of Bienvenido S. Bautista to represent the petitioner, and the special power of attorney executed by Bautista to authorize Zanoria to represent the petitioner did not cure the defect. It upheld the finding of the NLRC that the petitioner had illegally dismissed Villa. It deemed the advice by Ngochua and de Guzman for Villa to resign and to request instead for financial assistance was a strong and unequivocal indication of the petitioner's desire to sever the employer-employee relationship with Villa.

The CA later denied the motion for reconsideration.[14]

Issues

Hence, this appeal in which the petitioner submits that:

I

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT DID NOT RULE THAT THERE WAS NO VERIFICATION ATTACHED TO RESPONDENT VILLA'S NOTICE OF APPEAL AND MEMORANDUM ON APPEAL DATED MAY 29, 2003 AND THAT IT WAS AN UNSIGNED PLEADING AND WITHOUT LEGAL EFFECT, MOREOVER, IT COMMITTED UNFAIR TREATMENT.

II

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT DID NOT RULE THAT THE NATIONAL LABOR

---

[13] *Id.* at 59-60.

[14] *Id.* at 62-63.

RELATIONS COMMISSION FOURTH DIVISION HAD NO JURISDICTION TO REVERSE AND SET ASIDE THE DECISION OF THE LABOR ARBITER DATED APRIL 21, 2003 WHICH HAD ALREA[D]Y BECOME FINAL AND IMMUTABLE AS FAR AS RESPONDENT IS CONCERNED.

III

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT COMMITTED MISAPPREHENSION OF THE FACTS AND ISSUED ITS DECISION AND RESOLUTION CONTRARY TO THE EVIDENCE ON RECORD AND FINDINGS OF THE LABOR ARBITER.[15]

Ruling of the Court

The appeal lacks merit.

The petitioner prays that Villa's appeal should be treated as an unsigned pleading because she had accompanied her appeal with the same verification attached to her position paper.

The petitioner cannot be sustained. The NLRC justifiably gave due course to Villa's appeal.

Section 4 (a), Rule VI of the *Amended NLRC Rules of Procedure* requires an appeal to be verified by the appellant herself. The verification is a mere formal requirement intended to secure and to give assurance that the matters alleged in the pleading are true and correct. The requirement is complied with when one who has the ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, or when the matters contained in the petition have been alleged in good faith or are true and correct.[16] Being a mere formal requirement, the courts may even simply order the correction of improperly verified pleadings, or act on the same upon waiving

---

[15] *Id.* at 27.

[16] *Jacinto v. Gumaru, Jr.*, G.R. No. 191906, June 2, 2014, 724 SCRA 343, 356; *Altres v. Empleo*, G.R. No. 180986, December 10, 2008, 573 SCRA 583, 597.

the strict compliance with the rules of procedure.[17] It is the essence of the *NLRC Rules of Procedure* to extend to every party-litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[18] Accordingly, the substantial compliance with the procedural rules is appreciated in favor of Villa.

We cannot rule in the same way for the petitioner. For one, it belatedly submitted proof of Zanoria's authority to verify the pleading for the petitioner. Also, it did not submit the certification of non-forum shopping at the time of the filing of the appeal. The filing of the certification with the initiatory pleading was mandatory, and the failure to do so could not be cured by a later submission.[19] The non-submission of the certification, being a ground for dismissal, was fatal to the petition. There is no question that the non-compliance with the requirement for the certification, or a defect in the certification, would not be cured by the subsequent submission or the correction of the certification, except in cases of substantial compliance or upon compelling reasons.[20] Accordingly, the dismissal of the petitioner's appeal cannot be reversed or undone.

The petitioner next submits that the CA erred in holding that Villa had been illegally dismissed; that it had no intention to terminate her; that de Guzman had merely suggested to her that she should be filing the letter of resignation with the request for financial assistance because the management had disapproved her application for the 86% salary rate as basis for her retirement benefits; that it was Villa who had the intention to sever the employer-employee relationship because she had kept on following up her application for retirement; that she had prematurely filed the complaint for illegal dismissal; that she had voluntarily opted

---

[17] *Panaguiton, Jr. v. Department of Justice*, G.R. No. 167571, November 25, 2008, 571 SCRA 549, 557.

[18] *Mangali v. Court of Appeals*, August 21, 1980, 99 SCRA 236, 247.

[19] Section 5, Rule 7, 1997 Rules of Procedure; See *Fuji Television Network, Inc. v. Espiritu*, G.R. Nos. 204944-45, December 3, 2014, 744 SCRA 31, 52.

[20] *Jacinto v. Gumaru, Jr.*, *supra* note 16, at 344.

not to report to her work; and that she had not presented proof showing that it had prevented her from working and entering its premises.[21]

The petitioner's submissions are bereft of merit.

We note that the CA and the NLRC agreed on their finding that the petitioner did not admit Villa back to work after the completion of her 10-day suspension. In that regard, the CA observed:

> It is undeniable that private respondent was suspended for ten (10) days beginning March 8, 2002 to March 19, 2002. Ordinarily, after an employee [has] served her suspension, she should be admitted back to work and to continue to receive compensation for her services. ***In the case at bar, it is clear that private respondent was not admitted immediately after her suspension***. Records show that when private respondent reported back after her suspension, she was advised by Lucy de Guzman not to report back anymore as her application was approved, which was latter [sic] on disapproved. It is at this point that, said Lucy de Guzman had advised private respondent to tender a resignation letter with request for financial assistance. Not only Lucy De Guzman has advised her to tender her resignation letter. The letter of petitioner Lily Ngochua dated April 11, 2002 to private respondent which reads:
>
> > "As explained by Lucy de Guzman xxx your request for special retirement with financial assistance of 86%/year of service has not been approved. Because this offer was for employees working in operations department and not in Adm. & Sales.
> >
> > "However, as per Manila Office, you can be given financial assistance of ½ per year of service if you tender letter of resignation with request for financial assistance."
>
> shows that petitioner Lily Ngochua has also advised private respondent to the same. These acts are strong indication that petitioners wanted to severe [sic] the employer-employee relationship between them and that of private respondent. This is buttressed by the fact that when private respondent signified her intention to return back to

---

[21] *Rollo*, pp. 31-33.

work after learning of the disapproval of her application, she was prevented to enter the petitioner's premises by confiscating her ID and informing her that a new employee has already replaced her.

It should be noted that when private respondent averred this statement in her position paper submitted before the Labor Arbiter petitioners did not refute the same. Neither did they contest this allegation in their supposed Appeal Memorandum nor in their Motion for Reconsideration of the assailed decision of public respondent. Basic is the rule that matters not controverted are deemed admitted. To contest this allegation at this point of proceeding is not allowed for it is a settled rule that matters, theories or arguments not brought out in the original proceedings cannot be considered on review or appeal where they are raised for the first time. To consider the alleged facts and arguments raised belatedly would amount to trampling on the basic principles of fair play, justice and due process.[22]

Neither did Villa's application for early retirement manifest her intention to sever the employer-employee relationship. Although she applied for early retirement, she did so upon the belief that she would receive a higher benefit based on the petitioner's offer. As such, her consent to be retired could not be fairly deemed to have been knowingly and freely given.

Retirement is the result of a bilateral act of both the employer and the employee based on their *voluntary* agreement that upon reaching a certain age, the employee agrees to sever his employment.[23] The difficulty in the case of Villa arises from determining whether the retirement was voluntary or involuntary. The line between the two is thin but it is one that the Court has drawn. On one hand, voluntary retirement cuts the employment ties leaving no residual employer liability; on the other, involuntary retirement amounts to a discharge, rendering the employer liable for termination without cause. The employee's intent is decisive. In determining such intent, the relevant parameters to consider are the fairness of the process governing the retirement decision,

---

[22] *Id.* at 55-56.

[23] *Universal Robina Sugar Milling Corporation (URSUMCO) v. Caballeda*, G.R. No. 156644, July 28, 2008, 560 SCRA 115, 132.

the payment of stipulated benefits, and the absence of badges of intimidation or coercion.[24]

In case of early retirement programs, the offer of benefits must be certain while the acceptance to be retired should be absolute.[25] The acceptance by the employees contemplated herein must be explicit, voluntary, free and uncompelled.[26] In *Jaculbe v. Silliman University*,[27] we elucidated that:

> [A]n employer is free to impose a retirement age less than 65 for as long as it has the employees' consent. Stated conversely, **employees are free to accept the employer's offer to lower the retirement age if they feel they can get a better deal with the retirement plan presented by the employer. Thus, having terminated petitioner solely on the basis of a provision of a retirement plan which was not freely assented to by her, respondent was guilty of illegal dismissal**.[28] (bold emphasis supplied)

Under the circumstances, the CA did not err in declaring the petitioner guilty of illegal dismissal for violating Article 282[29] of the *Labor Code* and the twin notice rule.[30]

The petitioner posits that the CA erroneously affirmed the giving of overtime pay and service incentive leave pay to Villa; that she did not adduce proof of her having rendered actual overtime work; that she had not been authorized to render overtime work; and that her availment of vacation and sick leaves that had been paid precluded her claiming the service incentive leave pay.

---

[24] *Quevedo v. Benguet Electric Cooperative, Incorporated*, G.R. No. 168927, September 11, 2001, 599 SCRA 438, 446.

[25] *Korean Air Co., Ltd. v. Yuson*, G.R. No. 170369, June 16, 2010, 621 SCRA 53, 69.

[26] *Cercado v. Uniprom, Inc.*, G.R. No. 188154, October 13, 2010, 633 SCRA 281, 290.

[27] G.R. No. 156934, March 16, 2007, 518 SCRA 445.

[28] *Id.* at 452.

[29] Now Article 297 pursuant to DOLE Advisory Order No. 1, series of 2015.

[30] *Rollo*, p. 58.

We partly agree with the petitioner's position.

Firstly, entitlement to overtime pay must first be established by proof that the overtime work was actually performed before the employee may properly claim the benefit.[31] The burden of proving entitlement to overtime pay rests on the employee because the benefit is not incurred in the normal course of business.[32] Failure to prove such actual performance transgresses the principles of fair play and equity.

And, secondly, the NLRC's reliance on the daily time records (DTRs) showing that Villa had stayed in the company's premises beyond eight hours was misplaced. The DTRs did not substantially prove the actual performance of overtime work. The petitioner correctly points out that any employee could render overtime work only when there was a prior authorization therefor by the management.[33] Without the prior authorization, therefore, Villa could not validly claim having performed work beyond the normal hours of work. Moreover, Section 4 (c), Rule I, Book III of the *Omnibus Rules Implementing the Labor Code* relevantly states as follows:

> Section 4. *Principles in determining hours worked*. — The following general principles shall govern in determining whether the time spent by an employee is considered hours worked for purposes of this Rule:
>
> (a) x x x.
>
> (b) x x x.
>
> (c) If the work performed was necessary, or it benefited the employer, or the employee could not abandon his work at the end of his normal working hours because he had no replacement, **all time spent for such work shall be considered as hours worked, if the work was with the knowledge of his employer or immediate supervisor**. (bold emphasis supplied)

---

[31] *Lagatic v. National Labor Relations Commission*, G.R. No. 121004, January 28, 1998, 285 SCRA 251, 262.

[32] *Loon v. Power Master, Inc.*, G.R. No. 189404, December 11, 2013, 712 SCRA 441, 457.

[33] *Rollo*, p. 36.

(d) x x x.

We uphold the grant of service incentive leave pay.

Although the grant of vacation or sick leave with pay of at least five days could be credited as compliance with the duty to pay service incentive leave,[34] the employer is still obliged to prove that it fully paid the accrued service incentive leave pay to the employee.

The Labor Arbiter originally awarded the service incentive leave pay because the petitioner did not present proof showing that Villa had been justly paid.[35] The petitioner submitted the affidavits of Zanoria explaining the payment of service incentive leave after the Labor Arbiter had rendered her decision.[36] But that was not enough, for evidence should be presented in the proceedings before the Labor Arbiter, not after the rendition of the adverse decision by the Labor Arbiter or during appeal. Such a practice of belated presentation cannot be tolerated because it defeats the speedy administration of justice in matters concerning the poor workers.[37]

WHEREFORE, the Court **DENIES** the petition for review on *certiorari* for lack of merit; **AFFIRMS** the decision promulgated on September 27, 2006 by the Court of Appeals, with the MODIFICATION that the award of overtime pay in favor of respondent Elizabeth Villa is **DELETED**; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J. (*Chairperson*), *Leonardo-de Castro, Perlas-Bernabe,* and *Caguioa, JJ.*, concur.

---

[34] Article 95, *Labor Code.*

[35] *Rollo*, p. 91.

[36] *Id.* at 148-149.

[37] *Filipinas (Pre-fabricated Bldg.) Systems "FILSYSTEMS," Inc. v. National Labor Relations Commission*, G.R. No. 153859, December 11, 2003, 418 SCRA 404, 408.

THIRD DIVISION

[G.R. No. 188145. April 18, 2016]

SPOUSES PRIMO INALVEZ AND JULIANA INALVEZ, *petitioners, vs.* **BAYANG NOOL, ALLAN NOOL AND CELESTINO NOOL,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; CO-OWNERSHIP; A CO-OWNER DOES NOT LOSE HIS PART OF OWNERSHIP OF A CO-OWNED PROPERTY WHEN HIS SHARE IS MORTGAGED BY ANOTHER CO-OWNER WITHOUT THE FORMER'S KNOWLEDGE AND CONSENT; APPLICATION IN CASE AT BAR.— "Co-ownership is a form of trust and every co-owner is a trustee for the others." "Before the partition of a land or thing held in common, no individual or co-owner can claim title to any definite portion thereof. All that the co-owner has is an ideal or abstract quota proportionate share in the entire land or thing." "Should a co-owner alienate or mortgage the co-owned property itself, the alienation or mortgage shall remain valid but only to the extent of the portion which may be allotted to him in the division upon the termination of the co-ownership." "In case of foreclosure, a sale would result in the transmission only of whatever rights the seller had over of the thing sold." Indeed, a co-owner does not lose his part ownership of a co-owned property when his share is mortgaged by another co-owner without the former's knowledge and consent as in the case at bar. The mortgage of the inherited property is not binding against co-heirs who never benefited. As correctly emphasized by the CA, the petitioners' right in the subject property is limited only to their share in the co-owned property. When the subject property was sold to and consolidated in the name of TDB, the latter merely held the subject property in trust for the respondents. When the petitioners and Spouses Baluyot bought back the subject property, they merely stepped into the shoes of TDB and acquired whatever rights and obligations appertain thereto. Be that as it may, the rights of the respondents

as co-owners of the subject property were never alienated despite TDB's consolidation of ownership over the subject property. Neither does the fact that the petitioners succeeded in acquiring back the property from TDB and having a new title issued in their name terminate the existing co-ownership. x x x Since the mortgage of the co-owned property was done without the respondents' consent, they cannot be deemed to have lost their share as a consequence of the subsequent foreclosure and sale of the co-owned property. In the same way, the petitioners, as mere co-owners, had no right to mortgage the entire property for their right to do so is limited only to that portion that may be allotted to them upon termination of the co-ownership.

2. ID.; ID.; LAND REGISTRATION; CERTIFICATE OF TITLE; WHAT CANNOT BE COLLATERALLY ATTACKED IS THE CERTIFICATE OF TITLE AND NOT THE TITLE ITSELF; EXPLAINED; PRESENT IN CASE AT BAR.— The trial court's reliance on the doctrine that mere possession cannot defeat the right of a holder of a registered *Torrens* title over property is misplaced, considering that the respondents were almost deprived of their dominical rights over the said lot through fraud and with evident bad faith on the part of the petitioners. Failure and intentional omission to disclose the fact of actual physical possession by another person during registration proceedings constitutes actual fraud. Likewise, it is fraud to knowingly omit or conceal a fact, upon which benefit is obtained to the prejudice of a third person. Contrary to the petitioners' argument that the respondents' claim is a collateral attack upon their title which is impermissible, the Court had categorically ruled that a resolution on the issue of ownership does not subject the *Torrens* title issued over the disputed realties to a collateral attack. **It must be borne in mind that what cannot be collaterally attacked is the certificate of title and not the title itself.** "Mere issuance of the certificate of title in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate, or that the registrant may only be a trustee, or that other parties may have acquired interest over the property subsequent to the issuance of the certificate of title." The alleged incontrovertibility of title cannot be

successfully invoked by the petitioners because certificates of title merely confirm or record title already existing and cannot be used as a shield for the commission of fraud.

3. ID.; ID.; CO-OWNERSHIP; WHERE THE TRANSFEREES OF AN UNDIVIDED PORTION OF THE LAND ALLOWED A CO-OWNER OF THE PROPERTY TO OCCUPY A DEFINITE PORTION AND HAD NOT DISTURBED THE SAME FOR A PERIOD TOO LONG TO BE IGNORED, THE POSSESSOR IS IN BETTER CONDITION OR RIGHT THAN THE SAID TRANSFEREES; ESTABLISHED IN CASE AT BAR.— It must be noted that since the mortgage and sale of the subject property to the petitioners, the latter had allowed the respondents to occupy that portion allotted to them. Clearly, the petitioners were in possession of the subject property for more than 35 years. However, at no instance during this time did the petitioners, for that matter, question the respondents' right over the subject property. In *Vda. de Cabrera v. CA,* the Court held that where the transferees of an undivided portion of the land allowed a co-owner of the property to occupy a definite portion thereof and had not disturbed the same for a period too long to be ignored, the possessor is in a better condition or right than said transferees. *(Potior est conditio possidentis).* Such undisturbed possession had the effect of a partial partition of the co-owned property which entitles the possessor to the definite portion which he occupies. Conformably, the respondents are entitled to the subject property, having enjoyed uninterrupted possession thereof for more than 35 years.

APPEARANCES OF COUNSEL

Ricardo C. Atienza for petitioners.
Mauricio Law Offices for respondents.

D E C I S I O N

REYES, *J.*:

Assailed in this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated June 19, 2008 and the Resolution[3] dated May 26, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 89378 which reversed and set aside the Decision[4] dated April 3, 2007 in Civil Case No. 02-09 of the Regional Trial Court (RTC) of Camiling, Tarlac, Branch 68.

The Facts

This petition stemmed from a complaint for recovery of possession over a parcel of land covered by Transfer Certificate of Title (TCT) No. 305862[5] with an area of 10.2135 hectares situated at Villa Aglipay, San Jose, Tarlac, filed by Spouses Primo and Juliana Inalvez (Juliana) (petitioners) against Bayang Nool (Bayang), Allan Nool and Celestino Nool (respondents), with the Department of Agrarian Reform Adjudication Board (DARAB).

The records showed that the subject property was originally covered by TCT No. 58398[6] originally registered in the names of Spouses Nicolas and Francisca Nool and Spouses Cornelio and Bayang, with an area of 15.1441 ha. On May 3, 1965, Spouses Cornelio and Bayang sold a large portion of their one-half share of the landholding to the petitioners and Maria Zamora (Zamora), which sale was inscribed on the title as Entry No. 5-4972.[7] Consequently, TCT No. 58398 was cancelled and

---

[1] *Rollo*, pp. 11-47.

[2] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Portia Aliño-Hormachuelos and Estela M. Perlas-Bernabe (now a Member of this Court); *id.* at 49-60.

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

[4] Rendered by Presiding Judge Jose S. Vallo; *id.* at 176-188.

[5] Records, p. 12.

[6] *Id.* at 14.

[7] Dorsal side of Exhibit "C", *id.*

in lieu thereof, TCT No. 58439[8] was issued in the names of the following co-owners: Spouses Nicolas and Francisca (one-half share); Zamora (one-fourth share); Spouses Cornelio and Bayang (one-eighth share); and the petitioners (one-eighth share).[9]

On June 4, 1979, Spouses Nicolas and Francisca sold their entire one-half share over the property in favor of Spouses Abraham and Olivia Macayanan (Spouses Macayanan), which sale was inscribed on the title as Entry No. E-19-7847.[10] Then, on April 16, 1980, the new set of owners, namely, Spouses Macayanan, Zamora, Spouses Cornelio and Bayang, and the petitioners executed a Real Estate Mortgage[11] (REM) over the whole property in favor of Tarlac Development Bank (TDB) to secure a loan of ₱10,000.00.[12]

Unfortunately, the mortgage was foreclosed, and the title to the subject property was consolidated with TDB, together with the corresponding issuance of TCT No. 188251.[13] On April 17, 1985, TDB sold the parcel of land to the petitioners and Spouses Jim and Liberty Baluyot (Spouses Baluyot).[14] Hence, TCT No. 188251 was cancelled and TCT No. 188252[15] was issued in the names of the petitioners and Spouses Baluyot.[16] Meanwhile, the respondents continued possession of the subject lot.

On October 3, 1991, pursuant to an Agreement of Subdivision,[17] the property was subdivided as follows: Lot 1 with 138,734 square meters to the petitioners, and Lots 2 and 3 with 10,000

---

[8] *Id.* at 15-16.

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

[10] Dorsal side of Exhibit "D", records, p. 15.

[11] Exhibit "E", *id.* at 17-20.

[12] *Rollo*, pp. 50-51.

[13] Exhibit "G", records p. 22.

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

[15] *Id.* at 25-26.

[16] *Rollo*, p. 51.

[17] Records, p. 27.

sq.m. and 2,707 sq.m. respectively, to Spouses Baluyot. The portion pertaining to the petitioners was separately titled under TCT No. 260916, and was later replaced by TCT No. 262142,[18] showing that the original area of 138,734 sq.m. had been reduced to 133,809 sq.m.[19]

On March 24, 1998, the petitioners caused their property to be subdivided into nine sub-lots, by virtue of which subdivision, TCT No. 262142 was cancelled and new titles were issued, namely, TCT Nos. 305854 to 305862. The petitioners also declared the property for tax purposes.[20]

On June 16, 2000, the petitioners instituted a complaint for ejectment, collection of shares and damages, against the respondents before the DARAB-Region III docketed as DARAB Case No. III-T-1952-00. The petitioners alleged that since Bayang is Juliana's sister, they allowed the respondents to cultivate 2-ha portion of the subject property covered by TCT No. 305862,[21] with an area of 102,135 sq.m. with the obligation to share the landowners 25% of the harvest proceeds thereof. The respondents' cultivation thereof was purportedly conditioned upon the payment to the petitioners of a rightful share in the produce. Thus, when the respondents failed to fulfil their undertaking, the petitioners instituted an ejectment complaint against them.[22]

For her part, Bayang averred that she and her late husband were the actual and registered co-owners of the subject property, which they inherited from her father, together with the petitioners. Bayang denied having sold portions of their property to the petitioners and Zamora. She also disclaimed knowledge as to how their original title was replaced by TCT No. 58439 showing the acquisition by the petitioners of one-eight portion of the property and the corresponding reduction of their share. She

---

[18] Exhibit "K", *id.* at 28-29.

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

[20] *Id.* at 52.

[21] Records, p. 12.

[22] *Rollo*, pp. 92-93.

further denied having signed any document consenting to the mortgage of the subject property and refuted the genuineness of her husband's signature as appearing on the REM executed with TDB. Lastly, the respondents argued that they are deemed to have already acquired the subject property through ordinary acquisitive prescription since they have been in open, continuous and exclusive possession of the subject property for more than 30 years.[23]

On January 14, 2002, the DARAB dismissed the case upon finding that no tenancy relationship exists between the parties.[24] Dissatisfied, the petitioners filed a complaint for recovery of possession, damages with an application for preliminary injunction[25] against the respondents before the RTC of Camiling, Tarlac docketed as Civil Case No. 02-09. The case was raffled to Branch 68.

After trial, the court *a quo* rendered its judgment in favor of the petitioners.[26] The trial court dismissed the respondents' claim of ownership over the subject property taking note of the sale and transfer effected by Spouses Cornelio and Bayang over a large portion of their inherited property in favor of Zamora and the petitioners. Thus:

WHEREFORE, judgment is hereby rendered in favor of the [petitioners], as follows:

1. Ordering [the respondents] and all persons allowed by them to vacate the subject portion of the lot in suit presently covered by TCT No. 305862;

2. Ordering [the respondents], jointly and severally[,] to pay the [petitioners] Ph[P]500.00 a month from each of them as reasonable compensation for the use of the subject property from the time of the filing of this Complaint until possession is fully restored to [the petitioners];

---

[23] *Id.* at 53.

[24] Rendered by Regional Adjudicator Fe Arche Manalang; *id.* at 92-101.

[25] *Id.* at 65-75.

[26] *Id.* at 176-188.

3. Ordering the [respondents], jointly and severally[,] to pay [the petitioners] the sum of Ph[P]25,000.00 as attorney's fees; [and]

4. Cost of suit.

The award of other damages are [sic] not granted for not being prayed for and for lack of adequate proofs.

SO ORDERED.[27]

On appeal,[28] the CA reversed and set aside the RTC decision and dismissed the complaint for recovery of possession upon finding that a co-ownership existed between the parties.[29] The CA faulted the trial court for relying on the fact that the petitioners are the present registered owners of the property and in consequently ruling that they can recover possession of the portion occupied by the respondents ratiocinating that registration does not vest ownership but is intended to merely confirm and register title which one may have on the land. The CA also gave credence to the respondents' claim of forgery with respect to the signature of Spouses Cornelio and Bayang on the REM. The CA then ruled that:

Since [the petitioners'] act of mortgaging the property without the consent of [the respondents] did not terminate the existing co-ownership, [the respondents] cannot be deemed to have lost their part ownership in the property even by reason of the eventual foreclosure and consolidation of title in the name of [TDB]. x x x Similarly, x x x, [TDB] never acquired registrable title over that portion pertaining to [the respondents] but simply held the same in trust for the latter. Hence, when the [petitioners] subsequently bought the property from [TDB] they are deemed to have acquired no more than the rights and obligations that the bank had over the property to begin with. Putting it lightly, [the petitioners] did not acquire title to the subject property because they merely stepped into the shoes of [TDB] and acquired no more than what the latter could

---

[27] *Id.* at 187-188.

[28] *Id.* at 189-211.

[29] *Id.* at 49-60.

transfer to them in the first place. Evidently, [the petitioners] cannot be allowed to profit from their own illegal and fraudulent act of mortgaging [the respondents'] share without the latter's knowledge and consent.[30]

The petitioners moved for reconsideration[31] but it was denied,[32] hence, this petition.

The Issue

The main issue before this Court is whether a co-ownership exists between the petitioners and the respondents.

Ruling of the Court

The petition has no merit.

At the outset, it bears to emphasize that there is no dispute with respect to the fact that no tenancy or agricultural leasehold relationship existed between the parties whether express or implied since the petitioners have failed to overcome the burden of proving their affirmative allegation of tenancy. The petitioners however argue that they are the sole owners of the subject property since they have bought it from TDB after it had been foreclosed. On the other hand, the respondents insist that they are co-owners of the subject property which they inherited from their parents.

Essentially, the issues raised center on the core question of whether or not the subject property pertains to the exclusive ownership of the petitioners. Hence, the pertinent point of inquiry is whether co-ownership by the petitioners and the respondents over the subject property continued even after the subject property was purchased by TDB and title thereto transferred to its name, and even after it was eventually bought back by the petitioners from TDB.

While the question raised is essentially one of fact, of which the Court normally abstain from, yet, considering the divergent

---

[30] *Id.* at 57-58.

[31] *Id.* at 258-278.

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

positions of the courts below, this Court shall go by the exception to the general rule and proceed to review the facts of this case and make its own assessment of the evidence and documents on record. But even if the Court were to re-evaluate the evidence presented, there is still no reason to depart from the CA's ruling that the property in dispute is owned in common by the petitioners and the respondents.

In this case, the petitioners' cause of action for recovery of possession is grounded on their alleged exclusive ownership of the subject property which they merely purchased from TDB. They contend that TDB's consolidation of ownership over the subject property effectively ended and terminated the co-ownership. The respondents, however, counter that they are co-owners of the subject property and their co-ownership was by virtue of their inheritance, which was registered in the names of the petitioners by way of an agreement. Bayang also asserted that she never sold her share to the petitioners and Zamora nor was she aware of any mortgage over the subject property.

Here, records show that the subject property was originally owned by Juliana and Bayang's father, Cleto Macayanan under Original Certificate of Title No. 1665. "Pursuant to Article 1451 of the Civil Code, when land passes by succession to any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner."[33] Bayang, being an heir and a co-owner, is thus entitled to the possession of the subject property. This was confirmed by the issuance of TCT No. 58439 in the names of Spouses Nicolas and Francisca for one-half share, Spouses Cornelio and Bayang for one-eighth share, Zamora for one-fourth share, and the petitioners for one-eighth share. Evidently, a co-ownership existed between the parties prior to the foreclosure and consolidation of title in favor of TDB and the subsequent re-acquisition thereof by the petitioners.

---

[33] *Nufable v. Nufable*, 369 Phil. 135, 147 (1999).

"Co-ownership is a form of trust and every co-owner is a trustee for the others."[34] "Before the partition of a land or thing held in common, no individual or co-owner can claim title to any definite portion thereof. All that the co-owner has is an ideal or abstract quota proportionate share in the entire land or thing."[35] "Should a co-owner alienate or mortgage the co-owned property itself, the alienation or mortgage shall remain valid but only to the extent of the portion which may be allotted to him in the division upon the termination of the co-ownership."[36] "In case of foreclosure, a sale would result in the transmission only of whatever rights the seller had over of the thing sold."[37]

Indeed, a co-owner does not lose his part ownership of a co-owned property when his share is mortgaged by another co-owner without the former's knowledge and consent as in the case at bar. The mortgage of the inherited property is not binding against co-heirs who never benefited.[38] As correctly emphasized by the CA, the petitioners' right in the subject property is limited only to their share in the co-owned property. When the subject property was sold to and consolidated in the name of TDB, the latter merely held the subject property in trust for the respondents. When the petitioners and Spouses Baluyot bought back the subject property, they merely stepped into the shoes of TDB and acquired whatever rights and obligations appertain thereto.

Be that as it may, the rights of the respondents as co-owners of the subject property were never alienated despite TDB's consolidation of ownership over the subject property. Neither does the fact that the petitioners succeeded in acquiring back the property from TDB and having a new title issued in their name terminate the existing co-ownership. Besides, it seems that petitioners knew of the fact that they did not have a title to the

---

[34] *Sanchez v. CA*, 452 Phil. 665, 676 (2003).

[35] *Id.*

[36] *Philippine National Bank v. Garcia*, G.R. No. 182839, June 2, 2014, 724 SCRA 280, 291.

[37] *Cruz v. Bancom Finance Corporation*, 429 Phil. 225, 243 (2002).

[38] *Nufable v. Nufable*, *supra* note 33, at 146.

entire lot and could not, therefore, have validly mortgaged the same, because of the respondents' possession of the subject portion.

The trial court's reliance on the doctrine that mere possession cannot defeat the right of a holder of a registered *Torrens* title over property is misplaced, considering that the respondents were almost deprived of their dominical rights over the said lot through fraud and with evident bad faith on the part of the petitioners. Failure and intentional omission to disclose the fact of actual physical possession by another person during registration proceedings constitutes actual fraud. Likewise, it is fraud to knowingly omit or conceal a fact, upon which benefit is obtained to the prejudice of a third person.[39]

Contrary to the petitioners' argument that the respondents' claim is a collateral attack upon their title which is impermissible, the Court had categorically ruled that a resolution on the issue of ownership does not subject the *Torrens* title issued over the disputed realties to a collateral attack. **It must be borne in mind that what cannot be collaterally attacked is the certificate of title and not the title itself**.[40] "Mere issuance of the certificate of title in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate, or that the registrant may only be a trustee, or that other parties may have acquired interest over the property subsequent to the issuance of the certificate of title."[41] The alleged incontrovertibility of title cannot be successfully invoked by the petitioners because certificates of title merely confirm or record title already existing and cannot be used as a shield for the commission of fraud.[42]

---

[39] *Roberto Sta. Ana Dy, Jose Alaineo Dy, and Alteza A. Dy for themselves and as heirs/substitutes of deceased-petitioner Chloe Alindogan Dy v. Bonifacio A. Yu, Susana A. Tan, and Soledad Arquilla substituting deceased-respondent Rosario Arquilla,* G.R. No. 202632, July 8, 2015, citing *Alba vda. de Raz v. CA*, 372 Phil. 710, 738 (1999).

[40] *Lacbayan v. Samoy, Jr.*, 661 Phil. 306, 317 (2011).

[41] *Id.*

[42] *Roberto Sta. Ana Dy, Jose Alaineo Dy, and Alteza A. Dy for themselves and as heirs/substitutes of deceased-petitioner Chloe Alindogan Dy v.*

The CA was also on point when it upheld the respondents' claim of forgery with respect to the signatures of Spouses Cornelio and Bayang as appearing in the REM. The CA explained that:

> The evidence on record tends to corroborate [the respondents'] claim that [the petitioners] succeeded in mortgaging the co-owned property to [TDB] without their consent. The signature on the *[REM] Contract*, which purports to be that of Cornelio Nool, is undoubtedly a forgery considering that Cornelio Nool died on December 21, 1979 prior to the execution of said mortgage on April 16, 1980. Bayang's claim that her signature in the mortgage was forged was never rebutted by [the petitioners]. Also, the manifest disparities between [Bayang's] purported signature on the *[REM] Contract* and her signature as appearing on the Marriage Contract, which public document was admitted as genuine writing, supports [sic] a finding that her signature on the mortgage contract was also forged. The trial court failed to consider the evidence and to make its own comparison of the disputed handwriting with writings that are proved to be genuine as explicitly authorized by Section 22, Rule 132 of the Rules of Court.[43]

The Court disbelieves the petitioners' argument that the respondents started occupying the subject property only after the petitioners have bought back the subject property from TDB. Obviously, the respondents have been the owners and in possession of the subject property even before May 3, 1965 when they sold portions of their original share to the petitioners. The subject property presently in the respondents' possession covers an area of not more than 2 ha,[44] which corresponds, more or less, to the one-eighth aliquot share (1.8930 ha) in the co-owned property which the Spouses Cornelio and Bayang had retained for themselves in the co-ownership. It must be noted that since the mortgage and sale of the subject property to the petitioners, the latter had allowed the respondents to occupy that portion allotted to them. Clearly, the petitioners were in possession of the subject property for more than 35 years. However, at no instance during

---

Bonifacio A. Yu, Susana A. Tan, and Soledad Arquilla substituting deceased-respondent Rosario Arquilla, *supra* note 39, citing *Spouses Lopez v. Spouses Lopez*, 620 Phil. 368, 376 (2009).

[43] *Rollo*, pp. 55-56.

[44] TSN, December 4, 2003, p. 7.

this time did the petitioners, for that matter, question the respondents' right over the subject property.

In *Vda. de Cabrera v. CA*,[45] the Court held that where the transferees of an undivided portion of the land allowed a co-owner of the property to occupy a definite portion thereof and had not disturbed the same for a period too long to be ignored, the possessor is in a better condition or right than said transferees. (*Potior est conditio possidentis*).[46] Such undisturbed possession had the effect of a partial partition of the co-owned property which entitles the possessor to the definite portion which he occupies.[47] Conformably, the respondents are entitled to the subject property, having enjoyed uninterrupted possession thereof for more than 35 years.

From the foregoing disquisitions, it is clear that the CA did not err in declaring that the petitioners have no legal basis to recover possession of the subject property. Except for their claim that they merely purchased the subject property from TDB, the petitioners presented no other justification to disprove co-ownership. Since the mortgage of the co-owned property was done without the respondents' consent, they cannot be deemed to have lost their share as a consequence of the subsequent foreclosure and sale of the co-owned property. In the same way, the petitioners, as mere co-owners, had no right to mortgage the entire property for their right to do so is limited only to that portion that may be allotted to them upon termination of the co-ownership.

WHEREFORE, the petition is **DENIED**. The Decision dated June 19, 2008 and the Resolution dated May 26, 2009 of the Court of Appeals in CA-G.R. CV No. 89378 are hereby **AFFIRMED**.

SO ORDERED.

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

---

[45] 335 Phil. 19 (1997).

[46] *Id.* at 35.

[47] *Spouses Del Campo v. CA*, 403 Phil. 706, 718 (2001).

FIRST DIVISION

[G.R. No. 189607. April 18, 2016]

RENATO A. CASTILLO, *petitioner, vs.* **LEA P. DE LEON CASTILLO,** *respondent.*

SYLLABUS

1. **CIVIL LAW; MARRIAGE; THE VALIDITY OF MARRIAGE AND ALL ITS INCIDENTS MUST BE DETERMINED IN ACCORDANCE WITH THE LAW IN EFFECT AT THE TIME OF ITS CELEBRATION; APPLICATION IN CASE AT BAR.—**The validity of a marriage and all its incidents must be determined in accordance with the law in effect at the time of its celebration. In this case, the law in force at the time Lea contracted both marriages was the Civil Code. The children of the parties were also born while the Civil Code was in effect *i.e.* in 1979, 1981, and 1985. Hence, the Court must resolve this case using the provisions under the Civil Code on void marriages, in particular, Articles 80, 81, 82, and 83 (first paragraph); and those on voidable marriages are Article 83 (second paragraph), 85 and 86.

2. **ID.; ID.; UNDER THE CIVIL CODE, A VOID MARRIAGE DIFFERS FROM A VOIDABLE MARRIAGE; DISTINGUISHED.—** Under the Civil Code, a void marriage differs from a voidable marriage in the following ways: (1) a void marriage is nonexistent – *i.e.*, there was no marriage from the beginning – while in a voidable marriage, the marriage is valid until annulled by a competent court; (2) a void marriage cannot be ratified, while a voidable marriage can be ratified by cohabitation; (3) being nonexistent, a void marriage can be collaterally attacked, while a voidable marriage cannot be collaterally attacked; (4) in a valid marriage, there is no conjugal partnership and the offspring are natural children by legal fiction, while in voidable marriage there is conjugal partnership and the children conceived before the decree of annulment are considered legitimate; and (5) "in a void marriage no judicial decree to establish the invalidity is necessary," while in a voidable marriage there must be a judicial decree.

3. ID.; FAMILY CODE; MARRIAGE; A JUDICIAL DECLARATION OF ABSOLUTE NULLITY OF MARRIAGE IS NOW EXPRESSLY REQUIRED WHERE THE NULLITY OF A PREVIOUS MARRIAGE IS INVOKED FOR PURPOSES OF CONTRACTING A SECOND MARRIAGE; NOT APPLICABLE IN CASE AT BAR.— It must be emphasized that the enactment of the Family Code rendered the rulings in *Odayat, Mendoza, and Aragon* inapplicable to marriage celebrated after 3 August 1988. A judicial declaration of absolute nullity of marriage is now expressly required where the nullity of a previous marriage is invoked for purposes of contracting a second marriage. A second marriage contracted prior to the issuance of this declaration of nullity is thus considered bigamous and void. x x x However, as this Court clarified in *Apiag v. Cantero* and *Ty v. Court of Appeals*, the requirement of a judicial decree of nullity does not apply to marriages that were celebrated *before* the effectivity of the Family Code, particularly if the children of the parties were born while the Civil Code was in force. x x x As earlier explained, the rule in *Odayat, Mendoza, and Aragon* is applicable to this case. The Court thus concludes that the subsequent marriage of Lea to Renato is valid in view of the invalidity of her first marriage to Bautista because of the absence of a marriage license. That there was no judicial declaration that the first marriage was void ab initio before the second marriage was contracted is immaterial as this is not a requirement under the Civil Code. Nonetheless, the subsequent Decision of the RTC of Parañaque City declaring the nullity of Lea's first marriage only serves to strengthen the conclusion that her subsequent marriage to Renato is valid.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & De los Angeles for petitioner.

Respicio Velazquez & Rodriguez for respondent.

D EC I S I O N

SERENO, *C.J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Decision[1] in CA-G.R. CV No. 90153 and the Resolution[2] that affirmed the same. The CA reversed the Decision[3] dated 23 March 2007 issued by the Regional Trial Court (RTC) of Quezon City, Branch 84.

The RTC had granted the Petition for Declaration of Nullity of Marriage between the parties on the ground that respondent had a previous valid marriage before she married petitioner. The CA believes on the other hand, that respondent was not prevented from contracting a second marriage if the first one was an absolutely nullity, and for this purpose she did not have to await a final decree of nullity of the first marriage.

The only issue that must be resolved by the Court is whether the CA was correct in holding thus and consequentially reversing the RTC's declaration of nullity of the second marriage.

FACTUAL ANTECEDENTS

On 25 May 1972, respondent Lea P. De Leon Castillo (Lea) married Benjamin Bautista (Bautista). On 6 January 1979, respondent married herein petitioner Renato A. Castillo (Renato).

On 28 May 2001, Renato filed before the RTC a Petition for Declaration of Nullity of Marriage,[4] praying that his marriage to Lea be declared void due to her subsisting marriage to Bautista and her psychological incapacity under Article 36 of the Family Code. The CA states in its Decision that petitioner did not pursue

---

[1] Dated 20 April 2009; *Rollo*, pp. 55-68. Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Martin S. Villarama, Jr. (now a retired member of this Court) and Jose C. Reyes, Jr. concurring.

[2] Dated 16 September 2009; *Id.* at 69-70.

[3] *Id.* at 127-136. Penned by Presiding Judge Luisito G. Cortez.

[4] *Id.* at 76-81.

the ground of psychological incapacity in the RTC. The reason for this finding by the CA while unclear, is irrelevant in this Petition.

Respondent opposed the Petition, and contended among others that her marriage to Bautista was null and void as they had not secured any license therefor, and neither of them was a member of the denomination to which the solemnizing officer belonged.[5]

On 3 January 2002, respondent filed an action to declare her first marriage to Bautista void. On 22 January 2003, the Regional Trial Court of Parañaque City, Branch 260 rendered its Decision[6] declaring that Lea's first marriage to Bautista was indeed null and void *ab initio*. Thereafter, the same court issued a Certificate of Finality saying that the Decision dated 22 January 2003 had become final and executory.[7]

On 12 August 2004, respondent filed a Demurrer to Evidence[8] claiming that the proof adduced by petitioner was insufficient to warrant a declaration of nullity of their marriage on the ground that it was bigamous. In his Opposition,[9] petitioner countered that whether or not the first marriage of respondent was valid, and regardless of the fact that she had belatedly managed to obtain a judicial declaration of nullity, she still could not deny that at the time she entered into marriage with him, her previous marriage was valid and subsisting. The RTC thereafter denied respondent's demurrer in its Order[10] dated 8 March 2005.

In a Decision[11] dated 23 March 2007, the RTC declared the marriage between petitioner and respondent null and void *ab*

---

[5] *Id.* at 58.

[6] *Id.* at 184-186. Penned by Judge Helen Bautista-Ricafort.

[7] *Id.* at 183.

[8] *Id.* at 247-250.

[9] *Id.* at 256-269.

[10] *Id.* at 277-278. Penned by acting Presiding Judge Natividad Giron Dizon.

[11] *Id.* at 127-136. Penned by Presiding Judge Luisito G. Cortez.

initio on the ground that it was a bigamous marriage under Article 41 of the Family Code.[12] The dispositive portion reads:

> WHEREFORE, in the light of the foregoing considerations, the Court hereby declares the marriage between RENATO A. CASTILLO and LEA P. DE LEON-CASTILLO contracted on January 6, 1979, at the Mary the Queen Parish Church, San Juan, Metro Manila, is hereby declared NULL AND VOID AB INITIO based on bigamous marriage, under Article 41 of the Family Code.[13]

The RTC said that the fact that Lea's marriage to Bautista was subsisting when she married Renato on 6 January 1979, makes her marriage to Renato bigamous, thus rendering it void *ab initio*. The lower court dismissed Lea's argument that she need not obtain a judicial decree of nullity and could presume the nullity of a prior subsisting marriage. The RTC stressed that so long as no judicial declaration exists, the prior marriage is valid and existing. Lastly, it also said that even if respondent eventually had her first marriage judicially declared void, the fact remains that the first and second marriage were subsisting before the first marriage was annulled, since Lea failed to obtain a judicial decree of nullity for her first marriage to Bautista before contracting her second marriage with Renato.[14]

Petitioner moved for reconsideration insofar as the distribution of their properties were concerned.[15] His motion, however, was denied by the RTC in its Order[16] dated 6 September 2007. Thereafter, both petitioner[17] and respondent[18] filed their respective Notices of Appeal.

---

[12] *Id.* at 135.

[13] *Id.*

[14] *Id.* at 133-136.

[15] *Id.* at 137-152.

[16] *Id.* at 160-162.

[17] Records, pp. 512-513.

[18] *Id.* at 492.

In a Decision[19] dated 20 April 2009, the CA reversed and set aside the RTC's Decision and Order and upheld the validity of the parties' marriage. In reversing the RTC, the CA said that since Lea's marriages were solemnized in 1972 and in 1979, or prior to the effectivity of the Family Code on 3 August 1988, the Civil Code is the applicable law since it is the law in effect at the time the marriages were celebrated, and not the Family Code.[20] Furthermore, the CA ruled that the Civil Code does not state that a judicial decree is necessary in order to establish the nullity of a marriage.[21]

Petitioner's motion for reconsideration of the CA's Decision was likewise denied in the questioned CA Resolution[22] dated 16 September 2009.

Hence, this Petition for Review on *Certiorari*.

Respondent filed her Comment[23] praying that the CA Decision finding her marriage to petitioner valid be affirmed *in toto*, and that all properties acquired by the spouses during their marriage be declared conjugal. In his Reply to the Comment,[24] petitioner reiterated the allegations in his Petition.

OUR RULING

We deny the Petition.

The validity of a marriage and all its incidents must be determined in accordance with the law in effect at the time of its celebration.[25] In this case, the law in force at the time Lea contracted both marriages was the Civil Code. The children of the parties were also born while the Civil Code was in effect

---

[19] *Supra* note 1.

[20] *Rollo*, p. 63.

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

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

[23] *Id.* at 245-248.

[24] *Id.* at 253-260.

[25] *Niñal v. Bayadog*, 384 Phil. 661 (2000).

i.e., in 1979, 1981, and 1985. Hence, the Court must resolve this case using the provisions under the Civil Code on void marriages, in particular, Articles 80,[26] 81,[27] 82,[28] and 83 (first paragraph);[29]

---

[26] Art. 80. The following marriages shall be void from the beginning:

(1) Those contracted under the ages of sixteen and fourteen years by the male and female respectively, even with the consent of the parents;

(2) Those solemnized by any person not legally authorized to perform marriages;

(3) Those solemnized without a marriage license, save marriages of exceptional character;

(4) Bigamous or polygamous marriages not falling under article 83, number 2;

(5) Incestuous marriages mentioned in article 81;

(6) Those where one or both contracting parties have been found guilty of the killing of the spouse of either of them;

(7) Those between stepbrothers and stepsisters and other marriages specified in article 82. (n)

[27] Art. 81. Marriages between the following are incestuous and void from their performance, whether the relationship between the parties be legitimate or illegitimate:

(1) Between ascendants and descendants of any degree;

(2) Between brothers and sisters, whether of the full or half blood;

(3) Between collateral relatives by blood within the fourth civil degree. (28a)

[28] Art. 82. The following marriages shall also be void from the beginning:

(1) Between stepfathers and stepdaughters, and stepmothers and stepsons:

(2) Between the adopting father or mother and the adopted, between the latter and the surviving spouse of the former, and between the former and the surviving spouse of the latter:

(3) Between the legitimate children of the adopter and the adopted. (28a)

[29] Art. 83. Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

(1) The first marriage was annulled or dissolved:

(2) x x x (29a)

and those on voidable marriages are Articles 83 (second paragraph),[30] 85[31] and 86.[32]

---

[30] Art. 83. Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

(1) x x x; or

(2) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or if the absentee, though he has been absent for less than seven years, is generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, or if the absentee is presumed dead according to articles 390 and 391. The marriage so contracted shall be valid in any of the three cases until declared null and void by a competent court. (29a)

[31] Art. 85. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

(1) That the party in whose behalf it is sought to have the marriage annulled was between the ages of sixteen and twenty years, if male, or between the ages of fourteen and eighteen years, if female, and the marriage was solemnized without the consent of the parent, guardian or person having authority over the party, unless after attaining the ages of twenty or eighteen years, as the case may be, such party freely cohabited with the other and both lived together as husband and wife;

(2) In a subsequent marriage under article 83, number 2, that the former husband or wife believed to be dead was in fact living and the marriage with such former husband or wife was then in force;

(3) That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife;

(4) That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as her husband or his wife, as the case may be;

(5) That the consent of either party was obtained by force or intimidation, unless the violence or threat having disappeared, such party afterwards freely cohabited with the other as her husband or his wife, as the case may be;

(6) That either party was, at the time of marriage, physically incapable of entering into the married state, and such incapacity continues, and appears to be incurable. (30a)

[32] Art. 86. Any of the following circumstances shall constitute fraud referred to in number 4 of the preceding article:

Under the Civil Code, a void marriage differs from a voidable marriage in the following ways: (1) a void marriage is nonexistent — *i.e.*, there was no marriage from the beginning — while in a voidable marriage, the marriage is valid until annulled by a competent court; (2) a void marriage cannot be ratified, while a voidable marriage can be ratified by cohabitation; (3) being nonexistent, a void marriage can be collaterally attacked, while a voidable marriage cannot be collaterally attacked; (4) in a void marriage, there is no conjugal partnership and the offspring are natural children by legal fiction, while in voidable marriage there is conjugal partnership and the children conceived before the decree of annulment are considered legitimate; and (5) "in a void marriage no judicial decree to establish the invalidity is necessary," while in a voidable marriage there must be a judicial decree.[33]

Emphasizing the fifth difference, this Court has held in the cases of *People v. Mendoza*,[34] *People v. Aragon*,[35] and *Odayat v. Amante*,[36] that the Civil Code contains no express provision on the necessity of a judicial declaration of nullity of a void marriage.[37]

---

(1) Misrepresentation as to the identity of one of the contracting parties;

(2) Non-disclosure of the previous conviction of the other party of a crime involving moral turpitude, and the penalty imposed was imprisonment for two years or more;

(3) Concealment by the wife of the fact that at the time of the marriage, she was pregnant by a man other than her husband.

No other misrepresentation or deceit as to character, rank, fortune or chastity shall constitute such fraud as will give grounds for action for the annulment of marriage. (n)

[33] Eduardo P. Caguioa, *Comments and Cases on Civil Law (Civil Code of the Philippines)*, Vol. 1, 1967 Third Edition, p. 154.

[34] 95 Phil. 845 (1954).

[35] 100 Phil. 1033 (1957).

[36] 168 Phil. 1-5 (1977).

[37] *Niñal v. Bayadog*, 384 Phil. 661-675 (2000).

In *Mendoza* (1954), appellant contracted three marriages in 1936, 1941, and 1949. The second marriage was contracted in the belief that the first wife was already dead, while the third marriage was contracted after the death of the second wife. The Court ruled that the first marriage was deemed valid until annulled, which made the second marriage null and void for being bigamous. Thus, the third marriage was valid, as the second marriage was void from its performance, hence, nonexistent without the need of a judicial decree declaring it to be so.

This doctrine was reiterated in *Aragon* (1957), which involved substantially the same factual antecedents. In *Odayat* (1977), citing *Mendoza* and *Aragon*, the Court likewise ruled that no judicial decree was necessary to establish the invalidity of void marriages under Article 80 of the Civil Code.

It must be emphasized that the enactment of the Family Code rendered the rulings in *Odayat, Mendoza, and Aragon* inapplicable to marriages celebrated after 3 August 1988. A judicial declaration of absolute nullity of marriage is now expressly required where the nullity of a previous marriage is invoked for purposes of contracting a second marriage.[38] A second marriage contracted prior to the issuance of this declaration of nullity is thus considered bigamous and void.[39] In *Domingo v. Court of Appeals*, we explained the policy behind the institution of this requirement:

> Marriage, a sacrosanct institution, declared by the Constitution as an "inviolable social institution, is the foundation of the family;" as such, it "shall be protected by the State." In more explicit terms, the Family Code characterizes it as "a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life." So crucial are marriage and the family to the stability and peace of the nation that their "nature, consequences, and incidents are governed by law

[38] Article 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

[39] *Mercado v. Tan*, 391 Phil. 809-827 (2000).

and not subject to stipulation." **As a matter of policy, therefore, the nullification of a marriage for the purpose of contracting another cannot be accomplished merely on the basis of the perception of both parties or of one that their union is so defective with respect to the essential requisites of a contract of marriage as to render it void ipso jure and with no legal effect — and nothing more. Were this so, this inviolable social institution would be reduced to a mockery and would rest on very shaky foundations indeed**. And the grounds for nullifying marriage would be as diverse and far-ranging as human ingenuity and fancy could conceive. **For such a socially significant institution, an official state pronouncement through the courts, and nothing less, will satisfy the exacting norms of society. Not only would such an open and public declaration by the courts definitively confirm the nullity of the contract of marriage, but the same would be easily verifiable through records accessible to everyone**.[40] (Emphases supplied)

However, as this Court clarified in *Apiag v. Cantero*[41] and *Ty v. Court of Appeals*,[42] the requirement of a judicial decree of nullity does not apply to marriages that were celebrated *before* the effectivity of the Family Code, particularly if the children of the parties were born while the Civil Code was in force. In Ty, this Court clarified that those cases continue to be governed by *Odayat*, *Mendoza, and Aragon*, which embodied the then-prevailing rule:

> x x x. In Apiag v. Cantero, (1997) the first wife charged a municipal trial judge of immorality for entering into a second marriage. The judge claimed that his first marriage was void since he was merely forced into marrying his first wife whom he got pregnant. On the issue of nullity of the first marriage, we applied Odayat, Mendoza and Aragon. We held that since the second marriage took place and all the children thereunder were born before the promulgation of Wiegel and the effectivity of the Family Code, there is no need for a judicial declaration of nullity of the first marriage pursuant to prevailing jurisprudence at that time.

---

[40] G.R. No. 104818, 17 September 1993.

[41] 335 Phil. 511 (1997).

[42] 399 Phil. 647 (2000).

Similarly, in the present case, the second marriage of private respondent was entered into in 1979, before Wiegel. At that time, the prevailing rule was found in Odayat, Mendoza and Aragon. The first marriage of private respondent being void for lack of license and consent, there was no need for judicial declaration of its nullity before he could contract a second marriage. In this case, therefore, we conclude that private respondent's second marriage to petitioner is valid.

Moreover, we find that the provisions of the Family Code cannot be retroactively applied to the present case, for to do so would prejudice the vested rights of petitioner and of her children. As held in Jison v. Court of Appeals, the Family Code has retroactive effect unless there be impairment of vested rights. In the present case, that impairment of vested rights of petitioner and the children is patent x x x. (Citations omitted)

As earlier explained, the rule in *Odayat, Mendoza, and Aragon* is applicable to this case. The Court thus concludes that the subsequent marriage of Lea to Renato is valid in view of the invalidity of her first marriage to Bautista because of the absence of a marriage license. That there was no judicial declaration that the first marriage was void ab initio before the second marriage was contracted is immaterial as this is not a requirement under the Civil Code. Nonetheless, the subsequent Decision of the RTC of Parañaque City declaring the nullity of Lea's first marriage only serves to strengthen the conclusion that her subsequent marriage to Renato is valid.

In view of the foregoing, it is evident that the CA did not err in upholding the validity of the marriage between petitioner and respondent. Hence, we find no reason to disturb its ruling.

WHEREFORE, premises considered, the Petition is **DENIED**. The Court of Appeals Decision dated 20 April 2009 and Resolution dated 16 September 2009 in CA-G.R. CV No. 90153 are **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro, Bersamin, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 190466. April 18, 2016]

LUIS DERILO *y* GEPOLEO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; IN CRIMINAL PROSECUTIONS, IT IS FUNDAMENTAL THAT THE ACCUSED IS PRESUMED INNOCENT OF A CHARGE UNTIL HIS GUILT IS PROVEN BEYOND REASONABLE DOUBT.— In criminal prosecutions, it is fundamental that the accused is presumed innocent of a charge until his guilt is proven beyond reasonable doubt. In other words, the elemental acts constituting the offense must be established with moral certainty, as this finding and level of proof are the critical requisites to a finding of guilt.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); VIOLATION THEREOF; FOR PROSECUTIONS INVOLVING DANGEROUS DRUGS, THE DANGEROUS DRUG ITSELF CONSTITUTES THE *CORPUS DELICTI* OF THE OFFENSE AND THE FACT OF ITS EXISTENCE IS VITAL TO SUSTAIN A JUDGMENT OF CONVICTION BEYOND REASONABLE DOUBT.— For prosecutions involving dangerous drugs, the dangerous drug itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. It is of paramount importance that the identity of the dangerous drug be so established, along with the elements of the offense charged. Proof beyond reasonable doubt in these cases demands an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him.

3. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; IN ORDER TO MEET THE QUANTUM OF PROOF REQUIRED IN DRUG-RELATED PROSECUTIONS, THE CHAIN OF CUSTODY REQUIREMENT ENSURES THAT DOUBTS

CONCERNING THE IDENTITY OF THE SEIZED DRUGS ARE REMOVED; EXPLAINED.— In order to meet the quantum of proof required in drug-related prosecutions, the chain of custody requirement under Section 21 of RA No. 9165 ensures that doubts concerning the identity of the seized drugs 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 to be. To show an unbroken link in the chain of custody, **the prosecution's evidence must include testimony about every link in the chain**, from the moment the item was seized to the time it is offered in court as evidence, such that every person who handled the evidence would acknowledge 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 witness 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 its possession. **It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.**

4. **ID.; ID.; ID.; ID.; LINKS WHICH MUST BE ESTABLISHED TO ENSURE THE PRESERVATION OF THE IDENTITY AND INTEGRITY OF THE CONFISCATED DRUGS; ENUMERATED.—** Thus, the following links must be established to ensure the preservation of the identity and integrity of the confiscated drug: 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 by the apprehending officer 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 marked illegal drug seized from the forensic chemist to the court. We stress that the marking of the seized drugs or other related items is crucial in proving the unbroken chain of custody in drug-related prosecutions. As the first link in the chain of custody, the marking is of vital importance because succeeding handlers of the dangerous

drugs or related items will use the marking as reference. Also, 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. In other words, **the marking immediately upon confiscation or recovery of the dangerous drugs or related items is *indispensable* in the preservation of their integrity and evidentiary value**

5. ID.; ID.; ILLEGAL POSSESSION OF EQUIPMENT, INSTRUMENT, APPARATUS AND OTHER PARAPHERNELIA FOR ILLEGAL DRUGS; ELEMENTS.— The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 of RA No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia *fit or intended* for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

We resolve the appeal, filed by accused-appellant Luis Derilo *y* Gepoleo (*petitioner*), from the September 25, 2009 decision[1] and the December 8, 2009 resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CR No. 31602.

---

[1] *Rollo*, pp. 101-123; penned by Associate Justice Vicente S.E. Veloso, and concurred in by Associate Justices Andres B. Reyes, Jr. and Marlene Gonzales-Sison.

[2] *Id.* at 135.

The appealed decision affirmed the January 18, 2008 decision[3] of the Regional Trial Court (*RTC*), Branch 65, Sorsogon City, finding the petitioner guilty beyond reasonable doubt of violation of Sections 11 and 12, Article II of Republic Act [RA] No. 9165,[4] and sentencing him as follows: for **Criminal Case No. 04-711** — imprisonment of twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and to pay a fine of ₱300,000.00; and for **Criminal Case No. 04-712** — imprisonment of six (6) months and one (1) day, as minimum, to four (4) years, as maximum, and to pay a fine of ₱10,000.00.

The Factual Antecedents

On November 19, 2004, at around 6:00 A.M., a team of police officers, led by SPO1 Sonny Evasco, conducted a police operation to serve a search warrant[5] at the residence of the petitioner located in Lay-a, Gate, Bulan, Sorsogon.[6] The police officers coordinated with the barangay captain of Gate who, in turn, sent two *barangay tanods* — Basilio Gueta and Santiago Español — to accompany and assist the police officers in the service of the search warrant.[7]

After an initial search of the petitioner's pockets and wallet, SPO1 Evasco instructed Gueta and Español to conduct a search inside the petitioner's bedroom (of the place described in the search warrant) as a precautionary measure for the police officers to avoid being accused of planting evidence.[8] During the search, the *barangay tanods*, under the supervision of SPO1 Evasco,[9] recovered twelve (12) plastic sachets[10] inside a matchbox, each containing white crystalline substance.[11]

---

[3] *Id.* at 51-69; penned by Judge Adolfo G. Fajardo.

[4] Also known as the "Comprehensive Dangerous Drugs Act of 2002."

[5] *Records*, Volume I, pp. 121-122.

[6] TSN, July 5, 2005, p. 3.

[7] TSN, November 13, 2006, pp. 10-11.

[8] TSN, July 5, 2005, p. 20.

[9] *Id.* at 28.

[10] *Id.* at 5.

[11] TSN, November 13, 2006, p. 12.

The police officers also recovered suspected drug paraphernalia, *i.e.*, new and used aluminum foil, lighters, and a tube, which were scattered *in plain view* in different parts of the house. Some of the used aluminum foils were found under the house.[12]

While at the scene, SPO1 Evasco proceeded to mark the confiscated items with his initials, "S.B.E.," while SPO1 Calupit took their photographs. In addition, SPO1 Evasco prepared an inventory of the items seized, but the petitioner refused to sign the inventory.[13]

The petitioner and the seized items were then taken to the police station. Thereafter, the seized items were brought to the court and then to the PNP Crime Laboratory for examination by SPO1 Calupit and PO2 Lobrin.[14]

At the PNP Crime Laboratory, SPO1 Alejandro Usi, a drug screener/laboratory technician, conducted an *initial field test* of the drug specimens.[15] Based on the **Certification of Laboratory Examination** dated November 19, 2004, the test yielded positive for *methamphetamine hydrochloride*, also known as "*shabu*," a dangerous drug.[16]

The following day, P/Inspt. Josephine Clemens, the PNP Crime Laboratory's forensic chemist, conducted a confirmatory physical and chemistry examination of the drug specimens.[17] Based on the **Chemistry Report** dated November 20, 2004, the twelve (12) plastic sachets indeed contained *shabu*,[18] thus confirming the result of the earlier initial field test.

The prosecution charged the petitioner with violation of Sections 11 and 12, Article II of RA No. 9165, for possession

---

[12] TSN, July 5, 2005, pp. 21-23.

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

[14] *Id.* at 15.

[15] TSN, February 7, 2006, p. 3.

[16] *Records*, Volume I, p. 6.

[17] TSN, October 11, 2005, p. 8.

[18] *Records*, Volume I, p. 62.

of twelve (12) plastic sachets containing 0.3485 gram of *shabu* and for possession of drug paraphernalia, *i.e.*, forty-one (41) pieces of rolled aluminum foil, one (1) used aluminum foil, one (1) tube, two (2) lighters, and one (1) matchbox, respectively.[19] The cases were docketed as Criminal Case Nos. 04-711 and 04-712.

In its decision dated January 18, 2008, the RTC found the petitioner guilty beyond reasonable doubt of both crimes charged and sentenced him as follows:

> a) In **Criminal Case No. 04-711**, [the petitioner] is sentenced to suffer the penalty of imprisonment, ranging from twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00); and,
>
> b) In **Criminal Case No. 04-712**, [the petitioner] is further sentenced to suffer the penalty of imprisonment, ranging from six (6) months and one (1) day, as minimum, to four (4) years, as maximum, and to pay a fine of Ten Thousand Pesos (₱10,000.00) and the costs of suit.[20]

On appeal, the CA affirmed the RTC decision *in toto*. In its decision dated September 25, 2009, the appellate court ruled that: *first*, the delegation to the *barangay tanods* of the task of physically searching for illegal drugs in the petitioner's bedroom did not make the search irregular. Thus, the items seized, including the twelve (12) plastic sachets found by the *barangay tanods*, cannot be considered as "fruits of the poisonous tree." *Second*, the prosecution satisfactorily established the required link in the chain of custody of the seized items. *Third*, the alleged inconsistencies between the prosecution witnesses' testimonies appear to be minor and inconsequential and do not impair their credibility. *Fourth*, the failure of the police officers to coordinate with the Philippine Drug Enforcement Agency (*PDEA*) does not render the search illegal nor does it make the evidence seized from the petitioner's house inadmissible. And *fifth*, the petitioner's

---

[19] *Id.* at 1; *Records*, Volume II, p. 1.

[20] *Rollo*, p. 69.

defenses of alibi and frame-up cannot overcome the narration of the incident by the prosecution's witnesses.[21]

The petitioner moved for reconsideration, but the CA denied his motion in a resolution dated December 8, 2009.[22] As a consequence, the petitioner filed the present petition for review on *certiorari* on January 26, 2010.

The Present Petition

The petitioner raises the following issues in the present petition:

First, the petitioner argues that the search became unlawful when SPO1 Evasco delegated the task of searching the bedroom to the *barangay tanods* for fear of being "branded" as planting evidence. Consequently, any evidence which may have been obtained during the search is absolutely inadmissible for being the "fruit of the poisonous tree."[23]

Second, the petitioner insists that there are inconsistencies with the prosecution witnesses' testimonies as to who actually found the matchbox containing the twelve (12) plastic sachets and the suspected drug paraphernalia.[24]

And third, the petitioner claims that the chain of custody over the seized items "appears broken and questionable," considering that the seized items were not marked in his presence.[25] This puts into question the identity of the drug specimens submitted to the PNP Crime Laboratory for examination.[26]

The Court's Ruling

After due consideration, we resolve to **GRANT** the petitioner's appeal for the prosecution's failure to prove his guilt beyond reasonable doubt in Criminal Case Nos. 04-711 and 04-712.

---

[21] *Id.* at 117-122.

[22] *Id.* at 135.

[23] *Id.* at 18-19.

[24] *Rollo*, pp. 20-21.

[25] *Id.* at 23.

[26] *Id.* at 24.

Criminal Case No. 04-711

In criminal prosecutions, it is fundamental that the accused is presumed innocent of a charge until his guilt is proven beyond reasonable doubt.[27] In other words, the elemental acts constituting the offense must be established with moral certainty, as this finding and level of proof are the critical requisites to a finding of guilt.[28]

For prosecutions involving dangerous drugs, the dangerous drug itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.[29] It is of paramount importance that the identity of the dangerous drug be so established,[30] along with the elements of the offense charged. Proof beyond reasonable doubt in these cases demands an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him.[31]

In order to meet the quantum of proof required in drug-related prosecutions, the chain of custody requirement under Section 21 of RA No. 9165 ensures that doubts concerning the identity of the seized drugs are removed.[32] 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 to be.[33]

---

[27] CONSTITUTION, Article III, Section 14 (2).

[28] See *People v. Obmiranis*, G.R. No. 181492, December 16, 2008, 574 SCRA 140, 148.

[29] See *People v. Pedronan*, G.R. No. 148668, June 17, 2003, 404 SCRA 183, 190.

[30] See *People v. Mallillin*, 576 Phil. 576, 586 (2008).

[31] *Supra* note 28, at 148-149.

[32] See *J.* Brion's Dissenting Opinion in *People v. Dimaano*, G.R. No. 174481.

[33] *Supra* note 28, at 149.

To show an unbroken link in the chain of custody,[34] **the prosecution's evidence must include testimony about every link in the chain**, from the moment the item was seized to the time it is offered in court as evidence, such that every person who handled the evidence would acknowledge 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 witness 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 its possession. **It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused**.[35]

Thus, the following links must be established to ensure the preservation of the identity and integrity of the confiscated drug: 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 by the apprehending officer 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 marked illegal drug seized from the forensic chemist to the court.[36]

We stress that the marking of the seized drugs or other related items is crucial in proving the unbroken chain of custody in drug-related prosecutions.[37] As the first link in the chain of custody, the marking is of vital importance because succeeding handlers of the dangerous drugs or related items will use the

---

[34] *People v. Alivio*, G.R. No. 177771, May 30, 2011, 649 SCRA 318, 330.

[35] *Supra* note 28, at 149.

[36] *People v. Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

[37] *Valencia v. People*, G.R. No. 198804, January 22, 2014, 714 SCRA 492, 504.

marking as reference.[38] Also, 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.[39] In other words, **the marking immediately upon confiscation or recovery of the dangerous drugs or related items is *indispensable* in the preservation of their integrity and evidentiary value**.[40]

After a critical review of the records, we hold that the prosecution *failed* to establish that the drug specimens presented in court are those allegedly seized from the petitioner.

First, the records are bereft of any evidence that would clearly show that the twelve (12) plastic sachets supposedly containing the *shabu* were ever marked by SPO1 Evasco, whether at the scene or at the police station, and that they were marked in the presence of the petitioner. In fact, based on the evidence on record, there is only one set of markings on the twelve (12) plastic sachets — the markings of "A-1" to "A-12" made by P/Inspt. Clemens a day after the items were seized.[41]

This finding is further supported by the testimony of P/Inspt. Clemens regarding the markings on the specimens she examined:

PROSECUTOR EMMA S. SALVADOR JANER:

Q: Did you place any markings on the sachets of *shabu* for purposes of easy reference?

P/INSPT. CLEMENS:

A: Yes, ma'am.

---

[38] *Id.*

[39] *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.

[40] *People v. Gonzales*, G.R. No. 182417, April 3, 2013, 695 SCRA 123, 134.

[41] Records, Volume I, p. 118; TSN, October 11, 2005, pp. 4 and 6.

Q: And what are those markings, madam witness?

A: D-193-04, my initials and A-1 to A-12.

Q: Now, when you received the specimens of *shabu*, madam witness, [were] there any markings already placed thereon aside from the markings that you [placed]?

A: Yes, ma'am. A black marking.

Q: And what are these markings in particular?

A: **In the matchbox, "SBE" in all capital letters.**

Q: Whose markings is this, madam witness, on the front portion of the matchbox?

A: [These are] my markings and also from the drug screener who placed his own marking.

xxx xxx xxx

Q: Now, there is a marking on the bottom portion of the matchbox SBE. Was that already placed when this matchbox reached your office?

A: Yes, ma'am.[42] [Emphasis supplied.]

Based on the testimony of P/Inspt. Clemens, the only markings on the specimens submitted to her only consisted of the ones on the matchbox. **She made no mention of any markings (aside from her own) on the plastic sachets**.

Second, there appears to be unexplained inconsistencies in the drug specimens submitted by the police officers to the PNP Crime Laboratory for examination. On one hand, the Certification of Laboratory Examination dated November 19, 2004 states:

SPECIMEN SUBMITTED:

One (1) match box labeled "RIZAL" containing twelve (12) small transparent plastic sachets **marked "A" through "L,"** each containing suspected methamphetamine hydrochloride (*shabu*), and **having a total weight of 0.3485 gram**.[43] [Emphasis supplied.]

---

[42] TSN, October 11, 2005, pp. 6-7.

[43] *Records*, Volume I, p. 6.

On the other hand, the Chemistry Report dated November 20, 2004 states:

SPECIMEN SUBMITTED:

One (1) match box with trade mark "RIZAL" containing twelve (12) small tape-sealed transparent plastic sachets with black and red markings **marked as A-1 through A-12**, each with white crystalline substance **having a total net weight of 0.3133 gram**.[44] [Emphasis supplied.]

These two laboratory reports show inconsistencies with regard to the referenced markings on the twelve (12) plastic sachets and, more importantly, to the weight of the drug specimens — from 0.3485 gram in the first test and only 0.3133 gram in the second test.

Clearly, the drug specimens that were allegedly seized by the police officers from the petitioner during the search operation *differed* or, at the very least, *were no longer in their original condition* when examined by P/Inspt. Clemens on November 20, 2004, a day after they were first subjected to an initial field test by SPO1 Usi.

Third, the prosecution's evidence is seriously lacking in details as to the links in the chain of custody of the seized items from the time they were confiscated up to the time they were presented in court.

A thorough examination of the records reveals that the following are the only testimonies relating to the chain of custody of the seized items:

PROSECUTOR EMMA S. SALVADOR JANER:

Q: x x x Now, what did you do with the confiscated items?

SPO1 EVASCO:

A: We brought the suspect as well as the confiscated items in the police station and after that, we brought the confiscated items to the court.[45]

---

[44] *Id.* at 62.

[45] TSN, July 5, 2005, p. 12.

xxx xxx xxx

Q: x x x Now, after turning over the items together with the specimens of *shabu* to the court, what did you do next?

A: We filed a motion to withdraw the items to have it examined at the crime laboratory.[46]

xxx xxx xxx

Q: x x x Now, after filing the manifestation to the court to withdraw the specimens of *shabu*, what did you do next?

A: I secured a request for laboratory examination.[47]

xxx xxx xxx

Q: x x x Who transmitted the specimens of *shabu* to the crime laboratory for examination?

A: **PO2 Wilfredo Lobrin and SPO1 Edgar Calupit.**[48] [Emphasis supplied.]

PROSECUTOR EMMA S. SALVADOR JANER:

Q: Madam Witness, [do] you recall as to when you [received] the specimen of *shabu* and the paraphernalia for examination?

P/INSPT. CLEMENS:

A: Yes, ma'am.

Q: Will you please tell us?

A: The specimen was received in our office on November 19, 2004 and it was personally turned over to me on November 20, 2004 by PO3 Edgar Calupit.[49]

Q: [Do] you know as to who is the particular person who received the specimens of *shabu*?

---

[46] *Id.* at 13.

[47] *Id.* at 14.

[48] *Id.* at 15.

[49] TSN, October 11, 2005, p. 4.

A: **According to our information, it was our receiving officer**.[50] [Emphasis supplied.]

The above-quoted testimonies clearly point to SPO1 Calupit, PO2 Lobrin and an *unnamed* receiving officer as key persons who handled the seized items. The prosecution, therefore, should have asked these persons to testify regarding the circumstances under which they handled the subject items. Strangely, SPO1 Calupit and PO2 Lobrin, who both actually testified in court, were not at all asked by the prosecution to testify on the handling of the seized items in their custody. Rather, SPO1 Calupit's and PO2 Lobrin's testimonies only revolved around the implementation of the search warrant.

What cannot be ignored is the lack of specific details that would convince the Court that the specimens examined by SPO1 Usi and P/Inspt. Clemens were the same ones confiscated from the petitioner. For one thing, it is unclear who actually brought the plastic sachets to the crime laboratory for examination. It is likewise unclear who received the confiscated plastic sachets at the PNP Crime Laboratory or what happened to the specimens after the initial field test conducted by SPO1 Usi. This is particularly relevant, considering that the confirmatory laboratory examination — the *more reliable* test compared to the initial field test[51] — was only conducted a day after the alleged seizure of the items.

Similarly, there is no record of who exercised custody and possession of the drug specimens after they were examined by P/Inspt. Clemens and before they were presented before the court.

All told, the totality of these circumstances — the failure to mark the plastic sachets, the discrepancy in the weight, and the uncertainty of the individuals who handled the seized items — broke the chain of custody and tainted the integrity of the *shabu*

---

[50] *Id.*

[51] The initial field test was conducted by SPO1 Usi, a drug screener/ laboratory technician. Such initial field test was subject to the confirmatory test conducted by forensic chemist P/Inspt. Clemens. *Id.* at 11.

ultimately presented as evidence before the trial court.[52] **Given that the prosecution failed to prove the indispensable element of** *corpus delicti,* **the petitioner must be acquitted on the ground of reasonable doubt**.

Criminal Case No. 04-712

The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 of RA No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia *fit or intended* for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.

In the present case, there is no evidence showing that the aluminum foil, tube, and lighters found in the petitioner's house were fit or intended for introducing any dangerous drug into the body. The prosecution did not bother to show that there were traces of *shabu* on any of these alleged drug paraphernalia. In fact, it appears that the only evidence that the prosecution offered to prove this charge is the existence of the seized items by themselves.

For the prosecution's failure to prove that the items seized were intended to be used as drug paraphernalia, the petitioner must also be acquitted of the charge under Section 12 of RA No. 9165. Indeed, we cannot convict the petitioner for possession of drug paraphernalia when it was not proven beyond reasonable doubt that these items were used or intended to be used as drug paraphernalia.

WHEREFORE, premises considered, we hereby **REVERSE** and **SET ASIDE** the September 25, 2009 Decision and the December 8, 2009 Resolution of the Court of Appeals in CA-G.R. CR No. 31602. Petitioner Luis Derilo *y* Gepoleo is hereby **ACQUITTED** of the charge of violation of Sections 11 and 12, Article II of RA No. 9165, for failure of the prosecution to prove his guilt beyond reasonable doubt. His immediate

---

[52] *Supra* note 40, at 134-135.

RELEASE from detention is hereby ordered unless he is being held for another lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation, who is then also directed to report to this Court the action he has taken within five (5) days from his receipt of this Decision.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 191616. April 18, 2016]

FRANCIS C. CERVANTES, *petitioner, vs.* **CITY SERVICE CORPORATION and VALENTIN PRIETO, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF PLEADINGS; THE PURPOSE OF THE RULES ON SERVICE IS TO MAKE SURE THAT THE PARTY BEING SERVED WITH THE PLEADING, ORDER OR JUDGMENT IS DULY INFORMED OF THE SAME SO THAT HE CAN TAKE STEPS TO PROTECT HIS INTEREST.— In practice, service means the delivery or communication of a pleading, notice or some other paper in a case, to the opposite party so as to charge him with receipt of it and subject him to its legal effect. The purpose of the rules on service is to make sure that the party being served with the pleading, order or judgment is duly informed of the

same so that he can take steps to protect his interests; *i.e.,* enable a party to file an appeal or apply for other appropriate reliefs before the decision becomes final. x x x When a party is represented by counsel of record, service of orders and notices must be made upon said attorney; and notice to the client and to any other lawyer, not the counsel of record, is not notice in law. x x x The NLRC Rules governing the issuance and service of notices and resolutions is, likewise, no different.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE PERIOD FOR FILING A PETITION FOR *CERTIORARI* SHOULD BE RECKONED FROM THE TIME THE COUNSEL OF RECORD RECEIVED A COPY OF THE RESOLUTION DENYING THE MOTION FOR RECONSIDERATION; APPLICATION IN CASE AT BAR.— [I]n *Ginete v. Sunrise Manning Agency,et al.,* the Court held that "the period for filing a petition for *certiorari* should be reckoned from the time the counsel of record received a copy of the Resolution denying the motion for reconsideration." The Court further clarified that the period or manner of "appeal" from the NLRC to the Court of Appeals is governed by Rule 65, pursuant to the ruling of the Court in the case of *St. Martin Funeral Homes v. NLRC* in light of Section 4 of Rule 65, as amended, which states that the "petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed." x x x Thus, based on the foregoing, while in cases of decisions and final awards, copies thereof shall be served on both parties and their counsel/representative by registered mail, for purposes of appeal, however, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record. In the instant case, it is not disputed that during the NLRC proceedings, petitioner was represented by counsel, Atty. Romeo S. Occena, as in fact the NLRC *albeit* belated, furnished a copy of its July 29, 2009 Resolution to Atty. Occena on November 19, 2009. Petitioner's several motions during the proceedings before the NLRC were likewise all signed by Atty. Occena as counsel. Consequently, following the policy that the period to appeal shall be counted from receipt of resolution by the counsel of record, considering that petitioner is represented by a counsel, the latter is considered to have received notice of the NLRC Resolution dated July 22, 2009 on November 19, 2009, the date when his representative and counsel, Atty. Occena was

served notice thereof and not on July 30, 2009, or the date when petitioner's mother received the same decision.

APPEARANCES OF COUNSEL

Angelito R. Villarin for petitioner.
Kelly P. Dela Rosa for private respondents.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court filed by petitioner Francis Cervantes assailing the Resolutions of the Court of Appeals (*CA*), dated October 30, 2009[1] and March 11, 2010[2] in CA-G.R. SP No. 111037, which dismissed petitioner's petition for *certiorari* for having been filed out of time and denied the petitioner's motion for reconsideration, respectively.

The instant petition stemmed from a Complaint for illegal dismissal dated December 19, 2007 filed before the National Labor Relations Commission (*NLRC*) by petitioner Francis C. Cervantes against respondents City Service Corporation and/or Valentin Prieto, Jr. for illegal dismissal, underpayment of salaries/wages, overtime pay, holiday pay, holiday premium, rest day premium, service incentive leave, separation pay, ECOLA, moral and exemplary damages, and attorney's fees.

On June 30, 2008, the Labor Arbiter, in NLRC-NCR-12-14080-07, dismissed the complaint for lack of merit. It found that it was Cervantes who refused to work after he was transferred to another client of City Service. The Labor Arbiter stressed that employees of local manpower agencies, which are assigned to clients, do not become employees of the client.

---

[1] *Rollo*, pp. 32-34.

[2] *Id.* at 67-68.

Cervantes appealed the Labor Arbiter's decision, but was denied in a Resolution dated February 5, 2008. Undaunted, Cervantes moved for reconsideration, but was denied anew in a Resolution[3] dated July 22, 2009.

Thus, on October 6, 2009, Cervantes, through counsel Atty. Angelito R. Villarin, filed before the CA a Petition for *Certiorari*[4] under Rules 65 of the Rules of Court, alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC in affirming the assailed Resolutions dated February 9, 2009 and July 22, 2009 which dismissed Cervantes' complaint for illegal dismissal and denied his motion for reconsideration, respectively.

In the assailed Resolution[5] dated October 30, 2009, the CA dismissed Cervantes' petition for *certiorari* for having been filed out of time. The appellate court argued that, by petitioner's admission, his mother received the assailed Resolution of the NLRC denying his motion for reconsideration on July 30, 2009. Thus, counting sixty (60) days therefrom, petitioner had only until September 28, 2009 within which to file the petition. However, the petition for *certiorari* was filed only on October 7, 2009, or nine (9) days late.

Cervantes moved for reconsideration, but was denied in Resolution[6] dated March 11, 2010. Thus, the instant petition for review on *certiorari* raising the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW FOR RECKONING THE PERIOD FOR FILING A PETITION FOR CERTIORARI UNDER RULE 65 FROM RECEIPT OF THE ASSAILED RESOLUTION OF THE NLRC DATED JULY 22, 2009.

---

[3] *Id.* at 256-258.

[4] *Id.* at 264-307.

[5] *Id.* at 320-322.

[6] *Id.* at 67-68.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED AN ERROR OF LAW FOR RULING THAT THE SAID PETITION SHOULD HAVE BEEN DISMISSED ANYWAY BECAUSE PETITIONER FAILED TO ATTACH COPIES OF RESPONDENT'S REPLY MEMORANDUM AND COMMENT TO THE MOTION FOR RECONSIDERATION FILED WITH THE NLRC; AND

WHETHER OR NOT THE COURT OF APPEALS COMMITTED AN ERROR OF LAW THAT THE NLRC DID NOT COMMIT GRAVE ABUSE OF DISCRETION FOR SUSTAINING THE DECISION OF THE LABOR ARBITER THAT PETITIONER WAS NOT ILLEGALLY DISMISSED.

Procedurally, petitioner insists that he filed the petition for *certiorari* on time, which should be reckoned from the moment his counsel was informed about the Resolution denying his motion for reconsideration, and not from the date his mother received a copy of the NLRC Resolution.

The petition is partly meritorious.

In practice, service means the delivery or communication of a pleading, notice or some other paper in a case, to the opposite party so as to charge him with receipt of it and subject him to its legal effect. The purpose of the rules on service is to make sure that the party being served with the pleading, order or judgment is duly informed of the same so that he can take steps to protect his interests; *i.e.*, enable a party to file an appeal or apply for other appropriate reliefs before the decision becomes final.[7]

The rule is —

where a party appears by attorney in an action or proceeding in a court of record, all notices required to be given therein must be given to the attorney of record; and service of the court's order upon any person other than the counsel of record is not legally effective and binding upon the party, nor may it start the corresponding reglementary period for the subsequent procedural steps that may be taken by the attorney. Notice should be made upon the counsel

[7] *Spouses Soriano v. Soriano*, 558 Phil. 627, 641-642 (2007).

of record at his exact given address, to which notice of all kinds emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of address.

When a party is represented by counsel of record, service of orders and notices must be made upon said attorney; and notice to the client and to any other lawyer, not the counsel of record, is not notice in law.[8]

The NLRC Rules governing the issuance and service of notices and resolutions is, likewise, no different:

SECTION 4. SERVICE OF NOTICES, RESOLUTIONS, ORDERS AND DECISIONS. — a) Notices and copies of resolutions or orders, shall be served personally upon the parties by the bailiff or duly authorized public officer within three (3) days from his/her receipt thereof or by registered mail or by private courier;

b) *In case of decisions and final awards, copies thereof shall be served on both parties and their counsel or representative by registered mail or by private courier*; Provided that, in cases where a party to a case or his/her counsel on record personally seeks service of the decision upon inquiry thereon, service to said party shall be deemed effected as herein provided. Where parties are numerous, service shall be made on counsel and upon such number of complainants, as may be practicable and shall be considered substantial compliance with Article 224 (a) of the Labor Code, as amended. *For purposes of appeal, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record.*

c) The bailiff or officer serving the notice, order, or resolution shall submit his/her return within two (2) days from date of service thereof, stating legibly in his/her return his/her name, the names of the persons served and the date of receipt, which return shall be immediately attached and shall form part of the records of the case. In case of service by registered mail or by private courier, the name of the addressee and the date of receipt of the notice, order or resolution shall be written in the return card or in the proof of service issued by the private courier. If no service was effected, the reason thereof shall be so stated.[9]

---

[8] *Id.* at 642.

[9] The 2011 NLRC Rules of Procedure, Rule III, Sec. 4. (Emphasis ours)

Also, in *Ginete v. Sunrise Manning Agency*, *et al.*,[10] the Court held that "the period for filing a petition for *certiorari* should be reckoned from the time the counsel of record received a copy of the Resolution denying the motion for reconsideration."[11] The Court further clarified that the period or manner of "appeal" from the NLRC to the Court of Appeals is governed by Rule 65, pursuant to the ruling of the Court in the case of *St. Martin Funeral Homes v. NLRC*[12] in light of Section 4 of Rule 65, as amended, which states that the "petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed."

The Court further expounded therein, to wit:

> Corollarily, Section 4, Rule III of the New Rules of Procedure of the NLRC expressly mandates that "(F)or the purpose(s) of computing the period of appeal, the same shall be counted from receipt of such decisions, awards or orders by the counsel of record." ***Although this rule explicitly contemplates an appeal before the Labor Arbiter and the NLRC, we do not see any cogent reason why the same rule should not apply to petitions for certiorari filed with the Court of Appeals from decisions of the NLRC. This procedure is in line with the established rule that notice to counsel is notice to party and when a party is represented by counsel, notices should be made upon the counsel of record at his given address to which notices of all kinds emanating from the court should be sent***. It is to be noted also that Section 7 of the NLRC Rules of Procedure provides that "(A)ttorneys and other representatives of parties shall have authority to bind their clients in all matters of procedure"' a provision which is similar to Section 23, Rule 138 of the Rules of Court. More importantly, Section 2, Rule 13 of the 1997 Rules of Civil Procedure analogously provides that if any party has appeared by counsel, service upon him shall be made upon his counsel.[13]

---

[10] 411 Phil. 953 (2001).

[11] *Ginete v. Sunrise Manning Agency*, *et al.*, *supra*, at 956.

[12] 356 Phil. 811 (1998).

[13] *Ginete v. Sunrise Manning Agency*, *et al.*, *supra* note 10, at 958. (Emphasis ours)

In *Bello v. NLRC*,[14] citing anew *Ginete v. Sunrise Manning Agency, et al.*,[15] the Court held that "the period for filing a petition for *certiorari* should be reckoned from the time the counsel of record received a copy of the Resolution denying the motion for reconsideration."[16]

Thus, based on the foregoing, while in cases of decisions and final awards, copies thereof shall be served on both parties and their counsel/representative by registered mail, for purposes of appeal, however, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record.

In the instant case, it is not disputed that during the NLRC proceedings, petitioner was represented by counsel, Atty. Romeo S. Occena, as in fact the NLRC *albeit* belated, furnished a copy of its July 29, 2009 Resolution to Atty. Occena on November 19, 2009. Petitioner's several motions during the proceedings before the NLRC were likewise all signed by Atty. Occena as counsel. Consequently, following the policy that the period to appeal shall be counted from receipt of resolution by the counsel of record, considering that petitioner is represented by a counsel, the latter is considered to have received notice of the NLRC Resolution dated July 22, 2009 on November 19, 2009, the date when his representative and counsel, Atty. Occena was served notice thereof and not on July 30, 2009, or the date when petitioner's mother received the same decision.

Accordingly, the 60-day period for filing the petition for *certiorari* with the CA should be counted from the receipt by the petitioner's counsel of a copy of the NLRC Decision dated July 22, 2009 on November 19, 2009. It should be stressed that the NLRC sent the notice of Resolution to petitioner's counsel only on November 19, 2009. While there was a notice of Resolution dated July 22, 2009, said notice was not served upon

---

[14] 559 Phil. 20 (2007).

[15] *Supra* note 10.

[16] *Bello v. NLRC*, *supra* note 14, at 27.

petitioner's counsel. Thus, strictly speaking, the running of the 60-day period to appeal should be counted from November 19, 2009 when the notice of Resolution dated July 22, 2009 was served on petitioner's counsel. Considering that petitioner filed his petition for *certiorari* on October 7, 2009, the same was well within the prescribed period to appeal. The petition for *certiorari* was filed on time.

However, the foregoing discussion notwithstanding, we have reviewed the records of the case at bar and find no reversible error committed by the NLRC concerning the merits of the present petition. While the petition for *certiorari* was timely filed with the CA, the instant petition would still suffer the same verdict of dismissal in view of the identical findings of the Labor Arbiter and the NLRC. The findings of fact made by Labor Arbiters and affirmed by the NLRC are not only entitled to great respect, but even finality, and are considered binding if the same are supported by substantial evidence.

We find that the NLRC correctly upheld petitioner's dismissal to be valid. Records show that petitioner was relieved from his post in UST due to his poor work performance and attitude. However, while petitioner was removed from UST, private respondent immediately reassigned him to Mercury Drug Fairview which he refused to accept. Despite notices requiring him to report back to work, petitioner refused to heed. Considering that it was petitioner who went on absence without official leave (AWOL), the same negates the allegation of illegal dismissal.

WHEREFORE, premises considered, the petition is **DENIED**. The NLRC Resolutions dated February 9, 2009 and July 22, 2009 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 195176. April 18, 2016]

THE INSULAR LIFE ASSURANCE COMPANY, LTD., *petitioner, vs.* **PAZ Y. KHU, FELIPE Y. KHU, JR., and FREDERICK Y. KHU,** *respondents.*

SYLLABUS

1. **MERCANTILE LAW; INSURANCE; THE REINSTATEMENT OF AN INSURANCE POLICY SHOULD BE RECKONED FROM THE DATE WHEN THE SAME WAS APPROVED BY THE INSURER.—** In *Lalican v. The Insular Life Assurance Company, Limited*, which coincidentally also involves the herein petitioner, it was there held that the reinstatement of the insured's policy is to be reckoned from the date when the application was processed and approved by the insurer. There, we stressed that: To reinstate a policy means to restore the same to premium-paying status after it has been permitted to lapse. x x x Thus, it is settled that the reinstatement of an insurance policy should be reckoned from the date when the same was approved by the insurer.

2. **ID.; ID.; AN INSURANCE CONTRACT IS A CONTRACT OF ADHESION WHICH MUST BE CONSTRUED LIBERALLY IN FAVOR OF THE INSURED AND STRICTLY AGAINST THE INSURER; APPLICATION IN CASE AT BAR.—** In *Eternal Gardens Memorial Park Corporation v. The Philippine American Life Insurance Company,* we ruled in favor of the insured and in favor of the effectivity of the insurance contract in the midst of ambiguity in the insurance contract provisions. We held that: It must be remembered that an insurance contract is a contract of adhesion which must be construed liberally in favor of the insured and strictly against the insurer in order to safeguard the latter's interest. x x x Indeed, more than two years had lapsed from the time the subject insurance policy was reinstated on June 22, 1999 vis-a-vis Felipe's death on September 22, 2001. As such, the subject insurance policy has already become incontestable at the time of Felipe's death.

APPEARANCES OF COUNSEL

Cayetano Sebastian Ata Dado & Cruz for petitioner.
Buenaventura E. Sagrada for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The date of last reinstatement mentioned in Section 48 of the Insurance Code pertains to the date that the insurer approved the application for reinstatement. However, in light of the ambiguity in the insurance documents to this case, this Court adopts the interpretation favorable to the insured in determining the date when the reinstatement was approved.

Assailed in this Petition for Review on *Certiorari*[1] are the June 24, 2010 Decision[2] of the Court of Appeals (CA), which dismissed the Petition in CA-G.R. CV No. 81730, and its December 13, 2010 Resolution,[3] which denied the petitioner Insular Life Assurance Company Ltd.'s (Insular Life) motion for partial reconsideration.[4]

Factual Antecedents

On March 6, 1997, Felipe N. Khu, Sr. (Felipe) applied for a life insurance policy with Insular Life under the latter's Diamond Jubilee Insurance Plan. Felipe accomplished the required medical questionnaire wherein he did not declare any illness or adverse medical condition. Insular Life thereafter issued him Policy Number A000015683 with a face value of ₱1 million. This took effect on June 22, 1997.[5]

---

[1] *Rollo*, pp. 28-69.

[2] *Id.* at 70-82; penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Edgardo T. Lloren and Ramon Paul L. Hernando.

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

[4] *Id.* at 442-461.

[5] *Id.* at 71.

On June 23, 1999, Felipe's policy lapsed due to non-payment of the premium covering the period from June 22, 1999 to June 23, 2000.[6]

On September 7, 1999, Felipe applied for the reinstatement of his policy and paid ₱25,020.00 as premium. Except for the change in his occupation of being self-employed to being the Municipal Mayor of Binuangan, Misamis Oriental, all the other information submitted by Felipe in his application for reinstatement was virtually identical to those mentioned in his original policy.[7]

On October 12, 1999, Insular Life advised Felipe that his application for reinstatement may only be considered if he agreed to certain conditions such as payment of additional premium and the cancellation of the riders pertaining to premium waiver and accidental death benefits. Felipe agreed to these conditions[8] and on December 27, 1999 paid the agreed additional premium of ₱3,054.50.[9]

On January 7, 2000, Insular Life issued Endorsement No. PN-A000015683, which reads:

> This certifies that as agreed by the Insured, the reinstatement of this policy has been approved by the Company on the understanding that the following changes are made on the policy effective June 22, 1999:
>
> 1. The EXTRA PREMIUM is imposed; and
>
> 2. The ACCIDENTAL DEATH BENEFIT (ADB) and WAIVER OF PREMIUM DISABILITY (WPD) rider originally attached to and forming parts of this policy [are] deleted.
>
> In consequence thereof, the premium rates on this policy are adjusted to ₱28,000.00 annually, ₱14,843.00 semi-annually and ₱7,557.00 quarterly, Philippine currency.[10]

---

[6] *Id.*

[7] *Id.*

[8] *Id.* at unpaginated before p. 72.

[9] *Id.* at 72.

[10] Records, p. 80.

On June 23, 2000, Felipe paid the annual premium in the amount of ₱28,000.00 covering the period from June 22, 2000 to June 22, 2001. And on July 2, 2001, he also paid the same amount as annual premium covering the period from June 22, 2001 to June 21, 2002.[11]

On September 22, 2001, Felipe died. His Certificate of Death enumerated the following as causes of death:

Immediate cause: a. End stage renal failure, Hepatic failure

Antecedent cause: b. Congestive heart failure, Diffuse myocardial ischemia.

Underlying cause: c. Diabetes Neuropathy, Alcoholism, and Pneumonia.[12]

On October 5, 2001, Paz Y. Khu, Felipe Y. Khu, Jr. and Frederick Y. Khu (collectively, Felipe's beneficiaries or respondents) filed with Insular Life a claim for benefit under the reinstated policy. This claim was denied. Instead, Insular Life advised Felipe's beneficiaries that it had decided to rescind the reinstated policy on the grounds of concealment and misrepresentation by Felipe.

Hence, respondents instituted a complaint for specific performance with damages. Respondents prayed that the reinstated life insurance policy be declared valid, enforceable and binding on Insular Life; and that the latter be ordered to pay unto Felipe's beneficiaries the proceeds of this policy, among others.[13]

In its Answer, Insular Life countered that Felipe did not disclose the ailments (*viz.*, Type 2 Diabetes Mellitus, Diabetes Nephropathy and Alcoholic Liver Cirrhosis with Ascites) that he already had prior to his application for reinstatement of his insurance policy; and that it would not have reinstated the insurance policy had Felipe disclosed the material information on his adverse health

---

[11] *Rollo*, p. 72.

[12] *Id.* at 72-73.

[13] *Id.* at 70 and 73.

condition. It contended that when Felipe died, the policy was still contestable.[14]

Ruling of the Regional Trial Court (RTC)

On December 12, 2003, the RTC, Branch 39 of Cagayan de Oro City found[15] for Felipe's beneficiaries, thus:

> **WHEREFORE**, in view of the foregoing, plaintiffs having substantiated [their] claim by preponderance of evidence, judgment is hereby rendered in their favor and against defendants, ordering the latter to pay jointly and severally the sum of One Million (₱1,000,000.00) Pesos with legal rate of interest from the date of demand until it is fully paid representing the face value of Plan Diamond Jubilee No. PN-A000015683 issued to insured the late Felipe N. Khu[,] Sr; the sum of ₱20,000.00 as moral damages; ₱30,000.00 as attorney's fees; ₱10,000.00 as litigation expenses.
>
> SO ORDERED.[16]

In ordering Insular Life to pay Felipe's beneficiaries, the RTC agreed with the latter's claim that the insurance policy was reinstated on June 22, 1999. The RTC cited the ruling in *Malayan Insurance Corporation v. Court of Appeals*[17] that any ambiguity in a contract of insurance should be resolved strictly against the insurer upon the principle that an insurance contract is a contract of adhesion.[18] The RTC also held that the reinstated insurance policy had already become incontestable by the time of Felipe's death on September 22, 2001 since more than two years had already lapsed from the date of the policy's reinstatement on June 22, 1999. The RTC noted that since it was Insular Life itself that supplied all the pertinent forms relative to the reinstated policy, then it is barred from taking advantage of any ambiguity/obscurity perceived therein particularly as regards the date when the reinstated insurance policy became effective.

---

[14] *Id.* at unpaginated before p. 74.

[15] *Id.* at 277-297; penned by Judge Downey C. Valdevilla.

[16] *Id.* at 296-297.

[17] 336 Phil. 977 (1997).

[18] *Id.* at 989.

Ruling of the Court of Appeals

On June 24, 2010, the CA issued the assailed Decision[19] which contained the following decretal portion:

> WHEREFORE, the appeal is DISMISSED. The assailed Judgment of the lower court is AFFIRMED with the MODIFICATION that the award of moral damages, attorney's fees and litigation expenses [is] DELETED.
>
> SO ORDERED.[20]

The CA upheld the RTC's ruling on the non-contestability of the reinstated insurance policy on the date the insured died. It declared that contrary to Insular Life's contention, there in fact exists a genuine ambiguity or obscurity in the language of the two documents prepared by Insular Life itself, *viz.*, Felipe's Letter of Acceptance and Insular Life's Endorsement; that given the obscurity/ambiguity in the language of these two documents, the construction/interpretation that favors the insured's right to recover should be adopted; and that in keeping with this principle, the insurance policy in dispute must be deemed reinstated as of June 22, 1999.[21]

Insular Life moved for partial reconsideration[22] but this was denied by the CA in its Resolution of December 13, 2010.[23] Hence, the present Petition.

Issue

The fundamental issue to be resolved in this case is whether Felipe's reinstated life insurance policy is already incontestable at the time of his death.

---

[19] *Rollo*, pp. 70-82.

[20] *Id.* at 81-82.

[21] *Id.* at 80-81.

[22] *Id.* at 442-461.

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

Petitioner's Arguments

In praying for the reversal of the CA Decision, Insular Life basically argues that respondents should not be allowed to recover on the reinstated insurance policy because the two-year contestability period had not yet lapsed inasmuch as the insurance policy was reinstated only on December 27, 1999, whereas Felipe died on September 22, 2001;[24] that the CA overlooked the fact that Felipe paid the additional extra premium only on December 27, 1999, hence, it is only upon this date that the reinstated policy had become effective; that the CA erred in declaring that resort to the principles of statutory construction is still necessary to resolve that question given that the Application for Reinstatement, the Letter of Acceptance and the Endorsement in and by themselves already embodied unequivocal provisions stipulating that the two-year contestability clause should be reckoned from the date of approval of the reinstatement;[25] and that Felipe's misrepresentation and concealment of material facts in regard to his health or adverse medical condition gave it (Insular Life) the right to rescind the contract of insurance and consequently, the right to deny the claim of Felipe's beneficiaries for death benefits under the disputed policy.[26]

Respondents' Arguments

Respondents maintain that the phrase "effective June 22, 1999" found in both the Letter of Acceptance and in the Endorsement is unclear whether it refers to the subject of the sentence, *i.e.*, the "reinstatement of this policy" or to the subsequent phrase "changes are made on the policy;" that granting that there was any obscurity or ambiguity in the insurance policy, the same should be laid at the door of Insular Life as it was this insurance company that prepared the necessary documents that make up the same;[27] and that given the CA's finding which effectively

---

[24] *Id.* at 583.

[25] *Id.* at 581-582.

[26] *Id.* at 592.

[27] *Id.* at 611.

affirmed the RTC's finding on this particular issue, it stands to reason that the insurance policy had indeed become incontestable upon the date of Felipe's death.[28]

Our Ruling

We deny the Petition.

The Insurance Code pertinently provides that:

> Sec. 48. Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right must be exercised previous to the commencement of an action on the contract.
>
> After a policy of life insurance made payable on the death of the insured shall have been in force during the lifetime of the insured for a period of two years from the date of its issue or of its last reinstatement, the insurer cannot prove that the policy is void ab initio or is rescindible by reason of the fraudulent concealment or misrepresentation of the insured or his agent.

The rationale for this provision was discussed by the Court in *Manila Bankers Life Insurance Corporation v. Aban*,[29]

> Section 48 regulates both the actions of the insurers and prospective takers of life insurance. It gives insurers enough time to inquire whether the policy was obtained by fraud, concealment, or misrepresentation; on the other hand, it forewarns scheming individuals that their attempts at insurance fraud would be timely uncovered — thus deterring them from venturing into such nefarious enterprise. At the same time, legitimate policy holders are absolutely protected from unwarranted denial of their claims or delay in the collection of insurance proceeds occasioned by allegations of fraud, concealment, or misrepresentation by insurers, claims which may no longer be set up after the two-year period expires as ordained under the law.
>
> xxx xxx xxx

The Court therefore agrees fully with the appellate court's pronouncement that —

---

[28] *Id.* at 607.

[29] G.R. No. 175666, July 29, 2013, 702 SCRA 417, 427-429.

xxx xxx xxx

'The insurer is deemed to have the necessary facilities to discover such fraudulent concealment or misrepresentation within a period of two (2) years. It is not fair for the insurer to collect the premiums as long as the insured is still alive, only to raise the issue of fraudulent concealment or misrepresentation when the insured dies in order to defeat the right of the beneficiary to recover under the policy.

At least two (2) years from the issuance of the policy or its last reinstatement, the beneficiary is given the stability to recover under the policy when the insured dies. The provision also makes clear when the two-year period should commence in case the policy should lapse and is reinstated, that is, from the date of the last reinstatement'.

In *Lalican v. The Insular Life Assurance Company, Limited*,[30] which coincidentally also involves the herein petitioner, it was there held that the reinstatement of the insured's policy is to be reckoned from the date when the application was processed and approved by the insurer. There, we stressed that:

To reinstate a policy means to restore the same to premium-paying status after it has been permitted to lapse. . . .

xxx xxx xxx

In the instant case, Eulogio's death rendered impossible full compliance with the conditions for reinstatement of Policy No. 9011992. True, Eulogio, before his death, managed to file his Application for Reinstatement and deposit the amount for payment of his overdue premiums and interests thereon with Malaluan; but Policy No. 9011992 could only be considered reinstated after the Application for Reinstatement had been processed and approved by Insular Life during Eulogio's lifetime and good health.[31]

Thus, it is settled that the reinstatement of an insurance policy should be reckoned from the date when the same was approved by the insurer.

---

[30] 613 Phil. 518 (2009).

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

In this case, the parties differ as to when the reinstatement was actually approved. Insular Life claims that it approved the reinstatement only on December 27, 1999. On the other hand, respondents contend that it was on June 22, 1999 that the reinstatement took effect.

The resolution of this issue hinges on the following documents: 1) Letter of Acceptance; and 2) the Endorsement.

The Letter of Acceptance[32] wherein Felipe affixed his signature was actually drafted and prepared by Insular Life. This pro-forma document reads as follows:

LETTER OF ACCEPTANCE

Place: Cag. De [O]ro City

The Insular Life Assurance Co., Ltd.
P.O. Box 128, MANILA
Policy No. A000015683

Gentlemen:

Thru your Reinstatement Section, I/WE learned that this policy may be reinstated provided I/we agree to the following condition/s indicated with a check mark:

[xx] Accept the imposition of an extra/additional extra premium of [₱]5.00 a year per thousand of insurance; effective June 22, 1999

[ ] Accept the rating on the WPD at _____ at standard rates; the ABD at ____ the standard rates; the SAR at ₱ ____ annually per thousand of Insurance;

[xx] Accept the cancellation of the Premium waiver & Accidental death benefit.

[ ]

I am/we are agreeable to the above condition/s. Please proceed with the reinstatement of the policy.

Very truly yours,

Felipe N. Khu, Sr.

---

[32] Records, p. 85, dorsal side.

After Felipe accomplished this form, Insular Life, through its Regional Administrative Manager, Jesse James R. Toyhorada, issued an Endorsement[33] dated January 7, 2000. For emphasis, the Endorsement is again quoted as follows:

ENDORSEMENT

PN-A000015683

This certifies that as agreed to by the Insured, the reinstatement of this policy has been approved by the Company on the understanding that the following changes are made on the policy effective June 22, 1999:

1. The EXTRA PREMIUM is imposed; and

2. The ACCIDENTAL DEATH BENEFIT (ADB) and WAIVER OF PREMIUM DISABILITY (WPD) rider originally attached to and forming parts of this policy is deleted.

In consequence thereof, the PREMIUM RATES on this policy are adjusted to [₱]28,000.00 annually, [₱]14,843.00 semi-annually and [₱]7,557.00 quarterly, Philippine Currency.

Cagayan de Oro City, 07 January 2000.

RCV/

(Signed) Authorized Signature

Based on the foregoing, we find that the CA did not commit any error in holding that the subject insurance policy be considered as reinstated on June 22, 1999. This finding must be upheld not only because it accords with the evidence, but also because this is favorable to the insured who was not responsible for causing the ambiguity or obscurity in the insurance contract.[34]

The CA expounded on this point thus —

The Court discerns a genuine ambiguity or obscurity in the language of the two documents.

---

[33] *Id.* at 80.

[34] CIVIL CODE OF THE PHILIPPINES, Art. 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity.

In the Letter of Acceptance, Khu declared that he was accepting "the imposition of an extra/additional x x x premium of ₱5.00 a year per thousand of insurance; effective June 22, 1999". It is true that the phrase as used in this particular paragraph does not refer explicitly to the effectivity of the reinstatement. But the Court notes that the reinstatement was conditioned upon the payment of additional premium not only prospectively, that is, to cover the remainder of the annual period of coverage, but also retroactively, that is for the period starting June 22, 1999. Hence, by paying the amount of ₱3,054.50 on December 27, 1999 in addition to the ₱25,020.00 he had earlier paid on September 7, 1999, Khu had paid for the insurance coverage starting June 22, 1999. At the very least, this circumstance has engendered a true *lacuna*.

In the Endorsement, the obscurity is patent. In the first sentence of the Endorsement, it is not entirely clear whether the phrase "effective June 22, 1999" refers to the subject of the sentence, namely "the reinstatement of this policy," or to the subsequent phrase "changes are made on the policy."

The court below is correct. Given the obscurity of the language, the construction favorable to the insured will be adopted by the courts.

Accordingly, the subject policy is deemed reinstated as of June 22, 1999. Thus, the period of contestability has lapsed.[35]

In *Eternal Gardens Memorial Park Corporation v. The Philippine American Life Insurance Company*,[36] we ruled in favor of the insured and in favor of the effectivity of the insurance contract in the midst of ambiguity in the insurance contract provisions. We held that:

It must be remembered that an insurance contract is a contract of adhesion which must be construed liberally in favor of the insured and strictly against the insurer in order to safeguard the latter's interest. Thus, in *Malayan Insurance Corporation v. Court of Appeals*, this Court held that:

> Indemnity and liability insurance policies are construed in accordance with the general rule of resolving any ambiguity therein in favor of the insured, where the contract or policy

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

[36] 574 Phil. 161 (2008).

> is prepared by the insurer. **A contract of insurance, being a contract of adhesion, par excellence, any ambiguity therein should be resolved against the insurer**; in other words, it should be construed liberally in favor of the insured and strictly against the insurer. Limitations of liability should be regarded with extreme jealousy and must be construed in such a way as to preclude the insurer from noncompliance with its obligations.
>
> xxx xxx xxx
>
> As a final note, to characterize the insurer and the insured as contracting parties on equal footing is inaccurate at best. Insurance contracts are wholly prepared by the insurer with vast amounts of experience in the industry purposefully used to its advantage. More often than not, insurance contracts are contracts of adhesion containing technical terms and conditions of the industry, confusing if at all understandable to laypersons, that are imposed on those who wish to avail of insurance. As such, insurance contracts are imbued with public interest that must be considered whenever the rights and obligations of the insurer and the insured are to be delineated. Hence, in order to protect the interest of insurance applicants, insurance companies must be obligated to act with haste upon insurance applications, to either deny or approve the same, or otherwise be bound to honor the application as a valid, binding, and effective insurance contract.[37]

Indeed, more than two years had lapsed from the time the subject insurance policy was reinstated on June 22, 1999 vis-a-vis Felipe's death on September 22, 2001. As such, the subject insurance policy has already become incontestable at the time of Felipe's death.

Finally, we agree with the CA that there is neither basis nor justification for the RTC's award of moral damages, attorney's fees and litigation expenses; hence this award must be deleted.

WHEREFORE, the Petition is **DENIED**. The assailed June 24, 2010 Decision and December 13, 2010 Resolution of the Court of Appeals in CA-G.R. CV No. 81730 are **AFFIRMED**.

SO ORDERED.

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

---

[37] *Id.* at 172-174.

THIRD DIVISION

[G.R. No. 195552. April 18, 2016]

ACS DEVELOPMENT & PROPERTY MANAGERS, INC., *petitioner, vs.* **MONTAIRE REALTY AND DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

CIVIL LAW; DAMAGES; INTEREST ON MONETARY AWARDS; ALL MONETARY AWARDS SHALL BEAR INTEREST AT THE RATE OF ONLY SIX PERCENT (6%) *PER ANNUM*, TO BE COMPUTED FROM THE TIME THE AWARDS ATTAIN FINALITY UNTIL FULL PAYMENT THEREOF.— The imposable interest on the monetary awards after their finality must however be clarified, as the CA made no pronouncement on the CIAC's award of interest on the total money judgment, pegged by the CIAC at the rate of 12% *per annum* from the time they become due until full payment. To be consistent with prevailing jurisprudence, this must be modified in that all monetary awards shall bear interest at the rate of only six percent (6%) *per annum,* and to be computed from the time the awards attain finality until full payment thereof.

APPEARANCES OF COUNSEL

Francis Rafil & Anthony G. Ferrer for petitioner.
Rodrigo Berenguer & Guno for respondent.

R E S O L U T I O N

REYES, *J.*:

Before the Court is a Petition for *Certiorari*[1] filed by ACS Development & Property Managers, Inc. (ADPROM) against

[1] *Rollo*, pp. 2-72.

Mont-Aire[2] Realty and Development Corporation (MARDC) to assail the Decision[3] dated March 28, 2000 and Resolution[4] dated November 9, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 48805, which affirmed with modification the Decision[5] dated August 17, 1998 of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 32-97.

ADPROM and MARDC were parties to a Construction Agreement[6] executed on April 25, 1996, whereby ADPROM, as contractor, was to construct 17 units of MARDC's Villa Fresca Townhomes in Barangay Kaybagal, Tagaytay City. The total consideration for the contract was ₱39,500,000.00, inclusive of labor, materials, supervision and taxes. ADPROM was to be paid periodically based on monthly progress billings, less 10% retention.[7] Angel Lazaro & Associates (ALA) was hired by MARDC as the project's construction manager.[8]

The parties later amended their Construction Agreement, reducing the number of units to be erected to 11 and the total contract price to ₱25,500,000.00. On May 2, 1996, ADPROM commenced with the construction of the townhouses.[9]

MARDC fully satisfied ADPROM's Progress Billing Nos. 1 to 8 for a total amount of ₱23,169,183.43. In Progress Billing No. 9 for work performed in February 1997, ADPROM demanded from MARDC the amount of ₱1,495,345.24.[10] ALA, however,

---

[2] Montaire in the Petition for *Certiorari*.

[3] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Corona Ibay-Somera and Portia Aliño-Hormachuelos concurring; *rollo*, pp. 311-317.

[4] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Josefina Guevara-Salonga and Japar B. Dimaampao concurring; *id.* at 319-320.

[5] *Id.* at 80-99.

[6] *Id.* at 105-111.

[7] *Id.* at 107.

[8] *Id.* at 312.

[9] *Id.* at 81.

[10] *Id.* at 261.

approved the payment of only ₱94,460.28, as it disputed specific amounts in the billing, including cost additives.[11] ADPROM refused to allow a reduction in its demanded amount. In a letter[12] dated March 14, 1997, it even insisted on MARDC's acceptance of the accomplishments identified in Progress Billing No. 9 before it could proceed further with construction works. Beginning March 18, 1997, when Progress Billing No. 9 remained unpaid, ADPROM decided on a work stoppage.[13]

The stoppage prompted MARDC to serve upon ADPROM on March 20, 1997 a notice of default.[14] After several meetings among the parties and ADPROM's issuance of consolidated Progress Billing Nos. 9 and 10[15] intended to supersede the contested Progress Billing No. 9, ALA still advised MARDC to defer the payment of ADPROM's demand.[16] ADPROM's consolidated billing of ₱1,778,682.06 was still greater than ALA's approved amount of ₱1,468,348.60.[17]

On June 5, 1997, MARDC decided to terminate the subject Construction Agreement.[18] It demanded from ADPROM the return of alleged overpayments amounting to ₱11,188,539.69, after it determined from ALA that ADPROM's accomplished work constituted only 54.67%. An evaluation by another firm hired by MARDC, TCGI Engineers, also provided that ADPROM's work accomplishment was only at 46.98%.[19] Feeling aggrieved, ADPROM instituted with the CIAC a case for sum of money against MARDC, which in turn filed its own counterclaim against ADPROM.

---

[11] *Id.* at 268-269.

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

[13] *Id.* at 271-275, 312.

[14] *Id.* at 273.

[15] *Id.* at 283.

[16] *Id.* at 284, 312.

[17] *Id.* at 283.

[18] *Id.* at 289.

[19] *Id.* at 312-313.

On August 17, 1998, the CIAC rendered its Decision[20] that concluded with the following awards:

IX. SUMMARY OF AWARD

The Tribunal therefore makes the summary of award as follows:

A. **FOR [ADPROM]**

	Claims	Award
1. Unpaid Billings	₱1,468,348.60	₱1,468,348.60
2. Interest on Billings	19,755.23	109,824.43*
3. Refund of accumulated 10% retention	2,806,814.00	2,806,814.00
4. Interest on retention	202,396.71	0.00
Total	₱4,497,314.54	₱4,384,987.03

[* *computed at 6% per annum from 19 May 1997 up to 17 August 1998, the date of the promulgation of this award*]

B. **FOR [MARDC]**

1. Refund for overpayment	₱11,188,539.69	0.00
2. Interest on overpayment	167,828.10	0.00
3. Liquidated Damages	6,517,500.00	0.00
Total	₱17,873,867.79	0.00

C. **NET AWARD for CLAIMANT** **₱4,384,987.03**

NET AWARD **₱4,384,987.03**

X. AWARD

[MARDC] therefore is ordered to pay [ADPROM] the amount of PESOS **FOUR MILLION [THREE] HUNDRED [EIGHTY-FOUR] THOUSAND [NINE] HUNDRED [EIGHTY-SEVEN] AND [03]/100 (₱4,384,987.03)** within fifteen (15) days from receipt of notice hereof. Interest of twelve percent (12%) per annum shall be charged on said amount or any balance thereof from the time due until fully paid.[21]

---

[20] *Id.* at 80-99.

[21] *Id.* at 98-99.

Ruling of the CA

Dissatisfied, MARDC appealed the CIAC decision to the CA *via* a petition for review. On March 28, 2000, the CA rendered its Decision[22] deleting the award of interest on unpaid billings, and holding ADPROM liable to MARDC for liquidated damages at ₱39,500.00 per calendar day from March 20, 1997 until September 1, 1997. Thus, the dispositive portion of the CA decision reads:

> WHEREFORE, premises considered, the assailed Decision of [CIAC] is hereby MODIFIED. It is affirmed in part, insofar as it awards [ADPROM] its unpaid billings and the refund of its retention. The award of interest on the unpaid billings is set aside for lack of merit. Finally, [ADPROM] is hereby held liable to [MARDC] for liquidated damages in the amount of Thirty[-]Nine Thousand Five Hundred Pesos (Php39,500.00) per calendar day, computed from March 20, 1997, the date ADPROM was served a notice of default for unjustified work stoppage, until September 1, 1997, when [MARDC] contracted another construction corporation, the Ulanday Contractors, Inc., to complete the project.
>
> **SO ORDERED.**[23]

ADPROM filed a motion for reconsideration while MARDC filed a motion for partial reconsideration. Both motions were denied by the CA in its Resolution[24] dated November 9, 2010.

Unyielding, ADPROM filed the Petition for *Certiorari* before this Court arguing that the CA gravely abused its discretion in deleting the award of interest on unpaid billings and in ordering it to pay liquidated damages.

Ruling of the Court

The Court dismisses the petition.

At the outset, the Court emphasizes that ADPROM availed of the wrong remedy when it filed with the Court a petition for

---

[22] *Id.* at 311-317.

[23] *Id.* at 317.

[24] *Id.* at 319-320.

certiorari to question the CA decision that reviewed the CIAC's rulings. Instead of filing a petition for *certiorari* under Rule 65 of the Rules of Court, ADPROM should have filed a petition for review under Rule 45.[25] In *Spouses Leynes v. Former Tenth Division of the CA, et al.*,[26] the Court emphasized:

> The proper remedy of a party aggrieved by a decision of the [CA] is a petition for review under Rule 45 which is not similar to a petition for *certiorari* under Rule 65 of the Rules of Court. As provided in Rule 45 of the Rules of Court, decisions, final orders, or resolutions of the [CA] in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. A special civil action under Rule 65 is an independent action based on the specific grounds therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.[27]

Even granting that the Court adopts a liberal application of the rules and treats the present petition as a petition for review, there still exists no cogent reason for a reversal of the rulings made by the CA.

The appellate court sufficiently explained its bases in modifying the CIAC's monetary awards. As regards the deletion of the interest on the unpaid billings, the CA explained that with the parties' agreement that ALA would have to first approve ADPROM's progress billings before MARDC would be obligated to pay, the latter did not incur any delay in the payment of ADPROM's demands. On the award of liquidated damages, the CA cited ADPROM's unjustified work stoppage that resulted in MARDC's clear disadvantage. Even the non-payment of its demands upon MARDC failed to justify ADPROM's decision, given its own refusal to adjust its billings in accordance with

---

[25] See *Phil. Commercial Int'l. Bank v. CA*, 452 Phil. 542, 551 (2003).

[26] 655 Phil. 25 (2011).

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

the findings of ALA. Moreover, the subject Construction Agreement provided that in case of disputes that would arise from the contract, the parties should strive to resolve them through an amicable settlement.[28]

The foregoing pronouncements of the CA were in accord with the pertinent provisions of the parties' Construction Agreement. First, ADPROM was not entitled to CIAC's awarded interest of ₱109,824.43, which was supposedly computed based on the unpaid billings at six percent (6%) *per annum* from May 19, 1997 up to the date of promulgation of the CIAC decision.[29] Specifically on the accrual of MARDC's obligation to pay for work performed by ADPROM, the parties deemed necessary the prior approval by ALA of the billings to be paid, as recognized in the following stipulations:

> Article III
> SCOPE OF OWNER'S RESPONSIBILITY
>
> 3.1 [MARDC] shall make payments directly to [ADPROM] based on the latter's progress billing **as approved by [ALA]**.
>
> Article IV
> CONTRACT PRICE AND TERMS OF PAYMENT
>
> xxx xxx xxx
>
> 4.2 Terms of Payment
>
> xxx xxx xxx
>
> 4.2.3 [MARDC] shall pay [ADPROM] within seven (7) working days from receipt of the progress billing submitted by [ADPROM], **duly approved by [ALA]**.
>
> xxx xxx xxx
>
> 4.2.5 All payments/releases shall be effected strictly in accordance with the "Scope of Works, Cost Breakdown and Weight Percentage for Billing" attached as Annexes A and C and the stipulations herein provided and upon presentment by [ADPROM] of a written certification

[28] *Rollo*, pp. 315-316.

[29] *Id.* at 99.

> certifying as to the percentage of completion and accompanied by a certificate attesting to the said percentage of completion **and recommending approval by [ALA] for the appropriate payment thereof**, subject to the warranties and obligations of [ADPROM].[30] (Emphasis ours)

Clearly, given its consent to the foregoing conditions, ADPROM could not have compelled MARDC to satisfy the unpaid billings unless and until its progress billings had been approved by ALA. In the same vein, no default could be attributed to MARDC in the absence of such action from ALA. Records indicate that as of May 9, 1997, pending the settlement of the disputed matters between the parties, ALA only recommended payment by MARDC of the reduced amount of ₱1,468,348.60.[31] ADPROM then could neither fault nor penalize MARDC for its deferment of the demanded amounts. On the other hand, in withholding approval, ALA made clear its grounds for refusing to agree on the full amount of ADPROM's claim.

Contrary to the statement of ADPROM in its petition that ALA later approved on April 4, 1997 the payment of the consolidated Progress Billing Nos. 9 and 10, the minutes of the meeting among representatives of MARDC, ADPROM and ALA on even date indicated that the consolidated billings were then still subject to evaluation.[32] Records even show that as of May 9, 1997, there were still items in the billings that were being contested by ALA, already made known to ADPROM.[33]

The CA's award of liquidated damages upon MARDC was also supported by sufficient bases. In justifying the award, the appellate court correctly cited the unjustified decision of ADPROM to cease in its construction of MARDC's townhouse project. The pending conflict between the parties on the unpaid billings was not a sufficient ground for such recourse. Article

---

[30] *Id.* at 107.

[31] *Id.* at 312.

[32] *Id.* at 279-280.

[33] *Id.* at 284-286.

XIII, Section 13.1 of the Construction Agreement even provided that "[t]he parties shall attempt to settle any dispute arising from the Agreement amicably."[34]

The Court reiterates that MARDC was allowed under the parties' contract to rely on the findings of ALA on the percentage of completion and the appropriate payment that should be given therefor, and to act in accordance with such findings. However, beginning March 18, 1997, at a time when no approval for full payment was as yet issued by ALA, ADPROM proceeded with its threat to cease working on the townhouse project already conveyed in its letter dated March 14, 1997. Such work stoppage by ADPROM was not based on justifiable grounds, and thus rendered applicable the following agreement of the parties on liability for liquidated damages:

> Article IX
> LIQUIDATED DAMAGES
>
> 9.1. [ADPROM] acknowledges that time is of the essence of this Agreement and that any unexcused day of delay as determined in accordance with [S]ection 5.1 hereof as defined in the general conditions of this Agreement will result in injury or damages to [MARDC], in view of which, the parties have hereto agreed that for every calendar day of unexcused delay in the completion of its Work under this Agreement, [ADPROM] shall pay [MARDC] the sum of Thirty[-]Nine Thousand Five Hundred (₱39,500.00) per calendar day as liquidated damages. Said amount is equivalent to 1/10 of 1% of the Total Contract Price. Liquidated damages under this provision may be deducted by [MARDC] from the stipulated Contract Price or any balance thereof, or to any progress billings due [ADPROM].[35]

Section 5.1 of Article V referred to in the aforequoted provision provides that the townhouse project shall be completed within 180 calendar days, to be effective from the date of the agreement's execution, MARDC's payment of the required down payment

---

[34] *Id.* at 109-A.

[35] *Id.* at 109.

and the issuance of a Notice to Proceed.[36] Based on records, the parties agreed on an extension of the period to complete the project until April 30, 1997.[37]

There clearly was an unexcused delay in the completion of the project because of ADPROM's decision on a work stoppage. Given the terms of the Construction Agreement, ADPROM neither had the authority to terminate their contract, nor to unilaterally decide to discontinue a prompt performance of its duties under the agreement, especially after no default could as yet be attributed to MARDC. Records indicate that MARDC had been prompt in the payment of Progress Billing Nos. 1 to 8 for the period covering June 1996 to January 1997, having already paid a total amount of ₱23,169,183.43 for the construction of the townhouses. The dispute only arose from the February 1997 billing. ADPROM's unilateral and hasty decision to cease constructing, and the consequent delay in the project's completion, then made it liable for the stipulated liquidated damages. In *Philippine Charter Insurance Corporation v. Petroleum Distributors & Services Corporation*,[38] the Court reiterated:

> Article 2226 of the Civil Code allows the parties to a contract to stipulate on liquidated damages to be paid in case of breach. It is attached to an obligation in order to insure performance and has a double function: (1) to provide for liquidated damages, and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach. As a general rule, contracts constitute the law between the parties, and they are bound by its stipulations. For as long as they are not contrary to law, morals, good customs, public order or public policy, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient.[39] (Citations omitted)

Subsequent to the execution of the Construction Agreement, the parties decided to vary the terms of their contract by reducing

---

[36] *Id.* at 107.

[37] *Id.* at 97, 260.

[38] 686 Phil. 154 (2012).

[39] *Id.* at 164-165.

the project's number of units and the corresponding contract price. There was nonetheless no indication that they resolved to reduce the amount of liquidated damages to be paid by ADPROM in the event of its unexcused delay. The foregoing circumstances also do not affect ADPROM's entitlement to the unpaid billings of ₱1,468,348.60, after it was established before the CIAC and by the CA that work for such value had been completed by the company.[40] MARDC then rightly had to compensate ADPROM for such amount, together with the 10% retention of ₱2,806,814.00.

The imposable interest on the monetary awards after their finality must however be clarified, as the CA made no pronouncement on the CIAC's award of interest on the total money judgment, pegged by the CIAC at the rate of 12% *per annum* from the time they become due until full payment. To be consistent with prevailing jurisprudence, this must be modified in that all monetary awards shall bear interest at the rate of only six percent (6%) *per annum*, and to be computed from the time the awards attain finality until full payment thereof.[41]

WHEREFORE, the petition is **DISMISSED**. The Decision dated March 28, 2000 and Resolution dated November 9, 2010 of the Court of Appeals in CA-G.R. SP No. 48805 are **AFFIRMED with MODIFICATION** in that the monetary awards to the parties shall bear interest at the rate of six percent (6%) *per annum* from the time the awards become final until full satisfaction thereof.

SO ORDERED.

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

---

[40] *Rollo*, p. 283.

[41] *S.C. Megaworld Construction and Development Corporation v. Parada*, G.R. No. 183804, September 11, 2013, 705 SCRA 584, 609.

SECOND DIVISION

[G.R. No. 196028. April 18, 2016]

SAMAHAN NG MAGSASAKA AT MANGINGISDA NG SITIO NASWE, INC. [SAMMANA], REPRESENTED BY ROGELIO A. COMMENDADOR, PRESIDENT, *petitioner, vs.* **TOMAS TAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; PARTIES; REAL PARTY IN INTEREST; TO BE PROPERLY CONSIDERED AS A REAL PARTY IN INTEREST, THE PARTY MUST HAVE A REAL, ACTUAL, MATERIAL, OR SUBSTANTIAL INTEREST IN THE SUBJECT MATTER OF THE ACTION; NOT ESTABLISHED IN CASE AT BAR.— Unless otherwise authorized by law or the Rules of Court, every action must be prosecuted and defended in the name of the real party-in-interest. The Rules of Court defines a **real party in interest** as "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." To be properly considered as such, **the party must have *a real, actual, material, or substantial interest* in the subject matter of the action, NOT a mere expectancy or a future, contingent**, subordinate, or consequential interest. Republic Act *(RA)* No. 6657 in relation with Section 3 of the Rules of Court expressly allows farmers, farmworkers, tillers, cultivators, etc., organizations and associations, through their leaders, to represent their members in any proceedings before the DAR. It must be pointed out, however, that the law should be harmonized with the *interest* requirement in bringing actions and suits. In other words, while organizations and associations may represent their members before the DAR, these members must have such real, actual, material, or substantial interest in the subject matter of the action, NOT merely an expectancy, or a future contingent interest. Here, the petitioner alleged that it is duly registered with the SEC acting on behalf of its farmers and fishermen members which allegation gave it the right to represent its members. However, it failed to allege

and *prove* that these members are ***identified and registered qualified beneficiaries of the subject land***, or have already been ***actually awarded portions of it***, or have been issued ***Certificates of Land Ownership Award*** (CLOAs) for which they could validly claim the status of the land's grantees having a *real, actual, material interest* to question the July 26, 2000 Order of the DAR Secretary lifting the Notice of Coverage. Not being identified and duly registered qualified beneficiaries, these members' interest over the subject land were at most an expectancy that, unfortunately for them, did not ripen to actual award and ownership.

2. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 [COMPREHENSIVE AGRARIAN REFORM LAW (CARP)]; THE APPLICABLE RULES PROVIDE FOR THE PROCEDURE FOR DETERMINING THE PROPER BENEFICIARIES AND GRANTEES OR AWARDEES OF THE LANDS COVERED OR TO BE COVERED UNDER THE CARP; REQUISITES FOR THE COVERAGE.— Social justice in the land reform program also applies to landowners, not merely to farmers and farmworkers. This is precisely why the law – RA No. 6657 – and the applicable rules provide for the procedure for determining the proper beneficiaries and grantees or awardees of the lands covered or to be covered under the CARP. These procedures ensure that only the **qualified**, **identified**, and registered farmers and/or farmworkers-beneficiaries acquire the covered lands which they themselves actually till (subject to the landowners retention rights as protected by the law). Conversely, these procedures likewise ensure that landowners do not lose their lands to usurpers and other illegal settlers who wish to take advantage of the agrarian reform program to acquire lands to which they are not entitled. In this light, for a particular land and its farmers, farmworkers, tillers, etc. to be covered under the CARP, two requisites must concur: *first,* the land should be covered by the corresponding Notice of Coverage; and *second,* the beneficiaries must be qualified and registered by the DAR, in coordination with the Barangay Agrarian Reform Committee (*BARC*); copy of the BARC list or registry must be posted in accordance with the guidelines established by the Presidential Agrarian Reform Council

(PARC). x x x In other words, a claimant may fall under one of the categories of qualified beneficiaries as enumerated under Section 22 of RA No. 6657, but he or she does not automatically become a grantee of the covered land. RA No. 6657 specifically requires that not only must he or she be a qualified beneficiary, he or she must, above everything else, be identified and registered as such in accordance with the procedures and guidelines laid out in the law and applicable rules.

3. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; IN THE ABSENCE OF ANY SHOWING THAT THE FINAL ORDER WAS RENDERED WITHOUT JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION, NO COURT, NOT EVEN THE SUPREME COURT, HAS THE POWER TO REVIVE, REVIEW, CHANGE, OR ALTER A FINAL AND EXECUTORY JUDGMENT AND DECISION; APPLICATION IN CASE AT BAR.— Even assuming that the petitioner is a real party-in-interest, which we reiterate it is not, the present petition for review on *certiorari* still fails because **the July 26, 2000 Order of the DAR**, which the petitioner ultimately seeks this Court to review, **has already attained finality**. The petitioner alleged that they filed with the DAR their petition to revoke the lifting of the Notice of Coverage on the subject 129.4227-hectare property only on October 29, 2004, or more than four (4) years after the Order was issued by Secretary Morales on July 26, 2000. x x x Without any motion for reconsideration or appeal filed from the assailed July 26, 2000 order, the order lapsed to finality and can no longer be reviewed. This Court has held that administrative decisions must end sometime, as fully as public policy demands that finality be written on judicial controversies. In the absence of any showing that the subject final order was rendered without jurisdiction or with grave abuse of discretion, no court, not even this Court, has the power to revive, review, change, or alter a final and executory judgment or decision.

LEONEN, *J., dissenting opinion*:

LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 [COMPREHENSIVE AGRARIAN REFORM LAW (CARP)]; THE COMPREHENSIVE AGRARIAN REFORM

LAW SHOULD ALWAYS BE APPLIED WITHIN ITS CONTEXT OF SOCIAL JUSTICE, TO FURTHER ITS OBJECTIVE OF GIVING THE HIGHEST CONSIDERATION FOR THE WELFARE OF THE LANDLESS FARMERS AND FARMWORKERS; SUSTAINED.— Associations have legal personality to represent their members in actions before our courts when the outcome of these actions affects the members' vital interests. This holding has been reiterated in our jurisprudence. x x x No less than our Constitution guarantees "[t]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law[.]" It is easy to discern the convenience and benefits in forming and joining associations. Labor organizations, for example,"[exist] in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment." Those similarly situated can band together to find solutions for their common concerns based on shared experience. An association can also provide a layer of protection for individual members who have complaints and grievances against their employers or landowners, but fear being singled out, intimidated, or ignored if they raise their issues alone. x x x Article XIII also includes provisions that specifically focus on agrarian reform. x x x Section 5 also mandates the state to "recognize the right of farmers, farmworkers, and landowners, as well as cooperatives, and other independent farmer's organization to participate in the planning, organization, and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services." Congress enacted Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, pursuant to these provisions. Farmers should not be dissuaded from availing themselves of their rights under the Constitution and agrarian reform laws. They can organize and join associations that can represent their interests not only before executive bodies, but even before our courts. x x x The Rules of Court requires that "[u]nless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest[,]" or "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." We apply the Comprehensive Agrarian Reform Law always within its context of social justice, to further its objective of giving the highest consideration for the welfare of the landless farmers and farmworkers.

D E C I S I O N

BRION, *J.*:

We resolve the present petition for review on *certiorari*[1] assailing the July 27, 2010 decision[2] and February 10, 2011 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 100926. The CA dismissed the petitioner's appeal from the decision of the Office of the President (*OP*), which affirmed the lifting of the Notice of Coverage from the Comprehensive Agrarian Reform Program (*CARP*) issued over land sequestered by the Presidential Commission on Good Governance (*PCGG*).

FACTUAL BACKGROUND

The petitioner Samahan ng Magsasaka at Mangingisda ng Sitio Naswe, Inc. (*petitioner*) is an association of farmers and fishermen residing at Sitio Talaga, Barangay Ipag, Mariveles, Bataan.[4] The petitioner claimed that its members "have resided in the area for several years doing farming activities" from which they "derive their income for their daily sustenance."[5]

On April 4, 1995, the PCGG published in the newspaper an Invitation to Bid for the sale of its assets, which included 34 hectares of a 129.4227-hectare land in Barangay Ipag, Mariveles,

---

[1] *Rollo*, pp. 9-20.

[2] Penned by CA Associate Justice Florito S. Macalino, with Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr., concurring; *Id.* at 25-32.

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

[4] *Id.* at 10.

[5] *Id.* at 16-17.

Bataan, previously owned by Anchor Estate Corporation.[6] The PCGG sequestered the properties of Anchor Estate Corporation after it was identified to be a dummy corporation of the late President Ferdinand E. Marcos.

Respondent Tomas Tan emerged as the highest bidder in the bidding of the 34-hectare property.[7] The PCGG Committee on Privatization approved the sale and a Notice of Award was issued to the respondent on May 2, 2000. The OP, through former Executive Secretary Ronaldo B. Zamora, also approved the sale of the property to the respondent on July 16, 2000.[8] On August 1, 2000, the PCGG, representing the Republic of the Philippines, executed a Deed of Sale in the respondent's favor.[9]

On July 25, 2000, then Chairman of the PCGG Committee on Privatization Jorge V. Sarmiento wrote the Department of Agrarian Reform (*DAR*) requesting to stop the acquisition of the property under the CARP.[10] It appeared that, **on June 16, 1994, a Notice of Coverage had been issued over the 129.4227-hectare land in Barangay Ipag, Mariveles, Bataan,**[11] **and that the 34 hectares sold by the PCGG to the respondent had been already identified for CARP coverage and targeted for acquisition in the year 2000.**[12]

In an Order[13] dated July 26, 2000, DAR Secretary Horacio R. Morales, Jr. granted Chairman Sarmiento's request and lifted

---

[6] *Id.* at 26.

[7] *Id.*

[8] *Id.*

[9] *Id.* at 11.

[10] *Id.* at 26.

[11] *Id.* at 25.

[12] *Id.* at 26.

[13] The dispositive portion of the order stated:

WHEREFORE, premises considered, the Notice of Coverage issued on 16 June 1994 by MARO Dominador M. Delda is hereby LIFTED. The Provincial Agrarian Reform Officer (*PARO*) of Bataan and the MARO of

the Notice of Coverage on the 129.4227-hectare property. Secretary Morales also ordered to stop the acquisition proceedings on the property.[14]

On October 29, 2004,[15] the petitioner filed with the DAR a Petition to Revoke Secretary Morales's July 26, 2000 Order.[16] The DAR denied both the petitioner's petition in an Order dated February 3, 2006, and its subsequent motion for reconsideration in an order dated September 26, 2006.[17] The DAR based its denial on the ground that the subject property, *being government-owned*, does not fall as 'private agricultural land' subject to the CARP. The petitioner then appealed to the OP.

In a decision dated April 10, 2007, the OP dismissed the petitioner's appeal or lack of merit and affirmed the DAR Secretary's Order lifting the subject Notice of Coverage.[18] The petitioner moved to reconsider but the OP denied its motion in a resolution dated August 6, 2007.[19] The petitioner then filed a Petition for Review under Rule 43[20] with the CA.

In a decision[21] dated July 27, 2010, the CA held that, while the lifting of the subject Notice of Coverage was irregular and erroneous, the petitioner's petition for review must be dismissed on the ground that the petitioner was not a real party in interest to the case. It held:

Mariveles, Bataan, are hereby directed to stop acquisition proceedings for CARP coverage of the subject property.

[14] *Rollo*, p. 26.

[15] The CA decision, however, stated that the petitioner filed their petition to revoke on November 11, 2004.

[16] *Rollo*, p. 12.

[17] *Id.* at 26.

[18] *Id.* at 26-27.

[19] *Id.*

[20] Of the Rules of Court.

[21] *Supra* note 2.

We, nonetheless, find that the Petitioner is not a real party in interest in the case at bench. 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. All that has been alleged in the records was that the members of the Petitioner are in actual possession of the Subject Property and that farming activities were conducted thereon. Nothing, however, is stated as to them being beneficiaries, or at least potential beneficiaries, under CARP. This Court cannot be made to guess how a judgment setting aside the Assailed Decision and Assailed Resolution would positively affect the Petitioner simply because it is composed of farmers and fishermen x x x.[22] (Citations omitted)

The petitioner moved to reconsider the ruling but the CA denied its motion for reconsideration; hence, the petitioner filed the present petition for review on *certiorari* before this Court.

OUR RULING

We **DENY** the present petition for review on *certiorari* as we find no reversible error committed by the CA in issuing its assailed decision and resolution.

A. The petitioner is not a real party-in-interest to question the July 26, 2000 DAR Order; the Constitutional right to form associations does not make the petitioner a real party-in-interest in this case.

Unless otherwise authorized by law or the Rules of Court, every action must be prosecuted and defended in the name of the real party-in-interest.[23] The Rules of Court defines a **real party in interest** as "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."[24] To be properly considered as such, ***the party must have real, actual, material, or substantial interest***

---

[22] *Rollo*, p. 31.

[23] RULES OF COURT, Rule 3, Section 2.

[24] *Id.*

in the subject matter of the action,[25] **NOT a mere expectancy or a future, contingent**, subordinate, or consequential interest.[26]

Republic Act (*RA*) No. 6657[27] in relation with Section 3 of the Rules of Court expressly allows farmers, farmworkers, tillers, cultivators, etc., organizations and associations, through their leaders, to represent their members in any proceedings before the DAR. It must be pointed out, however, that the law should be harmonized with the *interest* requirement in bringing actions and suits. In other words, while organizations and associations may represent their members before the DAR, these members must have such real, actual, material, or substantial interest in the subject matter of the action, NOT merely an expectancy, or a future contingent interest.

Here, the petitioner alleged that it is duly registered with the SEC acting on behalf of its farmers and fishermen members which allegation gave it the right to represent its members. However, it failed to allege and *prove* that these members are ***identified and registered qualified beneficiaries of the subject land,*** or have already been ***actually awarded portions of it***, or have been issued ***Certificates of Land Ownership Award*** (CLOAs) for which they could validly claim the status of the land's grantees having a *real, actual, material interest* to question the July 26, 2000 Order of the DAR Secretary lifting the Notice of Coverage. Not being identified and duly registered qualified beneficiaries, these members' interest over the subject land were at most an expectancy that, unfortunately for them, did not ripen to actual award and ownership.

In *Fortich v. Corona*,[28] the Court did not consider as real parties in interest the movants in the case who were merely *recommendee* farmer-beneficiaries. The movants in *Fortich*, who claimed to be farmer-beneficiaries of the disputed agricultural

---

[25] *Subido v. City of Manila*, *et al.*, 108 Phil. 462-468 (1960).

[26] *Garcia v. David*, 67 Phil. 279, 285.

[27] See Section 50 of RA No. 6657.

[28] G.R. No. 131457, April 24, 1998, 289 SCRA 624, 628.

land in San Vicente, Sumilao, Bukidnon, attached to their motion for intervention a "Master List of Farmer-Beneficiaries" to show that they are real parties in interest in the case. The document merely showed that the movants were those "Found Qualified and Recommended for Approval" as farmer-beneficiaries; thus, the Court held that they were not real parties in interest as their interest over the land in question was a *mere expectancy*.

The Court was later confronted with the same issue in *Sumalo Homeowners Association of Hermosa, Bataan v. Litton*[29] and *Samahang Magsasaka ng 53 Hektarya v. Mosquera*.[30]

In *Sumalo Homeowners Association of Hermosa, Bataan*, the Court rejected the petitioners' claim as real parties in interest in the case because, aside from their self-serving assertions, the records were devoid of proof that they have been identified and registered as qualified CARP beneficiaries.

Subsequently, in *Samahang Magsasaka ng 53 Hektarya*, the Court ruled that being 'mere qualified beneficiaries of the CARP' was not enough to be considered a party in interest. The Court, applying *Fortich*, held that "farmer-beneficiaries, who are not approved awardees of CARP, are not real parties in interest;"[31] that the fact that there was "x x x certification that CLOAs were already generated in their names, but were not issued because of the present dispute, does not vest any right to the farmers since the fact remains that they have not yet been approved as awardees, actually awarded lands, or granted CLOAs x x x."[32]

As earlier pointed out, the petitioner in this case merely alleged that its members, composed of farmers and fishermen, were long-time residents of Sitio Talaga, Barangay Ipag, Mariveles, Bataan, and were conducting farming activities in the area. No evidence was presented to show that the petitioner's members were approved as awardees, or were granted CLOAs over their

---

[29] G.R. No. 146061, August 31, 2006, 500 SCRA 385.

[30] G.R. No. 152430, March 22, 2007, 518 SCRA 668.

[31] *Id.* at 679.

[32] *Id.*

respective portions of the disputed property. The petitioner even admits that the case folders of its members were not processed because of the DAR Secretary's July 26, 2000 Order.[33]

Thus, notwithstanding its representative capacity, the petitioner and its members are not real parties-in-interest to question the DAR's July 26, 2000 Order.

In *Department of Agrarian Reform v. Department of Education Culture and Sports*, the BARC certified the farmers-individuals who claimed to be permanent and regular farmworkers of the disputed land as potential CARP beneficiaries. Also, the Notice of Coverage issued by the MARO over the disputed land was approved by the DAR Regional Director, and finally by the DAR Secretary. On the DECS's appeal, the CA set aside the DAR Secretary's decision approving the Notice of Coverage.

The Court reversed the CA decision, declaring (on the issue of whether the farmers are qualified beneficiaries of CARP) that the identification of actual and potential beneficiaries under CARP is vested in the DAR Secretary pursuant to Section 15 of RA No. 6657. "Since the identification and selection of CARP beneficiaries are matters involving strictly the administrative implementation of the CARP, it behooves the courts to exercise great caution in substituting its own determination of the issue, unless there is grave abuse of discretion committed by the administrative agency. In this case, there was none."[34]

In contrast with the petitioner's case, its members were not identified and registered by the BARC as the subject land's beneficiaries; and the Notice of Coverage was in fact lifted by the DAR Secretary *via* the July 26, 2000 Order which Order the OP subsequently affirmed.

As the identification and selection of CARP beneficiaries are matters involving strictly the administrative implementation of the CARP which the Court generally respects, the CA's finding that the subject land is covered by RA No. 6657 (which is not

---

[33] *Rollo*, p. 17.

[34] 469 Phil. 1083, 1094-1095 (2004).

even reflected in its decision's *fallo*) cannot be validly relied upon by the petitioner. At most, it is a non-binding *obiter dictum*.

DAR Administrative Order No. 9, series of 1994,[35] the rules governing the hearing of protests involving the coverage of lands under RA No. 6657 at the time the PCGG Chairman filed the letter request with the DAR Secretary, did not provide any minimum period of time within which the protest or, in this case, the PCGG letter-request must be decided. As A.O. No. 9, series of 1994 provided, the MARO or PARO shall, once the protest is filed, "comment on said protest and submit the same to the Regional Director who shall rule on the same."[36]

In short, the DAR's lifting of the Notice of Coverage issued by the MARO over the subject land one day after the PCGG letter-request was filed was not inconsistent with then existing rules and was, therefore, not irregular.

B. The constitutional considerations: provisions governing agrarian reform program do not entail automatic grant of lands to every farmer and farmworker.

Social justice in the land reform program also applies to landowners, not merely to farmers and farmworkers. This is precisely why the law — RA No. 6657 — and the applicable rules provide for the procedure for determining the proper beneficiaries and grantees or awardees of the lands covered or to be covered under the CARP.

These procedures ensure that only the **qualified**, **identified**, and registered farmers and/or farmworkers-beneficiaries acquire the covered lands which they themselves actually till (subject to the landowners retention rights as protected by the law). Conversely, these procedures likewise ensure that landowners

---

[35] Entitled "AUTHORIZING ALL REGIONAL DIRECTORS (RDS) TO HEAR AND DECIDE ALL PROTESTS INVOLVING COVERAGE UNDER R.A. NO. 6657 OR P.D. NO. 27 AND DEFINING THE APPEAL PROCESS FROM THE RDS TO THE SECRETARY", issued on August 30, 1994.

[36] See Subsection A, Part III of A.O. No. 9, series of 1994.

do not lose their lands to usurpers and other illegal settlers who wish to take advantage of the agrarian reform program to acquire lands to which they are not entitled.

In this light, for a particular land and its farmers, farmworkers, tillers, etc. to be covered under the CARP, two requisites must concur: *first*, the land should be covered by the corresponding Notice of Coverage;[37] and *second*, the beneficiaries must be qualified and registered by the DAR, in coordination with the Barangay Agrarian Reform Committee (*BARC*); copy of the BARC list or registry must be posted[38] in accordance with the guidelines established by the Presidential Agrarian Reform Council (*PARC*).[39]

In *Sumalo Homeowners Association of Hermosa, Bataan v. Litton, et al.*[40] the Court pointed out that the "CARL is specific in its requirements for registering qualified beneficiaries." Those who have not been identified and registered as qualified beneficiaries are not real parties-in-interest.

Thus, Section 15 of the CARL explicitly provides:

SEC. 15. *Registration of Beneficiaries*. — The DAR in coordination with the Barangay Agrarian Reform Committee (BARC) as organized in this Act, shall register all agricultural lessees, tenants and farm workers who are qualified to be beneficiaries with the assistance of the BARC and the DAR shall provide the following data:

a) Names and members of their immediate farm household;

b) Location and area of the land they work;

c) Crops planted; and

d) Their share in the harvest or amount of rental paid or wages received.

A copy of the registry or list of all potential CARP beneficiaries in the barangay shall be posted in the barangay hall, school or other

---

[37] See Chapter V of RA No. 6657.

[38] See Sections 15 and 47 RA No. 6657.

[39] See Section 7 of RA No. 6657.

[40] 532 Phil. 86 (2006).

public buildings in the barangay where it shall be open to inspection by the public at all reasonable hours.

In other words, a claimant may fall under one of the categories of qualified beneficiaries as enumerated under Section 22 of RA No. 6657, but he or she does not automatically become a grantee of the covered land. RA No. 6657 specifically requires that not only must he or she be a qualified beneficiary, he or she must, above everything else, be identified and registered as such in accordance with the procedures and guidelines laid out in the law and applicable rules.

In these lights, the views of Associate Justice Marvic M.V.F. Leonen (*Justice Leonen*) that the social justice principles of the Constitution guarantees the petitioner automatic standing to question the DAR's July 26, 2000 Order is misplaced. So also, Justice Leonen cannot rely on *Department of Agrarian Reform v. Department of Education Culture and Sports* that the petitioner is a real party-in-interest because the land has already been subjected to the coverage of the CARP. To emphasize and reiterate, the land must be covered by the corresponding Notice of Coverage and the beneficiaries must be both qualified and registered by the DAR for the subject land and the petitioner's farmers and fishermen members to be covered by the CARP. There is thus nothing irregular in the procedure undertaken by the DAR Secretary in the lifting of the Notice of Coverage a day after the request was filed by the PCGG Chairman.

C. The July 26, 2000 DAR Order has already attained finality is no longer reviewable by this Court.

Even assuming that the petitioner is a real party-in-interest, which we reiterate it is not, the present petition for review on *certiorari* still fails because **the July 26, 2000 Order of the DAR**, which the petitioner ultimately seeks this Court to review, **has already attained finality**.

The petitioner alleged that they filed with the DAR their petition to revoke the lifting of the Notice of Coverage on the subject 129.4227-hectare property only on October 29, 2004, or more

than four (4) years after the Order was issued by Secretary Morales on July 26, 2000. Section 15 of Executive Order (*E.O.*) No. 292,[41] the applicable general law at the time the assailed order was issued, provides that:

> SECTION 15. Finality of Order. — The decision of the agency shall become final and executory fifteen (15) days after the receipt of a copy thereof by the party adversely affected unless within that period an administrative appeal or judicial review, if proper, has been perfected. One motion for reconsideration may be filed, which shall suspend the running of the said period.

Without any motion for reconsideration or appeal filed from the assailed July 26, 2000 order, the order lapsed to finality and can no longer be reviewed.

This Court has held that administrative decisions must end sometime, as fully as public policy demands that finality be written on judicial controversies.[42] In the absence of any showing that the subject final order was rendered without jurisdiction or with grave abuse of discretion, no court, not even this Court, has the power to revive, review, change, or alter a final and executory judgment or decision.

WHEREFORE, we **DENY** the petitioner's petition for review on *certiorari*. The decision dated July 27, 2010 and resolution dated February 10, 2011 of the Court of Appeals in CA-G.R. SP No. 100926 are hereby **AFFIRMED**.

SO ORDERED.

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

Leonen, J., see dissenting opinion.

---

[41] Entitled "Instituting the Administrative Code of 1987," signed into law July 25, 1987.

[42] *Camarines Norte Electric Cooperative, Inc. v. Torres*, 350 Phil. 315, 330-331 (1998).

DISSENTING OPINION

LEONEN, *J.*:

The ponencia affirmed the Court of Appeals Decision dismissing the Petition on the ground that petitioner was not a real party-in-interest.[1] The ponencia discussed that "the party must have a real, actual, material, or substantial interest in the subject matter of the action."[2] Petitioner is not the real party-in-interest to file an action questioning the order lifting the Notice of Coverage over the 129.4227-hectare land[3] in Barangay Ipag, Mariveles, Bataan since "it failed to allege and prove that [its] members are identified and registered qualified beneficiaries of the subject land, or have already been actually awarded portions of it, or have been issued Certificates of Land Ownership Award (CLOAs)[.]"[4] The ponencia noted that "petitioner even admits that the case folders of its members were not processed because of [Department of Agrarian Reform Secretary Horacio R. Morales, Jr.'s] July 26, 2000 Order."[5]

I

Associations have legal personality to represent their members in actions before our courts when the outcome of these actions affects the members' vital interests.[6] This holding has been reiterated in our jurisprudence.

Pharmaceutical and Health Care Association of the Philippines v. Health Secretary Duque III[7] involves the constitutionality of

---

[1] *Ponencia*, p. 3.

[2] *Id.* at 4.

[3] *Id.* at 2.

[4] *Id.* at 4.

[5] *Id.* at 5.

[6] *Purok Bagong Silang Association, Inc. v. Judge Yuipco*, 523 Phil. 51, 64 (2006) [Per *J.* Callejo, Sr., First Division].

[7] 561 Phil. 386 (2007) [Per *J.* Austria-Martinez, *En Banc*].

the Milk Code's[8] implementing rules and regulations.[9] In resolving the preliminary issue of whether petitioner association "representing its members that are manufacturers of breastmilk substitutes"[10] is a real party-in-interest, this Court adopted the following discussion from *Executive Secretary v. Court of Appeals*:[11]

> The modern view is that an association has standing to complain of injuries to its members. This view fuses the legal identity of an association with that of its members. An association has standing to file suit for its workers despite its lack of direct interest if its members are affected by the action. An organization has standing to assert the concerns of its constituents.
>
> xxx xxx xxx
>
> . . . We note that, under its Articles of Incorporation, the respondent was organized . . . to act as the representative of any individual, company, entity or association on matters related to the manpower recruitment industry, and to perform other acts and activities necessary to accomplish the purposes embodied therein. The respondent is, thus, the appropriate party to assert the rights of its members, because it and its members are in every practical sense identical. . . . The respondent [association] is but the medium through which its individual members seek to make more effective the expression of their voices and the redress of their grievances.[12]

This Court held that the "petitioner, whose legal identity is deemed fused with its members, should be considered as a real party-in-interest which stands to be benefited or injured by any judgment in the present action."[13] This Court considered the

---

[8] Exec. Order No. 51 (1986).

[9] *Pharmaceutical and Health Care Association of the Philippines v. Health Secretary Duque III,* 561 Phil. 386, 392 (2007) [Per *J.* Austria-Martinez, *En Banc*].

[10] *Id.* at 394.

[11] 473 Phil. 27, 50-51 (2004) [Per *J.* Callejo, Sr., Second Division].

[12] *Pharmaceutical and Health Care Association of the Philippines v. Health Secretary Duque III*, 561 Phil. 386, 395-396 (2007) [Per *J.* Austria-Martinez, *En Banc*].

[13] *Id.* at 396.

petitioner's amended articles of incorporation in that it was formed "to represent directly or through approved representatives the pharmaceutical and health care industry before the Philippine Government and any of its agencies, the medical professions and the general public."[14]

Executive Secretary involves the constitutionality[15] of certain provisions of the Migrant Workers and Overseas Filipinos Act of 1995.[16] This Court took cognizance of Asian Recruitment Council Philippine Chapter, Inc.'s petition on behalf of its recruitment agencies members and discussed that "[it] is but the medium through which its individual members seek to make more effective the expression of their voices and the redress of their grievances."[17] This Court noted that the 11 licensed and registered recruitment agencies members approved separate resolutions expressly authorizing Asian Recruitment Council Philippine Chapter, Inc. to file the petition on their behalf.[18]

No less than our Constitution guarantees "[t]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law[.]"[19] It is easy to discern the convenience and benefits in forming and joining associations. Labor organizations, for example, "[exist] in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment."[20] Those similarly situated can band together to find solutions for their common concerns based on shared experience. An association can also provide a layer of

---

[14] *Id.*

[15] *Executive Secretary v. Court of Appeals*, 473 Phil. 27, 36-37 (2004) [Per *J.* Callejo, Sr., Second Division].

[16] Rep. Act No. 8042 (1995).

[17] *Executive Secretary v. Court of Appeals*, 473 Phil. 27, 51 (2004) [Per *J.* Callejo, Sr., Second Division].

[18] *Id.*

[19] CONST., Art. III, Sec. 8.

[20] LABOR CODE, Art. 219 (g).

protection for individual members who have complaints and grievances against their employers or landowners, but fear being singled out, intimidated, or ignored if they raise their issues alone.

II

One of the key changes introduced in the 1987 Constitution was Article XIII on Social Justice and Human Rights. Article XIII includes provisions on the role and rights of people's organizations,[21] defined as "bona fide associations of citizens with demonstrated capacity to promote the public interest with identifiable leadership, membership, and structure."[22] Section 15 mandates the state to "respect the role of independent people's organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means."

Article XIII also includes provisions that specifically focus on agrarian reform. Section 4 provides:

ARTICLE XIII

xxx xxx xxx

Agrarian and Natural Resources Reform

SECTION 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

Section 5 also mandates the state to "recognize the right of farmers, farmworkers, and landowners, as well as cooperatives,

---

[21] CONST., Art. XIII, Secs. 15 and 16.

[22] CONST., Art. XIII, Sec. 15.

and other independent farmers' organizations to participate in the planning, organization, and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing, and other support services." Congress enacted Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988,[23] pursuant to these provisions.[24]

---

[23] Rep. Act No. 9700 was passed in 2009, amending Rep. Act No. 6657.

[24] See Rep. Act No. 6657 (1988), Secs. 15 and 22 on qualified beneficiaries:

SECTION 15. Registration of Beneficiaries. — The DAR in coordination with the Barangay Agrarian Reform Committee (BARC) as organized in this Act, shall register all agricultural lessees, tenants and farmworkers who are qualified to be beneficiaries of the CARP. These potential beneficiaries with the assistance of the BARC and the DAR shall provide the following data:

(a) names and members of their immediate farm household;

(b) owners or administrators of the lands they work on and the length of tenurial relationship;

(c) location and area of the land they work;

(d) crops planted; and

(e) their share in the harvest or amount of rental paid or wages received.

A copy of the registry or list of all potential CARP beneficiaries in the barangay shall be posted in the barangay hall, school or other public buildings in the barangay where it shall be open to inspection by the public at all reasonable hours.

xxx xxx xxx

SECTION 22. Qualified Beneficiaries. — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same barangay, or in the absence thereof, landless residents of the same municipality in the following order of priority: (a) agricultural lessees and share tenants; (b) regular farmworkers; (c) seasonal farmworkers; (d) other farmworkers; (e) actual tillers or occupants of public lands; (f) collectives or cooperatives of the above beneficiaries; and (g) others directly working on the land. Provided, however, That the children of landowners who are qualified under Section 6 of this Act shall be given preference in the distribution of the land of their parents: and Provided, further, That actual tenant-tillers in the landholdings shall not be ejected or removed therefrom. Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under this Program. A basic qualification of a beneficiary shall be his willingness, aptitude, and ability to cultivate and make the land as productive as possible. The DAR shall adopt a system of monitoring the record or

Farmers should not be dissuaded from availing themselves of their rights under the Constitution and agrarian reform laws. They can organize and join associations that can represent their interests not only before executive bodies, but even before our courts.

III

The Rules of Court requires that "[u]nless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest[,]"[25] or "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."[26]

Samahang Magsasaka ng 53 Hektarya v. Mosquera,[27] discussed in the ponencia, involves the exemption of a 53-hectare land from the Comprehensive Agrarian Reform Program (CARP) coverage.[28] This Court harmonized Republic Act No. 6657[29] with the Rules of Court provisions[30] governing real parties-in-

---

performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the PARC. If, due to the landowner's retention rights or to the number of tenants, lessees, or workers on the land, there is not enough land to accommodate any or some of them, they may be granted ownership of other lands available for distribution under this Act, at the option of the beneficiaries. Farmers already in place and those not accommodated in the distribution of privately-owned lands will be given preferential rights in the distribution of lands from the public domain.

[25] RULES OF COURT, Rule 3, Sec. 2.

[26] RULES OF COURT, Rule 3, Sec. 2.

[27] 547 Phil. 560 (2007) [Per *J.* Velasco, Jr., Second Division].

[28] *Id.* at 563-564.

[29] See Rep. Act No. 6657 (1988), Sec. 50, as amended by Rep. Act No. 9700 (2009), Sec. 18, which provides:
SEC. 50. Quasi-Judicial Powers of the DAR. — . . . Responsible farmer leaders shall be allowed to represent themselves, their fellow farmers, or their organizations in any proceedings before the DAR[.]

[30] *Samahang Magsasaka ng 53 Hektarya v. Mosquera*, 547 Phil. 560, 569-570 (2007) [Per *J.* Velasco, Jr., Second Division]. The case quoted Rule 3, Secs. 1 to 3 of the Revised Rules of Court, which provide:

interest in that organizations, represented by their authorized representatives, may bring actions before the courts:

R.A. 6657 allows farmer leaders like Elvira Baladad to represent the Macabud farmers or their Samahan in the proceedings before the DAR. The law, however, should be harmonized with the provisions of the Rules of Court. Assuming that the Macabud farmers are real parties-in-interest as defined by Sec. 2 of Rule 3 [of the Rules of Court], the appeal may be brought by their representative since such is allowed by R.A. 6657. *The action may then be brought by 1) the organization represented by its authorized representative (Sec. 1)* OR 2) the representative with the beneficiaries identified in the title of the case (Sec. 3). *In the first option, the organization should be duly registered in order to be clothed with juridical personality (Sec. 1)*. Admittedly, petitioner Samahan is not registered with the Securities and Exchange Commission. Thus, it is not a juridical person which can be a party in a case. The Rules of Court, however, does not prevent the Macabud farmers from filing an appeal since an action may be instituted in the name of their representative with each farmer-beneficiary identified in the title of the case in accordance with Sec. 3 of Rule 3. Unfortunately, petitioner also failed to comply with this simple requirement. The petition was brought by the unregistered Samahan represented by Elvira Baladad without mentioning the members of it. On this score, the petition can already be dismissed.[31] (Emphasis supplied)

SECTION 1. *Who may be parties; plaintiff and defendant*. — Only natural or juridical persons, or entities authorized by law may be parties in a civil action. . . .

SEC. 2. *Parties in interest*. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

SEC. 3. *Representatives as parties*. — Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules[.]

[31] *Samahang Magsasaka ng 53 Hektarya v. Mosquera*, 547 Phil. 560, 570 (2007) [Per *J.* Velasco, Jr., Second Division].

This Court held that the Samahan was not the real party-in-interest since its members "have not yet been approved as awardees, actually awarded lands, or granted CLOAs."[32] It cited *Hon. Fortich v. Hon. Corona*[33] in that mere *recommendee* farmer-beneficiaries are not real parties-in-interest.[34]

The ponencia also discussed *Sumalo Homeowners Association of Hermosa, Bataan v. Litton*[35] in that those who claim to be qualified beneficiaries, by mere assertion of "clearing, tilling and planting the land under claim of ownership,"[36] cannot be considered as real parties-in-interest to question a parcel of land's conversion or consequent coverage or non-coverage under the CARP.[37]

Associations filing suits must comply with certain standards under relevant laws, jurisprudence, and rules. An association must establish that its members are the real parties-in-interest, and that it has the authority to represent its members pursuant to its Articles of Incorporation or by board resolution.

Petitioner alleged in its Motion for Extension of Time to file Petition that it "is a farmer Association duly registered with the Securities and Exchange Commission, representing its members who are actual tillers and cultivators of subject landholding located in Brgy. Ipag, Mariveles, Bataan."[38] This matter was never contested by respondent Tomas Tan, who failed to file a comment despite several show cause resolutions issued by this Court requiring compliance."[39] This Court then required

---

[32] *Id.* at 571.

[33] 352 Phil. 461, 484 (1998) [Per *J.* Martinez, Second Division]. This was also discussed in the *ponencia*.

[34] *Samahang Magsasaka ng 53 Hektarya v. Mosquera*, 547 Phil. 560, 571 (2007) [Per *J.* Velasco, Jr., Second Division].

[35] 532 Phil. 86 (2006) [Per *J.* Ynares-Santiago, First Division].

[36] *Id.* at 98.

[37] *Id.* at 96-98.

[38] *Rollo*, p. 3, Motion for Extension of Time.

[39] *Id.* at 46 (Supreme Court Resolution dated June 6, 2011), 59 (Supreme Court Resolution dated October 10, 2011), 63 (Supreme Court Resolution

the Office of the Solicitor General to file a comment.[40] The Office of the Solicitor General never questioned petitioner's allegation of its registration with the Securities and Exchange Commission.[41] Instead, it argues that petitioner is not the real party-in-interest since its members have not been declared as qualified CARP beneficiaries; thus, their interest in the land grounds on a mere hope, insufficient for claiming an enforceable right before a court of law.[42]

We apply the Comprehensive Agrarian Reform Law always within its context of social justice, to further its objective of giving the highest consideration for the welfare of the landless farmers and farmworkers.[43]

In this case, Municipal Agrarian Reform Officer Dominador M. Delda issued a Notice of Coverage over the land in 1994,[44] even before the Presidential Commission on Good Governance (PCGG) published an Invitation to Bid its Assets, which included the land in April 4, 1995.[45] Respondent won as highest bidder and was issued a Notice of Award on May 2, 2000.[46] The Office

---

dated March 7, 2012), 67 (Supreme Court Resolution dated July 30, 2012), 71 (Supreme Court Resolution dated March 18, 2013).

[40] *Id.* at 112, Supreme Court Resolution dated March 3, 2014.

[41] *Id.* at 123-133, Solicitor General's Comment.

[42] *Id.* at 126-127, Solicitor General's Comment.

[43] Rep. Act No. 6557 (1988), Sec. 2, as amended by Rep. Act No. 9700 (2009), Sec. 1, provides:

> SEC. 2. Declaration of Principles and Policies. — It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farmworkers will receive the highest consideration to promote social justice and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic-size farms as the basis of Philippine agriculture[.]

[44] *Rollo*, pp. 25-26, Court of Appeals Decision dated July 27, 2010.

[45] *Id.* at 26, Court of Appeals Decision dated July 27, 2010.

[46] *Id.*

of the President gave its approval, and by August 1, 2000, the PCGG executed a Deed of Sale with respondent.[47]

Meanwhile, ocular inspection was conducted sometime in late 1999, and the land was targeted for CARP acquisition for year 2000.[48] Jorge V. Sarmiento (Commissioner Sarmiento), Chairperson of the PCGG Committee on Privatization, then wrote a letter dated July 25, 2000 requesting the Department of Agrarian Reform to stop the acquisition of the land.[49] The following day, Department of Agrarian Reform Secretary Horacio R. Morales, Jr. granted the request in the Order dated July 26, 2000, and lifted the Notice of Coverage.[50] On October 29, 2004, petitioner filed a Petition to Revoke the July 26, 2000 Order, but this, its motion for reconsideration, and its appeal to the Office of the President[51] were denied.

The Court of Appeals found no indication that the property is not agricultural land and held that the property is covered under Republic Act No. 6657.[52] It found that the lifting of the Notice of Coverage merely a day after the request of Commissioner Sarmiento "seem[ed] irregular in view of [Department of Agrarian Reform]'s own rules on protests involving the coverage under CARP";[53] thus, the July 26, 2000 Order cannot bind petitioner.[54] Nevertheless, the Court of Appeals dismissed the Petition upon finding that petitioner is not a real party-in-interest.[55]

---

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.* at 26-27, Court of Appeals Decision dated July 27, 2010.

[52] *Id.* at 29, Court of Appeals Decision dated July 27, 2010.

[53] *Id.* at 30-31, Court of Appeals Decision.

[54] *Id.* at 31, Court of Appeals Decision dated July 27, 2010.

[55] *Id.* at 31.

In *Department of Agrarian Reform v. Department of Education, Culture and Sports*,[56] this Court held that pursuant to Section 15 of Republic Act No. 6657, "the identification of actual and potential beneficiaries under CARP is vested in the Secretary of Agrarian Reform[.]"[57] In that case, the Barangay Agrarian Reform Committee found that the farmers "were potential CARP beneficiaries of the subject properties"[58] and that the Municipal Agrarian Reform Office issued a Notice of Coverage over the land.[59] Thus:

> Since the identification and selection of CARP beneficiaries are matters involving strictly the administrative implementation of the CARP, it behooves the courts to exercise great caution in substituting its own determination of the issue, unless there is grave abuse of discretion committed by the administrative agency. In this case, there was none.
>
> *The Comprehensive Agrarian Reform Program (CARP) is the bastion of social justice of poor landless farmers, the mechanism designed to redistribute to the underprivileged the natural right to toil the earth, and to liberate them from oppressive tenancy*. To those who seek its benefit, it is the means towards a viable livelihood and, ultimately, a decent life. The objective of the State is no less certain: "landless farmers and farmworkers will receive the highest consideration to promote social justice and to move the nation toward sound rural development and industrialization."[60] (Emphasis supplied)

ACCORDINGLY, I vote to **GRANT** the Petition.

---

[56] 469 Phil. 1083 (2004) [Per *J.* Ynares-Santiago, First Division].

[57] *Id.* at 1094.

[58] *Id.*

[59] *Id.*

[60] *Id.* at 1094-1095, citing *Lercana v. Jalandoni*, 426 Phil. 319, 329 (2002) [Per *J.* Quisumbing, Second Division] and *Secretary of Agrarian Reform v. Tropical Homes, Inc.*, 414 Phil. 389, 396-397 (2001) [Per *J.* De Leon, Jr., Second Division].

THIRD DIVISION

[G.R. No. 197136. April 18, 2016]

ROMEO PUCYUTAN, FOR AND IN BEHALF OF THE CITY OF MUNTINLUPA, METRO MANILA AS ITS CITY TREASURER, *petitioner, vs.* **MANILA ELECTRIC COMPANY, INC.,** *respondent.*

SYLLABUS

TAXATION; REAL PROPERTY TAX CODE (PRESIDENTIAL DECREE NO. 464); TAX ASSESSMENT; A NOTICE OF TAX ASSESSMENT FIXES AND DETERMINES THE TAX LIABILITY OF A TAXPAYER AND IS A NOTICE TO THE EFFECT THAT THE AMOUNT STATED THEREIN IS DUE AS TAX AND A DEMAND TO PAY THEREOF; ABSENCE OF NOTICE OF TAX ASSESSMENT, ESTABLISHED IN CASE AT BAR.— While it is true that in this Court's Resolution dated June 29, 2004, it gave the directive to the RTC to "resolve the factual issue of whether or not the Municipal Assessor served copies of Tax Declarations Nos. B-009-05499 to B-009-05502 on the petitioner," this Court made it clear or clarified in its latter Resolution dated March 29, 2005 resolving the motion for reconsideration of the Resolution dated June 29, 2004 that the directive is for the RTC to determine whether or not MERALCO was furnished with a notice of assessment. x x x It is therefore wrong for the petitioner to allege that among the fundamental rulings in the Resolution dated June 29, 2004 is that a notice of assessment is not an existing, fixed, and standard legal form and all that is legal and mandatory in its physical feature or make-up is that it should be in writing, and so long as it is a written advice that, in effect or effectively informs the taxpayer of the essential information that the Real Property Tax Code under P.D. No. 464 obliges such taxpayer to be so informed. A careful reading of the Resolution dated June 29, 2004 does not support such claim of the petitioner. The same Resolution emphasized that a notice of assessment fixes and determines the tax liability of a taxpayer and is a notice to the effect that the amount stated therein is due as tax and a demand to pay thereof. This

> Court also reminded that a notice of assessment as provided for in the Real Property Tax Code should effectively inform the taxpayer of the value of a specific property, or proportion thereof subject to tax, including the discovery, listing, classification, and appraisal of properties. Nowhere does the resolution state that the tax declarations can be considered as notices of assessment. Consequently, having thus discussed the nature and contents of a notice of assessment, the factual issue of whether or not Meralco was furnished with a notice of assessment is necessary to resolve the issues of the case. x x x In affirming the RTC, the CA did not err in ruling that the tax declarations cannot be validly considered as a notice of assessment under Section 27 of P.D. No. 464. x x x Such factual issue, having been decided by the RTC and affirmed by the CA, may no longer be reversed by this Court.

APPEARANCES OF COUNSEL

Eliseo B. Alampay for petitioner.

Quiason Makalintal Barot Torres & Ibarra for respondent.

D E C I S I O N

PERALTA, *J.*:

For this Court's consideration is the Petition for Review on *Certiorari*,[1] under Rule 45 of the Rules of Court, dated July 4, 2011 of petitioner Romeo Pucyutan, for and in behalf of the City of Muntinlupa as its City Treasurer, seeking the reversal of the Decision[2] dated October 22, 2010 and Resolution[3] dated May 27, 2011, both of the Court of Appeals (*CA*) in CA G.R. SP No. 108266 that affirmed the Orders dated September 4, 2006[4]

---

[1] *Rollo*, pp. 7-230.

[2] Penned by Associate Justice Vicente S. E. Veloso, with Associate Justices Francisco P. Acosta and Samuel H. Gaerlan, concurring; *id.* at 37-57.

[3] *Rollo*, p. 59.

[4] Penned by Judge Joselito C. Villarosa; *id.* at 92-94.

and October 14, 2008[5] of the Regional Trial Court (*RTC*) of Makati City ruling that respondent Manila Electric Company, Inc. (*MERALCO*) was not furnished with a notice of assessment.

The facts follow.

MERALCO, a duly-organized Philippine corporation engaged in the distribution of electricity, erected four (4) power-generating plants in Sucat, Muntinlupa, namely, the Gardner I, Gardner II, Snyder I and Snyder II from 1969 to 1972. Thereafter, on December 29, 1978, MERALCO sold all the said power-generating plants, including their landsites, to the National Power Corporation (*NAPOCOR*).

Sometime in 1985, the Assessor of Muntinlupa, while reviewing records pertaining to assessment and collection of real property taxes, allegedly discovered that for the period beginning January 1, 1976 to December 29, 1978, MERALCO misdeclared and/or failed to declare for taxation purposes a number of real properties consisting of several equipment and machineries found in the earlier mentioned power-generating plants. The Municipal Assessor, upon its review of the sale between MERALCO and NAPOCOR, found that the true value of the machineries and equipment in said power plants were misdeclared, and accordingly determined and assessed their value for taxation purposes for the years 1977 to 1978, as later reflected in Tax Declaration Nos. T-009005486 to T-05506.

A certification of non-payment of real property taxes was issued, and notices of delinquency were accordingly posted when MERALCO failed to pay taxes as assessed by said tax declarations and, on October 4, 1990, the Municipal Treasurer issued Warrants of Garnishment attaching MERALCO's bank deposits in three (3) different banks equivalent to its unpaid real property taxes.

Thereafter, MERALCO filed before the RTC a Petition for Prohibition with prayer for Writ of Preliminary Mandatory Injunction and/or Temporary Restraining Order (*TRO*) which

---

[5] *Id.* at 96-100.

eventually reached this Court, and on June 29, 2004,[6] with the then Acting Municipal Treasurer Nelia A. Barlis as respondent, this Court rendered a Resolution that partly reads as follows:

> This Court finds and so rules that the RTC committed grave abuse of discretion amounting to excess or lack of jurisdiction in declaring that [MERALCO] is not the taxpayer liable for the taxes due claimed by [BARLIS]. Indeed, in its May 18, 2001 Decision, this Court ruled:
>
> > The fact that NAPOCOR is the present owner of the Sucat power plant machineries and equipment does not constitute a legal barrier to the collection of delinquent taxes from the previous owner, MERALCO, who has defaulted in its payment.
> > x x x
>
> However, the Court holds that the RTC did not commit any grave abuse of discretion when it denied [BARLIS'] motion to dismiss on the claim that for [MERALCO's] failure to appeal from the 1986 notice of assessment of the Municipal Assessor, the assessment had become final and enforceable under Section 64 of P.D. No. 454.
>
> Section 22 of P.D. No. 464 states that, upon discovery of real property, the provincial, city or municipal assessor shall have an appraisal and assessment of such real property in accordance with Section 5 of the law, irrespective of any previous assessment or taxpayer's valuation thereon. The provincial, city or municipal assessor is tasked to determine the assessed value of the property meaning the value placed on taxable property for *ad valorem* tax purposes. The assessed value multiplied by the tax rate will produce the amount of tax due. It is synonymous to taxable value.
>
> An assessment fixes and determines the tax liability of a taxpayer. It is a notice to the effect that the amount therein stated is due as tax and a demand for payment thereof. The assessor is mandated under Section 27 of the law to give written notice within thirty days of such assessment, to the person in whose name the property is declared. The notice should indicate the kind of property being assessed, its actual use and market value, the assessment level and the assessed value. The notice may be delivered either personally to such person or to the occupant in possession, if any, or by mail, to the last known address of the person to be served, or through the

---

[6] *Manila Electric Company v. Nelia A. Barlis*, 477 Phil. 12 (2004).

assistance of the barrio captain. The issuance of a notice of assessment by the local assessor shall be his last action on a particular assessment. For purposes of giving effect to such assessment, it is deemed made when the notice is released, mailed or sent to a taxpayer. As soon as the notice is duly served, an obligation arises on the part of the taxpayer to pay the amount assessed and demanded.

If the taxpayer is not satisfied with the action of the local assessor in the assessment of his property, he has the right, under Section 30 of P.D. No. 464, to appeal to the Local Board of Assessment Appeals by filing a verified petition within sixty (60) days from service of said notice of assessment. If the taxpayer fails to appeal in due course, the right of the local government to collect the taxes due becomes absolute upon the expiration of such period, with respect to the taxpayer's property. The action to collect the taxes due is akin to an action to enforce a judgment. It bears stressing, however, that Section 30 of P.D. No. 464 pertains to the assessment and valuation of the property for purposes of real estate taxation. Such provision does not apply where what is questioned is the imposition of the tax assessed and who should shoulder the burden of the tax.

Comformably to Section 57 of P.D. No. 464, it is the local treasurer who is tasked with collecting taxes due from the taxpayer. x x x

xxx xxx xxx

In this case, [MERALCO] denied receiving copies of Tax Declarations Nos. B-009-5501 to B-009-5494 prepared by the respondent Municipal Assessor in 1985. In the face of [MERALCO's] denial, the respondent was burdened to prove the service of the tax declarations on the petitioner. While the respondent alleged in his Comment on the Petition at bar that the Municipal Assessor furnished the petitioner with copies of the said tax declarations on November 29, 1985, the only proof proferred by the respondent to prove such claim was the receipt signed by a certain Basilio Afuang dated November 29, 1985. The records failed to show the connection of Basilio Afuang to the petitioner, or that he was authorized by the petitioner to receive the owner's copy of the said tax declaration from the Office of the Municipal Assessor. We note that the respondent even failed to append a copy of the said receipt in its motion to dismiss in the trial court. Conformably, this Court, in its May 18, 2001 Decision, declared as follows:

> . . . The records, however, are bereft of any evidence showing actual receipt by petitioner of the real property tax declaration sent by the Municipal Assessor. However, the respondent in a Petition for *Certiorari* (G.R. No. 100763) filed with this Court which later referred the same to the Court of Appeals for resolution, narrated that "the municipal assessor assessed and declared the afore-listed properties for taxation purposes as of 28 November 1985." Significantly, in the same petition, respondent referred to former Municipal Treasurer Norberto A. San Mateo's notices to MERALCO, all dated 3 September 1986, as notices of assessment and not notices of collection as it claims in this present petition. Respondent cannot maintain diverse positions.

The question that now comes to [the] fore is, whether the respondent's Letters to the [MERALCO] dated September 3, 1986 and October 31, 1989, respectively, are mere collection letters as contended by the petitioner and as held by this Court in its February 1, 2002 Resolution; or, as claimed by the respondent and as ruled by this Court in its May 18, 2001 Decision, are notices of assessment envisaged in Section 27 of P.D. No. 464.

xxx xxx xxx

The Court, in its February 1, 2002 Resolution, upheld the petitioner's contention and ruled that the aforequoted letter/notices are not notices of assessment evisaged in Section 27 of P.D. No. 464. Thus:

xxx xxx xxx

Upon careful review of the records of this case and the applicable jurisprudence, we find that it is the contention of [MERALCO] and the ruling of this Court in its February 1, 2002 Resolution which is correct. Indeed, even the respondent admitted in his comment on the petition that:

> Indeed, respondent did not issue any notice of assessment because statutorily, he is not the proper officer obliged to do so. Under Chapter VII, Sections 90 and 90-A of the Real Property Tax Code, the functions related to the appraisal and assessment for tax purposes of real properties situated within a municipality pertains to the Municipal Deputy Assessor and for the municipalities within the Metropolitan Manila, the same is lodged, pursuant to P.D. No. 921, on the Municipal Assessor.

Consequently then, Sections 30 and 64 of P.D. No. 464 had no application in the case before the trial. The petitioner's action for prohibition was not premature. Hence, the Court of Appeals erred in rendering judgment granting the petition for *certiorari* of [BARLIS].

Moreover, the petitioner, in its petition for prohibition before the court *a quo*, denied liability for the taxes claimed by the respondent, asserting that if at all, it is the NAPOCOR, as the present owner of the machineries/equipment, that should be held liable for such taxes. The petitioner had further alleged that the assessment and collection of the said taxes had already prescribed. Conformably to the ruling of this Court in *Testate Estate of Lim vs. City of Manila*, Section 30 of P.D. No. 464 will not apply.

The Court further rules that there is a need to remand the case for further proceedings, in order for the trial court to resolve the factual issue of whether or not the Municipal Assessor served copies of Tax Declarations Nos. B-009-05499 to B-009-05502 on [MERALCO], and, if in the affirmative, when [MERALCO] received the same; and to resolve the other issues raised by the parties in their pleadings. It bears stressing that the Court is not a trier of facts.[7]

Respondent therein, on August 5, 2004, moved for the reconsideration of this Court's June 29, 2004 Resolution, and on March 29, 2005,[8] this Court, En Banc "Denied with Finality," respondent Barlis' motion for reconsideration. The resolution partly reads:

The Court shall now address the substantive issue raised by respondent Municipal Treasurer in his motion for reconsideration: "The applicability of Section 64 is not dependent on the resolution of the issue of whether or not the petitioner was furnished with Notices of Assessment."

Section 64 of RPTC reads:

Sec. 64. *Restriction upon power of court to impeach tax.* — No court shall entertain any suit assailing the validity of

---

[7] *Manila Electric Company v. Nelia A. Barlis*, *supra*, at 37-46. (Emphasis ours; citations omitted)

[8] *Rollo*, pp. 60-71.

> tax assessed under this Code until the taxpayer shall have paid, under protest, the tax assessed against him nor shall any court declare any tax invalid by reason of irregularities or informalities in the proceedings of the officers charged with the assessment or collection of taxes, or of failure to perform their duties within the time specified for their performance unless such irregularities, informalities or failure shall have impaired the substantial rights of the taxpayer; nor shall any court declare any portion of the tax assessed under the provisions of this Code invalid except upon condition that the taxpayer shall pay the just amount of the tax, as determined by the court in the pending proceeding.

Respondent Municipal Treasurer adamantly asserts that whether or not petitioner MERALCO was furnished with a notice of assessment is not necessary for the applicability of the above provision. She hinges this assertion on the use of the term "tax assessed," not "tax assessment," in the above provision. This allegedly means that the moment a taxpayer is charged with the payment of a tax, he must pay the same under protest before he may file a suit in court.

Contrary to respondent Municipal Treasurer's stance, the determination of whether or not petitioner MERALCO was furnished with a notice of assessment is necessary in order that Section 64 of the RPTC would apply to its petition for prohibition before the court *a quo*. It must be recalled that the real property taxes sought to be collected by the City of Muntinlupa from petitioner MERALCO are based on the finding that it "misdeclared and/or failed to declare for taxation purposes a number of real properties, consisting of several equipment and machineries, found in the power plants." In other words, the said taxes are presumably based on "new or revised assessments" made by the respondent Municipal Treasurer. In this connection, Section 27 of the RPTC provides:

> Sec. 27. *Notification of New or Revised Assessments.* — When a real property is assessed for the first time or when an existing assessment is increased or decreased, the provincial or city assessor shall within thirty days give written notice of such new or revised assessment to the person in whose name the property is declared. The notice may be delivered personally to such person or to the occupant in possession, if any, or by mail to the last known address of the person to be served, or through the assistance of the barrio captain.'

The term "tax assessed" in Section 67 should, thus, be read in relation to Section 27 because the particular words, clauses and phrases in a law should not be studied as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.

Section 64 stated that "no court shall entertain any suit assailing the validity of tax assessed under this Code until the taxpayer shall have been paid, under protest, the tax assessed against him. . ." However, in relation to Section 27, the taxpayer's obligation to pay the tax assessed against him arises only upon notification of such assessment. It bears reiterating that the assessment fixes and determines the tax liability of the taxpayer. The basic postulate of fairness thus requires that it is only upon notice of such assessment that the obligation of the taxpayer to pay the same arises. As it was explained in the Resolution of June 29, 2004:

> An assessment fixes and determines the tax liability of a taxpayer. It is a notice to the effect that the amount therein stated is due as tax and a demand for payment thereof. The assessor is mandated under Section 27 of the law to give written notice within thirty days of such assessment, to the person in whose name the property is declared. The notice should indicate the kind of property being assessed, its actual use and market value, the assessment level and the assessed value. The notice may be delivered either personally to such person or to the occupant in possession, if any, or by mail, to the last known address of the person to be served, or through the assistance of the barrio captain. The issuance of a notice of assessment by the local assessor shall be his last action on a particular assessment. For purposes of giving effect to such assessment, it is deemed made when the notice is released, mailed or sent to the taxpayer. As soon as the notice is duly served, an obligation arises on the part of the taxpayer to pay the amount assessed and demanded.

It is in this light that the determination of whether or not petitioner MERALCO was furnished with a notice of assessment is necessary in order that Section 64 of the RPTC would apply to its petition for prohibition before the court *a quo*. If petitioner MERALCO had been furnished with such notice, then its obligation to pay the real property taxes assessed against it has already accrued. Consequently,

conformably with Section 64 of the RPTC, the court *a quo* has no jurisdiction over the petition for prohibition for non-payment by petitioner MERALCO of the said taxes. As a corollary, if petitioner MERALCO had not been furnished with such notice, then its obligation to pay the taxes assessed against it has not, as yet, accrued. The court *a quo* then has jurisdiction over petitioner MERALCO's petition for prohibition despite non-payment of the said taxes because, in such a case, Section 64 of the RPTC is not applicable.

As held in the Resolution of June 29, 2004, whether or not petitioner MERALCO was furnished with a notice of assessment is a question of fact. The determination thereof as well as the other factual issues raised by the parties in their pleadings are best undertaken by the court *a quo*.

ACCORDINGLY, the Motion for Reconsideration dated August 5, 2004 of respondent Municipal Treasurer is DENIED with FINALITY.

The Regional Trial Court (RTC) of Makati City, Branch 66, is hereby DIRECTED to conduct the necessary proceedings with DISPATCH and to RESOLVE the said case within six (6) months from notice hereof.[9]

The case was, therefore, remanded to the RTC for the determination of the question of fact of "whether or not petitioner MERALCO was furnished with a notice of assessment x x x as well as other factual issues raised by the parties in their pleadings x x x."

The RTC, on May 2, 2006, rendered a Decision[10] finding that the transmittal letter of the then Office of the Municipal Assessor of Muntinlupa and the tax declarations received by the petitioner, through its employee Basilio Afuang in November 29, 1985, are effectively notices of assessment.

Dissatisfied, MERALCO filed a Motion for Reconsideration which the RTC granted in an Order[11] dated September 4, 2006, stating the following, among others:

---

[9] *Id.* at 68-71. (Citations and italics omitted; emphasis ours)

[10] Penned by Pairing Judge Rommel O. Baybay, *id.* at 300-304.

[11] Penned by Presiding Judge Joselito C. Villarosa, *id.* at 305-307.

After carefully considering the arguments of the parties in their respective pleadings, the Court reconsiders and sets aside the Decision dated May 2, 2006.

The Court finds that the municipal assessor of Muntinlupa failed to furnish MERALCO with the mandatory notice of assessment. This is evident from the admission of respondent that aside from Exhibits "1" to "10" and two letters dated 3 September 1986 and 13 October 1989, no other documents were received by MERALCO in connection with this case (Order dated 24 January 2006). The Court likewise reverses its ruling that the "transmittal letter" of the then Office of the Municipal Assessor of Muntinlupa and the tax declarations received by the petitioner through its employee Basilio Afuang on November 1985 are effectively "notices of assessment."

Article VII-K of Assessment Regulations No. 3-75 dated February 10, 1975 otherwise known as the "Rules and Regulations for the Implementation of the Real Property Tax Code (P.D. 464)," specifically paragraph (4) mandates that forms of notice of assessment RPA No. 7 shall be used which may be mimeographed by assessors for their use and that "the notice of assessment and owner's copy of the tax declaration shall be delivered or mailed to property owners within thirty days from entry of tax declarations covering the assessment of property in the Record of Assessments."

Undoubtedly, therefore, the two are separate and distinct; hence, the tax declarations and the receipt issued for said tax declarations cannot be considered effectively [sic] notices of assessment. Assessment is deemed made when the notice to this effect is released, mailed or sent to the taxpayer for the purpose of giving effect to said assessment. In other words, without the notice of assessment, there is no valid assessment.

The Court finds that there is arbitrariness and denial of due process on the part of the respondent in his attempts to collect real estate taxes from MERALCO although its obligation to pay the same had not yet arisen due to the failure of the municipal assessor to furnish MERALCO with the mandated notice of assessment.

In the Resolution of March 29, 2005, this Court was mandated to determine whether or not petitioner MERALCO was furnished with a notice of assessment.

According to the Supreme Court —

> x x x the determination of whether or not petitioner MERALCO was furnished with a notice of assessment is necessary in order that Section 64 of the RPTC would apply to its petition for prohibition before the court *a quo*. If petitioner MERALCO had been furnished with such notice, then its obligation to pay the real property taxes assessed against it has already accrued. Consequently, conformably with Section 64 of the RPTC, the court *a quo* has no jurisdiction over the petition for prohibition for non-payment of petitioner MERALCO of the said taxes. As corollary, if petitioner MERALCO had not been furnished with such notice, then its obligation to pay the taxes assessed against it has not, as yet, accrued. The court *a quo* then has jurisdiction over petitioner MERALCO's petition for prohibition despite non-payment of the said taxes because, in such a case, Section 64 of the RPTC is not applicable.
>
> As held in the Resolution of June 29, 2004, whether or not petitioner MERALCO was furnished with a notice of assessment is a question of fact. The determination thereof as well as the other factual issues raised by the parties in their pleadings are best undertaken by the court *a quo*.

In view therefore of this Court's finding that petitioner MERALCO had not been furnished with the notice of assessment, then its obligation to pay property taxes has not accrued. This Court then has jurisdiction over MERALCO's petition for prohibition. Likewise, MERALCO's obligation to pay the taxes has not yet accrued and the three warrants of garnishment against petitioner's bank deposits with the Philippines Commercial International Bank (now Equitable PCI Bank)[,] Metropolitan Bank and Trust Company, and Bank of Philippine Islands prematurely issued by the respondent treasurer are null and void. Any withdrawal from the bank deposits of MERALCO by virtue of said writs of garnishment is hereby declared illegal.[12]

Petitioner filed a motion for reconsideration, but the same was denied in the Order[13] dated October 14, 2008.

---

[12] *Rollo*, pp. 306-307. (Emphasis ours; citations omitted)

[13] *Id.* at 308-312.

An appeal was, therefore, filed with the CA and in dismissing the appeal, the CA ruled:

x x x Simply put, what the trial court was finally called upon to resolve is the factual issue of "whether or not petitioner MERALCO was furnished with a notice of assessment," and no longer "the factual issue of whether or not the Municipal Assessor served copies of Tax Declaration Nos. B-009-05499 to B-009-05502 on [MERALCO]."

xxx xxx xxx

the Supreme Court could not have been clearer on its point that the tax declaration here cannot be validly considered as a notice of assessment under Section 27 of P.D. No. 464.

First, a tax declaration is issued pursuant to "Section 22 of P.D. No. 464" which mandates "that upon discovery of real property, the provincial, city or municipal assessor shall make an appraisal and assessment of such real property in accordance with Section 5 of the law, irrespective of any previous assessment on taxpayers valuation thereon," while a notice of assessment is issued pursuant to Section 27 of the law which mandates the "assessor x x x to give written notice within thirty days of such assessment, to the person in whose name the property is declared."

Second, a tax declaration is mandated by Section 22 of P.D. No. 464 to be issued "upon discovery" by the assessor of the "real property" to be appraised and assessed, while a "written notice of assessment" as required by Section 27 of the same law has to be issued by the assessor "within thirty days" from "such assessment."

Third, no tax accrues as a result of the assessor's issuance of a tax declaration, for at that time, the assessor is merely tasked by Section 22 of the law "to determine the assessed value of the property, meaning, the value placed on taxable property for *ad valorem* tax purposes." On the other hand, the written notice of assessment is what ripens into a demandable tax. It is for said reason that the notice must conform to the standards set by Section 27 of P.D. No. 464 x x x.

xxx xxx xxx

In sum, the RTC could not have erred when it found "that the municipal assessor of Muntinlupa failed to furnish MERALCO with

the mandatory notice of assessment. This is evident from the admission of respondent that aside from Exhibits "1" to "10" and two letters dated 3 September 1986 and 13 October 1989, no other documents were received by MERALCO in connection with this case.

WHEREFORE, the instant appeal is DISMISSED for lack of merit. The appealed Orders dated September 4, 2006 and October 14, 2008 are hereby AFFIRMED.

SO ORDERED.[14]

Petitioner's motion for reconsideration was denied. Hence, this petition, in which the petitioner raised the following grounds:

a. rejecting and/or failing to resolve the issues raised by Petitioner in the subject case and resolved instead the issue it formulated in it the Assailed Order is a coram non-judice judgment;

b. validating a trial court's resolution of "legal issues" in a proceeding its jurisdiction over was explicitly directed by the Supreme Court to be rectified to the resolution of the one "factual issue" stated in its said directive;

c. legitimizing a trial court's absurd claim that it, a mere trial court, was tasked by the Supreme Court to resolve and hand down for and in its behalf the resolution of a purely legal issue; and

d. affirming orders and rulings of a trial court which disregarded and even mocked doctrinal teachings of the Supreme Court.[15]

Petitioner contends that the CA failed to resolve the issues raised by petitioner in his appeal, thus making the assailed decision *coram non-judice*. According to petitioner, it is a general principle of law that a court cannot set itself in motion, nor has it power to decide questions except as presented by the parties in their pleadings and anything that is decided beyond them is *coram non-judice* and void.

It is also the contention of petitioner that the final judgment of this Court in G.R. No. 114231 was the Resolution it adopted

---

[14] *Id.* at 53-56. (Emphases omitted)

[15] *Id.* at 9. (Underscoring omitted)

on June 29, 2004, the verdict of which has already been registered in its Book of Entry of Judgment on April 13, 2005. In the said resolution, the petitioner claims that this Court ruled that a notice of assessment is not an existing, fixed, and standard legal form, and what is controlling is that it is a written advice that in effect or effectively informs the taxpayer of the essential information the Real Property Tax Code under P.D. No. 464 obliges such taxpayer to be so informed.

Petitioner further claims that the RTC's first Decision (before it was overturned by its resolution granting MERALCO's motion for reconsideration) dated May 2, 2006 abided by the directive of this Court's Resolution dated June 29, 2005 because it ruled that petitioner provided MERALCO with the Tax Declarations specified in the said resolution of this Court before issuing the warrants of garnishment. As such, petitioner insists, only this Court's Resolution dated June 29, 2004 and the RTC's Decision dated May 2, 2006 can put a resolution on this case.

In its Comment,[16] MERALCO insists that the CA did not err in formulating the sole issue to be resolved in its appeal: whether or not the RTC erred in holding in its assailed Orders that "The City did not provide MERALCO with the notices of assessment as envisaged in P.D. No. 464." MERALCO further adds that when the case was called for pre-trial, the parties have agreed that pursuant to the Resolution dated March 29, 2005 of this Court, the actual issue to be resolved is whether or not MERALCO was furnished a notice of assessment by the City of Muntinlupa.

Furthermore, MERALCO argues that while the tax declarations furnished it contain the essential information such as the kind of property being assessed, its actual use and market value, which a notice of assessment should indicate, said tax declarations do not fix and determine the tax liability of the taxpayer and are not notices to the taxpayers that the liability fixed and determined therein are due as with a demand for the payment thereof.

---

[16] Dated October 27, 2011, *id.* at 241-283.

MERALCO also points out that this Court's Resolution dated March 29, 2005 is a clarification as to the directive on how to proceed with the case on remand.

The petition lacks merit.

A close reading of the arguments presented before this Court eventually and ultimately raises the question of whether this Court's Resolution dated June 29, 2004 and Resolution dated March 29, 2005, contain the same ruling. As claimed by the petitioner, in this Court's Resolution dated June 29, 2004, it ordered the case to be remanded to the RTC for factual determination of whether MERALCO received the "tax declarations" or not. If the same is true, then the RTC's Decision dated May 2, 2006 should be upheld since it resolved the said issue. However, based on the Order dated September 4, 2006 of the RTC and the Decision of the CA, this Court's latter Resolution dated March 29, 2005 calls for the determination of the RTC of whether or not a "notice of assessment" as contemplated in P.D. No. 464 was provided to MERALCO. Thus, only a clarification from this Court as to its two earlier resolutions is necessary in order to put the final nail in the coffin of this case.

While it is true that in this Court's Resolution dated June 29, 2004, it gave the directive to the RTC to "resolve the factual issue of whether or not the Municipal Assessor served copies of Tax Declarations Nos. B-009-05499 to B-009-05502 on the petitioner," this Court made it clear or clarified in its latter Resolution dated March 29, 2005 resolving the motion for reconsideration of the Resolution dated June 29, 2004 that the directive is for the RTC to determine whether or not MERALCO was furnished with a notice of assessment. Specifically, this Court ruled:

> It is in this light that the determination of whether or not petitioner MERALCO was furnished with a notice of assessment is necessary in order that Section 64 of the RPTC would apply to its petition for prohibition before the court *a quo*. If petitioner MERALCO had been furnished with such notice, then its obligation to pay the real property taxes assessed against it has already accrued. Consequently,

conformably with Section 64 of the RPTC, the court *a quo* has no jurisdiction over the petition for prohibition for non-payment of petitioner MERALCO of the said taxes. As a corollary, if petitioner MERALCO had not been furnished with such notice, then its obligation to pay the taxes assessed against it has not, as yet, accrued. The court *a quo* then has jurisdiction over petitioner MERALCO's petition for prohibition despite non-payment of the said taxes because, in such a case, Section 64 of the RPTC is not applicable.

As held in the Resolution of June 29, 2004, whether or not petitioner MERALCO was furnished with a notice of assessment is a question of fact. The determination thereof as well as the other factual issues raised by the parties in their pleadings are best undertaken by the court *a quo*.[17]

Thus, as a guide, this Court, in the same Resolution dated March 29, 2005, went on to discuss the nature and what constitutes a notice of assessment. The following was thus, expounded:

Section 64 stated that "no court shall entertain any suit assailing the validity of tax assessed under this Code until the taxpayer shall have paid, under protest, the tax assessed against him. . ." However, in relation to Section 27, the taxpayer's obligation to pay the tax assessed against him arises only upon notification of such assessment. It bears reiterating that the assessment fixes and determines the tax liability of the taxpayer. The basic postulate of fairness thus requires that it is only upon notice of such assessment that the obligation of the taxpayer to pay the same arises. As it was explained in the Resolution of June 29, 2004:

> **An assessment fixes and determines the tax liability of a taxpayer. It is a notice to the effect that the amount therein stated is due as tax and a demand for payment thereof. The assessor is mandated under Section 27 of the law to give written notice within thirty days of such assessment, to the person in whose name the property is declared. The notice should indicate the kind of property being assessed, its actual use and market value, the assessment level and the assessed value. The notice may be delivered either**

---

[17] *Rollo*, p. 296. (Emphasis ours)

> **personally to such person or to the occupant in possession, if any, or by mail, to the last known address of the person to be served, or through the assistance of the barrio captain. The issuance of a notice of assessment by the local assessor shall be his last action on a particular assessment. For purposes of giving effect to such assessment, it is deemed made when the notice is released, mailed or sent to the taxpayer. As soon as the notice is duly served, an obligation arises on the part of the taxpayer to pay the amount assessed and demanded.**[18]

It is therefore wrong for the petitioner to allege that among the fundamental rulings in the Resolution dated June 29, 2004 is that a notice of assessment is not an existing, fixed, and standard legal form and all that is legal and mandatory in its physical feature or make-up is that it should be in writing, and so long as it is a written advice that, in effect or effectively informs the taxpayer of the essential information that the Real Property Tax Code under P.D. No. 464 obliges such taxpayer to be so informed. A careful reading of the Resolution dated June 29, 2004 does not support such claim of the petitioner. The same Resolution emphasized that a notice of assessment fixes and determines the tax liability of a taxpayer and is a notice to the effect that the amount stated therein is due as tax and a demand to pay thereof. This Court also reminded that a notice of assessment as provided for in the Real Property Tax Code should effectively inform the taxpayer of the value of a specific property, or proportion thereof subject to tax, including the discovery, listing, classification, and appraisal of properties. Nowhere does the resolution state that the tax declarations can be considered as notices of assessment. Consequently, having thus discussed the nature and contents of a notice of assessment, the factual issue of whether or not Meralco was furnished with a notice of assessment is necessary to resolve the issues of the case. Hence, being a question of fact, this Court deemed it necessary to remand the case for its proper resolution. To reiterate, the RTC was called upon to resolve the factual issue of whether or not Meralco

---

[18] *Id.* (Emphasis ours)

was furnished with a notice of assessment and not the factual issue of whether or not the Municipal Assessor served copies of Tax Declaration Nos. B-009-05499 to B-009-05502 on Meralco.

What is controlling, therefore, is the directive of this Court contained in its Resolution dated March 29, 2005.

In finding that the municipal assessor of Muntinlupa failed to furnish MERALCO with a notice of assessment, the RTC, in its Order dated September 4, 2006, ruled, thus:

> The Court finds that the municipal assessor of Muntinlupa failed to furnish MERALCO with the mandatory notice of assessment. **This is evident from the admission of respondent that aside from Exhibits "1" to "10" and two letters dated 3 September 1986 and 13 October 1989, no other documents were received by MERALCO in connection with this case (Order dated 24 January 2006)**. The Court likewise reverses its ruling that the "transmittal letter" of the then Office of the Municipal Assessor of Muntinlupa and the tax declarations received by the petitioner through its employee Basilio Afuang on November 1985 (Exhibits "1" to "10") are effectively "notices of assessment."
>
> Article VII-K of Assessment Regulations No. 3-75 dated February 10, 1975 otherwise known as the "Rules and Regulations for the Implementation of the Real Property Tax Code (P.D. 464)," specifically paragraph (4) mandates that forms of notice of assessment RPA No. 7 shall be used which may be mimeographed by assessors for their use and that "the notice of assessment and owner's copy of the tax declaration shall be delivered or mailed to property owners within thirty days from entry of tax declarations covering the assessment of property in the Record of Assessments."
>
> Undoubtedly, therefore, the two are separate and distinct; hence, the tax declarations and the receipt issued for said tax declarations cannot be considered effectively [sic] notices of assessment. Assessment is deemed made when the notice to this effect is released, mailed or sent to the taxpayer for the purpose of giving effect to said assessment. In other words, without the notice of assessment, there is no valid assessment.[19]

---

[19] *Id.* at 306-307. (Emphasis ours; citations omitted)

In affirming the RTC, the CA did not err in ruling that the tax declarations cannot be validly considered as a notice of assessment under Section 27 of P.D. No. 464, thus:

> First, a tax declaration is issued pursuant to "Section 22 of P.D. No. 464" which mandates "that upon discovery of real property, the provincial, city or municipal assessor shall make an appraisal and assessment of such real property in accordance with Section 5 of the law, irrespective of any previous assessment on taxpayers valuation thereon," while a notice of assessment is issued pursuant to Section 27 of the law which mandates the "assessor x x x to give written notice within thirty days of such assessment, to the person in whose name the property is declared."
>
> Second, a tax declaration is mandated by Section 22 of P.D. No. 464 to be issued "upon discovery" by the assessor of the "real property" to be appraised and assessed, while a "written notice of assessment" as required by Section 27 of the same law has to be issued by the assessor "within thirty days" from "such assessment."
>
> Third, no tax accrues as a result of the assessor's issuance of a tax declaration, for at that time, the assessor is merely tasked by Section 22 of the law "to determine the assessed value of the property, meaning, the value placed on taxable property for *ad valorem* tax purposes." On the other hand, the written notice of assessment is what ripens into a demandable tax. x x x.[20]

Such factual issue, having been decided by the RTC and affirmed by the CA, may no longer be reversed by this Court. Time and again, this Court has ruled that "the factual findings of the trial court are given weight when supported by substantial evidence and carries more weight when affirmed by the Court of Appeals."[21]

Anent the issue raised by petitioner that the CA decision is *coram non-judice* or a void judgment, this Court finds it to be

---

[20] *Id.* at 54-55. (Emphases omitted)

[21] *Manila Bankers Life Insurance Corp. v. Eddy Ng Kok Wei*, 463 Phil. 871, 878 (2003), citing *Lim v. Chan*, 405 Phil. 496, 502 (2001), citing *Valgosons Realty, Inc. v. Court of Appeals*, G.R. No. 126233, September 11, 1998, 295 SCRA 449, 461.

erroneous. The CA, by formulating and resolving the sole issue of whether or not the RTC erred in holding in its assailed Orders that the petitioner did not provide MERALCO with the notice of assessment envisaged in P.D. No. 464 did not abandon or fail to resolve the other issues raised by the petitioner. Petitioner contends that the following issues raised in his Memorandum[22] have not been resolved by the CA:

> 1. Did or did not the court *a quo* have jurisdiction or authority to issue the "Villarosa Orders #1 and #2" and, assuming it did have such authority, did it abide by the Supreme Court's ruling in G.R. No. 114231 in exercising it?
>
> 2. Were the Tax Declarations Meralco stipulated the City did provide it relative to its suited tax claim effectively the "Notice of Assessment" envisaged in P.D. No. 464?
>
> 3. Given Meralco's stipulation of its actual receipt from the City of the aforementioned Tax Declarations, must or may its Treasurer's Letters of 03 September 1986 and 31 October 1989 still be held to be mere collection letters and not demands for the payment of the amounts stated therein?
>
> 4. Was there a notice of assessment structured as "RPA Form No. 7?"[23]

A close reading of the CA decision in question shows that the above-mentioned issues have been addressed by the appellate court. As aptly pointed out by MERALCO in its Comment dated October 27, 2011:

> Regarding the first issue which the Court of Appeals allegedly did not resolve, it will be noted that the Court of Appeals, after quoting on pages 8-10 of its Decision the discussion of the Court En Banc in its Resolution dated March 29, 2005, pertaining to the resolution of the substantive issue raised by the Municipal Treasurer in his Motion for Reconsideration that the applicability of Section 64 of the then Real Property Tax Code is not dependent on the resolution

[22] *Rollo*, pp. 101-120.

[23] *Id.* at 108.

of the issue of whether or not Petitioner was furnished with Notices of Assessment, concluded:

> Thus, the case was remanded to the RTC for the determination of the "question of fact" of whether or not petitioner MERALCO was furnished with a notice of assessment x x x as well as other factual issues raised by the parties in their pleadings x x x.

The trial court in its Orders dated 4 September 2006 and 14 October 2008, respectively, complied with said directive of the Honorable Supreme Court En Banc in its Resolution dated March 29, 2005.

In the Order dated September 4, 2006 (the so-called Villarosa Order #1), the trial court found that the municipal assessor of Muntinlupa failed to furnish Meralco with the mandatory notice of assessment which was evident from the admission of respondent that aside from Exhibits "1" to "10" and the two letters dated 3 September 1986 and 31 October 1989, no other documents were received by MERALCO in connection with this case.

Consequently, the trial court rulings (1) that Meralco's obligation to pay the taxes, has not yet accrued; (2) that the trial court has jurisdiction over petitioner Meralco's petition for prohibition despite non-payment of said taxes because in such a case, Section 64 of P.D. 464 is not applicable; (3) that since the taxes has not, as yet accrued, the three warrants of garnishment against Meralco's bank deposits with the Philippine Commercial Industrial Bank and Trust Company, and Bank of Philippine Islands were prematurely issued and therefore null and void and (4) that the withdrawal of the City Treasurer from the Meralco's bank deposit with the Bank of Philippine Islands by virtue of the null and void writ of garnishment should be refunded to the Meralco, are logical consequences of this aforesaid determination by the trial court in compliance with the directive in the Resolution En Banc dated 29 June 2005. No legal issue was resolved by the trial court.

In view thereof, when the Court of Appeals upheld the aforesaid determination by the trial court, in effect ruled that the trial court complied with the Court En Banc Resolutions.

With regard to the second issue, the Court of Appeals ruled:

> Clearly, the tax declarations referred to as Exhibits "2" and "10-A", and the assesor's letter of transmittal thereof offered in evidence as Exhibit "1" are not either signed singly or collectively, the notice of assessment envisaged in Section 27 of P.D. No. 464.
>
> xxx xxx xxx
>
> the Supreme Court could not have been clearer on its point that the tax declaration here cannot be validly considered as a notice of assessment under Section 27 of P.D. No. 464.
>
> First, a tax declaration is issued pursuant to "Section 22 of P.D. No. 464" which mandates "that upon discovery of real property, the provincial, city or municipal assessor shall make an appraisal and assessment of such real property in accordance with Section 5 of the law, irrespective of any previous assessment on taxpayers valuation thereon," while a notice of assessment is issued pursuant to Section 27 of the law which mandates the "assessor . . . to give written notice within thirty days of such assessment to the person in whose name the property is declared."
>
> Second, a tax declaration is mandated by Section 22 of P.D. No. 464 to be issued "upon discovery" by the assessor of the "real property" to be appraised and assessed, while a "written notice of assessment" as required by Section 27 of the same law has to be issued by the assessor "within thirty days" from "such assessment."
>
> Third, no tax accrues as a result of the assessor's issuance of a tax declaration, for at that time, the assessor is merely tasked by Section 22 of the law "to determine the assessed value of the property, meaning, the value placed on taxable property for *ad valorem* tax purposes." On the other hand, the written notice of assessment is what ripens into a demandable tax.

In view thereof, the Court of Appeals ruled on the second issue raised by respondent City Treasurer.

As to the third issue, the Court of Appeals likewise disposed the same, thus:

Neither can respondent-appellant validly claim that the Supreme Court would not have "held x x x 'that the aforequoted letters/notices are not the notices of assessment envisaged in Section 27 of P.D. No. 464' but merely rather 'collection letter' as contended by 'Petitioner-appellee,'" had MERALCO not "denied receiving copies of Tax Declarations Nos. B-009-5501 to B-009-5994 prepared by the respondent Municipal Assessor in 1985" because if such were the case, the Supreme Court would not have amended its June 29, 2004 Resolution which originally read:

> The Court further rules that there is a need to remand the case for further proceedings, in order for the trial court to resolve the factual issue of whether or not the Municipal Assessor served copies of Tax Declarations Nos. B-009-05499 to B-009-05502 on [MERALCO], and, if in the affirmative, when [MERALCO] received the same; and to resolve the other issues raised by the parties in their pleadings. It bears stressing that the Court is not a trier of facts.

to what its March 29, 2005 Resolution now clarifies as the issue to be resolved in the remanded case, *viz.*:

> As held in the Resolution of June 29, 2004, whether or not petitioner MERALCO was furnished with a notice of assessment is a question of fact. The determination thereof as well as the other factual issues raised by the parties in their pleadings are best undertaken by the court *a quo*.

Simply put, what the trial court was finally called upon to resolve is the factual issue of "whether or not petitioner MERALCO was furnished with a notice of assessment," and no longer "the factual issue of whether or not the Municipal Assessor served copies of Tax Declaration Nos. B-009-05499 to B-009-05502 on [MERALCO].

As regards the fourth issue raised by respondent, it was no longer necessary for the Court of Appeals to resolve the question if there was a notice of assessment structured as "RPA Form No. 7" when it ruled that —

> In sum, the RTC could not have erred when it found "that the municipal assessor of Muntinlupa failed to furnish MERALCO with the mandatory notice of assessment. This is evident from the admission of respondent that aside from Exhibits "1" to "10" and two letters dated 3 September 1986 and 13 October 1989, no other documents were received by MERALCO in connection with this case.
>
> WHEREFORE, the instant appeal is DISMISSED for lack of merit. The appealed Orders dated September 4, 2006 and October 14, 2008 are hereby AFFIRMED.
>
> SO ORDERED.[24]

Due to the above disquisitions, the other issues raised by petitioner in his present petition have already been adequately addressed by this Court.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated July 4, 2011 of petitioner Romeo Pucyutan is **DENIED** for lack merit. Consequently, the Decision dated October 22, 2010 and Resolution dated May 27, 2011, both of the Court of Appeals, are **AFFIRMED**.

SO ORDERED.

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

---

[24] *Id.* at 270-273. (Emphases omitted)

THIRD DIVISION

[G.R. No. 199464. April 18, 2016]

ROGELIO ROSARIO, RUDY ROSARIO, MARY ANN GUTIERREZ, SYLVIA CASTILLO, LOURDES JOSE, LORENA ESTEPA, VIRGINIA ESTEPA AND REMEDIOS SABADO, *petitioners, vs.* **RIZALITO F. ALBA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; THE JURISDICTION IN EJECTMENT CASES IS DETERMINED BY THE ALLEGATIONS OF THE COMPLAINT AND THE CHARACTER OF THE RELIEF SOUGHT.— It is ruled that jurisdiction in ejectment cases is determined by the allegations of the complaint and the character of the relief sought. The complaint should embody such statement of facts as to bring the party clearly within the class of cases under Section 1, Rule 70 of the 1997 Rules of Civil Procedure, as amended.

2. ID.; ID.; ID.; TWO FORMS OF EJECTMENT OR *ACCION INTERDICTAL,* DISTINGUISHED.— Ejectment or *accion interdictal* takes on two forms: forcible entry and unlawful detainer. In *Spouses Del Rosario v. Gerry Roxas Foundation, Inc.,* the Court explained: **Forcible entry** and **unlawful detainer** are two distinct causes of *action defined in Section 1, Rule 70 of the Rules of Court. In forcible* entry, one is deprived of physical possession of any land or building by means of force, intimidation, threat, strategy, or stealth. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In forcible entry, the possession is illegal from the beginning and the only issue is who has the prior possession *de facto.* In unlawful detainer, possession was originally lawful but became unlawful by the expiration or termination of the right to possess and the issue of rightful possession is the one decisive,

for in such action, the defendant is the party in actual possession and the plaintiffs cause of action is the termination of the defendant's right to continue in possession.

3. ID.; ID.; FORCIBLE ENTRY; THE COMPLAINT CANNOT BE CONSIDERED ONE FOR FORCIBLE ENTRY WHEN THERE IS NO SHOWING THAT THE ACTION WAS FILED WITHIN ONE YEAR FROM THE QUESTIONED ENTRY.— The complaint cannot be considered as one for forcible entry. While the respondent averred that the petitioners' entry in the subject properties was made *without the knowledge and consent* of the respondent or his predecessor-in-interest which said allegation may amount to an averment of the employment of *stealth,* there is, however, no showing that the action was filed within one year from the questioned entry. The complaint does not even state when the alleged dispossession began.

4. ID.; ID.; UNLAWFUL DETAINER; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.— It has been held in a catena of cases that in actions for *unlawful detainer,* a complaint sufficiently alleges said cause of action if it states the following elements, to wit: (1) initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by the plaintiff to the defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and (4) within one year from the making of the last demand to vacate the property, the plaintiff instituted the complaint for ejectment. Quite obviously, the first element is meant to present the basis of the lawful possession in the beginning which is either by virtue of a contract or by tolerance. In the instant case, it is undisputed that no contract, express or implied existed between the parties. Apart from the MTC's conclusion that the petitioners' possession was by the mere tolerance of Luz and the respondent, there was however no evidence presented by the respondent to show such. In the complaint, the respondent merely alleged that the petitioners, "without the knowledge and consent of [the respondent] and his late mother," occup[ied] the subject property by building their respective houses and other improvements thereon. Yet, the respondent failed to show

how or why the petitioners' possession can be considered as lawful at its inception *(but became illegal due to the expiration or termination of the right to possess)* to sufficiently establish an unlawful detainer case.

APPEARANCES OF COUNSEL

Aurora P. Sanglay for petitioners.
Lorna B. Siago-Gacod 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 Rogelio Rosario (Rogelio), Rudy Rosario, Mary Ann Gutierrez, Sylvia Castillo, Lourdes Jose, Lorena Estepa, Virginia Estepa and Remedios Sabado (petitioners) against Rizalito F. Alba (respondent) assailing the Decision[2] dated August 5, 2011 of the Court of Appeals (CA), and the Resolution[3] dated November 10, 2011 denying the motion for reconsideration thereof in CA-G.R. SP No. 110189. The CA reversed the Decision[4] dated June 30, 2009 of the Regional Trial Court (RTC) of Bauang, La Union, Branch 33, in Civil Case No. 1876-Bg, and reinstated the Decision[5] dated January 10, 2009 of the Municipal Trial Court (MTC) of Bauang, La Union, in Civil Case No. 1074.

---

[1] *Rollo*, pp. 9-37.

[2] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Rebecca De Guia-Salvador and Amy C. Lazaro-Javier concurring; *id.* at 38-49.

[3] *Id.* at 50.

[4] Rendered by Judge Rose Mary R. Molina-Alim; records, pp. 145-153.

[5] Rendered by Judge Romeo V. Perez; *id.* at 103-107.

The Facts

The instant petition stemmed from a complaint for ejectment[6] filed by the respondent against the petitioners before the MTC.

The subject properties originally formed part of a parcel of land belonging to the estate of the late Urbano Rosario (Urbano) and Vicenta Zarate (Vicenta). By virtue of a Decision[7] dated August 23, 2001 of the RTC of Bauang, La Union, Branch 67, in Civil Case No. 1151-Bg (*for Revival of Judgment*), which was rendered pursuant to a Compromise Agreement[8] executed among the heirs to the said estate, namely, Jovencio Rosario, et al., Luzviminda Romero and Luz Florendo-Alba (Luz), the subject properties were adjudged as shares of Luz.[9]

The respondent is the son and only surviving legal heir of Luz while the petitioners are fellow heirs to the estate of Urbano and Vicenta. As found by the courts below, the petitioners introduced residential dwellings and other improvements on the subject properties even before the death of Luz. After Luz died, the respondent sent out written notices to vacate upon the petitioners; the last one was sent as a registered mail on November 9, 2007, and was duly received by the petitioners on November 12 and 14, 2007.[10] Because of the petitioners' refusal to leave, the respondent instituted the action for ejectment on June 10, 2008.[11]

In their Answer,[12] the petitioners claimed that the subject properties were already sold by Luz to Rogelio, and to Pablo Rosario, the latter being the predecessor-in-interest of the other

---

[6] *Id.* at 1-4.

[7] *Id.* at 7-9.

[8] *Id.* at 72-74.

[9] *Id.* at 7, 103.

[10] *Id.* at 10-17.

[11] *Id.* at 1-4.

[12] *Id.* at 21-24.

petitioners even before the execution of the Compromise Agreement in Civil Case No. 1151-Bg. This was allegedly proved by duly notarized deeds of sale.[13]

Ruling of the MTC

On January 10, 2009, the MTC rendered its Decision. It found that the petitioners' possession was merely tolerated, which became unlawful after the respondent demanded them to vacate the subject properties. Anent the petitioners' claim that the subject properties were already sold to their predecessors-in-interest, the MTC ruled that said assertion cannot hold water as the parcels of land subject matter of the deeds of sale presented by the petitioners were found to be different from the purported inheritance of the respondent. On top of the money judgment and the award of attorney's fees in favor of the respondent, the MTC ordered the petitioners to remove the improvements they introduced in the subject properties and to vacate the same.[14]

Ruling of the RTC

The petitioners appealed to the RTC.[15] On June 30, 2009, the RTC rendered its Decision[16] setting aside the decision of the MTC. The RTC ordered the dismissal of the respondent's complaint on the following grounds: a) the complaint cannot give rise to an unlawful detainer action. The MTC ruling that the petitioners' possession of the properties was merely tolerated was misplaced as there was neither an express or implied contract among the parties;[17] b) the case could not likewise be one for forcible entry since there was no allegation that entry was committed by means of force, intimidation, strategy or stealth;[18] and c) since no date of entry was alleged by the respondent, the

---

[13] *Id.* at 22; 101-102.

[14] *Id.* at 107.

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

[16] *Id.* at 145-153.

[17] *Id.* at 150.

[18] *Id.*

petitioners' contention that they have been in possession of the properties since 1989 to 1994 *(the period when the subject properties were allegedly conveyed to them by deeds of sale)*, or for more than one year, was worthy of credence.[19] Even if the respondent was the true owner of the subject properties, he cannot avail of the summary action of ejectment considering that the possession thereof cannot be wrested from another who had been in the physical or material possession of the same for more than one year.[20] Thus, the MTC should have dismissed the action for want of jurisdiction.[21]

Ruling of the CA

The respondent elevated his case to the CA. On August 5, 2011, the CA rendered the assailed Decision[22] reversing and setting aside the decision of the RTC and reinstated the MTC judgment. Undaunted, the petitioners sought reconsideration which was denied by the CA in the Resolution[23] dated November 10, 2011.

Hence this petition.

According to the petitioners, the CA erred:

a) in failing to consider the deeds of sale, project of partition and deed of waiver of rights which supports their claim of ownership and possession;

b) in re-stating the respondent's allegation and concluding that their possession was by mere tolerance which is not based on the findings of facts and law; and

c) in reinstating the findings of the MTC that there is no identity of the properties they are claiming and those alleged to be inherited by the respondent.[24]

---

[19] *Id.*

[20] *Id.* at 151.

[21] *Id.*

[22] *Rollo*, pp. 38-49.

[23] *Id.* at 50.

[24] *Id.* at 15.

Ruling of the Court

The Court finds merit in the petition.

Plainly dubbed as one for ejectment, the respondent's complaint materially alleges the following:

> 3. [The respondent] is the son and only surviving legal heir of the late [Luz] who at the time of her death left two parcels of land located at Central West, Bauang, La Union which are particularly described as follows:
>
> *1. An orchard with an area of 179.67 sq.[m.], a residential lot with an area of 100 sq.m. and a commercial lot with an area of 166.67 sq.m., declared under ARP No. 001-01570;*
>
> *2. An orchard with an area of 4,000 sq.m. and a residential lot with an area of 778 sq.m. declared under ARP No. 001-01574.*
>
> xxx xxx xxx
>
> 4. The above described properties are the shares of [the respondent's] mother [Luz] in the estate of the late [Urbano] and [Vicenta]. [Luz's] shares were duly adjudicated to her as per Decision in Civil Case No. 1151-Bg[,] entitled Beatriz R. Gapasin and Luz Florendo versus Jovencio Rosario, et al. for Revival of Judgment, copy of the said Decision is hereto attached as **Annex "C"**. [The respondent] is now the owner of the said properties having inherited the same from his mother [Luz];
>
> 5. **That [Rogelio,] without the knowledge and consent of [the respondent] and his late mother[,] had built a house and commercial stalls on the land covered by ARP No. 001-01570 (No. 1 above) and had the stalls leased to the damage and prejudice of the [respondent]. The other [petitioners] built their houses on the property covered by ARP No. 001-01574 (No. 2 above) without the knowledge and consent of the [respondent] and his late mother;** [and]
>
> 6. After the partition of the estate of Urbano and [Vicenta] and the foregoing shares were inherited by the [respondent], he demanded [the petitioners] to vacate his properties since he already needs the same for his personal use. [The petitioners] however unjustifiably refused and still refuse to leave the premises. Copies

of demand letters sent to the [petitioners] are hereto attached as **Annex "D" and series**[.][25] (Emphasis ours)

It is ruled that jurisdiction in ejectment cases is determined by the allegations of the complaint and the character of the relief sought. The complaint should embody such statement of facts as to bring the party clearly within the class of cases under Section 1, Rule 70 of the 1997 Rules of Civil Procedure, as amended,[26] which states:

SECTION 1. *Who may institute proceedings, and when*. — Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

Ejectment or *accion interdictal* takes on two forms: forcible entry and unlawful detainer. In *Spouses Del Rosario v. Gerry Roxas Foundation, Inc.*,[27] the Court explained:

Forcible entry and **unlawful detainer** are two distinct causes of *action defined in Section 1, Rule 70 of the Rules of Court. In forcible entry*, one is deprived of physical possession of any land or building by means of force, intimidation, threat, strategy, or stealth. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any

---

[25] Records, pp. 1-2.

[26] *Milagros Diaz, Eduardo Q. Catacutan, Dante Q. Catacutan, represented by their common Attorney-in-fact, Fernando Q. Catacutan v. Spouses Gaudencio Punzalan and Teresita Punzalan*, G.R. No. 203075, March 16, 2016.

[27] 666 Phil. 410 (2011).

contract, express or implied. In forcible entry, the possession is illegal from the beginning and the only issue is who has the prior possession *de facto*. In unlawful detainer, possession was originally lawful but became unlawful by the expiration or termination of the right to possess and the issue of rightful possession is the one decisive, for in such action, the defendant is the party in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.[28] (Emphasis and italics ours and underscoring in the original)

After a careful perusal of the complaint, the Court agrees with the RTC that the respondent's complaint is not constitutive of any of the forms of cases for ejectment.

The complaint cannot be considered as one for forcible entry. While the respondent averred that the petitioners' entry in the subject properties was made *without the knowledge and consent* of the respondent or his predecessor-in-interest which said allegation may amount to an averment of the employment of *stealth*,[29] there is, however, no showing that the action was filed within one year from the questioned entry. The complaint does not even state when the alleged dispossession began.

The respondent asserted that the petitioners entered the disputed properties even before said properties were adjudged as the share of the respondent's mother in the estate of the late Urbano and Vicenta. This was, in fact, admitted by the respondent in his Memorandum filed before the CA where he stated:

> Even before actual partition, [Rogelio] had built a house and commercial stalls on the land covered by ARP No. 001-01570 (No. 1 above) and had the stalls leased. The other [petitioners] built their houses on the property covered by ARP No. 001-01574 (No. 2 above).

---

[28] *Id.* at 422, citing *Sumulong v. Court of Appeals*, G.R. No. 108817, May 10, 1994, 232 SCRA 372, 382-383.

[29] See *Zacarias v. Anacay*, G.R. No. 202354, September 24, 2014, 736 SCRA 508.

It was only after a Decision was rendered in Civil Case No. 1151-Bg for Revival of Judgment that there was actual partition of the estate x x x.[30]

Considering that the judgment in Civil Case No. 1151-Bg was rendered on August 23, 2001, and the instant case was instituted only on June 10, 2008, it clearly appears that the instant case was instituted long after the one year period for the institution of a case for forcible entry has lapsed.

Neither can the Court consider the complaint as one for unlawful detainer.

It has been held in a catena of cases[31] that in actions for *unlawful detainer*, a complaint sufficiently alleges said cause of action if it states the following elements, to wit: (1) initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by the plaintiff to the defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of its enjoyment; and (4) within one year from the making of the last demand to vacate the property, the plaintiff instituted the complaint for ejectment.

Quite obviously, the first element is meant to present the basis of the lawful possession in the beginning which is either by virtue of a contract or by tolerance.

In the instant case, it is undisputed that no contract, express or implied existed between the parties. Apart from the MTC's conclusion that the petitioners' possession was by the mere tolerance of Luz and the respondent, there was however no evidence presented by the respondent to show such.

In the complaint, the respondent merely alleged that the petitioners, "without the knowledge and consent of [the

---

[30] CA *rollo*, p. 210.

[31] *Zacarias v. Anacay*, *supra* note 29; *Republic of the Philippines, et al. v. Sunvar Realty Development Corporation*, 688 Phil. 616 (2012); *Macaslang v. Spouses Zamora*, 664 Phil. 337 (2011).

respondent] and his late mother," occup[ied] the subject property by building their respective houses and other improvements thereon.[32] Yet, the respondent failed to show how or why the petitioners' possession can be considered as lawful at its inception *(but became illegal due to the expiration or termination of the right to possess)* to sufficiently establish an unlawful detainer case.

Reference to the notices/demands to vacate sent to the petitioners is also unavailing since there is nothing in the notices which shows that the petitioners' possession was initially lawful. The notices to vacate only resonate the allegations made by the respondent in his complaint which commonly state as follows:

> I am writing at the instance of my client Rizalito F. Alba who is the owner of the parcel of land where you had built your house at Central West, Bauang, La Union as per decision of the [RTC], Branch 67, Bauang, La Union in Civil Case 1151. The said decision had already become final and executory. My client now needs her [sic] lot which had deprived from her [sic] mother for so many years.
>
> Demand is therefore made upon you to vacate the land within the period of thirty (30) days from receipt hereof. Your failure to do so shall constrain us to file the appropriate charges against you in court.
>
> Please be guided accordingly.[33]

However, in spite of the respondent's failure to cite and substantiate how the petitioners' possession could be considered as lawful at its inception, the MTC ruled that the petitioners' possession was by mere tolerance of Luz and the respondent, citing *Arcal v. CA*.[34] Thus:

> **From the time that the [respondent] made demands to the [petitioners] to vacate the properties subject of this case and they refused to do so, their possession has already become unlawful**. The Supreme Court held in the case of Arcal vs. Court of Appeals (28 SCRA 34): "The possession by the defendants over the land has

---

[32] Records, p. 2.

[33] *Id.* at 10-17.

[34] 348 Phil. 813 (1998).

already become unlawful from the time that a demand to vacate was sent to them. Possession by tolerance is lawful, but such possession becomes unlawful upon demand to vacate made by the owner and the possessor by tolerance refuses to comply with such demand." **Such is the case at bar**. x x x.[35] (Emphasis ours)

The Court does not agree.

As the petitioners pointed out, it was only in the respondent's petition for review[36] filed before the CA where he asserted that the former's possession was by mere tolerance, *viz.*:

After the actual partition however, [the petitioners'] possession of the subject properties was **tolerated by the [respondent] for a while.** [The respondent] first endeavored to have the properties be declared in the name of her [sic] mother and her siblings which was completed only sometime in the year 2006.

After the properties were finally declared in the name of [Luz], et al., [the respondent], being the sole heir of [Luz], demanded [the petitioners] to vacate subject properties since he already needs the same for his personal use. x x x.[37] (Emphasis ours)

Unfortunately for the respondent, his statement only strengthens the contention that this is not an unlawful detainer case. Forsooth, said statement is an open admission that the alleged acts of tolerance by the respondent was exercised only after the actual partition of the estate of the late Urbano and Vicenta, or long after the petitioners have entered into their possession of the subject properties. The respondent alleged that the petitioners entered into the questioned possession without the knowledge and consent of Luz, and of himself; and that thereafter, he opted to tolerate said possession. This is not the "*tolerance*" which justifies an unlawful detainer case within the contemplation of the law.

The Court reiterates what has been held in *Zacarias v. Anacay*:[38]

---

[35] Records, p. 107.

[36] *Id.* at 263-278.

[37] *Id.* at 268.

[38] *Supra* note 29.

In the instant case, the allegations in the complaint do not contain any averment or fact that would substantiate petitioners' claim that they permitted or tolerated the occupation of the property by respondents. **The complaint contains only bare allegations that "respondents without any color of title whatsoever occupies the land in question by building their house in the said land thereby depriving petitioners the possession thereof**." Nothing has been said on how respondents' entry was effected or how and when dispossession started. Admittedly, no express contract existed between the parties. This failure of petitioners to allege the key jurisdictional facts constitutive of unlawful detainer is fatal. Since the complaint did not satisfy the jurisdictional requirement of a valid cause for unlawful detainer, the [MTC] had no jurisdiction over the case. It is in this light that this Court finds that the [CA] correctly found that the [MTC] had no jurisdiction over the complaint. x x x.[39] (Emphasis ours and some emphasis in the original deleted)

Accordingly, the appellate court committed reversible error when it reinstated the MTC decision which took cognizance of the case, dealt upon its merits, and conducted summary proceedings as if the subject matter is, indeed, one of ejectment.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated August 5, 2011 and Resolution dated November 10, 2011 of the Court of Appeals in CA-G.R. SP No. 110189 are hereby **REVERSED AND SET ASIDE**. The Decision dated June 30, 2009 of the Regional Trial Court of Bauang, La Union, Branch 33, in Civil Case No. 1876-Bg, is **REINSTATED**.

SO ORDERED.

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

---

[39] *Id.* at 521, citing *Spouses Valdez, Jr. v. CA*, 523 Phil. 39, 50-51 (2006).

SECOND DIVISION

[G.R. No. 200693. April 18, 2016]

NENA C. ANG, SPOUSES RENATO C. ANG and PAULINE ANG, SPOUSES GUILLERMO SY and ALISON ANG-SY, NELSON C. ANG, RICKY C. ANG, as substituted by his heirs, and MELINDA C. ANG, *petitioners, vs.* **CHINATRUST (PHILIPPINES) COMMERCIAL BANK CORPORATION and THE ASIAN DEBT FUND,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; JURISDICTION OVER A PARTY IS ACQUIRED EITHER THROUGH HIS VOLUNTARY APPEARANCE IN COURT OR UPON A VALID SERVICE OF SUMMONS.—** In civil cases, jurisdiction over a party is acquired either through his voluntary appearance in court or upon a valid service of summons. When a party was not validly served summons and did not voluntarily submit to the court's jurisdiction, the court cannot validly grant any relief against him.

2. **ID.; ID.; SUMMONS; PERSONAL SERVICE DISTINGUISHED FROM SUBSTITUTED SERVICE.—** In an action strictly *in personam,* summons shall be served personally on the defendant whenever practicable. Personal service is made by personally handing a copy of the summons to the defendant or by tendering it to him if he refuses to receive and sign for it. While personal service is the preferred method of serving summons, the Rules of Court are also mindful that this is sometimes impracticable or even impossible. Thus, Rule 14 also allows the sheriff (or other proper court officer) to resort to substituted service instead: x x x But while the Rules permit substituted service, they also require strict compliance with its statutory requirements because of its extraordinary character. After all, substituted service is in derogation of the usual method of service.

3. **ID.; ID.; ID.; SUBSTITUTED SERVICE; ELEMENTS OF A VALID SUBSTITUTED SERVICE; ELUCIDATED.—**

In *Manotoc v. Court of Appeals*, we dissected Rule 14, Section 8 and distilled the following elements of a valid substituted service: ***First***, the party relying on substituted service or the sheriff must establish the impossibility of prompt personal service. Before substituted service of summons can be resorted to, the sheriff must have made several attempts to personally serve the summons within a reasonable period of one month. And by "several attempts," the sheriff is expected to have tried *at least thrice on at least two different dates*. ***Second***, there must be specific details in the return describing the circumstances surrounding the attempted personal service. The sheriff must describe the efforts he took and the circumstances behind the failure of his attempts. The details in the return serve as evidence to prove the impossibility of prompt personal service. Nevertheless, the sheriff's failure to make such a disclosure in the return does not conclusively prove that the service is invalid. The plaintiff may still establish the impossibility of service during the hearing of any incident assailing the validity of the substituted service. Further, if there is a defect in the service of summons that is apparent on the face of the return, the trial court must immediately determine whether the defect is real or not. If the defect is real, the court is obliged to issue new summonses and cause their service on the defendants. ***Third***, if substituted service is made at the defendant's house or residence, the sheriff must leave a copy of the summons with a person of "*suitable age and discretion residing therein*." This refers to a person who has reached the age of full legal capacity and has sufficient discernment to comprehend the importance of a summons and his duty to deliver it immediately to the defendant. ***Finally***, if substituted service is made at the defendant's office or regular place of business, the sheriff must instead leave a copy of the summons with a "*competent person in charge thereof*." This refers to the person managing the office or the business of the defendant, such as the president or the manager. A serving officer's failure to comply with any of these elements results in the court's failure to acquire jurisdiction over the person of the defendant. However, proof that the defendant actually received the summons in a timely manner or his failure to deny the same (which amounts to voluntary appearance) would satisfy the requirements of due process. The constitutional requirement of due process requires that the service be such as may be reasonably expected

to give the notice desired. Once the service reasonably accomplishes that end, the requirement of justice is answered, traditional notions of fair play are satisfied, and due process is served.

APPEARANCES OF COUNSEL

Gatchalian Castro and Mawis for petitioners.

Romulo Mabanta Buenventura Sayoc & Delos Angeles for respondent Asian Debt Fund.

Rolando V. Vicera for respondent Chinatrust (Philippines) Commercial Bank Corporation.

D E C I S I O N

BRION, *J.*:

This petition for review on *certiorari* seeks to reverse the April 29, 2011 decision and January 30, 2012 resolution of the Court of Appeals (*CA*) in **CA-G.R. SP No. 99391.**[1] The CA only partly granted the petitioners' petition for *certiorari* against the May 17, 2007 order of the Regional Trial Court of Makati City (*RTC*), Branch 56 in **Civil Case No. 06-872**.[2] The RTC denied the petitioners' motion to dismiss the complaint for lack of jurisdiction over their person.

ANTECEDENTS

On October 11, 2006, respondent Chinatrust (Philippines) Banking Corporation (*Chinatrust*) filed a money claim (with an application for the issuance of a writ of preliminary attachment) amounting to US $458,614.84 against Nation Petroleum Corporation (*Nation*) and petitioners Mario Ang, Nena Ang, Renato Ang, Pauline Ang, Guillermo Sy, Alison Ang-Sy, Nelson Ang, Ricky Ang, and Melinda Ang (*collectively the defendants*).

---

[1] Penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Vicente S.E. Veloso and Edwin D. Sorongon.

[2] Penned by Judge Reynaldo M. Laigo.

The complaint was filed before the RTC and docketed as **Civil Case No. 06-872**.

On October 12, 2006, the RTC, through its Branch Clerk of Court Atty. Richard C. Jamora issued summonses to the defendants. The summonses indicated Nation's address as "*Ground Floor, BPI Building, Rizal Street, Candelaria Quezon and/or 39th Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue corner Sen. Gil J. Puyat Avenue, Makati City.*" It also indicated the address of the individual defendants as "*39th Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue corner Sen. Gil J. Puyat Avenue, Makati City.*"

The RTC heard *ex parte* the application for a preliminary attachment on October 18, 2006. On October 27, 2006, the RTC granted Chinatrust's application for a writ of attachment conditioned on its posting of a ₱25,000,000.00 bond.

On November 6, 2006, Process Server Joseph R. Dela Cruz and Assisting Sheriff Robert V. Alejo executed an Officer's Return reporting their service of the summons. It reads:

> That on 30 October 2006, the undersigned Process Server of this Court together with one of the assisting Sheriff Robert V. Alejo, and plaintiff's counsel and its representative served the copy of summons together with complaint, its annexes, writ, order and bond, upon defendants at *39th Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Ave. cor. Sen. Gil J. Puyat Ave., Makati City*, thru Mr. RICKY ANG, personally, who acknowledged receipt thereof but refused to sign in the original copy of summons, and the receptionist of the said firm informed that the other defendants have not yet arrived and it would be better if we will return in the afternoon.
>
> That in the afternoon on even date, said processes were served thru Ms. MELINDA ANG, Corporate Secretary of defendant NATION PETROLEUM CORPORATION and instructed Ms. Charlotte Magpayo, Administrative Assistant of the said corporation to received [sic] the same.
>
> That despite diligent efforts to locate the whereabouts of the other defendants MARIO ANG, NENA ANG, RENATO ANG, PAULINE ANG, GUILLERMO SY, ALISON ANG-SY and NELSON ANG outside the premises of their office, considering that said process

server and his group were not allowed to enter, substituted service was made by leaving their respective court processes at their office or regular place of business through the same Ms. Charlotte Magpayo by affixing the "receiving stamp" of Nation Petroleum and her notation, as shown in the original copy of summons.[3]

On November 21, 2006, the defendants entered a Special Appearance with a Motion to Dismiss the case for lack of jurisdiction.[4] The defendants argued: (1) that the RTC failed to acquire jurisdiction over Nation because service of summons was made on Charlotte Magpayo, a mere property supply custodian,[5] instead of the president, managing partner, general manager, corporate secretary, or in-house counsel;[6] and (2) that the individual defendants were not validly served summons[7] because (3) the process server improperly resorted to substituted service and failed to comply with its strict requirements.[8]

Chinatrust opposed the Motion to Dismiss,[9] insisting: (1) that Nation was validly served summons because as a property supply custodian, Magpayo occupies a very responsible position that enjoys the highest degree of trust and confidence;[10] (2) that the individual defendants likewise authorized Magpayo to receive the summons on their behalf;[11] (3) that the process server properly resorted to substituted service;[12] and (4) that Ricky Ang is estopped from contesting the validity of substituted service because he was served in person.[13]

---

[3] *Rollo*, p. 112.

[4] *Id.* at 114.

[5] *Id.* at 116.

[6] *Id.* at 115.

[7] *Id.* at 117.

[8] *Id.* at 119.

[9] *Id.* at 125.

[10] *Id.* at 127.

[11] *Id.* at 128.

[12] *Id.* at 131.

[13] *Id.* at 134.

On May 17, 2007, the RTC denied the defendants' Motion to Dismiss. The RTC held that Nation's corporate secretary Melinda Ang authorized Charlotte Magpayo as her agent for the limited purpose of receiving the summons.[14] It further held that Melinda's denial of this fact is self-serving as she was never presented in court for cross-examination.

The RTC also held that Ricky Ang was validly served summons because he acknowledged receipt of the process even though he refused to sign the original copy.[15]

With respect to the remaining defendants, the RTC held that the process server's resort to substituted service on Charlotte Magpayo was warranted. The Court found: (1) that the process server and his group attempted to serve summons on the defendants on the morning of October 30, 2006 at their place of work; (2) that aside from Mr. Ricky Ang, the defendants had not yet arrived; (3) that the process server left and exerted diligent efforts to locate the defendants' whereabouts; (4) that he returned to the defendants' office on the afternoon of the same day but was denied entry to the defendants' offices; and (5) therefore, he was forced to resort to substituted service through Charlotte Magpayo.[16]

On June 22, 2007, the defendants filed a petition for *certiorari* before the CA challenging the RTC's jurisdiction over them. The petition was docketed as **CA-G.R. SP No. 99391**.

In the meantime, Chinatrust assigned its rights to the trust receipt subject of **Civil Case No. 06-872** to respondent The Asian Debt Fund, Ltd. (*ADF*). Thus, the CA allowed ADF to be substituted for Chinatrust on March 9, 2010.

On April 29, 2011, the CA affirmed the RTC's May 17, 2007 order but dismissed the suit as against Nation.[17] The CA

---

[14] *Id.* at 196.

[15] *Id.* at 197.

[16] *Id.*

[17] *Id.* at 46.

held that RTC did not acquire jurisdiction over Nation because the list of corporate officers authorized to receive summons for a corporation is exclusive.[18] The CA found insufficient evidence to support the RTC's conclusion that Nation's corporate secretary granted Charlotte Magpayo, a property supply custodian, a special power of attorney to receive summons for the corporation on her behalf.[19]

However, the CA upheld the process server's resort to substituted service with respect to the individual defendants.[20] The CA held that the process server exerted efforts to personally serve the summons on the individual defendants but was prohibited from entering their individual offices. This made personal service impossible, leaving the process server no choice but to resort to substituted service by leaving a copy of the summons with Charlotte Magpayo, a competent person of sufficient age and discretion in the defendants' office.[21]

On April 4, 2012, the individual defendants, now petitioners, filed the present petition for review on *certiorari*.

THE PETITION

The petitioners argue: (1) that the Officer's return failed to establish the impossibility of personal service;[22] (2) that Charlotte Magpayo is not a competent person in charge of their business;[23] and (3) that the failure to comply with the strict requirements of substituted service renders the service of summons void.[24]

On the other hand, ADF maintains that the questions of the impossibility of personal service and whether diligent efforts

---

[18] *Id.* at 52.

[19] *Id.* at 53.

[20] *Id.* at 57.

[21] *Id.* at 58-59.

[22] *Id.* at 33.

[23] *Id.* at 38.

[24] *Id.* at 40.

were exerted to locate the petitioners are factual matters that should not be passed upon in a petition for review on *certiorari*.[25] ADF continues that nevertheless, circumstances showed an impossibility of service because upon the server's return to the office, the petitioners' staff prevented them from entering the offices;[26] thus, the officers resorted to service of summons to a Charlotte Magpayo, a competent person authorized to receive summons in the Nation Petroleum office.[27]

ADF also insists that Ricky Ang was personally tendered summons despite his refusal to sign the original.[28]

OUR RULING

We find the petition partly meritorious.

In civil cases, jurisdiction over a party is acquired either through his voluntary appearance in court or upon a valid service of summons. When a party was not validly served summons and did not voluntarily submit to the court's jurisdiction, the court cannot validly grant any relief against him.

In an action strictly *in personam*, summons shall be served personally on the defendant whenever practicable.[29] Personal service is made by personally handing a copy of the summons to the defendant or by tendering it to him if he refuses to receive and sign for it.

While personal service is the preferred method of serving summons, the Rules of Court are also mindful that this is sometimes impracticable or even impossible. Thus, Rule 14 also allows the sheriff (or other proper court officer) to resort to substituted service instead:

---

[25] *Id.* at 390.

[26] *Id.* at 393.

[27] *Id.* at 396.

[28] *Id.* at 397.

[29] RULES OF COURT, Rule 14, Section 6.

SEC. 7. *Substituted service*. — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.[30]

But while the Rules permit substituted service, they also require strict compliance with its statutory requirements because of its extraordinary character.[31] After all, substituted service is in derogation of the usual method of service.[32]

In *Manotoc v. Court of Appeals*,[33] we dissected Rule 14, Section 8 and distilled the following elements of a valid substituted service:

First, the party relying on substituted service or the sheriff must establish the impossibility of prompt personal service.[34] Before substituted service of summons can be resorted to, the sheriff must have made several attempts to personally serve the summons within a reasonable period of one month. And by "several attempts," the sheriff is expected to have tried *at least thrice on at least two different dates*.[35]

Second, there must be specific details in the return describing the circumstances surrounding the attempted personal service.[36] The sheriff must describe the efforts he took and the circumstances behind the failure of his attempts. The details in the return serve as evidence to prove the impossibility of prompt personal service.

---

[30] *Id.*, Section 67.

[31] *Domagas v. Jensen*, 489 Phil. 631, 645-646 (2005), citing *Hamilton v. Levy*, 344 SCRA 821 (2000).

[32] *Id.*; *Manotoc v. Court of Appeals*, 530 Phil. 454, 468 (2006); *Keister v. Navarro*, 167 Phil. 567, 573 (1977).

[33] *Manotoc v. Court of Appeals*, *supra* note 32.

[34] *Id.* at 468, citing *Arevalo v. Quintalan*, 202 Phil. 256, 262 (1982).

[35] *Id.* at 469.

[36] *Id.* at 470.

Nevertheless, the sheriff's failure to make such a disclosure in the return does not conclusively prove that the service is invalid. The plaintiff may still establish the impossibility of service during the hearing of any incident assailing the validity of the substituted service.[37]

Further, if there is a defect in the service of summons that is apparent on the face of the return, the trial court must immediately determine whether the defect is real or not.[38] If the defect is real, the court is obliged to issue new summonses and cause their service on the defendants.

Third, if substituted service is made at the defendant's house or residence, the sheriff must leave a copy of the summons with a person of "*suitable age and discretion residing therein*."[39] This refers to a person who has reached the age of full legal capacity and has sufficient discernment to comprehend the importance of a summons and his duty to deliver it immediately to the defendant.

Finally, if substituted service is made at the defendant's office or regular place of business, the sheriff must instead leave a copy of the summons with a "*competent person in charge thereof*." This refers to the person managing the office or the business of the defendant, such as the president or the manager.[40]

A serving officer's failure to comply with any of these elements results in the court's failure to acquire jurisdiction over the person of the defendant. However, proof that the defendant actually received the summons in a timely manner or his failure to deny the same (which amounts to voluntary appearance)[41]

---

[37] *Mapa v. Court of Appeals,* G.R. No. 79374, October 2, 1992, 214 SCRA 417, 428.

[38] *Bank of the Philippine Islands v. Sps. Evangelista*, 441 Phil. 445, 449 (2002).

[39] *Manotoc v. Court of Appeals*, *supra* note 32, at 471.

[40] *Id.*

[41] *Boticano v. Chu*, 232 Phil. 503, 511-512 (1987).

would satisfy the requirements of due process. The constitutional requirement of due process requires that the service be such as may be reasonably expected to give the notice desired.[42] Once the service reasonably accomplishes that end, the requirement of justice is answered, traditional notions of fair play are satisfied, and due process is served.[43]

The impossibility of prompt personal service was not established.

In the present case, the return failed to establish the impossibility of prompt personal service. The return stated that the process server and the assisting sheriffs made two attempts at personal service on the morning and the afternoon of October 30, 2006. The server claims that in between the two attempts, he made diligent efforts to locate the whereabouts of the other defendants outside their office.

The process server only made two attempts at Nation's office and both attempts were made on the same date. He did not even attempt to serve the defendants at their homes. This does not even meet the bare minimum requirements in *Manotoc*. This does not establish the impossibility of personal service within a reasonable period of time; this only shows a half-hearted attempt that hardly satisfies the diligence and best efforts required from a serving officer. We reiterate that the server must have made at least three attempts on two different dates within a reasonable period of one month before substituted service becomes available.

We cannot give credence to the server's general and sweeping claim that he exerted "diligent efforts" to locate the defendants' whereabouts outside the premises of the Nation Petroleum Office in between his attempts. That he exerted "diligent efforts" is a conclusion of fact which can only be made after examining the details of his efforts which were omitted from the return. Without

---

[42] *Keister v. Navarro*, *supra* note 32, at 573.

[43] *Montalban v. Maximo*, 131 Phil. 154, 161 (1968).

the narration of these *particular* efforts, the courts cannot sufficiently conclude whether or not the efforts taken were, in fact, diligent.

While defendants are expected to avoid and evade service of summons, a serving officer is likewise expected to be resourceful, persevering, canny, and diligent in serving the process on a defendant.[44] Given the circumstances, we find that immediate resort to substituted service was unwarranted for failure to establish the impossibility of personal service.

A property custodian is *not* a competent person in charge of the defendant's workplace.

Moreover, even assuming that Chinatrust were able to establish the impossibility of personal service, the substituted service through Charlotte Magpayo was invalid. A "competent person in charge" refers to one managing the office or the business, such as the president, manager, or the officer-in-charge. The rule presupposes the existence of a relation of confidence between such person and the defendant.

Charlotte Magpayo is a Property Custodian at Nation Petroleum. Her position denotes limited responsibility to office equipment, inventory, and supplies. Chinatrust did not submit any evidence that Magpayo's job description includes the management of Nation Petroleum's Makati office. We do not see how she can be considered as the *competent person in charge of the defendants' business or office* and the respondents failed to prove otherwise.

The statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by statute is considered ineffective.[45]

---

[44] *Manotoc v. Court of Appeals*, *supra* note 32, at 469.

[45] *Macasaet v. Co*, G.R. No. 156759, 5 June 2013, 697 SCRA 187, 203.

We find that the RTC failed to acquire jurisdiction over petitioners Mario Ang, Nena Ang, Renato Ang, Pauline Ang, Guillermo Sy, Alison Ang-Sy, Nelson Ang, and Melinda Ang for failure to comply with the rules on substituted service under Rule 14, Section 8.

However, with respect to petitioner Ricky Ang, we sustain the lower courts' conclusion that he was personally served summons. Personal service may be effected by handing a copy of the summons to the defendant in person or, **if he refuses to receive and sign for it, by tendering it to him**.[46] The return indicates that Ricky Ang personally received a copy of the summons and the complaint despite his refusal to sign the original copy. This constitutes valid tender of the summons and the complaint.

This Court cannot tolerate — or worse, validate — laxity and laziness of judicial serving officers. And while this rule may seem unduly harsh on litigants, they too have a duty to be vigilant in the enforcement of their rights. A plaintiff's counsel has the duty to inspect the return to ensure that the rules on substituted service have been complied with. He cannot take legal shortcuts and gain advantage from an improperly served summons. He must satisfy himself that the court regularly acquired jurisdiction over the other party. Otherwise, he must move for the issuance of alias summons as there is a failure of service.[47]

We empathize with the situation of the ADF, but as an assignee of rights, it is bound by the actions (and inaction) of Chinatrust. We further note that the lawyer for Chinatrust was part of the serving entourage and should have known that the resort to substituted service was premature. Thus, we have no choice but to grant the petition and dismiss the complaint in **Civil Case No. 06-872** against all the petitioners, except for Ricky Ang, for failure of the RTC to acquire jurisdiction over their persons.

---

[46] RULES OF COURT, Rule 14, Section 6.

[47] RULES OF COURT, Rule 14, Section 5.

As a consolation to ADF, this dismissal is ***without prejudice*** to the re-filing of the complaint against the petitioners or their subsequent inclusion in the same case upon a valid service of summons.

WHEREFORE, premises considered, we partly **GRANT** the petition.

The April 29, 2011 decision of the Court of Appeals in **CA-G.R. SP No. 99391** is **MODIFIED** and the complaint against Mario Ang, Nena C. Ang, Renato C. Ang, Pauline Ang, Guillermo Sy, Alison Ang-Sy, Nelson C. Ang, and Melinda C. Ang in **Civil Case No. 06-872** is hereby **DISMISSED** for lack of jurisdiction over their persons **WITHOUT PREJUDICE** to its refiling in court.

The Regional Trial Court of Makati City, Branch 56 is **DIRECTED** to **PROCEED** with **Civil Case No. 06-872** against Ricky C. Ang.

SO ORDERED.

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

Peralta,[*] *J.,* on leave.

---

[*] Designated as Additional Member in lieu of Associate Justice Mariano C. del Castillo, per raffle dated March 14, 2016.

THIRD DIVISION

[G.R. No. 202051. April 18, 2016]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS & HIGHWAYS; ENGINEER SIMPLICIO D. GONZALES, District Engineer, Second Engineering District of Camarines Sur; and ENGINEER VICTORINO M. DEL SOCORRO, JR., Project Engineer, DPWH, Baras, Canaman, Camarines Sur, *petitioners, vs.* **SPOUSES ILDEFONSO B. REGULTO and FRANCIA R. REGULTO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; HIERARCHY OF COURTS; STRICT OBSERVANCE THEREOF IS UNNECCESARY WHEN THE CASE BROUGHT BEFORE THE APPELLATE COURT INVOLVED A PURELY QUESTION OF LAW; PRINCIPLE, APPLIED.— At the outset, it is noted that petitioners filed the instant petition before this Court without appealing the said case before the Court of Appeals *(CA)*. A strict application of the policy of strict observance of the judicial hierarchy of courts is unnecessary when cases brought before the appellate courts do not involve factual but purely legal questions. Section 2 (c), Rule 41, of the Revised Rules of Court provides that a decision or order of the RTC may, as done in the instant petition, be appealed to the Supreme Court by petition for review on *certiorari* under Rule 45, provided that such petition raises only questions of law. x x x In the case at bar, the petitioners raise questions of law in disputing the denial by the RTC in the application of C.A. No. 141 to impose the legal easement of right-of-way to the subject property, and the application of Section 8 *(Expropriation)* of the IRR of R.A. No. 8974 instead of Section 5 *(Quit Claim)* in the acquisition of the said property. Essentially, the issue for resolution of this Court is whether the petitioners are liable for just compensation in enforcing the Government's legal easement of right-of-way on the subject property which originated from

the 7,759 square-meter of public land awarded by free patent to the predecessor-in-interest of the Spouses Regulto.

2. CIVIL LAW; PUBLIC LAND ACT (C.A. NO. 141, AS AMENDED); LANDS ORIGINALLY GRANTED BY FREE PATENT ARE SUBJECT TO A RIGHT-OF-WAY IN FAVOR OF THE GOVERNMENT.— This Court finds that the RTC erroneously ruled that the provisions of C.A. No. 141 are not applicable to the case at bar. On the contrary, this Court held that "a legal easement of right-of-way exists in favor of the Government over land that was originally a public land awarded by free patent even if the land is subsequently sold to another." This Court has expounded that the "ruling would be otherwise if the land was originally a private property, to which just compensation must be paid for the taking of a part thereof for public use as an easement of right-of-way." It is undisputed that the subject property originated from and was a part of a 7,759-square-meter property covered by free patent registered under OCT No. 235. Furthermore, the Spouses Regulto's transfer certificate of title, which the RTC relied, contained the reservation: *"subject to the provisions of the Property Registration Decree and the Public Land Act, as well as to those of the Mining Law, if the land is mineral, and subject, further, to such conditions contained in the original title as may be subsisting."*Jurisprudence settles that one of the reservations and conditions under the Original Certificate of Title of land granted by free patent is that the said land is subject *"to all conditions and public easements and servitudes recognized and prescribed by law especially those mentioned in Sections 109, 110, 111, 112, 113 and 114, Commonwealth Act No. 141, as amended."* x x x In other words, lands granted by patent shall be subject to a right-of-way not exceeding 60 meters in width for public highways, irrigation ditches, aqueducts, and other similar works of the government or any public enterprise, free of charge, except only for the value of the improvements existing thereon that may be affected.

3. ID.; ID.; ID.; THE RESERVATION AND CONDITION IMPOSED BY C.A. 141 ARE NOT WAIVED BY THE GOVERNMENT IN THE PRESENT CASE; SUCH ENCUMBRANCE IS NOT LIMITED BY TIME PERIOD.— We are not persuaded with the ruling of the RTC that the

government waived the encumbrance imposed by C.A. No., 141 *(Public Land Act)* when it did not oppose the subdivision of the original property covered by the free patent. The reservation and condition contained in the OCT of lands granted by free patent, like the origins of the subject property, is not limited by any time period, thus, the same is subsisting. This subsisting reservation contained in the transfer certificate of title of the Spouses Regulto belies such supposition that the Government waived the enforcement of its legal easement of right-of-way on the subject property when it did not oppose to the subdivision of the property in 1995.

4. ID.; ID.; ID.; IN VIEW OF THE SAID EASEMENT OF RIGHT-OF-WAY, THE GOVERNMENT MAY APPROPRIATE THE PORTION OF THE LAND NECESSSARY FOR THE CONSTRUCTION OF ROAD WITHOUT PAYING FOR IT.— With the existence of the said easement of right-of-way in favor of the Government, the petitioners may appropriate the portion of the land necessary for the construction of the bypass road without paying for it, except for damages to the improvements. Consequently, the petitioners are ordered to obtain the necessary quitclaim deed from the Spouses Regulto for the 162-square-meter strip of land to be utilized in the bypass road project. It is noted that the 162 square meters of the subject property traversed by the bypass road project is well within the limit provided by the law.

5. ID.; ID.; ID.; ID.; WHEN THERE IS "TAKING" IN THE CONTEXT OF STATE'S INHERENT POWER OF EMINENT DOMAIN SUCH THAT THERE IS MATERIAL IMPAIRMENT OF THE VALUE OF THE PROPERTY, THE GOVERNMENT IS LIABLE TO PAY JUST COMPENSATION OVER THE REMAINING AREA OF THE SUBJECT PROPERTY.— While this Court concurs that the petitioners are not obliged to pay just compensation in the enforcement of its easement of right-of-way to lands which originated from public lands granted by free patent, we, however, rule that petitioners are not free from any liability as to the consequence of enforcing the said right-of-way granted over the original 7,759-square-meter property to the 300-square-meter property belonging to the Spouses Regulto.

> There is "taking," in the context of the State's inherent power of eminent domain, when the owner is actually deprived or dispossessed of his property; when there is a practical destruction or material impairment of the value of his property or when he is deprived of the ordinary use thereof." Using one of these standards, it is apparent that there is taking of the remaining area of the property of the Spouses Regulto. It is true that no burden was imposed thereon, and that the spouses still retained title and possession of the property. The fact that more than half of the property shall be devoted to the bypass road will undoubtedly result in material impairment of the value of the property. It reduced the subject property to an area of 138 square meters. Thus, the petitioners are liable to pay just compensation over the remaining area of the subject property, with interest thereon at the rate of six percent (6%) *per annum* from the date of writ of possession or the actual taking until full payment is made.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.

D E C I S I O N

PERALTA, *J.*:

For resolution of this Court is the petition for review on *certiorari* dated July 10, 2012 filed by petitioners, the Republic of the Philippines as represented by the Department of Public Works and Highways (*DPWH*); Engineer Simplicio D. Gonzales, District Engineer, Second Engineering District of Camarines Sur; and Engineer Victorino M. Del Socorro, Jr., Project Engineer, DPWH, Baras, Canaman, Camarines Sur assailing the Order[1] dated May 24, 2012 of the Regional Trial Court (*RTC*) of Naga City, Branch 62, which ordered herein petitioners to pay respondents spouses Ildefonso B. Regulto and Francia R. Regulto (Spouses Regulto) the amount of Two Hundred Forty-Three

[1] Penned by Judge Antonio C.A. Ayo, Jr., *rollo*, pp. 36-38.

Thousand Pesos (₱243,000.00) as just compensation for the part of their property traversed by the Naga City-Milaor Bypass Project of the DPWH.

The factual antecedents are as follows:

Respondents spouses Ildefonso B. Regulto and Francia R. Regulto are the registered owners of the property in controversy located at Mabel, Naga City, Camarines Sur consisting of 300 square meters covered by Transfer Certificate of Title (*TCT*) No. 086-2010000231.[2] The Spouses Regulto acquired the said property by virtue of a deed of absolute sale executed by Julian R. Cortes, attorney-in-fact of the spouses Bienvenido and Beatriz Santos, in February 1994.[3] The subject property originated from a Free Patent property consisting of 7,759 square meters registered and covered by Original Certificate of Title (*OCT*) No. 235 dated April 14, 1956.[4]

Sometime in April 2011, the DPWH Second Engineering District of Camarines Sur apprised the Spouses Regulto of the construction of its road project, the Naga City-Milaor Bypass Road, which will traverse their property and other adjoining properties.[5] The DPWH initially offered the spouses the sum of ₱243,000.00 or ₱1,500.00 per square meter for the 162 square-meter affected area as just compensation.[6]

However, in a letter dated May 11, 2006, the DPWH, through District Engr. Rolando P. Valdez, withdrew the offer, and informed the Spouses Regulto that they were not entitled to just compensation since the title of their land originated from a Free Patent title acquired under Commonwealth Act (*C.A.*) No. 141, known as the Public Land Act, which contained a reservation in favor of the government of an easement of right-

---

[2] *Rollo*, p. 46.

[3] *Id.*

[4] *Id.* at 54.

[5] *Id.* at 47.

[6] *Id.* at 38.

of-way of twenty (20) meters, which was subsequently increased to sixty (60) meters by Presidential Decree (*P.D.*) No. 635, for public highways and similar works that the government or any public or *quasi*-public service enterprise may reasonably require for carrying on their business, with payment of damages for the improvements only.[7]

The Spouses Regulto, in their letter dated May 30, 2011, protested the findings of the DPWH and ordered them to cease from proceeding with the construction.[8] They alleged that since their property is already covered by TCT No. 086-2010000231, it ceased to be a public land.[9] They communicated that the market value of the property is ₱450,000.00 plus the Zonal Value of the Bureau of Internal Revenue (*BIR*), which is more or less the acceptable just compensation of their property.[10] Furthermore, they requested that they be furnished, within five (5) days from the receipt of their letter, with a Program of Works and Sketch Plan showing the cost of the project and the extent or area covered by the road that will traverse their property.[11]

The DPWH furnished the Spouses Regulto with the sketch plan showing the extent of the road right-of-way that will cut across their property.[12] It also reiterated its earlier position that the title to the land was acquired under C.A. No. 141.[13]

On October 8, 2011, the Spouses Regulto filed a complaint for payment of just compensation, damages with prayer for issuance of temporary restraining order and/or writ of preliminary injunction before the RTC of Naga City, Branch 62, against herein petitioners Republic of the Philippines, represented by

---

[7] *Id.* at 60.

[8] *Id.* at 61.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.* at 62.

[13] *Id.*

the DPWH; District Engr. Valdez of the Second Engineering District of Camarines Sur; and Project Engr. Del Socorro, Jr. of the DPWH, Baras, Canaman, Camarines Sur.[14]

The Spouses Regulto averred that the DPWH acted with deceit, misrepresentation and evident bad faith in convincing them to sign on a paper after relying on the assurance that they would be paid with just compensation.[15] They also alleged that their property is outside the coverage of Section 112, C.A. No. 141 because their land is a private property, and that the same is situated beyond the 60-meter radius or width from the public highways, railroads, irrigation ditches, aqueducts, telegraph and telephone lines, airport runways, and other government structures.[16]

On August 5, 2011, the petitioners, through the Office of the Solicitor General (*OSG*), filed a Motion to Dismiss on the ground that the Spouses Regulto do not have a cause of action, and that their complaint failed to state the same.[17] Petitioners asseverated that Section 112 of C.A. No. 141 is explicit on the encumbrance imposed upon lands originally covered by a free patent or any other public land patent.[18] Petitioners also alleged that the respondents failed to exhaust administrative remedies for not appealing the findings of the Regional Infrastructure Right-of-Way (*IROW*) Committee with the DPWH Regional Director or to the Secretary of Public Works and Highways.[19]

In an Order dated October 17, 2011, the RTC denied the motion filed by the petitioners citing that the insufficiency of the cause of action must appear on the face of the complaint to sustain a dismissal based on lack of cause of action.[20] In this

---

[14] *Id.* at 45.

[15] *Id.* at 47.

[16] *Id.* at 49.

[17] *Id.* at 64-72.

[18] *Id.* at 66.

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

[20] *Id.* at 73.

case, the complaint stated allegations of nonpayment of just compensation.[21] Furthermore, the court mentioned that one of the exceptions of the doctrine of exhaustion of administrative remedies is when the issue is one of law and when circumstances warrant urgency of judicial intervention, as in the case of the Spouses Regulto whose portion of their property has already been occupied by the petitioners without just compensation.[22]

In the Answer[23] dated November 16, 2011, the petitioners reiterated their defense that no legal right has been violated since C.A. No. 141, as amended by P.D. No. 1361,[24] imposes a 60-meter wide lien on the property originally covered by a Free Patent.[25] Petitioners also avowed that Section 5 of the Implementing Rules and Regulation (*IRR*) of the Republic Act (*R.A.*) No. 8974[26] provides that if the private property or land is acquired under the provisions of C.A. No. 141, the government officials charged with the prosecution of the projects or their representative is authorized to take immediate possession of the property subject to the lien as soon as the need arises, and the government may obtain a quitclaim from the owners concerned without the need for payment for the land acquired under the said quitclaim mode except for the damages to improvements only.[27] Hence, petitioners maintained that the Spouses Regulto are not entitled to a just compensation for the portion of their

---

[21] *Id.*

[22] *Id.*

[23] *Id.* at 74-92.

[24] FURTHER AMENDING THE PROVISIONS OF SECTION ONE HUNDRED TWELVE OF COMMONWEALTH ACT NUMBERED ONE HUNDRED FORTY-ONE, AS AMENDED BY PRESIDENTIAL DECREE NUMBERED SIX HUNDRED THIRTY-FIVE.

[25] *Rollo*, p. 78.

[26] An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and for Other Purposes.

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

property affected by the construction of the Naga City-Milaor Bypass Road.[28]

The petitioners, in a Motion dated December 19, 2011, prayed for the issuance of the writ of possession of the subject property in their favor for the construction of the project to finally proceed and be completed without further delay.[29]

On January 2, 2012, the RTC ordered the respondents spouses to remove the obstructions that they erected on the subject property within three days, or the petitioners may dismantle the same to proceed with the construction of the bypass road project.[30] Likewise, the petitioners were ordered to deliver the check already prepared in the amount of Three Thousand Pesos (₱3,000.00) for payment of the trees/improvements on the property.[31] The petitioners were also ordered to deposit with any authorized government depository bank the amount of Thirty-Six Thousand Four Hundred Fifty Pesos (₱36,450.00) equivalent to the assessed value of the 162 square meters of the subject property, which was assessed at ₱67,500.00 by the 2010 tax declaration, that the road project will traverse.[32]

In an Order dated January 27, 2012, the RTC dismissed the motion for reconsideration filed by the Spouses Regulto, and sustained its earlier order that the petitioners deposit the amount of ₱36,450.00.[33] The RTC also acknowledged the receipt of the Spouses Regulto of the check for the payment of the improvements on the property affected by the project.[34]

Consequently, the RTC, in its Order dated May 24, 2012, ordered the petitioners to pay the Spouses Regulto the amount

---

[28] *Id.* at 89.

[29] *Id.* at 96-103.

[30] *Id.* at 104.

[31] *Id.*

[32] *Id.*

[33] *Id.* at 105.

[34] *Id.*

of ₱243,000.00 as just compensation for the affected portion of their property.[35] The dispositive portion of the Order reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the defendants Engr. Rolando F. Valdez and Engr. Victorino M. del Socorro, Jr., Republic of the Philippines and the Dept. of Public Works and Highways to pay plaintiffs-spouses Ildefonso and Francia Regulto the amount of ₱243,000.00 as just compensation for their property traversed by the Naga-Milaor Bypass Project.
>
> SO ORDERED.[36]

The RTC concluded that the government waived the encumbrance provided for in C.A. No. 141 when it did not oppose the further subdivision of the original property covered by the free patent or made an express intent on making its encumbrance before the residential lots, which are part of the said subdivision, were sold to other innocent purchasers for value, especially after the 25-year period has lapsed since the free patent.[37]

Hence, the petitioners, through the OSG, filed the instant petition raising the following issues:

THE RTC ERRED IN HOLDING THAT RESPONDENTS ARE ENTITLED TO AND IN ORDERING PETITIONERS TO PAY JUST COMPENSATION DESPITE THE UNDISPUTED FACT THAT THE LAND WAS ORIGINALLY PUBLIC LAND AWARDED TO RESPONDENTS' PREDECESSORS-IN-INTEREST BY FREE PATENT, AND THUS A LEGAL EASEMENT OF RIGHT-OF-WAY EXISTS IN FAVOR OF THE GOVERNMENT.

THE TRIAL COURT'S RATIOCINATION — THAT THE SUBJECT PROPERTY HAS *IPSO FACTO* CEASED TO BE "PUBLIC LAND" AND THUS NO LONGER SUBJECT TO THE LIEN IMPOSED BY SAID PROVISION OF C.A. NO. 141, BY VIRTUE OF THE SUBJECT PROPERTY BEING ALREADY COVERED BY A TRANSFER CERTIFICATE OF TITLE IN THEIR NAME —

---

[35] *Id.* at 38.

[36] *Id.*

[37] *Id.*

CONTRAVENES SECTION 44 OF P.D. NO. 1529 AND *NATIONAL IRRIGATION ADMINISTRATION VS. COURT OF APPEALS*.

THE RTC ERRED IN HOLDING THAT SECTION 8 ("EXPROPRIATION"), NOT SECTION 5 ("QUIT CLAIM"), OF THE IMPLEMENTING RULES AND REGULATIONS OF R.A. NO. 8974 IS THE APPLICABLE PROVISION REGARDING THE MODE OF ACQUISITION OF RESPONDENTS' PROPERTY.[38]

This Court finds the instant petition partially meritorious.

At the outset, it is noted that petitioners filed the instant petition before this Court without appealing the said case before the Court of Appeals (*CA*). A strict application of the policy of strict observance of the judicial hierarchy of courts is unnecessary when cases brought before the appellate courts do not involve factual but purely legal questions.[39] Section 2 (c),[40] Rule 41, of the Revised Rules of Court provides that a decision or order of the RTC may, as done in the instant petition, be appealed to the Supreme Court by petition for review on *certiorari* under Rule 45, provided that such petition raises only questions of law.[41]

The distinction between questions of law and questions of fact are explained in the case of *Navy Officers' Village Association, Inc. (NOVAI) v. Republic of the Philippines*[42] as follows:

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence on a certain state of facts. The issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of the facts

---

[38] *Rollo*, pp. 19-20.

[39] *Dio v. Subic Bay Marine Exploratorium, Inc.*, G.R. No. 189532, June 11, 2014, 726 SCRA 244, 252.

[40] Section 2. *Modes of appeal.* —

(c) *Appeal by certiorari*. — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with the Rule 45.

[41] *Dio v. Subic Bay Marine Exploratorium, Inc.*, *supra* note 39.

[42] G.R. No. 177168, August 3, 2015. (Citations omitted)

being admitted. In contrast, a question of fact exists when a doubt or difference arises as to the truth or falsehood of facts or when the query invites the calibration of the whole evidence considering mainly the credibility of the witnesses; the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole; and the probability of the situation.

In the case at bar, the petitioners raise questions of law in disputing the denial by the RTC in the application of C.A. No. 141 to impose the legal easement of right-of-way to the subject property, and the application of Section 8 (*Expropriation*) of the IRR of R.A. No. 8974 instead of Section 5 (*Quit Claim*) in the acquisition of the said property.

Essentially, the issue for resolution of this Court is whether the petitioners are liable for just compensation in enforcing the Government's legal easement of right-of-way on the subject property which originated from the 7,759 square-meter of public land awarded by free patent to the predecessor-in-interest of the Spouses Regulto.

Petitioners allege that a legal easement of right-of-way exists in favor of the Government since the land in controversy was originally public land awarded by free patent to the Spouses Regulto's predecessors-in-interest.

The RTC, however, ruled that the provision of C.A. No. 141 regarding the easement of right-of-way in favor of the government is not applicable to the subject property since the law is clearly meant for lands granted gratuitously by the government in favor of individuals tasked to make it agriculturally productive.[43] It ruled that the subject property is already a private property since the Spouses Regulto acquired the same through a deed of absolute sale from the spouses Bienvenido and Beatriz Santos in February 1994, and that the same originated from the property covered by TCT No. 24027.[44]

---

[43] *Rollo*, p. 38.

[44] *Id.*

This Court finds that the RTC erroneously ruled that the provisions of C.A. No. 141 are not applicable to the case at bar. On the contrary, this Court held that "a legal easement of right-of-way exists in favor of the Government over land that was originally a public land awarded by free patent even if the land is subsequently sold to another."[45] This Court has expounded that the "ruling would be otherwise if the land was originally a private property, to which just compensation must be paid for the taking of a part thereof for public use as an easement of right-of-way."[46]

It is undisputed that the subject property originated from and was a part of a 7,759-square-meter property covered by free patent registered under OCT No. 235.[47] Furthermore, the Spouses Regulto's transfer certificate of title, which the RTC relied, contained the reservation: "*subject to the provisions of the Property Registration Decree and the Public Land Act, as well as to those of the Mining Law, if the land is mineral, and subject, further, to such conditions contained in the original title as may be subsisting*."[48]

Jurisprudence settles that one of the reservations and conditions under the Original Certificate of Title of land granted by free patent is that the said land is subject "*to all conditions and public easements and servitudes recognized and prescribed by law especially those mentioned in Sections 109, 110, 111, 112, 113 and 114, Commonwealth Act No. 141, as amended*."[49]

Section 112 of C.A. No. 141, as amended, provides that lands granted by patent shall be subjected to a right-of-way in favor of the Government, to wit:

Sec. 112. Said land shall further be subject to a **right-of-way not exceeding sixty (60) meters on width** for **public highways**,

---

[45] *NIA v. Court of Appeals*, 395 Phil. 48, 56 (2000).

[46] *Id.*

[47] *Rollo*, pp. 39-44, Annex B, OCT No. 235.

[48] *Id.* at 54-55, Annex A-TCT No. 086-2010000231.

[49] *NIA v. Court of Appeals*, *supra* note 45, at 55.

railroads, irrigation ditches, aqueducts, telegraph and telephone lines, airport runways, including sites necessary for terminal buildings and other government structures needed for full operation of the airport, as well as areas and sites for government buildings for Resident and/or Project Engineers needed in the prosecution of government-infrastructure projects, and similar works as the Government or any public or quasi-public service or enterprise, including mining or forest concessionaires, may reasonably require for carrying on their business, **with damages for the improvements only**.

Government officials charged with the prosecution of these projects or their representatives are authorized to take immediate possession of the portion of the property subject to the lien as soon as the need arises and after due notice to the owners. It is however, understood that ownership over said properties shall immediately revert to the title holders should the airport be abandoned or when the infrastructure projects are completed and buildings used by project engineers are abandoned or dismantled, but subject to the same lien for future improvements."[50]

In other words, lands granted by patent shall be subject to a right-of-way not exceeding 60 meters in width for public highways, irrigation ditches, aqueducts, and other similar works of the government or any public enterprise, free of charge, except only for the value of the improvements existing thereon that may be affected.[51]

We are not persuaded with the ruling of the RTC that the government waived the encumbrance imposed by C.A. No. 141 (*Public Land Act*) when it did not oppose the subdivision of the original property covered by the free patent. The reservation and condition contained in the OCT of lands granted by free patent, like the origins of the subject property, is not limited by any time period, thus, the same is subsisting.[52] This subsisting reservation contained in the transfer certificate of title of the Spouses Regulto belies such supposition that the Government

---

[50] Emphasis supplied.

[51] *Republic v. Andaya*, 552 Phil. 40, 45 (2007).

[52] *NIA v. Court of Appeals*, *supra* note 45, at 55.

waived the enforcement of its legal easement of right-of-way on the subject property when it did not oppose to the subdivision of the property in 1995.

Petitioners allege that since the property in controversy was originally acquired under the provisions of special laws, particularly C.A. No. 141, then Section 5 of the IRR of R.A. No. 8974 should be applied in the present case. Petitioners insist that the acquisition of the portion of the subject property is through execution of quitclaims.

Section 5 of the IRR of R.A. No. 8974 provides:

SECTION 5. *Quit Claim*. — If the **private property or land is acquired** under the provisions of Special Laws, particularly **Commonwealth Act No. 141, known as the Public Land Act**, which provides a 20-meter strip of land easement by the government for public use with damages to improvements only, P.D. No. 635 which increased the reserved area to a 60-meter strip, and P.D. No. 1361 which authorizes government officials charged with the prosecution of projects or their representative to take immediate possession of portion of the property subject to the lien as soon as the need arises and after due notice to the owners, then a **quit claim from the owners concerned shall be obtained by the Implementing Agency. No payment by the government shall be made for land acquired under the quit claim mode**.[53]

With the existence of the said easement of right-of-way in favor of the Government, the petitioners may appropriate the portion of the land necessary for the construction of the bypass road without paying for it, except for damages to the improvements. Consequently, the petitioners are ordered to obtain the necessary quitclaim deed from the Spouses Regulto for the 162-square-meter strip of land to be utilized in the bypass road project.

It is noted that the 162 square meters of the subject property traversed by the bypass road project is well within the limit provided by the law. While this Court concurs that the petitioners are not obliged to pay just compensation in the enforcement of

[53] Emphasis supplied.

its easement of right-of-way to lands which originated from public lands granted by free patent, we, however, rule that petitioners are not free from any liability as to the consequence of enforcing the said right-of-way granted over the original 7,759-square-meter property to the 300-square-meter property belonging to the Spouses Regulto.

There is "taking," in the context of the State's inherent power of eminent domain, when the owner is actually deprived or dispossessed of his property; when there is a practical destruction or material impairment of the value of his property or when he is deprived of the ordinary use thereof.[54] Using one of these standards, it is apparent that there is taking of the remaining area of the property of the Spouses Regulto. It is true that no burden was imposed thereon, and that the spouses still retained title and possession of the property. The fact that more than half of the property shall be devoted to the bypass road will undoubtedly result in material impairment of the value of the property. It reduced the subject property to an area of 138 square meters.

Thus, the petitioners are liable to pay just compensation over the remaining area of the subject property, with interest thereon at the rate of six percent (6%) *per annum* from the date of writ of possession or the actual taking until full payment is made.

The case of *Republic v. Hon. Jesus M. Mupas*[55] elucidated just compensation in this language:

> Just compensation is defined as "the full and fair equivalent of the property taken from its owner by the expropriator." The word "just" is used to qualify the meaning of the word "compensation" and to convey the idea that the amount to be tendered for the property to be taken shall be real, substantial, full and ample. On the other hand, the word "compensation" means "a full indemnity or remuneration for the loss or damage sustained by the owner of property taken or injured for public use."

---

[54] *Republic of the Philippines, rep. by the National Power Corporation v. Heirs of Saturnino Q. Borbon, et al.*, G.R. No. 165354, January 12, 2015, citing *Ansaldo v. Tantuico*, Jr., 266 Phil. 319, 323 (1990).

[55] G.R. Nos. 181892, 209917, 209696 & 209731, September 8, 2015.

Simply stated, just compensation means that the former owner must be returned to the monetary equivalent of the position that the owner had when the taking occurred. To achieve this monetary equivalent, we use the standard value of "fair market value" of the property at the time of the filing of the complaint for expropriation or at the time of the taking of property, whichever is earlier.[56]

Consequently, the case is remanded to the court of origin for the purpose of determining the final just compensation for the remaining area of the subject property. The RTC is thereby ordered to make the determination of just compensation payable to the respondents Spouses Regulto with deliberate dispatch. The RTC is cautioned to make a determination based on the parameters set forth by law and jurisprudence regarding just compensation.

WHEREFORE, the petition for review on *certiorari* dated July 10, 2012 filed by the Republic of the Philippines as represented by the Department of Public Works and Highways; Engineer Simplicio D. Gonzales, District Engineer, Second Engineering District of Camarines Sur; and Engineer Victorino M. Del Socorro, Jr., Project Engineer, DPWH, Baras, Canaman, Camarines Sur, is hereby **PARTIALLY GRANTED**.

The case is hereby **REMANDED** to the Regional Trial Court of Naga City, Branch 62 for the determination of the final just compensation of the compensable area consisting of 138 square meters, with interest thereon at the rate of six percent (6%) *per annum* from the date of writ of possession or the actual taking until full payment is made.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Perez, Reyes,* and *Perlas-Bernabe*,[*] *JJ.,* concur.

---

[56] Citation omitted.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 14, 2014.

SECOND DIVISION

[G.R. No. 204325. April 18, 2016]

LYNMAN BACOLOR, JEFFREY R. GALURA, HELEN B. TORRES, FRITZIE C. VILLEGAS, RAYMOND CANLAS and ZHEILA C. TORRES,* *petitioners, vs.* **VL MAKABALI MEMORIAL HOSPITAL, INC., ALEJANDRO S. MAKABALI, MELCHOR CATAMBING and DAX M. TIDULA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; VERIFICATION/ CERTIFICATION OF NON-FORUM SHOPPING; A CERTIFICATE AGAINST FORUM SHOPPING SIGNED BY THE PETITIONER'S COUNSEL IS INVALID.—** As properly pointed out by the CA, the Verification/Certificate of Non-Forum Shopping with Undertaking executed by petitioners' counsel is not valid. As stated in *Altres,* a certificate against forum shopping must be signed by the party and in case his counsel signs the same on his behalf, the counsel must be armed with a special power of attorney. Since petitioners' counsel is not shown to have been authorized by Drs. Villegas, Canlas and Zheila to sign a certificate of non-forum shopping on their behalf, the execution of said certificate by counsel violates the foregoing rules.

2. **ID.; ID.; ID.; THERE IS SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING WHEN THREE OUT OF SIX PETITIONERS EXECUTED THEIR OWN VERIFICATION AND CERTIFICATION.—** [T]he CA failed to consider the concept of "substantial compliance" to the requirements of verification and certificate of non-forum shopping, as it has been shown that three of the six petitioners executed their own verification and certificate against forum shopping. The verification of a pleading is a formal and not a jurisdictional requirement. It is intended to assure that the allegations in a pleading are true and correct. As such, the court may order the correction of unverified pleadings, or it

* Referred to as Cortez in some parts of the records.

may act on them and waive strict compliance with the rules. The verification requirement is deemed substantially complied with when a person who has sufficient knowledge to swear to the truth of the allegations in the complaint or petition signs the verification; and matters alleged therein have been made in good faith or are true and correct. Thus, there is substantial compliance if at least one of the petitioners makes a proper verification. x x x In this case, three out of six petitioners signed three separate verifications appended to the Petition for *Certiorari.* Their signatures are sufficient assurance that the allegations in the Petition were made in good faith, or are true and correct. Thus, there is substantial compliance with the verification requirement.

3. ID.; ID.; ID.; ID.; AS A RULE, THE PARTY WHO DID NOT SIGN THE CERTIFICATE AGAINST FORUM SHOPPING WILL BE DROPPED AS PARTY TO THE CASE; JUSTIFIABLE REASONS EXIST IN CASE AT BAR FOR THE RELAXATION OF THE RULE SINCE PETITIONERS' CAUSE OF ACTION REVOLVES ON THE SAME ISSUE.— [A]s a rule, the certificate against forum shopping must be signed by all plaintiffs or petitioners; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable situations, such as when the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of one of them in the certificate against forum shopping is considered substantial compliance with the rules. In *Abaria v. National Labor Relations Commission,* 47 out of 88 petitioners signed the certificate against forum shopping. The Court ruled that the petitioning employees shared a common interest and cause of action when they filed the case for illegal dismissal. The Court decreed that when petitioners therein appealed to the CA, they pursued the case as a collective body, invoking one argument in support of their cause of action, which is, the illegal dismissal purportedly committed by their employer when union members resorted to strike due to the employer's refusal to bargain with officers of the local chapter. x x x Here, three of six petitioners signed the certificate of non-forum shopping. At the least, the CA could have ordered that those who did not sign it be dropped as parties, but not the outright dismissal of the Petition. The Court, nevertheless, holds that there are justifiable reasons for the relaxation of the rules on the filing of a certificate of non-forum shopping

and that the certificate against forum shopping signed by three out of six petitioners suffices. Specifically, petitioners' cause of action revolves on the same issue, that is, respondents illegally dismissed them under similar circumstances. They were all resident physicians who were purportedly 1) re-employed by the Hospital even after the expiration of their respective one year contracts; 2) forced to resign and offered to be re-engaged as fixed term employees but declined; 3) demoted; 4) accused of violations of the Hospital rules and regulations; and, 5) dismissed. Moreover, substantial justice dictates that the Petition for *Certiorari* be given due course and be resolved on the merits. This is especially so since the findings of the LA are contrary to those of the NLRC, particularly on the issues of whether respondents illegally dismissed petitioners and of whether they were afforded due process of law. The requirement of strict compliance with the rules on filing of certificate against forum shopping highlights the mandatory character of the submission of such certificate. However, this mandatory requirement allows substantial compliance provided that there are justifiable circumstances for the relaxation of the rules.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider and Santos for petitioners.

Escudero Marasigan Vallente and E.H. Villareal for respondent VL Makabali Memorial Hospital, Inc., *et al.*

Jord Archaes R. David for respondent Dax M. Tidula.

D E C I S I O N

DEL CASTILLO, *J.*:

Rules of procedure must be used to achieve speedy and efficient administration of justice and not derail it. When strict application of the rules on verification and non-forum shopping will result in patent denial of substantial justice, these rules may be construed liberally. After all, the ends of justice are better served when cases are determined on the merits, not on mere technicality.[1]

---

[1] *Ateneo de Naga University v. Manalo*, 497 Phil. 635, 645 (2005).

This Petition for Review on *Certiorari* assails the Resolution[2] dated July 12, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 125333. The CA dismissed the Petition for *Certiorari* filed therewith because of the purported defective Verification/ Certificate of Non-Forum Shopping with Undertaking appended to the Petition; and of petitioners' violation of Section 3, Rule 46 of the Rules of Court. Also challenged is the CA Resolution[3] dated October 22, 2012 which denied the Motion for Reconsideration for lack of merit.

Factual Antecedents

The case stemmed from an amended Complaint[4] for illegal dismissal and money claims filed by Drs. Lynman Bacolor (Dr. Bacolor), Jeffrey R. Galura (Dr. Galura), Helen B. Torres (Dr. Helen), Fritzie C. Villegas (Dr. Villegas), Raymond Canlas (Dr. Canlas), Zheila C. Torres (Dr. Zheila) and Dax Tidula (Dr. Tidula) against VL Makabali Hospital, Inc. (the Hospital), Alejandro S. Makabali, its owner and President, and Melchor Catambing (Catambing), its Emergency Room (ER) Manager.[5]

Allegedly, the Hospital engaged Drs. Bacolor; Galura, Villegas and Canlas as resident physicians assigned in its ER for one year, commencing October 2000 until October 2001. It engaged Drs. Helen and Zheila, also as ER resident physicians, starting March 2001 until March 2002, and January 2002 until January 2003, respectively. Despite the expiration of their contracts, the Hospital continued to employ Drs. Bacolor, Galura, Villegas, Canlas, Helen and Zheila (petitioners).[6]

Petitioners stated that on May 3, 2006, Catambing and one Dr. Lopez instructed them to resign, and re-apply to the Hospital

---

[2] CA *rollo*, Vol. II, pp. 860-861; penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Isaias P. Dicdican and Michael P. Elbinias.

[3] *Rollo*, pp. 82-83.

[4] CA *rollo*, Vol. I, pp. 159-162.

[5] *Id.* at 165.

[6] *Id.* at 166-167.

as resident physicians under a one-year fixed term contract. They further alleged that Catambing and Dr. Lopez later directed them to sign a waiver and offered them "gratitude" pay of ₱27,000.00 but they refused to resign; and because of their refusal, respondents demoted them as assistant physicians in the Operating Room (OR) of the Hospital.[7]

Additionally, petitioners insisted that to compel them to resign, respondents issued notices to explain to Drs. Bacolor, Galura, Helen, Villegas and Canlas. In particular, Drs. Bacolor, Galura and Helen were charged with dishonesty for allegedly directing patients to secure laboratory examinations outside the Hospital; while Drs. Villegas and Canlas were charged with violation of timekeeping procedure and habitual violation of rules and regulations.[8]

Consequently, petitioners filed a case for constructive illegal dismissal against respondents. They argued that despite their complaint, respondents still conducted an administrative investigation against them.[9] On June 30, 2006, Drs. Bacolor and Galura received notices of termination from the Hospital.[10]

Petitioners contended that they were constructively dismissed when respondents demoted them as assistant physicians in the OR of the Hospital.[11] They stated that such demotion was neither necessary nor temporary, and was arbitrarily done to force them to resign. They further averred that Drs. Bacolor and Galura were actually illegally dismissed after they were given respective notices of termination.[12]

On the other hand, Dr. Tidula stated that the Hospital engaged him as resident physician for a year commencing on January 1,

---

[7] *Id.* at 167-168.

[8] *Id.* at 169-170.

[9] *Id.* at 171.

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

[11] *Id.* at 174.

[12] *Id.* at 177-178.

2001 to December 31, 2001; the Hospital renewed his contract for the year 2002 to 2003; and after his contract expired, the Hospital continued to engage his services.[13]

Dr. Tidula likewise alleged that in 2005, several resident physicians in the Hospital resigned. As a result, the remaining resident physicians were made to fill in their duties. Allegedly, it was agreed upon that when a resident doctor was absent, a reliever would take his place; and the reliever's fee would be charged against the salary of the absent doctor. Dr. Tidula claimed that the reliever shall punch in the time card of the absent doctor for recording, accounting and expediency purposes.[14]

Furthermore, Dr. Tidula asserted that in February 2006, Dr. Amelita Lising (Dr. Lising), who was a resident physician, went on leave. He averred that being the acting Chief Resident, he implemented the agreement regarding the designation of reliever. He stated that the relievers of Dr. Lising were made to punch in and out her time card to prove that they had taken her place; and they received salary from that intended for Dr. Lising.[15]

Dr. Tidula narrated that on May 3, 2006, he and his fellow residents were directed to resign with the promise that they would be re-engaged under a fixed term of one year. He averred that Catambing and Dr. Lopez also instructed him and the other resident physicians to tender their resignation and sign a waiver in favor of the Hospital. He alleged that they were also offered ₱27,000.00 as financial assistance; however, he and the other resident physicians refused to resign.[16]

Additionally, Dr. Tidula alleged that on May 16, 2006, he was ordered to report exclusively at the OR of the Hospital as assistant physician; and this demotion was a result of his refusal

---

[13] *Id.* at 400.

[14] *Id.* at 400-401.

[15] *Id.* at 402.

[16] *Id.* at 403-404.

to resign. Consequently, he filed a complaint for constructive dismissal against the Hospital.[17]

Later, Catambing gave Dr. Tidula a Notice[18] of dismissal for violation of timekeeping procedure. Dr. Tidula stated that he inquired from Catambing why he was not given any notice to explain. Purportedly, Catambing informed him that a notice to explain was sent through a private courier. Upon verification, Dr. Tidula discovered that the notice was delivered to a person unknown to him. He informed the Hospital about the matter but the Hospital insisted that he was given the opportunity to explain and was invited to an investigation, as such, the sanction against him remains.[19]

Dr. Tidula argued that he was illegally dismissed since he did not receive a notice to explain; and he did not violate any of the company rules.[20]

For their part, respondents asserted that Drs. Tidula, Bacolor and Galura were validly dismissed. In particular, they alleged that Dr. Tidula violated timekeeping procedure of the Hospital when he punched in Dr. Lising's time card on February 2, 6, 10 and 12, 2006.[21] On the other hand, Drs. Bacolor and Galura were found guilty of referring patients to other clinics for laboratory examination in February 2006.[22]

Moreover, respondents claimed that the Hospital did not dismiss Drs. Helen, Villegas and Canlas; thus, they should be dropped from the complaint. They added that Dr. Zheila was never cited for any infraction but she abandoned her work as she had been absent since July 2006.[23]

---

[17] *Id.* at 404.

[18] *Id.* at 428-432.

[19] *Id.* at 408.

[20] *Id.* at 410-412.

[21] *Id.* at 252, 254.

[22] *Id.* at 258.

[23] *Id.* at 253.

Ruling of the Labor Arbiter

On July 23, 2010, the LA rendered a Decision[24] finding respondents guilty of illegally dismissing petitioners and Dr. Tidula, as well as ordering respondents to pay them backwages from the time of their dismissal until finality of the Decision, and separation pay. The LA also ordered the Hospital to pay petitioners and Dr. Tidula moral damages of ₱100,000.00 each and exemplary damages of ₱100,000.00 each, and attorney's fees.

The Hospital appealed to the National Labor Relations Commission (NLRC).[25]

Ruling of the National Labor Relations Commission

On November 11, 2011, the NLRC reversed and set aside the LA Decision and dismissed the complaints.[26] It held that there was no showing that petitioners and Dr. Tidula were demoted, and that such demotion amounted to constructive dismissal. It ruled that "it would be difficult to discern the differences between the duties of a resident and assistant physician, as both indubitably perform doctor's duties."[27] Also, the NLRC decreed that Dr. Zheila did not even sign the verification and certificate of non-forum shopping in this case.

Moreover, the NLRC gave credence to respondents' position that Drs. Bacolor and Galura were validly dismissed because they repeatedly referred patients to another clinic for laboratory examinations. It ruled that such was an act of deceit because the Hospital offered the same services.

---

[24] *Id.* at 493-525; penned by Labor Arbiter Reynaldo V. Abdon.

[25] CA *rollo*, Vol. II, pp. 528-551.

[26] CA *rollo*, Vol. I, pp. 64-76; penned by Commissioner Dolores M. Peralta-Beley and concurred in by Presiding Commissioner Leonardo L. Leonida and Commissioner Mercedes R. Posada-Lacap.

[27] *Id.* at 73.

On April 18, 2012, the NLRC denied petitioners and Dr. Tidula's motion for reconsideration.[28]

Aggrieved, petitioners filed a Petition for *Certiorari* with the CA ascribing grave abuse of discretion on the part of the NLRC in giving due course to the appeal despite its alleged lack of appeal bond; and in reversing the LA Decision.

The Petition was accompanied by three separate Verifications/ Certificates of Non-Forum Shopping signed by Drs. Galura, Bacolor and Helen.[29] Atty. Carlos Raphael N. Francisco executed and signed a Verification/Certificate of Non-Forum Shopping with Undertaking in behalf of Drs. Villegas, Canlas and Zheila.[30]

Ruling of the Court of Appeals

On July 12, 2012, the CA issued the assailed Resolution, the pertinent portions of which read:

> The Petition for Certiorari contains the following infirmities, hence is DISMISSED:
>
> 1. The Verification/Certification of Non-Forum Shopping With Undertaking attached to the Petition is executed by Atty. Carlos Raphael N. Francisco, allegedly [sic] counsel of record of petitioners Fritzie C. Villegas, Raymond Canlas and Zeila C. Torres, not by the three petitioners themselves, in violation of Rule 7, Section 5 of the Rules of Court, and the ruling in Far Eastern Shipping Company v. Court of Appeals, et al.
>
> 2. The Petition does not indicate in its title that Dax Tidula is a party respondent, although in the portion entitled 'Parties' he is so named, and does not indicate the address of Dax Tidula, all in violation of Rule 46, Section 3 of the Rules of Court, in relation to Rule 65 of the same Rules.
>
> SO ORDERED.[31]

---

[28] *Id.* at 77-80.

[29] *Id.* at 56-59.

[30] *Id.* at 60-61.

[31] CA *rollo*, Vol. II, pp. 860-861.

On October 22, 2012, the CA denied petitioners' Motion for Reconsideration.[32]

Aggrieved, petitioners filed this Petition raising the following assignment of errors:

[1] THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT PROBABLY IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN THE COURT OF APPEALS DISMISSED THE PETITION FOR CERTIORARI OF THE PETITIONERS DESPITE THE FACT THAT SEVERAL OF THE PETITIONERS HAD VALIDLY EXECUTED VERIFICATIONS AND CERTIFICATES OF NON-FORUM SHOPPING WHICH WERE ATTACHED TO SAID PETITION FOR CERTIORARI;

[2] THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT PROBABLY IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN THE COURT OF APPEALS DISMISSED THE PETITION FOR CERTIORARI OF THE PETITIONERS DESPITE THE FACT THAT THE PETITIONERS HAD SUBSTANTIALLY COMPLIED WITH THE RULES ON THE EXECUTION OF A VERIFICATION AND CERTIFICATE OF NON-FORUM SHOPPING;

[3] THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT PROBABLY IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN THE COURT OF APPEALS DISMISSED THE PETITION FOR CERTIORARI OF THE PETITIONERS DESPITE THE FACT THAT THE ONLY KNOWN ADDRESS OF RESPONDENT TIDULA WAS INCLUDED IN THE PETITION FOR CERTIORARI AND THAT RESPONDENT TIDULA, THROUGH HIS COUNSEL, WAS SERVED WITH A COPY OF SUCH PETITION FOR CERTIORARI;

---

[32] *Rollo*, pp. 82-83.

[4] THE COURT OF APPEALS SANCTIONED A DEPARTURE BY THE NLRC IN NLRC CASE NO[.] RAB. III-06-10180-06 FROM THE ACCEPTED OR USUAL COURSE OF JUDICIAL PROCEEDINGS AS THE COURT OF APPEALS ALLOWED THE NLRC TO VIRTUALLY EXTEND THE PERIOD OF THE RESPONDENT HOSPITAL TO FILE AN APPEAL FOR ALMOST FOUR MONTHS FROM THE EXPIRATION OF THE PERIOD TO FILE SUCH APPEAL;

[5] THE COURT OF APPEALS SANCTIONED A DEPARTURE BY THE NLRC IN NLRC CASE NO[.] RAB. III-06-10180-06 FROM THE ACCEPTED OR USUAL COURSE OF JUDICIAL PROCEEDINGS AS THE COURT OF APPEALS ALLOWED THE NLRC TO GIVE DUE COURSE TO AN APPEAL THAT WAS CLEARLY FILED OUT OF TIME AND TO MODIFY THE DECISION OF THE LABOR ARBITER THAT WAS ALREADY FINAL AND EXECUTORY; and

[6] THE COURT OF APPEALS SANCTIONED A DEPARTURE BY THE NLRC IN NLRC CASE NO[.] RAB. III-06-10180-06 FROM THE ACCEPTED OR USUAL COURSE OF JUDICIAL PROCEEDINGS AS THE COURT OF APPEALS TOLERATED THE GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION COMMITTED BY THE NLRC IN REVERSING IN TOTO THE DECISION OF THE LABOR ARBITER DESPITE THE FACT THAT SUCH REVERSAL IS NOT SUPPORTED BY ANY EVIDENCE ON RECORD AND BY THE APPLICABLE LAWS.[33]

Petitioners argue that the verifications executed by three of the six petitioners and the verification executed by their counsel constituted full compliance with the required verification. They contended that the three petitioners who made their verification are real parties-in-interest, and their counsel who also verified the Petition had been in possession of authentic and relevant records of the case.

---

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

Also, petitioners posit that the failure of Drs. Villegas, Canlas and Zheila to execute a certificate of non-forum shopping should not have caused the dismissal of the Petition for *Certiorari*. They insist that under justifiable circumstances, the signature of one of the petitioners in the certificate against forum shopping substantially complies with the rules. They further point out that all of them share a common interest and invoke a common cause of action under the same set of facts.

Moreover, petitioners submit that they complied with Section 3, Rule 46 of the Rules of Court. They contend that they included Dr. Tidula in the Petition for *Certiorari* as respondent because he remains interested in the reversal of the NLRC Decision and Resolution. They add that from the inception of the case, all pleadings had been coursed through Dr. Tidula's counsel; and they are unaware of the address of Dr. Tidula as he never indicated it in his position paper. Hence, they maintain that it is fair that in the present proceeding, any pleading intended for Dr. Tidula be sent to his counsel.

In addition, petitioners state that the non-inclusion of Dr. Tidula is not a fatal defect but a mere typographical error which does not prejudice the rights of any party.

Finally, petitioners fault the CA in not finding that the NLRC committed grave abuse of discretion in giving due course to the Hospital's appeal despite its failure to post appeal bond within the period to perfect an appeal. They also maintain that the NLRC committed grave abuse of discretion in holding that they were not illegally dismissed by respondents.

The Hospital, on the other hand, asserts that the CA correctly dismissed the Petition because it was filed by a counsel who had no authority from petitioners; and that the Certificate against Forum Shopping attached thereto was fatally defective. It also declares that the Petition for *Certiorari* improperly impleaded Dr. Tidula as respondent. Lastly, it contends that petitioners are not entitled to money claims.

Our Ruling

The Petition is meritorious.

In *Altres v. Empleo*,[34] the Court summarized the basic tenets involving non-compliance with the requirements on, or filing of defective verification and certificate against forum shopping, to wit:

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

4) As to certification against forum shopping, 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".

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign,

---

[34] 594 Phil. 246, 261-262 (2008).

he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.

The CA dismissed the Petition for *Certiorari* on the ground that the Verification/Certificate of Non-Forum Shopping executed by petitioners' counsel on behalf of Drs. Villegas, Canlas and Zheila violated Section 5, Rule 7 of the Rules of Court.[35]

As properly pointed out by the CA, the Verification/Certificate of Non-Forum Shopping with Undertaking executed by petitioners' counsel is not valid. As stated in *Altres*, a certificate against forum shopping must be signed by the party and in case his counsel signs the same on his behalf, the counsel must be armed with a special power of attorney. Since petitioners' counsel is not shown to have been authorized by Drs. Villegas, Canlas and Zheila to sign a certificate of non-forum shopping on their behalf, the execution of said certificate by counsel violates the foregoing rules.

---

[35] SECTION 5. Certification Against Forum Shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed. Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (n)

Nonetheless, the CA failed to consider the concept of "substantial compliance" to the requirements of verification and certificate of non-forum shopping, as it has been shown that three of the six petitioners executed their own verification and certificate against forum shopping.

The verification of a pleading is a formal and not a jurisdictional requirement. It is intended to assure that the allegations in a pleading are true and correct. As such, the court may order the correction of unverified pleadings, or it may act on them and waive strict compliance with the rules.[36]

The verification requirement is deemed substantially complied with when a person who has sufficient knowledge to swear to the truth of the allegations in the complaint or petition signs the verification; and matters alleged therein have been made in good faith or are true and correct. Thus, there is substantial compliance if at least one of the petitioners makes a proper verifcation.[37]

In *Ateneo de Naga University v. Manalo*,[38] the signature of one of three petitioners therein was considered substantial compliance with the verification requirement. The Court held that Fr. Tabora, the petitioner who signed the verification, has sufficient knowledge to swear to the truth of the allegations in the petition filed with the CA; and his signature was ample assurance that the allegations have been made in good faith or are true and correct.

In *SKM Art Craft Corporation v. Bauca*,[39] the Court held that the verification and certificate against forum shopping signed by nine out of 23 respondents substantially complied with the verification requirement since they have common interest and cause of action. The Court likewise stated that the apparent

---

[36] *Bello v. Bonifacio Security Services, Inc*., 670 Phil. 563, 568 (2011).

[37] *Altres v. Empleo*, *supra* note 34 at 261.

[38] *Supra* note 1 at 643.

[39] G.R. Nos. 171282 & 183484, November 27, 2013, 710 SCRA 652, 660-662.

merit of the petition and the conflicting findings of the LA and the NLRC also justified the decision of the CA to resolve the case on the merits.

In this case, three out of six petitioners signed three separate verifications appended to the Petition for *Certiorari*. Their signatures are sufficient assurance that the allegations in the Petition were made in good faith, or are true and correct. Thus, there is substantial compliance with the verification requirement.

On the other hand, as a rule, the certificate against forum shopping must be signed by all plaintiffs or petitioners; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable situations, such as when the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of one of them in the certificate against forum shopping is considered substantial compliance with the rules.[40]

In *Abaria v. National Labor Relations Commission*,[41] 47 out of 88 petitioners signed the certificate against forum shopping. The Court ruled that the petitioning employees shared a common interest and cause of action when they filed the case for illegal dismissal. The Court decreed that when petitioners therein appealed to the CA, they pursued the case as a collective body, invoking one argument in support of their cause of action, which is, the illegal dismissal purportedly committed by their employer when union members resorted to strike due to the employer's refusal to bargain with officers of the local chapter.

Furthermore, in *Torres v. Specialized Packaging Development Corp.*,[42] the Court allowed the relaxation of the rules on submission of certificate against forum shopping. One of the compelling grounds for the allowance of said certificate therein where only two of 25 petitioners signed the same was the "apparent merits of the substantive aspects of the case." It noted that the

---

[40] *Altres v. Empleo*, *supra* note 34 at 262.

[41] 678 Phil. 64, 87-88 (2011).

[42] 477 Phil. 540, 554 (2004).

varying views of the LA and the NLRC give ample basis for the necessity of a review on the merits and the outright dismissal of the petition was prejudicial to the parties' substantive rights.

Here, three of six petitioners signed the certificate of non-forum shopping. At the least, the CA could have ordered that those who did not sign it be dropped as parties, but not the outright dismissal of the Petition.

The Court, nevertheless, holds that there are justifiable reasons for the relaxation of the rules on the filing of a certificate of non-forum shopping and that the certificate against forum shopping signed by three out of six petitioners suffices.

Specifically, petitioners' cause of action revolves on the same issue, that is, respondents illegally dismissed them under similar circumstances. They were all resident physicians who were purportedly 1) re-employed by the Hospital even after the expiration of their respective one year contracts; 2) forced to resign and offered to be re-engaged as fixed term employees but declined; 3) demoted; 4) accused of violations of the Hospital rules and regulations; and, 5) dismissed.

Moreover, substantial justice dictates that the Petition for *Certiorari* be given due course and be resolved on the merits. This is especially so since the findings of the LA are contrary to those of the NLRC,[43] particularly on the issues of whether respondents illegally dismissed petitioners and of whether they were afforded due process of law.

The requirement of strict compliance with the rules on filing of certificate against forum shopping highlights the mandatory character of the submission of such certificate. However, this mandatory requirement allows substantial compliance provided that there are justifiable circumstances for the relaxation of the rules.[44]

---

[43] *Heirs of Amada A. Zaulda v. Zaulda*, G.R. No. 201234, March 17, 2014, 719 SCRA 308, 320.

[44] *Fernandez v. Villegas*, G.R. No. 200191, August 20, 2014, 733 SCRA 548, 560.

Furthermore, the CA dismissed the Petition for *Certiorari* because it did not indicate in its title that Dr. Tidula is a party respondent and the Petition did not state Dr. Tidula's actual address. The CA held that these omissions violate Section 3,[45] Rule 46 of the Rules of Court, in relation to Rule 65 thereof.

We do not agree.

Since Dr. Tidula was included as one of the respondents in the body of the Petition, then the CA could have clarified with petitioners the non-inclusion of Dr. Tidula in the title and could have ordered the title rectified.

Likewise, the Court finds that the failure to state the address of Dr. Tidula is insufficient to cause the dismissal of the Petition. The lack of address of Dr. Tidula is not a fatal defect as he had been represented by his counsel in the case. The indication that the party "could be served with process care of his counsel was substantial compliance with the Rules." And, when a party has appeared through counsel, service is to be made upon the counsel, unless the court expressly orders that it be made upon the party.[46]

In view of the foregoing, a remand of the case to the CA for proper disposition on the merits is deemed proper.

WHEREFORE, the Petition is **GRANTED**. The July 12, 2012 and October 22, 2012 Resolutions of the Court of Appeals in CA-G.R. SP No. 125333 are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Court of Appeals for appropriate disposition.

SO ORDERED.

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

---

[45] SECTION 3. Contents and Filing of Petition; Effect of Non-Compliance with Requirements. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

[46] *OSM Shipping Phil., Inc. v. National Labor Relations Commission*, 446 Phil. 793, 803-804 (2003).

SECOND DIVISION

[G.R. No. 206522. April 18, 2016]

DOEHLE-PHILMAN[1] MANNING AGENCY, INC., DOHLE (IOM) LIMITED AND CAPT. MANOLO T. GACUTAN, *petitioners,* ***vs.*** **HENRY C. HARO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARERS; PERMANENT AND TOTAL DISABILITY BENEFITS; REQUIREMENTS TO BE ENTITLED TO DISABILITY BENEFITS.— The Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels (POEA-SEC), particularly Section 20(B) thereof, provides that the employer is liable for disability benefits when the seafarer suffers from a work-related injury or illness during the term of his contract. To emphasize, to be compensable, the injury or illness 1) must be work-related and 2) must have arisen during the term of the employment contract. In *Jebsen Maritime, Inc. v. Ravena,* the Court held that those diseases not listed as occupational diseases may be compensated if it is shown that they have been caused or aggravated by the seafarer's working conditions. The Court stressed that while the POEA-SEC provides for a disputable presumption of work-relatedness as regards those not listed as occupational diseases, this presumption does not necessarily result in an automatic grant of disability compensation. The claimant still has the burden to present substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" that his work conditions caused or at least increased the risk of contracting the illness.

2. ID.; ID.; ID.; WHEN THE SEAFARER WAS DIAGNOSED WITH AORTIC REGURGITATION, AN ILLNESS NOT LISTED AS AN OCCUPATIONAL DISEASE, HE HAS THE BURDEN TO PROVE THAT SUCH ILLNESS IS WORK-RELATED; THE CLAIMANT IN THE PRESENT CASE

---

[1] Spelled in some parts of the records as Dohle-Philman.

FAILED TO PROVE THE REQUIRED LINKAGE BETWEEN HIS WORK AND HIS ILLNESS TO ENTITLE HIM TO DISABILITY BENEFITS.— In this case, considering that respondent did not suffer from any occupational disease listed under Section 32-A of the POEA-SEC, then to be entitled to disability benefits, the respondent has the burden to prove that his illness is work-related. Unfortunately, he failed to discharge such burden. Records reveal that respondent was diagnosed of aortic regurgitation, a heart "condition whereby the aortic valve permits blood ejected from the left ventricle to leak back into the left ventricle." Although this condition manifested while respondent was aboard the vessel, such circumstance is not sufficient to entitle him to disability benefits as it is of equal importance to also show that respondent's illness is work-related. In *Ayungo v. Beamko Shipmanagement Corporation*; the Court held that for a disability to be compensable, the seafarer must prove a reasonable link between his work and his illness in order for a rational mind to determine that such work contributed to, or at least aggravated, his illness. It is not enough that the seafarer's injury or illness rendered him disabled; it is equally necessary that he establishes a causal connection between his injury or illness, and the work for which he is engaged. Here, respondent argues that he was unable to work as a seaman for more than 120 days, and that he contracted his illness while under the employ of petitioners. However, he did not at all describe his work as an oiler, and neither did he specify the connection of his work and his illness. x x x Respondent simply relied on the presumption that his illness is work-related. He did not adduce substantial evidence that his work conditions caused, or at the least increased the risk of contracting his illness. Like in *Panganiban,* herein respondent did not elaborate on the nature of his work and its connection to his illness. Certainly, he is not entitled to any disability compensation. In an attempt to establish work-relatedness, respondent stated in his Memorandum before the Court that his illness is compensable due to stress. Aside from being belatedly argued, such claim is unmeritorious as it still failed to prove the required linkage between respondent's work and his illness to entitle him to disability benefits.

3. ID.; ID.; ID.; ID.; THE FACT THAT SEAFARER WAS DECLARED FIT TO WORK PRIOR TO HIS DEPLOYMENT

DOES NOT NECESSARILY MEAN THAT HE SUSTAINED HIS ILLNESS WHILE ABOARD THE VESSEL.— [T]he Court holds that the fact that respondent passed the PEME is of no moment in determining whether he acquired his illness during his employment. The PEME is not exploratory in nature. It is not intended to be a thorough examination of a person's medical condition, and is not a conclusive evidence that one is free from any ailment before deployment. Hence, it does not follow that because respondent was declared fit to work prior to his deployment, then he necessarily sustained his illness while aboard the vessel.

APPEARANCES OF COUNSEL

Retoriano & Olalia-Retoriano for petitioners.
Sapalo Velez Bundang & Bulilan for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

"[T]he constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers. The commitment of this Court to the cause of labor does not prevent us from sustaining the employer when it is in the right. We should always be mindful that justice is in every case for the deserving, to be dispensed with in the light of established facts, the applicable law, and existing jurisprudence."[2]

This Petition for Review on *Certiorari* assails the July 20, 2012 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 117988. The CA reversed and set aside the September 28, 2010[4]

---

[2] *Magsaysay Maritime Corporation v. National Labor Relations Commission*, 630 Phil. 352, 369 (2010).

[3] CA *rollo*, pp. 329-341; penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia.

[4] *Id.* at 24-35; penned by Commissioner Teresita D. Castillon-Lora and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Napoleon M. Menese.

and November 30, 2010[5] Resolutions of the National Labor Relations Commission (NLRC) in NLRC LAC (OFW) No. 04-000295-10 which affirmed the February 26, 2010 Decision[6] of the Labor Arbiter (LA) dismissing the Complaint in NLRC OFW Case No. 06-09031-09. Accordingly, the CA ordered Doehle-Philman Manning Agency, Inc. (Doehle-Philman), Dohle (IOM) Limited (Dohle Ltd.) and Capt. Manolo T. Gacutan (petitioners) to jointly and severally pay respondent Henry C. Haro permanent and total disability benefits amounting to US$60,000.00 and attorney's fees of 10% of the total monetary award. Also assailed is the March 27, 2013 CA Resolution[7] denying petitioners' Motion for Reconsideration.

Factual Antecedents

On May 30, 2008, Doehle-Philman, in behalf of its foreign principal, Dohle Ltd., hired respondent as oiler aboard the vessel MV CMA CGM Providencia[8] for a period of nine months with basic monthly salary of US$547.00 and other benefits.[9] Before deployment, respondent underwent pre-employment medical examination (PEME) and was declared fit for sea duty.[10]

Respondent stated that on June 1, 2008, he boarded the vessel and assumed his duties as oiler; however, in November 2008, he experienced heartache and loss of energy after hammering and lifting a 120-kilogram machine; thereafter, he was confined

---

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

[6] *Id.* at 36-41; penned by Labor Arbiter Geobel A. Bartolabac.

[7] *Id.* at 381-382.

[8] The Employment Contract and respondent's Seaman's Book indicate that the name of the vessel boarded by respondent is MV CMA CGM Providencia. This matter is also clarified in petitioners' Reply. It is however noted that in respondent's Position Paper and Petition for *Certiorari* he stated that the name of the vessel he boarded was M/S Violetta; *id.* at 6, 46, 90-91, 139.

[9] *Id.* at 58.

[10] *Id.* at 59.

at a hospital in Rotterdam where he was informed of having a hole in his heart that needed medical attention.[11]

After his repatriation on December 6, 2008, respondent reported to Doehle-Philman which in turn referred him to Clinico-Med. Respondent claimed that he was confined for two days in UST[12] Hospital and that a heart operation was recommended to him. He nevertheless admitted that he had not yet undergone any surgery.[13] On April 24, 2009, respondent's personal doctor, Dr. Luminardo M. Ramos (Dr. Ramos), declared him not fit to work.[14]

Consequently, on June 19, 2009, respondent filed a Complaint for disability benefits, reimbursement of medical expenses, moral and exemplary damages, and attorney's fees against petitioners.[15] Respondent claimed that since he was declared fit to work before his deployment, this proved that he sustained his illness while in the performance of his duties aboard the vessel; that he was unable to work for more than 120 days; and that he lost his earning capacity to engage in a work he was skilled to do. Thus, he insisted he is entitled to permanent and total disability benefits.[16]

For their part, petitioners alleged that respondent boarded the vessel on June 2, 2008; that on or about November 21, 2008, respondent was confined at a hospital in Rotterdam; and that upon repatriation, he was referred to Dr. Leticia Abesamis (Dr. Abesamis), the company-designated doctor, for treatment.[17]

Petitioners denied that respondent has a hole in his heart. Instead, they pointed out that on December 27, 2008, Dr. Abesamis diagnosed him of "aortic regurgitation, moderate" but declared that his condition is not work-related.[18] They averred

---

[11] *Id.* at 46-47.

[12] University of Sto. Tomas.

[13] CA *rollo*, pp. 47-48.

[14] *Id.* at 64.

[15] *Id.* 48.

[16] *Id.* at 48-50.

[17] *Id.* at 67-68, 113.

[18] *Id.* at 114.

that despite such declaration, they still continued with respondent's treatment.[19] However, on January 19, 2009, Dr. Abesamis declared that respondent had not reported for follow up despite repeated calls.[20] On April 8, 2009, the company-designated doctor reported that respondent refused surgery.[21] And on April 15, 2009, she reiterated that respondent's condition is not work-related.[22]

Petitioners insisted that the determination of the fitness or unfitness of a medically repatriated seafarer rests with the company-designated physician; and since Dr. Abesamis declared that respondent's illness is not work-related, such determination must prevail.[23] They also stressed that the company-designated doctor continuously treated respondent from his repatriation in December 2008, until April 2009, hence, her finding that his illness is not work-related must be respected.[24]

Finally, petitioners argued that since respondent's illness is not an occupational disease, then he must prove that his work caused his illness; because of his failure to do so, then he is not entitled to disability benefits.[25]

Ruling of the Labor Arbiter

On February 26, 2010, the LA dismissed[26] the case for lack of merit. The LA noted that Dr. Abesamis declared that respondent's illness is not work-related; therefore, it is incumbent upon respondent to prove otherwise. He further held that even respondent's personal doctor, Dr. Ramos, did not state that his illness is work-related as he only declared that respondent is not fit for work.

---

[19] *Id.* at 69.

[20] *Id.* at 115.

[21] *Id.* at 118.

[22] *Id.* at 119.

[23] *Id.* at 76.

[24] *Id.* at 144-145.

[25] *Id.* at 78.

[26] *Id.* at 36-41.

Ruling of the National Labor Relations Commission

Respondent interposed an appeal. He maintained that he is entitled to permanent and total disability benefits because he underwent the PEME and was declared fit to work; and his illness transpired while he was in the performance of his duties and during the effectivity of his employment contract.

On September 28, 2010, the NLRC dismissed[27] the appeal. It found no sufficient evidence that respondent's illness is work-connected. It decreed that instead of establishing that the alleged hole in his heart was work-related, respondent focused more on his inability to work for more than 120 days. It also explained that respondent's reliance on his PEME is misplaced as the same is neither rigid nor exploratory. It likewise reiterated the finding of the LA that even respondent's personal doctor did not pronounce his condition as work-connected, and only declared him unfit to resume sea duty.

On November 30, 2010, the NLRC denied[28] respondent's Motion for Reconsideration.

Ruling of the Court of Appeals

Respondent filed a Petition for *Certiorari* with the CA arguing that the NLRC committed grave abuse of discretion in finding him not entitled to disability benefits, moral and exemplary damages, and attorney's fees.

On July 20, 2012, the CA granted[29] the Petition and concomitantly reversed and set aside the September 28, 2010 and November 30, 2010 NLRC Resolutions. The decretal portion of the CA Decision reads:

WHEREFORE, the foregoing considered, the present petition is hereby GRANTED and the assailed Resolutions [dated] 28 September 2010 and 30 November 2010 [are] REVERSED and SET ASIDE.

---

[27] *Id.* at 24-35.

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

[29] *Id.* at 329-341.

Accordingly, private respondents are hereby held jointly and severally liable to pay petitioner permanent and total disability benefits in the sum of US$60,000.00 and attorney's fees of ten percent (10%) of the total monetary award, both at its peso equivalent at the time of actual payment.

SO ORDERED.[30]

According to the CA, the NLRC committed grave abuse of discretion in affirming the LA Decision dismissing the Complaint. The CA gave credence to respondent's arguments that he acquired his illness during his employment contract with petitioners; and that his illness has rendered him totally and permanently disabled as he had not been able to perform his customary work for more than 120 days.

On March 27, 2013, the CA denied[31] petitioners' Motion for Reconsideration.

Thus, petitioners filed this Petition stating that:

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS, REVERSIBLE AND GROSS ERROR IN LAW BASED ON THE FOLLOWING GROUNDS:

A. In failing to uphold the legal and jurisprudential principle that a writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction which is absolutely lacking in this case.

B. In utilizing [r]espondent's alleged inability to work for a period exceeding 120 days as sole basis for entitlement to permanent total disability benefits in absolute disregard of the provisions of the POEA Standard Employment Contract making work-relation as a condition *sine qua non* for compensability of an illness or injury.

C. In awarding ten percent (10%) attorney's fees in favor of [r]espondent solely on the ground that he was constrained to

---

[30] *Id.* at 340.

[31] *Id.* at 381-382.

> engage the services of counsel contrary to the well-entrenched principle that attorney's fees shall only be awarded upon a showing that the petitioner acted in gross and evident bad faith.[32]

Petitioners' Arguments

Petitioners posit that no abuse of discretion may be imputed against the NLRC because its findings and conclusions were based on the facts and evidence on record. Thus, they claim that the CA erred in setting aside the NLRC Resolutions and in not upholding that a writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.[33]

Additionally, petitioners insisted that the CA erred in granting permanent and total disability benefits in favor of respondent on the sole basis that he was unable to work for a period exceeding 120 days.[34] They argue that since respondent's illness is not an occupational disease then there must be causal connection between his work and his illness. They contend that the burden to prove such connection is upon respondent. They added that there is no proof that the nature of respondent's job increased the risk of his illness.[35]

Lastly, petitioners reiterate that the company-designated doctor continuously treated respondent for a period of about four months; that nothing in the records disproves the finding of company-designated physician that respondent's condition is not job-related; that since respondent's illness is not work-related then, the company-designated doctor is not obliged to make a declaration on his fitness or unfitness to work; and, that respondent's personal doctor merely concluded that respondent is "not fit" but he did

---

[32] *Rollo*, p. 11; bold-facing omitted, italics supplied.

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

[34] *Id.* at 16.

[35] *Id.* at 21.

not also make any declaration on whether respondent's condition is work-related or not.[36]

Respondent's Arguments

Respondent contends that the CA properly ruled that he is entitled to permanent and total disability benefits.[37] He insists that since his illness is not listed as an occupational disease, he is "relieved of the burden to show the causation [of] his rights over the disability benefits"[38] as his illness is disputably presumed work-related.[39] He maintains that he sustained his illness while employed as oiler and his condition resulted in the loss of his earning capacity.[40]

Issue

Is the CA correct in setting aside the NLRC Resolutions denying respondent's claim for permanent and total disability benefits?

Our Ruling

The Court finds merit in the Petition.

This Court does not review factual issues as only questions of law can be raised in a Rule 45 Petition. However, such rule admits of exceptions including a situation where the factual findings of the tribunals or courts below are conflicting. Here, there being contrary findings of fact by the LA and NLRC, on one hand, and the CA, on the other, we deem it necessary to make our own determination and evaluation of the evidence on record.[41]

Essentially, petitioners claim that respondent is not entitled to permanent and total disability benefits on the sole basis that he was unable to work for more than 120 days.

The Court agrees.

---

[36] *Id.* at 19-22.

[37] *Id.* at 200.

[38] *Id.* at 203.

[39] *Id.*

[40] *Id.* at 208.

[41] *Heirs of Dela Cruz v. Philippine Transmarine Carriers, Inc.*, G.R. No. 196357, April 20, 2015.

The Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels (POEA-SEC), particularly Section 20 (B) thereof, provides that the employer is liable for disability benefits when the seafarer suffers from a work-related injury or illness during the term of his contract. To emphasize, to be compensable, the injury or illness 1) must be work-related and 2) must have arisen during the term of the employment contract.[42]

In *Jebsen Maritime, Inc. v. Ravena*,[43] the Court held that those diseases not listed as occupational diseases may be compensated if it is shown that they have been caused or aggravated by the seafarer's working conditions. The Court stressed that while the POEA-SEC provides for a disputable presumption of work-relatedness as regards those not listed as occupational diseases, this presumption does not necessarily result in an automatic grant of disability compensation. The claimant still has the burden to present substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"[44] that his work conditions caused or at least increased the risk of contracting the illness.[45]

In this case, considering that respondent did not suffer from any occupational disease listed under Section 32-A of the POEA-SEC, then to be entitled to disability benefits, the respondent has the burden to prove that his illness is work-related. Unfortunately, he failed to discharge such burden.

Records reveal that respondent was diagnosed of aortic regurgitation, a heart "condition whereby the aortic valve permits blood ejected from the left ventricle to leak back into the left ventricle."[46]

---

[42] *Philippine Transmarine Carriers, Inc. v. Aligway*, G.R. No. 201793, September 16, 2015.

[43] G.R. No. 200566, September 17, 2014, 735 SCRA 494, 510-511.

[44] *Heirs of dela Cruz v. Phil. Transmarine Carriers, Inc.*, *supra* note 41.

[45] *Jebsen Maritime, Inc. v. Ravena*, *supra* note 43.

[46] <http://www.hopkinsmedicine.org/heart_vascular_institute/conditions_treatments/treatments/minimally_invasive_aortic_valve_replacement. html> (Last visited on March 17, 2016)

Although this condition manifested while respondent was aboard the vessel, such circumstance is not sufficient to entitle him to disability benefits as it is of equal importance to also show that respondent's illness is work-related.

In *Ayungo v. Beamko Shipmanagement Corporation*,[47] the Court held that for a disability to be compensable, the seafarer must prove a reasonable link between his work and his illness in order for a rational mind to determine that such work contributed to, or at least aggravated, his illness. It is not enough that the seafarer's injury or illness rendered him disabled; it is equally necessary that he establishes a causal connection between his injury or illness, and the work for which he is engaged.[48]

Here, respondent argues that he was unable to work as a seaman for more than 120 days, and that he contracted his illness while under the employ of petitioners. However, he did not at all describe his work as an oiler, and neither did he specify the connection of his work and his illness.

In *Panganiban v. Tara Trading Shipmanagement, Inc.*,[49] the Court denied the claim for disability benefits of a seafarer who was an oiler like herein respondent. The Court held that petitioner therein failed to elaborate on the nature of his work or to even specify his tasks as oiler which rendered it difficult to determine a link between his position and his illness.

The Court is confronted with a similar situation in this case. Respondent simply relied on the presumption that his illness is work-related. He did not adduce substantial evidence that his work conditions caused, or at the least increased the risk of contracting his illness. Like in *Panganiban*, herein respondent did not elaborate on the nature of his work and its connection to his illness. Certainly, he is not entitled to any disability compensation.

---

[47] G.R. No. 203161, February 26, 2014, 717 SCRA 538.

[48] *Id.* at 548-549.

[49] 647 Phil. 675, 689 (2010).

In an attempt to establish work-relatedness, respondent stated in his Memorandum before the Court that his illness is compensable due to stress.[50] Aside from being belatedly argued, such claim is unmeritorious as it still failed to prove the required linkage between respondent's work and his illness to entitle him to disability benefits.

In this regard, we quote with approval the pronouncement of the NLRC as follows:

> x x x [Respondent] admitted that he was told by the attending physician that 'his heart has a hole somewhere in the left ventricle' x x x. Instead of showing how a hole in the heart may be work[-]related, [respondent] argued on his being 'unable to perform his customary work for more than 120 days' x x x. He stressed in his Appeal that 'probability' is the ultimate test of proof in compensation proceedings, but he did not cite any probable circumstance which could have made [a] hole in the heart [w]ork[-]related.
>
> xxx xxx xxx
>
> x x x [T]o be entitled to compensation and benefits, the seafarer must prove by substantial evidence that he contracted the illness during the term of his contract and [that] such infirmity was work-related or at the very least aggravated by the conditions of the work for which he was engaged. Failing on this aspect, the assertion of [respondent] that his illness was work-connected is nothing but an empty imputation of fact without any probative weight.[51]

Moreover, the company-designated doctor determined that respondent's condition is not work-related.

Section 20 (B) (3) of the POEA-SEC provides that the company-designated doctor is tasked to determine the fitness or the degree of disability of a medically repatriated seafarer.[52] In addition, the company-designated doctor was shown to have closely examined and treated respondent from his repatriation

---

[50] *Rollo*, pp. 304-307.

[51] CA *rollo*, pp. 32-33.

[52] 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is

up to four months thereafter. Thus, the LA and the NLRC's reliance on the declaration of the company-designated doctor that respondent's condition is not work-related is justified.[53]

The Court also notes that even respondent's physician of choice made no pronouncement whether his condition is work-related or not. In his one-page medical report, Dr. Ramos only stated that respondent is not fit for work. He neither stated that respondent's condition is not work-related nor did he expound on his conclusion that respondent is not fit for work.

Lastly, the Court holds that the fact that respondent passed the PEME is of no moment in determining whether he acquired his illness during his employment. The PEME is not exploratory in nature. It is not intended to be a thorough examination of a person's medical condition, and is not a conclusive evidence that one is free from any ailment before deployment.[54] Hence, it does not follow that because respondent was declared fit to work prior to his deployment, then he necessarily sustained his illness while aboard the vessel.

Given all these, the Court finds that the CA erred in setting aside the NLRC Resolutions, which affirmed the dismissal of the Complaint. The findings and conclusions arrived at by the NLRC were not tainted with grave abuse of discretion as respondent's claim for disability benefits is unsupported by substantial evidence. Indeed, when the evidence adduced negates compensability, the claim must necessarily fail.[55]

WHEREFORE, the Petition is **GRANTED**. The July 20, 2012 Decision and March 27, 2013 Resolution of the Court of

---

declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

[53] See *Wilhelmsen-Smith Bell Manning v. Suarez*, G.R. No. 207328, April 20, 2015.

[54] *Heirs of dela Cruz v. Phil. Transmarine Carriers, Inc.*, *supra* note 41, citing *Quizora v. Denholm Crew Management (Philippines), Inc.*, 676 Phil. 313, 329 (2011).

[55] *Ayungo v. Beamko Shipmanagement Corp.*, *supra* note 47 at 553.

Appeals in CA-G.R. SP No. 117988 are **REVERSED** and **SET ASIDE.** Accordingly, the Complaint is **DISMISSED** for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 207408. April 18, 2016]

HEIRS OF FELINO M. TIMBOL, JR., namely, MICHAEL JOHN JORGE TIMBOL, FELINO JAMES JORGE TIMBOL, and MARILOU TIMBOL, *petitioners, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; DOCTRINE OF *LAW OF THE CASE*; A DECISION ON A PRIOR APPEAL OF THE SAME CASE IS GENERALLY HELD TO BE THE LAW OF THE CASE WHETHER THAT QUESTION IS RIGHT OR WRONG, THE REMEDY OF THE PARTY DEEMING HIMSELF AGGRIEVED BEING TO SEEK A REHEARING.— The term *law of the case* has been held to mean that "whatever is once irrevocably established as the controlling legal rule or 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.

As a general rule, a decision on a prior appeal of the same case is held to be the law of the *case whether that question is right or wrong,* the remedy of the party deeming himself aggrieved being to seek a rehearing." The doctrine applies when "(1) a question is passed upon by an appellate court, and (2) the appellate court remands the case to the lower court for further proceedings; the lower court and even the appellate courts on subsequent appeal of the case are, thus, bound by how such question had been previously settled." This must be so for reasons of practicality and the orderly adjudication of cases. The doctrine of the *law of the case* is "necessary to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal." It is "founded on the policy of ending litigation." The need for "judicial orderliness and economy require such stability in the final judgments of courts or tribunals of competent jurisdiction."

2. ID.; ID.; ID.; DOCTRINE OF LAW OF THE CASE, APPLIED IN CASE AT BAR.— The Court is bound by its earlier ruling in *PNB v. Timbol* finding the extrajudicial foreclosure to be proper. The Court therein thoroughly and thoughtfully examined the validity of the extrajudicial foreclosure in order to determine whether the writ of preliminary injunction was proper. To allow a reexamination of this conclusion will disturb what has already been settled and only create confusion if the Court now makes a contrary finding. Thus, "[q]uestions necessarily involved in the decision on a former appeal will be regarded as the law of the case on a subsequent appeal, although the questions are not expressly treated in the opinion of the court, as the presumption is that all the facts in the case bearing on the point decided have received due consideration whether all or none of them are mentioned in the opinion." The Court of Appeals was correct to abide by the Court's ruling in *PNB v. Timbol,* for "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."

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IT IS DIFFICULT TO BELIEVE THAT AN EXPERIENCED BUSINESSMAN WOULD ENTER INTO A MORTGAGE CONTRACT WITHOUT KNOWING ITS TERMS AND CONDITIONS.— The Court cannot sustain the claim that the Spouses Timbol were kept in the dark by PNB on the real terms of the contract the Spouses Timbol signed. It is difficult to imagine that an experienced businessman like Timbol will sign documents, especially a mortgage contract that potentially involves multi-million peso liabilities, without knowing its terms and conditions. Moreover, the records are replete with evidence that the Spouses Timbol had already partially complied with their obligation under the mortgage contract. Replying to PNB's demand letter dated 2 September 1999, Felino Timbol himself acknowledged that he and his wife were "well aware of our total outstanding obligation" to PNB, which he pegged at ₱33 million. The same letter bears no indication that the Spouses Timbol were impugning the terms of their agreement. On the contrary, they acknowledged their obligation and merely pleaded for more time to comply. They further amplified their assent in another undated letter where they informed PNB that they "can deliver a partial payment of at least 10% of [their] total obligation." Likewise, in a letter dated 2 October 2000, Felino Timbol acknowledged the amount of his obligation "based on the Statement of Account prepared by PNB-IFL," and even laid down his proposal on how the Spouses Timbol would settle the same."

APPEARANCES OF COUNSEL

Norman R. Gabriel for petitioners.

D E C I S I O N

CARPIO, *J.*:

The Case

Before this Court is a petition for review[1] on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] dated 26 September 2012 and Resolution[3] dated 31 May 2013 of the Court of Appeals in CA-G.R. CV No. 84649. The Court of Appeals reversed and set aside the 5 January 2005 Decision[4] of the Regional Trial Court (RTC) of Makati City, Branch 150, in Civil Case No. 00-946.

The Facts

Civil Case No. 00-946 stems from a Complaint[5] for annulment of real estate mortgage, foreclosure of mortgage, and auction sale; accounting and damages, with prayer for temporary restraining order and/or injunction filed by Felino M. Timbol, Jr. and his wife Emmanuela R. Laguardia (Spouses Timbol) against the Philippine National Bank (PNB), Atty. Ricardo M. Espina, in his capacity as notary public of Makati, and the Register of Deeds of Makati.

The facts of the case are as follows:

Sometime in December 1996, Karrich Holdings Ltd. ["KHL"], based in Hong Kong and owned by Felino M. Timbol, Jr. ["Timbol"] applied with Philippine National Bank ["PNB"]'s wholly-owned Hong Kong-based subsidiary, PNB International Finance Limited ["PNB-IFL"] for credit facilities. Karrich Auto Exchange ["KAE"], then named Superkinis Auto Sales, a sole proprietorship based in

---

[1] *Rollo*, pp. 3-16.

[2] *Id.* at 18-30. Penned by Associate Justice Ramon A. Cruz, with Associate Justices Romeo F. Barza and Stephen C. Cruz concurring.

[3] *Id.* at 32-33.

[4] *Id.* at 34-46. Penned by Judge Reinato G. Quilala.

[5] Records (Vol. I), pp. 1-15.

the Philippines and also owned by Timbol, acted as co-borrower. The credit facilities were granted in the total amount of USD850,000.00, or PhP22,796,200.00.

As security, Timbol executed real estate mortgages on his behalf and on behalf of Emmanuela Laguardia ["Laguardia"], over nine (9) different parcels of real estate registered in the name of Mr. and Mrs. Felino M. Timbol, Jr. Timbol was supposedly made to sign the real estate mortgage forms and Promissory Note forms in blank, among other documents, and thereafter returned the same to PNB. Timbol was allegedly never furnished with copies of the finished forms, a statement PNB would later categorically deny.

The first Real Estate Mortgage was in consideration of credit accommodations in the amount of Thirteen Million Fifty Three Thousand Six Hundred Pesos (Php13,053,600.00, Philippine currency) and further read pertinently as follows:

> WITNESSETH: That for and in consideration of credit accommodations obtained from the Mortgagee and to secure the payment of the same x x x the Mortgagors hereby transfer and convey by way of mortgage unto the Mortgagee its successors or assigns, the following:
>
> Seven (7) real estate properties covered by TCT Nos. 196111, 196112, 196113, 196114, 196115, 196116 and 196117 with their technical descriptions detailed in the attached Annex A.
>
> xxx xxx xxx

The consideration for the second Real Estate Mortgage amounted to Seven Million Five Hundred Ninety-Eight Thousand Eight Hundred Fifty Pesos and 0/100 (PhP7,598,850.00, Philippine currency). The mortgage was constituted over a 293-sq.m. parcel of land covered by TCT No. 177564. The third Real Estate Mortgage secured an obligation amounting to Two Million One Hundred Forty-Three Thousand Seven Hundred Fifty Pesos and 0/100 (Php2,143,750.00, Philippine currency) and covered an 87.5 sq.m. parcel of land under TCT No. 207636.

The real estate mortgages were annotated on the aforementioned transfer certificates of title. On later perusal of the transfer certificates of title, however, Timbol supposedly discovered that the amounts annotated as mortgaged added up to One Hundred One Million One Hundred Seventeen Thousand Eight Hundred Pesos and 0/100

(PhP101,117,800.00). Over time, Timbol signed several Promissory Notes, attesting to availments under the credit line amounting to Eight Hundred Forty-Nine Thousand Five Hundred Ninety-Five US Dollars and 7/100 (USD849,595.07). On April 1, 1998, the credit facilities were reduced to Eight Hundred Forty-Eight Thousand Three Hundred US Dollars and 0/100 (USD848,300.00), pursuant to the letter sent by PNB-IFL to KAE/KHL.

When Timbol, KAE, and KHL defaulted on the payment of their loan obligation, PNB, on behalf of PNB-IFL, sent a demand letter dated September 2, 1999, advising them that their total outstanding obligation stood at Thirty-Eight Million, Eighty-Eight Thousand One Hundred Seventy-Three Pesos and 59/100 (PhP38,088,173.59), inclusive of penalties and interests. In a response apparently dated October 19, 1999, Timbol, signing in representation of KHL, manifested that he was "well aware" of the "₱33 Million" outstanding obligation and that he was awaiting the outcome of a pending application for another loan. Timbol thus requested for additional time to settle the obligation with PNB-IFL and for the conversion of the same to Philippine currency.

On November 15, 1999, PNB caused the foreclosure of the mortgaged properties, claiming that Timbol/KAE/KHL had violated the terms of the real estate mortgage by defaulting on the payment of the loan obligation despite demands. As of the date of the foreclosure, the outstanding obligation already amounted to One Million Twenty-One Thousand Seven Hundred Forty-Three US Dollars and 40/100 (USD1,021,743.40) or Forty-Two Million Three Hundred Twenty Thousand Six Hundred Eleven Pesos and 62/100 (PhP42,320,611.62). Atty. Ricardo M. Espina ["Espina"] notarized the Notice of Extra-Judicial Sale.

PNB was allegedly the highest bidder at the public auction sale with a bid price of Thirty-Five Million Six Hundred Sixty-Nine Thousand Pesos and 0/100 (PhP35,669,000.00). Espina issued the corresponding Certificate of Sale dated December 10, 1999.

On August 4, 2000, Timbol and Laguardia filed suit against PNB, Espina, and the Register of Deeds of Makati City for annulment of the real estate mortgage, of the foreclosure and auction sale, for accounting and damages, and for a temporary restraining order and/or injunction. They accused PNB of deliberately "bloating" the amount of the obligation. They furthermore assailed the foreclosure

proceedings as highly irregular, invalid, and illegal, because the petition for the extra-judicial foreclosure had not been filed in accordance with Supreme Court Administrative Order No. 3; the Notice of Notary Public's Sale did not specify the newspaper in which the Notice of Sale would be published, and was neither raffled for this purpose nor properly posted; and the Notary did not conduct an actual public bidding. They moreover faulted Defendant Espina for refusing to furnish Timbol with copies of documents relative to the supposed auction sale. Meanwhile, the Makati City Register of Deeds gave plaintiff Timbol a Certification that no December 11, 1996 Deed of Mortgage in favor of PNB-IFL covering the transfer certificates of title in question was located in the records. Nor had any certificate of sale been registered on the titles. Plaintiffs thus prayed that the mortgage and Promissory Notes, and the extra-judicial foreclosure, the foreclosure sale, and any subsequent Certificate of Sale, be declared null and void; that the mortgage liens annotated on the transfer certificates of title be cancelled; that PNB be directed to render an accounting of plaintiffs' true and actual obligation; and that damages and attorney's fees be awarded. Plaintiffs also prayed for preliminary and permanent injunctive relief to restrain PNB from consolidating its title to and ownership over the real properties, and to restrain the Makati City Registry of Deeds from canceling plaintiffs' titles and issuing new ones in lieu thereof.

During the hearings on his prayer for a temporary restraining order or writ of preliminary injunction, Timbol affirmed the Affidavit he executed for that purpose.

By Order dated September 8, 2000, the RTC granted the issuance of a writ of preliminary injunction prayed for. The RTC denied PNB's Motion for Reconsideration and Supplemental Motion for Reconsideration, while granting the plaintiffs' Motion to Reduce Bond. PNB elevated the RTC's Order all the way to the Supreme Court which would ultimately nullify and set aside the same in its February 11, 2005 Decision in G.R. No. 157535.

Meanwhile, in his Answer, Espina defended the validity of the foreclosure sale proceedings and explained that it was PNB's Atty. Geromo who rejected Plaintiff Timbol's request for copies of the mortgage documents and promissory notes. Espina pointed out that the alleged Special Power of Attorney supposedly authorizing plaintiff Timbol to represent Laguardia had already been revoked by a July 20, 1998 Order of the Regional Trial Court of Parañaque City, where

a petition for legal separation was already pending. Espina further accused Plaintiff Timbol of coming to court with unclean hands, having also breached his obligations to PNB-IFL. Espina made crossclaims for indemnification as well as counterclaims for moral and exemplary damages, attorney's fees, and litigation expenses.

For its part, PNB insisted that the Real Estate Mortgage contracts had been "already in printed form" at the time Timbol signed the same, and that it was not PNB-IFL's practice that these be signed in blank. PNB also argued that the total amount of Timbol/KAE/KHL's obligation already included interest at agreed-upon rates and that the foreclosure proceedings had been proper and valid. Thus PNB asserted that any damage that might result to plaintiffs were merely *damnum absque injuria*. PNB added that the proceedings were governed by Act No. 3135, not Administrative Order No. 3, as stipulated in the mortgage contracts themselves. PNB moreover explained that the mortgage over seven (7) properties covered by TCT Nos. 196111 thru 196117, all of the Register of Deeds of Makati, altogether secured an obligation of only Thirteen Million Fifty-Three Thousand Six Hundred Pesos and 0/100 (PhP13,053,600.00), with each of the other mortgages over two (2) properties securing obligations of only Two Million One Hundred Forty-Three Thousand Seven Hundred Fifty Pesos and 0/100 (PhP2,143,750.00) and Seven Million Five Hundred Ninety-Eight Thousand Eight Hundred Fifty Pesos and 0/100 (PhP7,598,850.00), rendering plaintiffs' computation erroneous. PNB advanced counterclaims for actual, moral, and exemplary damages as well as litigation expenses and attorney's fees.[6]

The Ruling of the RTC

On 5 January 2005, the RTC issued its assailed decision, the dispositive portion of which reads:

WHEREFORE, the foreclosure of mortgage made by the defendant bank on November 15, 1999 is hereby declared null and void over the properties covered by TCTs Nos. 196111, 196112, 196113, 196114, 196115, 196116, 196117, 207636 and 177564 of the Registry of Deeds of Makati City.

---

[6] *Rollo*, pp. 19-22.

SO ORDERED.[7]

The RTC found that "[t]he mortgage loan annotated at the back of the titles did not reflect the actual amount of the loan obtained by the plaintiffs." This, the RTC held, "vitiated the subsequent foreclosure of the mortgage initiated by the defendant bank."[8]

The RTC also held that there was an "obviously deliberate act of the defendant bank in refusing to furnish the plaintiff copies of the loan documents" which, the RTC stated strengthens "the claim of the [Spouses Timbol] that they were virtually led by the defendant bank to sign blank loan documents by merely affixing their signatures thereto."[9] Further, the RTC interpreted PNB's actions as an attempt "to hide the correct amount of the obligation," confirming the Spouses Timbol's claim that PNB bloated the amount of their obligation.[10]

The RTC further held that PNB failed "to show proof that when it filed the petition for foreclosure with defendant notary public, [it] was duly empowered by a board resolution, as evidenced by a secretary's certificate x x x to foreclose the mortgage constituted over the subject properties."[11] There was no evidence, the RTC said, "that this subsidiary, obviously a partnership entity, was duly authorized by a resolution that empowered it to assign all its rights and interest in the mortgage in favor of defendant bank."[12]

Lastly, the RTC found no basis to grant the claim for damages and attorney's fees.[13]

---

[7] *Id.* at 46.

[8] *Id.* at 44.

[9] *Id.*

[10] *Id.* at 45.

[11] *Id.*

[12] *Id.*

[13] *Id.*

The Ruling of the Court of Appeals

Without filing a motion for reconsideration of the RTC decision, PNB elevated the case to the Court of Appeals. While the case was pending, Timbol died[14] and was substituted by his heirs, herein petitioners.[15]

In its 26 September 2012 decision, the Court of Appeals reversed the RTC's decision, to wit:

> WHEREFORE, the appeal is PARTIALLY GRANTED. The January 5, 2005 Decision of Branch 150 of the Makati City RTC is hereby REVERSED and SET ASIDE. However, Defendant-Appellant's plea for moral and exemplary damages, together with attorney's fees and costs, is DENIED. A new judgment is hereby entered DISMISSING the complaint.
>
> SO ORDERED.[16]

The Court of Appeals held that factual issues raised by PNB have been "definitively laid to rest" by this Court's decision in *PNB v. Timbol*[17] where it was found that "respondents never denied that they defaulted in the payment of the obligation."[18] In the same decision, this Court upheld PNB's argument that "Supreme Court Administrative Order No. 3 does not apply, the extrajudicial foreclosure having been conducted by a notary public to which mode of foreclosure respondents agreed in the REMs, hence, proper."

As to the allegation that PNB bloated the amount of the obligation, the same decision found as follows:

> x x x the 7 titles collectively secured the amount of ₱13,053,600.00. Such claim despite respondent Timbol's admission in his October 27, 1999 letter to petitioner's counsel that he and his company's

---

[14] CA *rollo*, pp. 122-124.

[15] *Id.* at 130-131.

[16] *Rollo*, p. 28.

[17] 491 Phil. 352 (2005).

[18] *Id.* at 367.

outstanding obligation was ₱33,000,000.00 is grossly misleading and is a gross [m]isrepresentation.[19]

The Court of Appeals noted that the Court's pronouncements in *PNB v. Timbol* settle the question on PNB's "attempt to hide something" and the alleged bloating of the amounts in the mortgage documents.[20] On the other hand, the Court of Appeals held that "PNB sufficiently demonstrated plaintiffs-appellees' satisfaction with the loan transaction, proving that Timbol never questioned his obligation and even repeatedly made partial payments on his principal obligations and the interests accruing thereon."[21]

The Court of Appeals also found "that the Real Estate Mortgage contracts themselves amply provide for x x x PNB's authority to foreclose the mortgage as PNB-IFL's agent and attorney-in-fact."[22] Moreover, the Court of Appeals said that Spouses Timbol never "disputed the authority of x x x PNB in instituting foreclosure proceedings. This implicit admission binds them."[23]

Finally, as to the claim for moral and exemplary damages, the Court of Appeals denied the same for lack of basis.[24]

Petitioners filed a motion for reconsideration, which was denied in the assailed Resolution dated 31 May 2013.

Petitioners' Arguments

Petitioners are now before this Court on a petition for review on *certiorari* praying for the reversal of the Court of Appeals' decision.

Petitioners argue that the Court of Appeals committed the following errors:

---

[19] *Rollo*, p. 26.

[20] *Id.*

[21] *Id.*

[22] *Id.* at 26-27.

[23] *Id.* at 27.

[24] *Id.* at 28.

A.

The court *a quo* erred in not dismissing the appeal outright because PNB did not even bother filing a motion for reconsideration of the RTC Decision.

B.

The court *a quo* erred in applying the Decision of the Honorable [Court] in G.R. No. 157535 as the issue on that case is on the injunction only.

C.

The court *a quo* erred in not holding that PNB deliberately did not provide Felino M. Timbol, Jr. with copies of the loan and mortgage documents.

D.

The court *a quo* erred in not sustaining the factual findings of the RTC that PNB deliberately failed to provide Timbol with the documents.

E.

The court *a quo* erred in not holding that there was an absence of a proper authority coming from PNB-IFL as to the assignment of its rights and interest in favor of PNB.[25]

Petitioners contend that "[PNB] should have first filed a motion for reconsideration of the RTC Decision before interposing its appeal."[26]

Likewise, petitioners argue that the Court of Appeals' application of the ruling in *PNB v. Timbol*[27] is misplaced. They emphasize that the earlier case dealt only with the application for the issuance of a writ of preliminary injunction, and not the validity of the mortgage.[28]

---

[25] *Id.* at 6.

[26] *Id.* at 7.

[27] *Supra* note 17.

[28] *Rollo*, p. 8.

Petitioners also insist that the RTC's findings on PNB's alleged refusal to furnish the Spouses Timbol with copies of the mortgage documents and the lack of evidence to show PNB-IFL's authority to assign its rights and interests to PNB should have been upheld by the Court of Appeals.[29]

Respondent's Arguments

PNB, in its Comment, counters that the petition for review must be dismissed for "failing to show special and important reasons warranting the exercise of this Honorable Court's discretionary reviewing power."[30] PNB points out that petitioners are raising factual issues that have already been "exhaustively discussed and resolved" by this Court in *PNB v. Timbol*.[31]

PNB also argues that the Court of Appeals correctly cited the Court's decision in *PNB v. Timbol*.[32]

Moreover, PNB argues that the Court of Appeals did not commit reversible error when it found that the PNB "did not bloat the loan obligations of petitioners" and as such, had "no reason to refuse petitioners' request that they be furnished copies of the loan documents."[33] As further proof, PNB notes that petitioners, in the proceedings at the RTC, "expressly admitted" the "genuineness and due execution of the [real estate mortgage] and the subject Promissory Notes."[34]

Next, PNB asserts that it did not err in filing a Notice of Appeal without first filing a motion for reconsideration of the RTC's decision. PNB argues that "[t]here is absolutely nothing in the 1997 Rules of Civil Procedure that requires a party-litigant to first file a motion for reconsideration of an adverse decision before it can file a Notice of Appeal." PNB claims that the

---

[29] *Id.* at 9-11.

[30] *Id.* at 68.

[31] *Id.* at 69.

[32] *Id.* at 70.

[33] *Id.* at 72.

[34] *Id.* at 72-73.

provisions in the Rules of Civil Procedure on motions for reconsideration are "merely directory, and not mandatory."[35]

As to the alleged absence of a proper authority from PNB-IFL to give PNB the right to foreclose on the real estate mortgage, PNB agrees with the Court of Appeals' ruling and underscores the terms of the mortgage contract as the basis for such authority.[36] Specifically, PNB points to Paragraph 21, which states:

> 21. APPOINTMENT OF AGENT; ASSIGNMENT. — The Mortgagee hereby appoints the Philippine National Bank (Head Office, Pasay City) as its attorney-in-fact with full power and authority to exercise all its rights and obligations under this Agreement, such as but not limited to foreclosure of the Mortgaged Properties, taking possession and selling of the mortgaged/foreclosed properties, and execution of covering documents. x x x.[37]

Thus, PNB concludes that the petition must be dismissed for failure of petitioners to "present a valid and legitimate question of law x x x that would warrant the exercise of [the Court's] discretionary power of review."[38]

The Court's Ruling

The petition is denied for lack of merit.

Non-filing of a Motion for Reconsideration

Petitioners assail the Court of Appeals' ruling for failing to dismiss the appeal outright because PNB did not file a motion for reconsideration of the RTC's decision.

Section 1, Rule 37 of the Rules on Civil Procedure states:

> SECTION 1. *Grounds of and period for filing motion for new trial or reconsideration*. — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment

---

[35] *Id.* at 73.

[36] *Id.* at 74.

[37] *Id.* at 75.

[38] *Id.*

or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

> (a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
>
> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

Within the same period, **the aggrieved party *may* also move for reconsideration** upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law. (Emphasis supplied)

The use of the term ***may*** in the provision means that the same is permissive and not mandatory. As such, a party aggrieved by the trial court's decision may either move for reconsideration or appeal to the Court of Appeals.

On the other hand, Rule 41, Section 3 provides as follows:

SEC. 3. *Period of ordinary appeal, appeal in habeas corpus cases*. — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. However, an appeal in *habeas corpus* cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed. (Emphasis supplied)

This means that, within 15 days from notice of judgment, a party may file either an appeal or a motion for reconsideration.

Moreover, appeal is a matter of discretion. The Court has the "prerogative under the law to determine whether or not it

shall consent to exercise its appellate jurisdiction in any given case."[39] In this case, the Court of Appeals exercised its prerogative and accepted the appeal.

Petitioners had the chance to question the Court of Appeals' exercise of jurisdiction. However, they lost such opportunity because they failed to file their Appellees' Brief[40] without any explanation for such failure, despite acknowledging that they received a copy of the Appellant's Brief,[41] and despite filing their counsels' formal entry of appearance,[42] and filing a manifestation informing the court of their father's death.[43] In other words, petitioners had the opportunity to raise their opposition to PNB's appeal, but they did not.

Even in their motion for reconsideration[44] of the Court of Appeals' decision, the only issues that petitioners raised were on the RTC's findings on the "deliberate failure on the part of the PNB to furnish Timbol with the loan documents" and on the lack of evidence of PNB-IFL's resolution assigning its rights on the mortgage to PNB.[45] It is now too late to delve into this issue considering petitioners' participation in the proceedings.

Application of the Law of the Case Doctrine

The Court of Appeals correctly applied the *law of the case* doctrine.

In *PNB v. Timbol*,[46] PNB brought a petition for *certiorari* to set aside the order of Judge Zeus L. Abrogar that issued a writ of preliminary injunction in Civil Case No. 00-946. The Court

---

[39] *Chua Giok Ong v. Court of Appeals*, 233 Phil. 110, 116 (1987).

[40] CA *rollo*, pp. 106, 110.

[41] *Id.* at 104.

[42] *Id.* at 111.

[43] *Id.* at 117.

[44] *Id.* at 157-160.

[45] *Id.* at 159.

[46] *Supra* note 17.

struck down this order, holding that the order "was attended with grave abuse of discretion."[47]

The Court found that the Spouses Timbol "never denied that they defaulted in the payment of the obligation."[48] In fact, they even acknowledged that they had an outstanding obligation with PNB, and simply requested for more time to pay.

The Court also held that the extrajudicial foreclosure of the mortgage was proper, since it was done in accordance with the terms of the Real Estate Mortgage, which was also the Court's basis in finding that Supreme Court Administrative Order No. 3 does not apply in that case.[49]

The Court also found that the Spouses Timbol's claim that PNB bloated the amount of their obligation was "grossly misleading and a gross misinterpretation" by the Spouses Timbol. The Court noted the Spouses Timbol's letter to PNB[50] that acknowledged they had an outstanding obligation to PNB, as well as affirmed that they received the demand letter directing them to pay, contrary to their claim. Thus, the Court in *PNB v. Timbol* concluded that the RTC committed grave abuse of discretion when it issued a writ of preliminary injunction.

No doubt, this Court is bound by its earlier pronouncements in *PNB v. Timbol*.

The term *law of the case* has been held to mean that "whatever is once irrevocably established as the controlling legal rule or 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. As a general rule, a decision on a prior appeal of the same case is held to be the law of the *case whether that question is right or wrong*,

---

[47] *Supra* note 17, at 369.

[48] *Supra* note 17, at 367.

[49] *Supra* note 17, at 368-369.

[50] *Supra* note 17, at 369.

the remedy of the party deeming himself aggrieved being to seek a rehearing."[51]

The doctrine applies when "(1) a question is passed upon by an appellate court, and (2) the appellate court remands the case to the lower court for further proceedings; the lower court and even the appellate courts on subsequent appeal of the case are, thus, bound by how such question had been previously settled."[52]

This must be so for reasons of practicality and the orderly adjudication of cases. The doctrine of the *law of the case* is "necessary to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal."[53] It is "founded on the policy of ending litigation."[54] The need for "judicial orderliness and economy require such stability in the final judgments of courts or tribunals of competent jurisdiction."[55]

The Court is bound by its earlier ruling in *PNB v. Timbol* finding the extrajudicial foreclosure to be proper. The Court therein thoroughly and thoughtfully examined the validity of the extrajudicial foreclosure in order to determine whether the writ of preliminary injunction was proper. To allow a reexamination of this conclusion will disturb what has already been settled and only create confusion if the Court now makes a contrary finding.

---

[51] *Radio Communications of the Philippines, Inc. v. Court of Appeals*, 522 Phil. 267, 273 (2006), citing *Padillo v. Court of Appeals*, 422 Phil. 334 (2001). (Emphasis in the original)

[52] *Lopez v. Esquivel, Jr.*, 604 Phil. 437, 456 (2009).

[53] *Radio Communications of the Philippines, Inc. v. Court of Appeals*, *supra* note 51, citing *Padillo v. Court of Appeals*, 422 Phil. 334, 351 (2001).

[54] *Banco de Oro-EPCI, Inc. v. Tansipek*, 611 Phil. 90, 99 (2009), citing *People v. Pinuila*, 103 Phil. 992, 1000 (1958).

[55] *Escobar v. Luna*, 547 Phil. 661, 669 (2007), citing *Kabankalan Catholic College v. Kabankalan Catholic College Union-PACIWU-TUCP*, 500 Phil. 254, 266 (2005).

Thus, "[q]uestions necessarily involved in the decision on a former appeal will be regarded as the law of the case on a subsequent appeal, although the questions are not expressly treated in the opinion of the court, as the presumption is that all the facts in the case bearing on the point decided have received due consideration whether all or none of them are mentioned in the opinion."[56]

The Court of Appeals was correct to abide by the Court's ruling in *PNB v. Timbol*, for "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."[57]

Other Issues

Further, the Court of Appeals itself found ample reason to reverse and set aside the RTC's decision. These findings, the Court now finds, are supported by the evidence on record.

The Court cannot sustain the claim that the Spouses Timbol were kept in the dark by PNB on the real terms of the contract the Spouses Timbol signed.

It is difficult to imagine that an experienced businessman like Timbol will sign documents, especially a mortgage contract that potentially involves multi-million peso liabilities, without knowing its terms and conditions. Moreover, the records are replete with evidence that the Spouses Timbol had already partially complied with their obligation under the mortgage contract.

Replying to PNB's demand letter dated 2 September 1999, Felino Timbol himself acknowledged that he and his wife were "well aware of our total outstanding obligation" to PNB, which

---

[56] *Banco de Oro-EPCI, Inc. v. Tansipek*, *supra* note 54.

[57] *Development Bank of the Philippines v. Guariña Agricultural and Realty Development Corporation*, G.R. No. 160758, 15 January 2014, 713 SCRA 292, citing *Bachrach Motor Co. v. Esteva*, 67 Phil. 16 (1938).

he pegged at ₱33 million. The same letter bears no indication that the Spouses Timbol were impugning the terms of their agreement. On the contrary, they acknowledged their obligation and merely pleaded for more time to comply.[58] They further amplified their assent in another undated letter where they informed PNB that they "can deliver a partial payment of at least 10% of [their] total obligation."[59] Likewise, in a letter dated 2 October 2000, Felino Timbol acknowledged the amount of his obligation "based on the Statement of Account prepared by PNB-IFL," and even laid down his proposal on how the Spouses Timbol would settle the same.[60]

As to the claim that there is no proper authority from PNB-IFL assigning its rights and interest in the mortgage contract to PNB, the Court finds that the same is easily controverted by the Real Estate Mortgage itself.

Paragraph 21 of the Real Estate Mortgage states:

> 21. APPOINTMENT OF AGENT; ASSIGNMENT. The Mortgagee **hereby appoints the Philippine National Bank (Head Office, Pasay City) as its attorney-in-fact with full power and authority to exercise all its rights and obligations under this Agreement, such as but not limited to foreclosure of the Mortgaged Properties**, taking possession and selling of the mortgaged/foreclosed properties, and execution of covering documents. The Mortgagee may also assign its rights and interest under this Agreement even without need of prior notice to, or consent of, the Mortgagors.[61] (Emphasis supplied)

The terms of the contract are clear and should end any further discussion on this issue.

In addition, petitioners never raised the authority of PNB to foreclose the mortgage on behalf of PNB-IFL in their Complaint[62]

---

[58] Records (Vol. II), p. 883.

[59] *Id.* at 960.

[60] *Id.* at 965-966.

[61] *Id.* at 840.

[62] Records (Vol. I), pp. 1-15.

before the trial court or in the proceedings before the Court of Appeals.

It is now too late for petitioners to raise these issues before the Court. It is noteworthy that all these could have been ventilated in the proceedings before the Court of Appeals had petitioners not neglected to file their Appellees' Brief.

Thus, the foregoing discussion puts to rest the issues raised by petitioners. Consequently, the real estate mortgage, the subsequent foreclosure and auction sale are held to be valid. No irregularity attended the execution of the mortgage contract, the foreclosure, and the auction sale, the same being within the terms agreed upon by petitioners' predecessor-in-interest and PNB.

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals dated 26 September 2012 and Resolution dated 31 May 2013 in CA-G.R. CV No. 84649 are **AFFIRMED**.

SO ORDERED.

Brion, del Castillo, Mendoza, and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 215534. April 18, 2016]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **LIQUIGAZ PHILIPPINES CORPORATION,** *respondent.*

[G.R. No. 215557. April 18, 2016]

LIQUIGAZ PHILIPPINES CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; TAX ASSESSMENT; THE REQUIREMENT OF PROVIDING THE TAXPAYER WITH WRITTEN NOTICE OF THE FACTUAL AND LEGAL BASES OF THE ASSESSMENT AND THE DECISION MADE AGAINST HIM IS MANDATORY; REASON.— The importance of providing the taxpayer of adequate written notice of his tax liability is undeniable. Section 228 of the NIRC declares that an assessment is void if the taxpayer is not notified in writing of the facts and law on which it is made. Again, Section 3.1.4 of RR No. 12-99 requires that the FLD must state the facts and law on which it is based, otherwise, the FLD/FAN itself shall be void. Meanwhile, Section 3.1.6 of RR No. 12-99 specifically requires that the decision of the CIR or his duly authorized representative on a disputed assessment shall state the facts, law and rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the FDDA. The use of the word "shall" in Section 228 of the NIRC and in RR No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him is mandatory. The requirement of providing the taxpayer with written notice of the factual and legal bases applies both to the FLD/FAN and the FDDA. Section 228 of the NIRC should not be read restrictively as to limit the written notice only to the assessment itself. As implemented by RR No. 12-99, the written notice requirement for both the FLD and the FAN is in observance of due process—to afford the taxpayer adequate opportunity to file a protest on the assessment and thereafter file an appeal in case of an adverse decision. To rule otherwise would tolerate abuse and prejudice. Taxpayers will be unable to file an intelligent appeal before the CTA as they would be unaware on how the CIR or his authorized representative appreciated the defense raised in connection with the assessment. On the other hand, it raises the possibility that the amounts reflected in the FDDA were arbitrarily made if the factual and legal bases thereof are not shown. x x x The reason for requiring that taxpayers be informed in writing of the facts and law on which the assessment is made is the constitutional guarantee that no person shall be deprived of his property without due process of law. Merely notifying the

taxpayer of its tax liabilities without elaborating on its details is insufficient.

2. ID.; ID.; ID.; FAILURE TO COMPLY WITH THE WRITTEN NOTICE REQUIREMENT SHALL RENDER THE DECISION VOID; BUT A VOID FINAL DECISION ON A DISPUTED ASSESSMENT DOES NOT NECESSARILY RENDER THE ASSESSMENT VOID.— In resolving the issue on the effects of a void FDDA, it is necessary to differentiate an "assessment" from a "decision." x x x An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA. Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other—unless the law or regulations otherwise provide. Section 228 of the NIRC provides that an assessment shall be void if the taxpayer is not informed in writing of the law and the facts on which it is based. It is, however, silent with regards to a decision on a disputed assessment by the CIR which fails to state the law and facts on which it is based. This void is filled by RR No. 12-99 where it is stated that failure of the FDDA to reflect the facts and law on which it is based will make the decision void. It, however, does not extend to the nullification of the entire assessment.

3. ID.; ID.; ID.; SUBSTANTIAL COMPLIANCE WITH WRITTEN NOTICE REQUIREMENT IS ALLOWED PROVIDED THAT THE TAXPAYER WOULD BE EVENTUALLY APPRISED IN WRITING.— [T]he requirement of providing the taxpayer with written notice of the facts and law used as basis for the assessment is not to be mechanically applied. Emphasis on the purpose of the written

notice is important. The requirement should be in place so that the taxpayer could be adequately informed of the basis of the assessment enabling him to prepare an intelligent protest or appeal of the assessment or decision. x x x [S]ubstantial compliance with the requirement under Section 228 of the NIRC is permissible, provided that the taxpayer would be eventually apprised in writing of the factual and legal bases of the assessment to allow him to file an effective protest against.

4. ID.; ID.; ID.; WHERE THE FINAL DECISION ON DISPUTED ASSESSMENT IS VOID FOR FAILURE TO COMPLY WITH NOTICE REQUIREMENT, IT IS TANTAMOUNT TO A DENIAL BY INACTION OF THE COMMISSIONER OF INTERNAL REVENUE WHICH IS APPEALABLE TO THE COURT OF TAX APPEALS.— [A]n FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.

APPEARANCES OF COUNSEL

Zambrano & Gruba Law Offices for Liquigaz Philippines Corporation.

Office of the Solicitor General for Commissioner of Internal Revenue.

D E C I S I O N

MENDOZA, *J.*:

Presented before us is a novel issue. When may a Final Decision on Disputed Assessment (*FDDA*) be declared void, and in the event that the FDDA is found void, what would be its effect on the tax assessment?

Assailed in these consolidated petitions for review on *certiorari* filed under Rule 45 of the Rules of Court are the May 22, 2014 Decision[1] and the November 26, 2014 Resolution[2] of the Court of Tax Appeals (*CTA*) *En Banc* which affirmed the November 22, 2012 Decision[3] of the CTA Division, Second Division (*CTA Division*).

Liquigaz Philippines Corporation (*Liquigaz*) is a corporation duly organized and existing under Philippine laws. On July 11, 2006, it received a copy of Letter of Authority (*LOA*) No. 00067824, dated July 4, 2006, issued by the Commissioner of Internal Revenue (*CIR*), authorizing the investigation of all internal revenue taxes for taxable year 2005.[4]

On April 9, 2008, Liquigaz received an undated letter purporting to be a Notice of Informal Conference (*NIC*), as well as the detailed computation of its supposed tax liability. On May 28, 2008, it received a copy of the Preliminary Assessment Notice[5] (*PAN*), dated May 20, 2008, together with the attached details of discrepancies for the calendar year ending

---

[1] Penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Caesar A. Casanova, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Cielito N. Mindaro-Grulla concurring; Presiding Justice Roman G. del Rosario concurring and dissenting, and Associate Justice Ma. Belen M. Ringpis-Liban dissenting; Associate Justice Erlinda P. Uy on leave; *rollo* (G.R. No. 215557), pp. 44-53.

[2] Penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justice Juanito C. Castañeda, Jr., Associate Justice Lovell R. Bautista, Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Cielito N. Mindaro-Grulla concurring; Presiding Justice Roman G. del Rosario concurring and dissenting, and Associate Justice Ma. Belen M. Ringpis-Liban dissenting; *id.* at 70-76.

[3] Penned by Associate Justice Caesar A. Casanova, with Associate Justice Juanito C. Castañeda and Associate Justice Cielito N. Mindaro-Grulla concurring; *id.* at 105-129.

[4] *Id.* at 45.

[5] *Rollo* (G.R. No. 215534), pp. 80-83.

December 31, 2005.[6] Upon investigation, Liquigaz was initially assessed with deficiency withholding tax liabilities, inclusive of interest, in the aggregate amount of ₱23,931,708.72, broken down as follows:

Expanded Withholding Tax (*EWT*)	₱5,456,141.82
Withholding Tax on Compensation (*WTC*)	₱4,435,463.97
Fringe Benefits Tax (*FBT*)	₱14,040,102.93
TOTAL	**₱23,931,708.72**

Thereafter, on June 25, 2008, it received a Formal Letter of Demand[7] (*FLD*)/Formal Assessment Notice (*FAN*), together with its attached details of discrepancies, for the calendar year ending December 31, 2005. The total deficiency withholding tax liabilities, inclusive of interest, under the FLD was ₱24,332,347.20, which may be broken down as follows:

EWT	₱5,535,890.38
WTC	₱4,500,169.94
FBT	₱14,296,286.88
TOTAL	**₱24,332,347.20**

On July 25, 2008, Liquigaz filed its protest against the FLD/FAN and subsequently submitted its supporting documents on September 23, 2008.

Then, on July 1, 2010, it received a copy of the FDDA[8] covering the tax audit under LOA No. 00067824 for the calendar year ending December 31, 2005. As reflected in the FDDA, the CIR still found Liquigaz liable for deficiency withholding tax liabilities, inclusive of interest, in the aggregate amount of ₱22,380,025.19, which may be broken down as follows:

---

[6] *Id.* at 46.

[7] *Id.* at 87-90.

[8] *Rollo* (G.R. No. 215557), pp. 103-104.

EWT	₱3,479,426.75
WTC	₱4,508,025.93
FBT	₱14,392,572.51
TOTAL	**₱22,380,025.19**

Consequently, on July 29, 2010, Liquigaz filed its Petition for Review before the CTA Division assailing the validity of the FDDA issued by the CIR.[9]

The CTA Division Ruling

In its November 22, 2012 Decision, the CTA Division partially granted Liquigaz's petition cancelling the EWT and FBT assessments but affirmed with modification the WTC assessment. It ruled that the portion of the FDDA relating to the EWT and the FBT assessment was void pursuant to Section 228 of the National Internal Revenue Code (*NIRC*) of 1997, as implemented by Revenue Regulations (RR) No. 12-99.

The CTA Division noted that unlike the PAN and the FLD/FAN, the FDDA issued did not provide the details thereof, hence, Liquigaz had no way of knowing what items were considered by the CIR in arriving at the deficiency assessments. This was especially true because the FDDA reflected a different amount from what was stated in the FLD/FAN. The CTA Division explained that though the legal bases for the EWT and FBT assessment were stated in the FDDA, the taxpayer was not notified of the factual bases thereof, as required in Section 228 of the NIRC.

On the other hand, it upheld the WTC assessment against Liquigaz. It noted that the factual bases used in the FLD and the FDDA with regard thereto were the same as the difference in the amount merely resulted from the use of a different tax rate.

The CTA Division agreed with Liquigaz that the tax rate of 25.40% was more appropriate because it represents the effective

[9] *Id.* at 46.

tax compensation paid, computed based on the total withholding tax on compensation paid and the total taxable compensation income for the taxable year 2005. It did not give credence to Liquigaz's explanation that the salaries account included accrued bonus, 13th month pay, *de minimis* benefits and other benefits and contributions which were not subject to withholding tax on compensation. The CTA Division relied on the report prepared by Antonio O. Maceda, Jr., the court-commissioned independent accountant, which found that Liquigaz was unable to substantiate the discrepancy found by the CIR on its withholding tax liability on compensation. The dispositive portion of the CTA Division decision reads:

WHEREFORE, the *Petition for Review* is hereby **PARTIALLY GRANTED.** Accordingly, the assessments for deficiency expanded withholding tax in the amount of ₱3,479,426.75 and fringe benefits tax in the amount of ₱14,392,572.51 issued by respondent against petitioner for taxable year 2005, both inclusive of interest and compromise penalty is hereby **CANCELLED** and **WITHDRAWN** for being void.

However, the assessment for deficiency withholding tax on compensation for taxable year 2005 is hereby **AFFIRMED** with **MODIFICATIONS**. Accordingly, petitioner is hereby **ORDERED** to **PAY** respondent the amount of ₱2,958,546.23, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Salaries per ITR	₱52,239,313.00
Less: Salaries per Alphalist	₱42,921,057.16
Discrepancy	₱9,318,255.84
Tax rate	25.40%
Basic Withholding Tax on Compensation	₱2,366,836.98
Add: 25% Surcharge	₱591,709.25
Total Amount Due	₱2,958,546.23

In addition, petitioner is liable to pay: (a) deficiency interest at the rate of twenty percent (20%) per annum of the basic deficiency withholding tax on compensation of ₱2,958,546.23 computed from

January 20, 2006 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount due of ₱2,958,546.23 and on the deficiency interest which have accrued as aforestated in (a) computed from July 1, 2010 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997, as amended.

The compromise penalty of ₱25,000.00, originally imposed by respondent is hereby excluded there being no compromise agreement between the parties.

SO ORDERED.[10]

Both the CIR and Liquigaz moved for reconsideration, but their respective motions were denied by the CTA Division in its February 20, 2013 Resolution.

Aggrieved, they filed their respective petitions for review before the CTA *En Banc*.

The CTA En Banc Ruling

In its May 22, 2014 Decision, the CTA *En Banc* affirmed the assailed decision of the CTA Division. It reiterated its pronouncement that the requirement that the taxpayer should be informed in writing of the law and the facts on which the assessment was made applies to the FDDA — otherwise the assessment would be void. The CTA *En Banc* explained that the FDDA determined the final tax liability of the taxpayer, which may be the subject of an appeal before the CTA.

The CTA *En Banc* echoed the findings of the CTA Division that while the FDDA indicated the legal provisions relied upon for the assessment, the source of the amounts from which the assessments arose were not shown. It emphasized the need for stating the factual bases as the FDDA reflected *different* amounts than that contained in the FLD/FAN.

On the other hand, the CTA *En Banc* sustained Liquigaz's WTC assessment. It observed that the basis for the assessment

---

[10] *Id.* at 127-128.

was the same for the FLD and the FDDA, which was a comparison of the salaries declared in the Income Tax Return (*ITR*) and the Alphalist that resulted in a discrepancy of ₱9,318,255.84. The CTA *En Banc* highlighted that the change in the amount of assessed WTC deficiency simply arose from the revision of the tax rate used — from 32% to the effective tax rate of 25.40% suggested by Liquigaz.

Further, it disregarded the explanation of Liquigaz on the ground of its failure to specify how much of the salaries account pertained to *de minimis* benefits, accrued bonuses, salaries and wages, and contributions to the Social Security System, Medicare and Pag-Ibig Fund. The CTA *En Banc* reiterated that even the court-commissioned independent accountant reported that Liquigaz was unable to substantiate the discrepancy found by the CIR.

Both parties moved for a partial reconsideration of the CTA *En Banc* Decision, but the latter denied the motions in its November 26, 2014 Resolution.

Not satisfied, both parties filed their respective petitions for review, anchored on

SOLE ISSUE

WHETHER THE COURT OF TAX APPEALS *EN BANC* ERRED IN PARTIALLY UPHOLDING THE VALIDITY OF THE ASSESSMENT AS TO THE WITHHOLDING TAX ON COMPENSATION BUT DECLARING INVALID THE ASSESSMENT ON EXPANDED WITHHOLDING TAX AND FRINGE BENEFITS TAX.

The present consolidated petitions revolve around the same FDDA where Liquigaz seeks the cancellation of its remaining tax liability and the CIR aims to revive the assessments struck down by the tax court. Basically, Liquigaz asserts that like its assessment for EWT and FBT deficiency, the WTC assessment should have been invalidated because the FDDA did not provide for the facts on which the assessment was based. It argues that it was deprived of due process because in not stating the factual

basis of the assessment, the CIR did not consider the defenses and supporting documents it presented.

Moreover, Liquigaz is adamant that even if the FDDA would be upheld, it should not be liable for the deficiency WTC liability because the CIR erred in comparing its ITR and Alphalist to determine possible discrepancies. It explains that the salaries of its employees reflected in its ITR does not reflect the total taxable income paid and received by the employees because the same refers to the gross salaries of the employees, which included amounts that were not subject to WTC.

On the other hand, the CIR avers that the assessments for EWT and FBT liability should be upheld because the FDDA must be taken together with the PAN and FAN, where details of the assessments were attached. Hence, the CIR counters that Liquigaz was fully apprised of not only the laws, but also the facts on which the assessment was based, which were likewise evidenced by the fact that it was able to file a protest on the assessment. Further, the CIR avers that even if the FDDA would be declared void, it should not result in the automatic abatement of tax liability especially because RR No. 12-99 merely states that a void decision of the CIR or his representative shall not be considered as a decision on the assessment.

The Court's Ruling

Central to the resolution of the issue is Section 228[11] of the NIRC and RR No. 12-99,[12] as amended. They lay out the procedure to be followed in tax assessments. Under Section

---

[11] Sec. 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayers. *Provided, however*, That a preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return;

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

228 of the NIRC, a taxpayer shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void. In implementing Section 228 of the NIRC, RR No. 12-99 reiterates the requirement that a taxpayer must be informed in writing of the law and the facts on which his tax liability was based, to wit:

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles had not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to vehicles, capital equipment, machineries and spare parts, has been sold, traded, or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; **otherwise, the assessment shall become final.**

If the protest is denied in whole or in party, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal** to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; **otherwise, the decision shall become final, executor and demandable.** (Emphases supplied)

[12] Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code through Payment of a Suggested Compromise Penalty.

SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.* —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 *Notice for informal conference*. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.

3.1.2 *Preliminary Assessment Notice* (*PAN*). — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based (see illustration in ANNEX A hereof). If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties. . . .

3.1.4 *Formal Letter of Demand and Assessment Notice*. — The formal letter of demand and assessment notice shall be issued by

the Commissioner or his duly authorized representative. **The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based**, ***otherwise, the formal letter of demand and assessment notice shall be void*** (see illustration in ANNEX B hereof). x x x

3.1.5 *Disputed Assessment*. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended. x x x

3.1.6 *Administrative Decision on a Disputed Assessment*. — **The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, *otherwise, the decision shall be void*** (see illustration in ANNEX C hereof), in which case, the same shall not be considered a decision on a disputed assessment; and (b) that the same is his *final decision*.

[Emphases and Underscoring Supplied]

The importance of providing the taxpayer of adequate written notice of his tax liability is undeniable. Section 228 of the NIRC declares that an assessment is void if the taxpayer is not notified in writing of the facts and law on which it is made. Again, Section 3.1.4 of RR No. 12-99 requires that the FLD must state the facts and law on which it is based, otherwise, the FLD/FAN itself shall be void. Meanwhile, Section 3.1.6 of RR No. 12-99 specifically requires that the decision of the CIR or his duly authorized representative on a disputed assessment shall state the facts, law and rules and regulations, or jurisprudence

on which the decision is based. Failure to do so would invalidate the FDDA.

The use of the word "shall" in Section 228 of the NIRC and in RR No. 12-99 indicates that the requirement of informing the taxpayer of the legal and factual bases of the assessment and the decision made against him is mandatory.[13] The requirement of providing the taxpayer with written notice of the factual and legal bases applies both to the FLD/FAN and the FDDA.

Section 228 of the NIRC should not be read restrictively as to limit the written notice only to the assessment itself. As implemented by RR No. 12-99, the written notice requirement for both the FLD and the FAN is in observance of due process — to afford the taxpayer adequate opportunity to file a protest on the assessment and thereafter file an appeal in case of an adverse decision.

To rule otherwise would tolerate abuse and prejudice. Taxpayers will be unable to file an intelligent appeal before the CTA as they would be unaware on how the CIR or his authorized representative appreciated the defense raised in connection with the assessment. On the other hand, it raises the possibility that the amounts reflected in the FDDA were arbitrarily made if the factual and legal bases thereof are not shown.

A void FDDA does not ipso facto render the assessment void

The CIR and Liquigaz are at odds with regards to the effect of a void FDDA. Liquigaz harps that a void FDDA will lead to a void assessment because the FDDA ultimately determines the final tax liability of a taxpayer, which may then be appealed before the CTA. On the other hand, the CIR believes that a void FDDA does not *ipso facto* result in the nullification of the assessment.

---

[13] *CIR v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014, 729 SCRA 113, 128.

In resolving the issue on the effects of a void FDDA, it is necessary to differentiate an "assessment" from a "decision." In *St. Stephen's Association v. Collector of Internal Revenue*,[14] the Court has long recognized that a "decision" differs from an "assessment," to wit:

> In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days prescribed by section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with paragraph (1) of Section 7, Republic Act No. 1125, conferring appellate jurisdiction upon the Court of Tax Appeals to review "*decisions* of the Collector of Internal Revenue in cases involving *disputed assessment* . . ."

The difference is likewise readily apparent in Section 7[15] of R.A. 1125,[16] as amended, where the CTA is conferred with

---

[14] 104 Phil. 314, 317 (1958).

[15] SEC. 7. ***Jurisdiction***. — The CTA shall exercise:

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

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

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

[16] *An Act Creating the Court of Tax Appeals*.

appellate jurisdiction over the decision of the CIR in cases involving disputed assessments, as well as inaction of the CIR in disputed assessments. From the foregoing, it is clear that what is appealable to the CTA is the "decision" of the CIR on disputed assessment and not the assessment itself.

An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR. As such, the FDDA is not the only means that the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the protest filed by the latter, which may also be appealed before the CTA.

Clearly, a decision of the CIR on a disputed assessment differs from the assessment itself. Hence, the invalidity of one does not necessarily result to the invalidity of the other — unless the law or regulations otherwise provide.

Section 228 of the NIRC provides that an assessment shall be void if the taxpayer is not informed in writing of the law and the facts on which it is based. It is, however, silent with regards to a decision on a disputed assessment by the CIR which fails to state the law and facts on which it is based. This void is filled by RR No. 12-99 where it is stated that failure of the FDDA to reflect the facts and law on which it is based will make the decision void. It, however, does not extend to the nullification of the entire assessment.

With the effects of a void FDDA expounded, the next issue to be addressed is whether the assailed FDDA is void for failure to state the facts and law on which it was based.

The FDDA must state the facts and law on which it is based to provide the taxpayer the opportunity to file an intelligent appeal

The CIR and Liquigaz are also in disagreement whether the FDDA issued was compliant with the mandatory requirement of written notice laid out in the law and implementing rules and regulations. Liquigaz argues that the FDDA is void as it did not contain the factual bases of the assessment and merely showed the amounts of its alleged tax liabilities.

A perusal of the FDDA issued in the case at bench reveals that it merely contained a table of Liquigaz's supposed tax liabilities, without providing any details. The CIR explains that the FDDA still complied with the requirements of the law as it was issued in connection with the PAN and FLD/FAN, which had an attachment of the details of discrepancies. Hence, the CIR concludes that Liquigaz was sufficiently informed in writing of the factual bases of the assessment.

The reason for requiring that taxpayers be informed in writing of the facts and law on which the assessment is made is the constitutional guarantee that no person shall be deprived of his property without due process of law.[17] Merely notifying the taxpayer of its tax liabilities without elaborating on its details is insufficient. In *CIR v. Reyes*,[18] the Court further explained:

> In the present case, Reyes was not informed in writing of the law and the facts on which the assessment of estate taxes had been made. She was merely notified of the findings by the CIR, who had simply relied upon the provisions of former Section 229 prior to its amendment by Republic Act (RA) No. 8424, otherwise known as the Tax Reform Act of 1997.

---

[17] *CIR v. Bank of the Philippine Islands*, 549 Phil. 886, 899 (2007).

[18] 516 Phil. 176, 186-190 (2006).

First, RA 8424 has already amended the provision of Section 229 on protesting an assessment. The old requirement of merely *notifying* the taxpayer of the CIR's findings was changed in 1998 to *informing* the taxpayer of not only the law, but also of the facts on which an assessment would be made; otherwise, the assessment itself would be invalid. xxx

At the time the pre-assessment notice was issued to Reyes, RA 8424 already stated that the taxpayer must be informed of both the law and facts on which the assessment was based. Thus, the CIR should have required the assessment officers of the Bureau of Internal Revenue (BIR) to follow the clear mandate of the new law. The old regulation governing the issuance of estate tax assessment notices ran afoul of the rule that tax regulations — old as they were — should be in harmony with, and not supplant or modify, the law. xxx

Fourth, petitioner violated the cardinal rule in administrative law that the taxpayer be accorded due process. Not only was the law here disregarded, but no valid notice was sent, either. A void assessment bears no valid fruit.

The law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. **In the instant case, respondent has not been informed of the basis of the estate tax liability. Without complying with the unequivocal mandate of first informing the taxpayer of the government's claim, there can be no deprivation of property, because no effective protest can be made**. The haphazard shot at slapping an assessment, supposedly based on estate taxation's general provisions that are expected to be known by the taxpayer, is utter chicanery.

Even a cursory review of the preliminary assessment notice, as well as the demand letter sent, reveals the lack of basis for — not to mention the insufficiency of — the gross figures and details of the itemized deductions indicated in the notice and the letter. **This Court cannot countenance an assessment based on estimates that appear to have been arbitrarily or capriciously arrived at**. Although taxes are the lifeblood of the government, their assessment

and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself."

[Emphases Supplied]

In *CIR v. United Salvage and Towage (Phils.), Inc.*,[19] the Court struck down an assessment where the FAN only contained a table of the taxes due without providing further detail thereto, to wit:

In the present case, a mere perusal of the FAN for the deficiency EWT for taxable year 1994 will show that other than a tabulation of the alleged deficiency taxes due, no further detail regarding the assessment was provided by petitioner. Only the resulting interest, surcharge and penalty were anchored with legal basis. **Petitioner should have at least attached a detailed notice of discrepancy or stated an explanation why the amount of ₱48,461.76 is collectible against respondent and how the same was arrived at**. Any short-cuts to the prescribed content of the assessment or the process thereof should not be countenanced, in consonance with the ruling in Commissioner of Internal Revenue v. Enron Subic Power Corporation to wit:

> The CIR insists that an examination of the facts shows that Enron was properly apprised of its tax deficiency. During the pre-assessment stage, the CIR advised Enron's representative of the tax deficiency, informed it of the proposed tax deficiency assessment through a preliminary five-day letter and furnished Enron a copy of the audit working paper allegedly showing in detail the legal and factual bases of the assessment. The CIR argues that these steps sufficed to inform Enron of the laws and facts on which the deficiency tax assessment was based.
>
> We disagree. The advice of tax deficiency, given by the CIR to an employee of Enron, as well as the preliminary five-day letter, were not valid substitutes for the mandatory notice in writing of the legal and factual bases of the assessment. These steps were mere perfunctory discharges of the CIR's duties in correctly assessing a taxpayer. The requirement for issuing a preliminary or final notice, as the case may be, informing a taxpayer of the existence of a deficiency tax

[19] *Supra* note 13.

> assessment is markedly different from the requirement of what such notice must contain. Just because the CIR issued an advice, a preliminary letter during the pre-assessment stage and a final notice, in the order required by law, does not necessarily mean that Enron was informed of the law and facts on which the deficiency tax assessment was made.
>
> The law requires that the legal and factual bases of the assessment be stated in the formal letter of demand and assessment notice. Thus, such cannot be presumed. Otherwise, the express provisions of Article 228 of the NIRC and RR No. 12-99 would be rendered nugatory. The alleged "factual bases" in the advice, preliminary letter and "audit working papers" did not suffice. There was no going around the mandate of the law that the legal and factual bases of the assessment be stated in writing in the formal letter of demand accompanying the assessment notice.
>
> We note that the old law merely required that the taxpayer be notified of the assessment made by the CIR. This was changed in 1998 and the taxpayer must now be informed not only of the law but also of the facts on which the assessment is made. Such amendment is in keeping with the constitutional principle that no person shall be deprived of property without due process. In view of the absence of a fair opportunity for Enron to be informed of the legal and factual bases of the assessment against it, the assessment in question was void. . . . .
>
> xxx xxx xxx

Applying the aforequoted rulings to the case at bar, it is clear that the assailed deficiency tax assessment for the EWT in 1994 disregarded the provisions of Section 228 of the Tax Code, as amended, as well as Section 3.1.4 of Revenue Regulations No. 12-99 by not providing the legal and factual bases of the assessment. Hence, the formal letter of demand and the notice of assessment issued relative thereto are void.

[Emphasis Supplied]

Nevertheless, the requirement of providing the taxpayer with written notice of the facts and law used as basis for the assessment is not to be mechanically applied. Emphasis on the purpose of the written notice is important. The requirement should be in

place so that the taxpayer could be adequately informed of the basis of the assessment enabling him to prepare an intelligent protest or appeal of the assessment or decision. In *Samar-I Electric Cooperative v. CIR*,[20] the Court elaborated:

> The above information provided to petitioner enabled it to protest the PAN by questioning respondent's interpretation of the laws cited as legal basis for the computation of the deficiency withholding taxes and assessment of minimum corporate income tax despite petitioner's position that it remains exempt therefrom. In its letter-reply dated May 27, 2002, respondent answered the arguments raised by petitioner in its protest, and requested it to pay the assessed deficiency on the date of payment stated in the PAN. A second protest letter dated June 23, 2002 was sent by petitioner, to which respondent replied (letter dated July 8, 2002) answering each of the two issues reiterated by petitioner: (1) validity of EO 93 withdrawing the tax exemption privileges under PD 269; and (2) retroactive application of RR No. 8-2000. The FAN was finally received by petitioner on September 24, 2002, and protested by it in a letter dated October 14, 2002 which reiterated in lengthy arguments its earlier interpretation of the laws and regulations upon which the assessments were based.
>
> Although the FAN and demand letter issued to petitioner were not accompanied by a written explanation of the legal and factual bases of the deficiency taxes assessed against the petitioner, the records showed that respondent in its letter dated April 10, 2003 responded to petitioner's October 14, 2002 letter-protest, explaining at length the factual and legal bases of the deficiency tax assessments and denying the protest.
>
> Considering the foregoing exchange of correspondence and documents between the parties, we find that the requirement of Section 228 was substantially complied with. Respondent had fully informed petitioner *in writing* of the factual and legal bases of the deficiency taxes assessment, which enabled the latter to file an "effective" protest, much unlike the taxpayer's situation in *Enron*. Petitioner's right to due process was thus not violated.

Thus, substantial compliance with the requirement under Section 228 of the NIRC is permissible, provided that the taxpayer

---

[20] G.R. No. 193100, December 10, 2014.

would be eventually apprised in writing of the factual and legal bases of the assessment to allow him to file an effective protest against.

The above-cited cases refer to the compliance of the FAN/FLD of the due process requirement embodied in Section 228 of the NIRC and RR No. 12-99. These may likewise applied to the FDDA, which is similarly required to include a written notice of the factual and legal bases thereof. Without sounding repetitious, it is important to note that Section 228 of the NIRC did not limit the requirement of stating the facts and law only to the FAN/FLD. On the other hand, RR No. 12-99 detailed the process of assessment and required that both the FAN/FLD and the FDDA state the law and facts on which it is based.

Guided by the foregoing, the Court now turns to the FDDA in issue.

It is undisputed that the FDDA merely showed Liquigaz' tax liabilities without any details on the specific transactions which gave rise to its supposed tax deficiencies. While it provided for the legal bases of the assessment, it fell short of informing Liquigaz of the factual bases thereof. Thus, the FDDA as regards the EWT and FBT tax deficiency did not comply with the requirement in Section 3.1.6 of RR No. 12-99, as amended, for failure to inform Liquigaz of the factual basis thereof.

The CIR erred in claiming that Liquigaz was informed of the factual bases of the assessment because the FDDA made reference to the PAN and FAN/FLD, which were accompanied by details of the alleged discrepancies. The CTA *En Banc* highlighted that the amounts in the FAN and the FDDA were **different**. As pointed out by the CTA, the FLD/FAN and the FDDA reflected the following amounts:[21]

---

[21] *Rollo* (G.R. No. 215557), p. 50.

Basic Deficiency Tax	**Expanded Withholding Tax**	**Withholding Tax on Compensation**	**Fringe Benefits Tax**	**Total**
Per FLD	₱3,675,048.78	₱2,981,841.84	₱9,501,564.07	₱16,158,454.72
Per FDDA	₱1,823,782.67	₱2,366,836.98	₱7,572,236.16	₱11,762,855.81
Difference	**₱1,851,266.11**	**₱615,004.89**	**₱1,929,327.91**	**₱4,395,598.91**

As such, the Court agrees with the tax court that it becomes even more imperative that the FDDA contain details of the discrepancy. Failure to do so would deprive Liquigaz adequate opportunity to prepare an intelligent appeal. It would have no way of determining what were considered by the CIR in the defenses it had raised in the protest to the FLD. Further, without the details of the assessment, it would open the possibility that the reduction of the assessment could have been arbitrarily or capriciously arrived at.

The Court, however, finds that the CTA erred in concluding that the assessment on EWT and FBT deficiency was void because the FDDA covering the same was void. The assessment remains valid notwithstanding the nullity of the FDDA because as discussed above, the assessment itself differs from a decision on the disputed assessment.

As established, an FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. Therefore, it is as if there was no decision rendered by the CIR. It is tantamount to a denial by inaction by the CIR, which may still be appealed before the CTA and the assessment evaluated on the basis of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA.

On the other hand, the Court agrees that the FDDA substantially informed Liquigaz of its tax liabilities with regard to its WTC assessment. As highlighted by the CTA, the basis for the assessment was the same for the FLD and the FDDA, where the salaries reflected in the ITR and the alphalist were

compared resulting in a discrepancy of ₱9,318,255.84. The change in the amount of assessed deficiency withholding taxes on compensation merely arose from the modification of the tax rates used — 32% in the FLD and the effective tax rate of 25.40% in the FDDA. The Court notes it was Liquigaz itself which proposed the rate of 25.40% as a more appropriate tax rate as it represented the effective tax on compensation paid for taxable year 2005.[22] As such, Liquigaz was effectively informed in writing of the factual bases of its assessment for WTC because the basis for the FDDA, with regards to the WTC, was identical with the FAN — which had a detail of discrepancy attached to it.

Further, the Court sees no reason to reverse the decision of the CTA as to the amount of WTC liability of Liquigaz. It is a time-honored doctrine that the findings and conclusions of the CTA are accorded the highest respect and will not be lightly set aside because by the very nature of the CTA, it is dedicated exclusively to the resolution of tax problems and has accordingly developed an expertise on the subject.[23] The issue of Liquigaz' WTC liability had been thoroughly discussed in the courts *a quo* and even the court-appointed independent accountant had found that Liquigaz was unable to substantiate its claim concerning the discrepancies in its WTC.

To recapitulate, a "decision" differs from an "assessment" and failure of the FDDA to state the facts and law on which it is based renders the decision void — but not necessarily the assessment. Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided.[24]

WHEREFORE, the May 22, 2014 Decision and the November 26, 2014 Resolution of the Court of Tax Appeals *En Banc* are

---

[22] *Id.* at 123.

[23] *CIR v. Mirant (Philippines) Operations, Corporation*, 667 Phil. 208, 222 (2011).

[24] *Philippine Health Care Providers, Inc. v. CIR*, 616 Phil. 387, 411 (2009).

PARTIALLY AFFIRMED in that the assessment on deficiency Withholding Tax in Compensation is upheld.

The case is **REMANDED** to the Court of Tax Appeals for the assessment on deficiency Expanded Withholding Tax and Fringe Benefits Tax.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 217120. April 18, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **THE HEIRS OF SPOUSES FLORENTINO AND PACENCIA MOLINYAWE, represented by MARITES MOLINYAWE and FRED SANTOS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, EXPLAINED; VIOLATION OF SEVERAL RULES OF PROCEDURE AND WELL-SETTLED RULINGS AMOUNTS TO GRAVE ABUSE OF DISCRETION.— For the extraordinary remedy of *certiorari* to be justified, the petitioner must satisfactorily establish that the court gravely abused its discretion. Grave abuse of discretion is the capricious or whimsical exercise of judgment that effectively brings the acting entity outside the exercise of its proper jurisdiction. The abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason

of passion or personal hostility, and the abuse must be so patent and gross so as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law, as to be equivalent to having acted without jurisdiction. In the case at bar, a cursory review of the records would reveal that the RTC-Branch 57 violated several rules of procedure and well-settled rulings. Thus, its decision was arrived at arbitrarily and whimsically – clearly constituting grave abuse of discretion.

2. ID.; ID.; ID.; ID.; ACTING ON A PETITION FOR CANCELLATION OF *LIS PENDENS* AND QUIETING OF TITLE DESPITE THE COURT'S LACK OF JURISDICTION AND FINALITY OF THE DECISION IN THE MAIN CASE CONSTITUTES GRAVE ABUSE OF DISCRETION; THE COURT SHOULD HAVE DISMISSED *MOTU PROPRIO* RESPONDENT'S MOTION TO ADMIT AN AMENDED AND SUPPLEMENTAL PETITION.— [I]t cannot be denied that the forfeiture case involving the subject TCTs was filed before the CFI-Pasig while the complaint/petition for cancellation of *lis pendens* and quieting of title was filed before the RTC-Branch 57. There is likewise no dispute that the CFI-Pasig tried and decided the forfeiture case. Therefore, it was the CFI-Pasig that had jurisdiction over the main action or proceeding involving the subject TCTs, not the RTC-Branch 57. As the CFI-Pasig had jurisdiction over the main action, said court exercised exclusive power and control over the TCTs that were the subjects of the respondents' complaint/petition with the RTC- Branch 57. Hence, the RTC-Branch 57 had no jurisdiction over the respondents' complaint/petition. The Court agrees with the Republic's contention that only the court having jurisdiction over the main action or proceeding involving the property may order the cancellation thereof. In this case, only the CFI-Pasig (or its successor) can order the cancellation of *lis pendens,* not the RTC- Branch 57. x x x In the case at bench, considering that a judgment in Civil Case No. 6379 had been rendered in favor of the Republic and said judgment already attained finality, the RTC-Branch 57 could no longer claim and exercise jurisdiction over the respondents' original complaint/petition for cancellation of *lis pendens* and quieting of title in. Civil Case No. 10-658. It is also to be noted that when the respondents filed their

motion to admit their amended and supplemental petition before RTC-Branch 57, the decision in LRC Case No. M-5469 rendered by the RTC-Branch 138 had likewise attained finality. The RTC-Branch 57 cannot definitely alter a final and executory decision of a co-equal court by such a move. To do so would certainly defeat the clear purpose of amendments provided by the rules and amount to a grave abuse of discretion as well. x x x In view of the finality of the decisions in Civil Case No. 6379 and LRC Case No. M-5469, the RTC-Branch 57 had no legal or valid basis in admitting the respondents' amended and supplemental petition. It should have dismissed *motu proprio* the respondents' motion to admit amended and supplemental petition for lack of jurisdiction.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
The Law Office of Agnes VST Devanadera for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari*[1] filed by the Republic of the Philippines *(Republic)* praying that the February 20, 2015 Decision[2] of the Court of Appeals (*CA*) in CA G.R. SP No. 133803 be reversed and set aside and that Civil Case No. 10-658 pending before the Regional Trial Court, Branch 57, Makati City *(RTC-Branch 57*), be dismissed for lack of jurisdiction.

In the CA, the appellate court denied the Republic's petition for *certiorari* which sought to annul the orders, dated September 6, 2013[3] and November 19, 2013,[4] of the RTC-Branch 57

[1] *Rollo*, pp. 23-66.

[2] *Id.* at 70-78; Penned by Associate Justice Socorro B. Inting with Associate Justice Jose C. Reyes, Jr. and Associate Justice Victoria Isabel A. Paredes, concurring.

[3] *Id.* at 252 (Issued by Judge Honorio E. Guanlao, Jr.).

[4] *Id.* at 264.

admitting the Amended and Supplemental Petition of the respondents, seeking the cancellation of the *lis pendens* annotated at the back of Transfer Certificate of Title (TCT) Nos. 75239, 76129 and 77577 and for quieting of title of said TCTs on the ground of prescription because the Republic failed to execute the final and executory decision of a co-equal court.

The Antecedents:

On May 16, 1960, criminal cases for malversation were filed with the then Court of First Instance of La Union *(CFI-La Union)* against several accused including Florentino Molinyawe *(Florentino)* and docketed as **Criminal Case Nos. 2996 and 2997**.[5]

In that same year, the Republic, through the Office of the Solicitor General *(OSG)*, filed a forfeiture case pursuant to Republic Act *(R.A.)* No. 1379 before the then CFI-Pasig against Florentino, his relatives, and the respondents in this case, namely: Patricia Molinyawe, Salisi Molinyawe, Oscar Molinyawe, Vicente Miranda, Baldomera Miranda, Cresence Padilla, Leonarda Recinto Padilla, and Vicente Leus *(respondents)*. The forfeiture case, docketed as **Civil Case No. 6379**, involved several parcels of land covered by TCT Nos. 75239, 76129 and 77577, and registered in the names of the Spouses Vicente Miranda and Baldomera Miranda *(Spouses Miranda)*, Spouses Cresence Padilla and Leonarda *Recinto Padilla (Spouses Padilla)* and Vivencio Leus *(Leus)*. The Republic claimed that Florentino had illegally acquired the said properties as their values were said to be grossly disproportionate to his declared income.

On November 18, 1960, the Republic caused the annotation of the forfeiture case on the back of the titles of the subject lots.[6]

On September 22, 1972, the CFI-Pasig declared the sale of the subject properties to the Spouses Miranda, Spouses Padilla and Leus null and void, and ordered that the said properties be forfeited in favor of the Republic.

---

[5] *Id.* at 71.

[6] *Id.*

The decision was appealed to the CA but the appeal was denied by the CA in its February 13, 1974 Resolution. No further action was taken to set aside the judgment. Thus, on August 23, 1974, the CA issued an Entry of Judgment.

The CFI-Pasig then issued a writ of execution on February 14, 1975. Although the writ was duly served on the respondents in that case, more than thirty (30) years had passed, but still the Republic failed to cancel TCT Nos. 75239, 76129 and 77577 and transfer them to its name. It appeared that Florentino did not turn over to the Republic the owner's duplicate copies of the subject TCTs.[7]

Meanwhile, on January 12, 1973, in Criminal Case Nos. 2996 and 2997, the CFI-La Union acquitted Florentino of malversation.

Many years later, on July 9, 2010, the respondents, as heirs of Florentino, filed with the RTC-Branch 57, a *Complaint/ Petition*, docketed as **Civil Case No. 10-658**, praying for the cancellation of the *lis pendens* annotated at the back of TCT Nos. 75239, 76129 and 77577 and for quieting of title regarding said TCTs on the ground of prescription for the non-execution of the September 22, 1972 CA decision.[8]

Thereafter, on October 6, 2010, the Republic caused the annotation of the September 22, 1972 decision on the back of TCT Nos. 75239, 76129 and 77577.

On December 5, 2010, the Republic filed a separate action with the RTC, Branch 138, Makati City *(RTC Branch 138)*, docketed as **LRC Case No. M-5469**, specifically a petition for annulment of owner's duplicate copy of said TCTs and the issuance of new ones pursuant to Section 107 of Presidential Decree (*P.D.*) No. 1529 allegedly due to the respondents' refusal to surrender the owner's duplicate copies.[9]

---

[7] *Id.* at 25.

[8] *Id.* at 25-26.

[9] *Id.* at 26-27.

On September 12, 2011, the RTC-Branch 138 decided in favor of the Republic in LRC Case No. M-5469 declaring the owner's duplicate copies of TCT Nos. 75239, 76129 and 77577 in possession of the respondents as null and void. Thus, the RTC-Branch 138 cancelled the same and directed the Register of Deeds of Makati (*RD-Makati*) to issue new owner's duplicate copies of said TCTs in the name of the Republic.[10]

On April 12, 2012, the RD-Makati caused the cancellation and transfer of the subject TCTs as follows:

a. TCT No. 75239 in the names of the spouses Vicente Miranda and Baldomera Miranda — cancelled and transferred to the Republic of the Philippines with TCT No. 006-2012000526.

b. TCT No. 76129 in the names of the spouses Cresence Padilla and Leonarda Recinto Padilla — cancelled and transferred to the Republic of the Philippines with TCT No. 006-2012000527.

c. TCT No. 77577 in the name of Vivencio Leus — cancelled and transferred to the Republic of the Philippines with TCT No. 006-2012000528.[11]

Considering that no appropriate remedy was pursued within the reglementary period, the September 12, 2011 decision in the LRC case became final and executory. In January 2012, the Republic filed a motion for execution which was granted by the RTC-Branch 138 in its March 16, 2012 Order.[12]

Due to the decision in the LRC case, the respondents filed on June 10, 2013, a ***Motion to Admit Amended and Supplemental Petition*** (attaching to it the said Amended and Supplemental Petition), in Civil Case No. 10-658. In its September 6, 2013 Order, the RTC-Branch 57, granted the same. The Republic moved for a reconsideration but its motion was denied in its November 19, 2013 Order of the Court.

---

[10] *Id.* at 72-73.

[11] *Id.* at 25.

[12] *Id.* at 29.

Consequently, the Republic filed a Rule 65 petition for *certiorari* before the CA seeking the annulment of the orders, dated September 6, 2013 and November 19, 2013, issued by the RTC-Branch 57 in Civil Case No. 10-658. It argued that the trial court had committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the September 6, 2013 and November 19, 2013 orders considering that: a] it had no jurisdiction over the original complaint/petition; b] the amendment sought a review of a final and executory decision of a co-equal court; and c] the amendment is a collateral attack on TCT Nos. 006-201000526, 006-201200527 and 006-201200528.

Ruling of the Court of Appeals

In its February 20, 2015 Decision, the CA dismissed the petition. The appellate court ruled that the RTC-Branch 57 did not act without or in excess of jurisdiction or committed grave abuse of discretion in issuing its questioned orders. It explained that the RTC had jurisdiction over an action for quieting of title. The CA explained that the order of the RTC to admit the respondents' amended and supplemental petition inspite of being fully aware of the finality of the decision of a co-equal court was not tantamount to grave abuse of discretion which would warrant the issuance of a writ of *certiorari*. Further, the Court found that the RTC's judgment was not performed in a capricious or whimsical manner because the alleged abuse of discretion was not so patent and gross. Hence, the CA concluded that its judgment was not exercised in an arbitrary and despotic manner by reason of passion or personal hostility. In other words, the CA was saying that although the actions of the RTC-Branch 57 could constitute imprudence, it could not be regarded as an act of grave abuse of discretion that could justify the issuance of a writ of *certiorari*.

Finally, the CA opined that the decision of RTC-Branch 138 in LRA Case No. M-5469 was a "flawed decision" reasoning as follows:

Shifting to another point, We are in awe on how LRA Case No. M-5469 was decided. There are some observations that tinker with

our curiosity. It is quite strange and mind boggling too that in LRA Case No. M-5469, it seems apparent that the decision made therein was only based on the decision dated September 22, 1972 pertaining to the forfeiture case without regard for taking into account the January 23, 1975 decision in the malversation case acquitting Florentino Molinyawe. Of course, it is understandable that no mention of the acquittal was made in petitioner's Petition for annulment of the owner's duplicate copy of the TCTs covering the subject properties. Interestingly too, private respondents merely opted to file a motion to dismiss, instead of filing their answer and presenting the trial court (Branch 138) the January 23, 1975 decision. Had these been considered, a complete turn of events could have transpired considering that such acquittal necessarily rendered the forfeiture of the properties ineffective and invalid. By the virtue of the acquittal, the forfeiture of his properties became ineffective. Consequently, it is but proper that his forfeited properties be given back to him or in his absence, to his heirs. That said, the decision in LRA Case No. M-5469 is, to Us, a flawed decision. But then, of course, this is not a matter that necessitates a discussion in the present case mindful of the fact that this is not within the thrust of a petition for certiorari. In certiorari, We are only limited to the determination of whether or not public respondent acted without or in excess of jurisdiction or with grave abuse of discretion in rendering the assailed orders and as earlier stated, no such abuse of discretion was found to be availing under the circumstances.[13]

Not in conformity with the CA decision, the Republic filed the subject petition based on the following

GROUNDS:

THE DECISION DATED FEBRUARY 20, 2015 OF THE COURT OF APPEALS IS NOT IN ACCORD WITH LAW AND JURISPRUDENCE SINCE:

1) RTC-BRANCH 57 COMMITTED GRAVE ABUSE OF DISCRETION IN ADMITTING RESPONDENTS' AMENDED AND SUPPLEMENTAL PETITION AS IT HAS NO JURISDICTION IN THE FIRST PLACE OVER CIVIL CASE NO. 10-658; AND

---

[13] *Id.* at 76-77.

2) **THE COURT OF APPEALS WENT BEYOND ITS JURISDICTION UNDER RULE 65 WHEN IT RULED THAT THE CIVIL FORFEITURE CASE IS CONTINGENT OR DEPENDENT ON THE CRIMINAL CASE**.[14]

The Republic emphasizes that RTC-Branch 57 gravely abused its discretion when it admitted the respondents' Amended and Supplemental Petition because, in the first place, it had no jurisdiction over Civil Case No. 10-658. Citing jurisprudence, it argues that an amendment of a pleading is not permissible when the court has no jurisdiction over the case. Moreover, by admitting the Amended and Supplemental Petition, it was allowing the respondents to alter both the factual and legal findings of the RTC-Branch 138 in its decision in LRC No. M-5469, which had long become final and executory.

The Republic argues that the respondents' Complaint/Petition should have been dismissed right away by the RTC-Branch 57 because, pursuant to Section 77 of P.D. No. 1529, they were not the proper parties to ask for the cancellation of the notice of *lis pendens*. It points out that the allegations show that the cancellation of the notice of *lis pendens* was but an ancillary or incident to Civil Case No. 6374. The Republic highlights that the respondents admitted that they did not have a legal or an equitable interest in TCT Nos. 75239, 76129 and 77577; that the original complaint/petition failed to allege any of the grounds under Section 77 of P.D. No. 1529 for the cancellation of a notice of *lis pendens*; and that only the court having jurisdiction over the main action or proceeding involving the property may order its cancellation.

More importantly, the Republic contends that the admission of the respondents' Amended and Supplemental Petition seeks to alter the final and executory findings of a co-equal branch. It being the purpose, it concludes that the RTC-Branch 57 should have dismissed the petition and amended petition pursuant to Section 1, Rule 9 of the 1997 Rules of Civil Procedure which allows *motu propio* dismissal of cases.

---

[14] *Id.* at 34.

Finally, the Republic stresses that the CA went beyond its jurisdiction under Rule 65 when it stated that the civil forfeiture case was contingent or dependent on the outcome of a criminal case.

Position of the Respondents

The respondents counter that the RTC-Branch 57 had jurisdiction over the original petition that they had filed and that the admission of their amended and supplemental petition was in order and in accordance with the Rules of Court. They point out that actions for quieting of title and cancellation of *lis pendens* are actions which are incapable of pecuniary estimation. Hence, the respondents posit that the RTC-Branch 57 had exclusive original jurisdiction thereof pursuant to the provisions of Section 19 of Batas Pambansa (*B.P.*) Blg. 129, as amended.

They further argue that the amended and supplemental petition will not alter the findings of the RTC-Branch 138 considering that they chose to amend and supplement their original petition because its decision in LRC Case No. M-5469 rendered moot and academic their action for cancellation of *lis pendens* and quieting of title. In this regard, they assert that the CA did not go beyond its jurisdiction under Rule 65 when it briefly discussed its observation and stated that the LRC case was flawed.

The Court's Ruling

The petition is meritorious.

Grant of extraordinary remedy of certiorari justified when grave abuse of discretion present

For the extraordinary remedy of *certiorari* to be justified, the petitioner must satisfactorily establish that the court gravely abused its discretion. Grave abuse of discretion is the capricious or whimsical exercise of judgment that effectively brings the acting entity outside the exercise of its proper jurisdiction. The abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal

hostility, and the abuse must be so patent and gross so as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law, as to be equivalent to having acted without jurisdiction.[15]

In the case at bar, a cursory review of the records would reveal that the RTC-Branch 57 violated several rules of procedure and well-settled rulings. Thus, its decision was arrived at arbitrarily and whimsically — clearly constituting grave abuse of discretion.

Jurisdiction; Final and Executory judgment

Records show that when the respondents filed Civil Case No. 10-658 in July 2010 for the cancellation of the *lis pendens* annotated on the back of TCT Nos. 75239, 76129 and 77577 and for quieting of said titles before the RTC-Branch 57, there was already a decision rendered by the CFI-Pasig City in the forfeiture case (Civil Case No. 6379) declaring null and void the sale of the subject properties to the Spouses Miranda, Spouses Padilla and Leus and at the same time ordering said properties forfeited in favor of the Republic. The September 22, 1972 decision of the CFI-Pasig, in Civil Case No. 6379 became final and executory on August 23, 1974 after the CA issued an entry of judgment. Subsequently, in February 1975, the CFI-Pasig issued a writ of execution in Civil Case No. 6379.

The records further establish that when the respondents filed their Motion to Admit Amended and Supplemental Petition on June 10, 2013 before the RTC-Branch 57, a decision had already been rendered by the RTC-Branch 138 in LRC Case No. M-5469, declaring the owner's duplicate copies of TCT Nos. 75239, 76129 and 77577 in possession of the respondents null and void, cancelling the same and directing the RD-Makati to issue new owner's duplicate copies of said TCTs in the name of the Republic. On April 12, 2012, in compliance with the said decision in the LRC case, the RD-Makati caused the cancellation and transfer

[15] *Biñan Rural Bank v. Carlos*, G.R. No. 193919, June 15, 2015.

of the subject TCTs. Hence, TCT Nos. 75239, 76129 and 77577 were all cancelled and TCT Nos. 006-2012000526, 006-2012000527 and 006-2012000528 were issued, respectively, all in the name of the Republic.

From the above scenario, it cannot be denied that the forfeiture case involving the subject TCTs was filed before the CFI-Pasig while the complaint/petition for cancellation of *lis pendens* and quieting of title was filed before the RTC-Branch 57. There is likewise no dispute that the CFI-Pasig tried and decided the forfeiture case. Therefore, it was the CFI-Pasig that had jurisdiction over the main action or proceeding involving the subject TCTs, not the RTC-Branch 57. As the CFI-Pasig had jurisdiction over the main action, said court exercised exclusive power and control over the TCTs that were the subjects of the respondents' complaint/petition with the RTC-Branch 57. Hence, the RTC-Branch 57 had no jurisdiction over the respondents' complaint/petition.

The Court agrees with the Republic's contention that only the court having jurisdiction over the main action or proceeding involving the property may order the cancellation thereof. In this case, only the CFI-Pasig (or its successor) can order the cancellation of *lis pendens*, not the RTC-Branch 57. The case of *J. Casim Construction Supplies, Inc. v. Registrar of Deeds of Las Piñas*[16] is illustrative on this point, to wit:

> *Lis pendens* — which literally means pending suit — refers to the jurisdiction, power or control which a court acquires over the property involved in a suit, pending the continuance of the action, and until final judgment. Founded upon public policy and necessity, *lis pendens* is intended to keep the properties in litigation within the power of the court until the litigation is terminated, and to prevent the defeat of the judgment or decree by subsequent alienation. Its notice is an announcement to the whole world that a particular property is in litigation and serves as a warning that one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over said property.

[16] 636 Phil. 725-738 (2010).

A notice of *lis pendens,* once duly registered, may be cancelled by the trial court before which the action involving the property is pending. This power is said to be inherent in the trial court and is exercised only under express provisions of law. Accordingly, Section 14, Rule 13 of the 1997 Rules of Civil Procedure authorizes the trial court to cancel a notice of *lis pendens* where it is properly shown that the purpose of its annotation is for molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be annotated. Be that as it may, the power to cancel a notice of *lis pendens* is exercised only under exceptional circumstances, such as: where such circumstances are imputable to the party who caused the annotation; where the litigation was unduly prolonged to the prejudice of the other party because of several continuances procured by petitioner; where the case which is the basis for the *lis pendens* notation was dismissed for *non prosequitur* on the part of the plaintiff; or where judgment was rendered against the party who caused such a notation. In such instances, said notice is deemed ipso facto cancelled.

In theorizing that the RTC of Las Piñas City, Branch 253 has the inherent power to cancel the notice of lis pendens that was incidentally registered in relation to Civil Case No. 2137, a case which had been decided by the RTC of Makati City, Branch 62 and affirmed by the Supreme Court on appeal, petitioner advocates that the cancellation of such a notice is not always ancillary to a main action.

The argument fails.

From the available records, it appears that the subject notice of *lis pendens* had been recorded at the instance of Bruneo F. Casim (Bruneo) in relation to Civil Case No. 2137 — one for annulment of sale and recovery of real property — which he filed before the RTC of Makati City, Branch 62 against the spouses Jesus and Margarita Casim, predecessors-in-interest and stockholders of petitioner corporation. That case involved the property subject of the present case, then covered by TCT No. 30459. At the close of the trial on the merits therein, the RTC of Makati rendered a decision adverse to Bruneo and dismissed the complaint for lack of merit. Aggrieved, Bruneo lodged an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 54204, which reversed and set aside the trial court's decision. Expectedly, the spouses Jesus and Margarita Casim elevated the case to the Supreme Court, docketed as G.R.

No. 151957, but their appeal was dismissed for being filed out of time.

A necessary incident of registering a notice of *lis pendens* is that the property covered thereby is effectively placed, until the litigation attains finality, under the power and control of the court having jurisdiction over the case to which the notice relates. In this sense, parties dealing with the given property are charged with the knowledge of the existence of the action and are deemed to take the property subject to the outcome of the litigation. **It is also in this sense that the power possessed by a trial court to cancel the notice of *lis pendens* is said to be inherent as the same is merely ancillary to the main action.**

Thus, in *Vda. de Kilayko v. Judge Tengco, Heirs of Maria Marasigan v. Intermediate Appellate Court* and *Tanchoco v. Aquino*, it was held that **the precautionary notice of lis pendens may be ordered cancelled at any time by the court having jurisdiction over the main action inasmuch as the same is merely an incident to the said action**. The pronouncement in Heirs of Eugenio Lopez, Sr. v. Enriquez, citing Magdalena Homeowners Association, Inc. v. Court of Appeals, is equally instructive —

The notice of *lis pendens* . . . is ordinarily recorded without the intervention of the court where the action is pending. The notice is but an incident in an action, an extrajudicial one, to be sure. It does not affect the merits thereof. It is intended merely to constructively advise, or warn, all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary transaction are subject to the results of the action, and may well be inferior and subordinate to those which may be finally determined and laid down therein. The cancellation of such a precautionary notice is therefore also a mere incident in the action, and may be ordered by the Court having jurisdiction of it at any given time. . . .

Clearly, the action for cancellation of the notice of lis pendens in this case must have been filed not before the court a quo **via an original action but rather, before the RTC of Makati City, Branch 62 as an incident of the annulment case in relation to which its registration was sought. Thus, it is the latter court that has jurisdiction over the main case referred to in the notice and it is that same court which exercises power and control over the real property subject of the notice.**

[Emphases Supplied]

In the case at bench, considering that a judgment in Civil Case No. 6379 had been rendered in favor of the Republic and said judgment already attained finality, the RTC-Branch 57 could no longer claim and exercise jurisdiction over the respondents' original complaint/petition for cancellation of *lis pendens* and quieting of title in Civil Case No. 10-658. It is also to be noted that when the respondents filed their motion to admit their amended and supplemental petition before RTC-Branch 57, the decision in LRC Case No. M-5469 rendered by the RTC-Branch 138 had likewise attained finality. The RTC-Branch 57 cannot definitely alter a final and executory decision of a co-equal court by such a move. To do so would certainly defeat the clear purpose of amendments provided by the rules and amount to a grave abuse of discretion as well. Thus:

> But even so, **the petition could no longer be expected to pursue before the proper forum inasmuch as the decision rendered in the annulment case has already attained finality** before both the Court of Appeals and the Supreme Court on the appellate level, unless of course there exists substantial and genuine claims against the parties relative to the main case subject of the notice of *lis pendens*. There is none in this case. It is thus well to note that the precautionary notice that has been registered relative to the annulment case then pending before the RTC of Makati City, Branch 62 has served its purpose. **With the finality of the decision therein on appeal, the notice has already been rendered *functus officio***. The rights of the parties, as well as of their successors-in-interest, petitioner included, in relation to the subject property, are hence to be decided according the said final decision.[17]
>
> [Emphases Supplied]

In view of the finality of the decisions in Civil Case No. 6379 and LRC Case No. M-5469, the RTC-Branch 57 had no legal or valid basis in admitting the respondents' amended and supplemental petition. It should have dismissed *motu proprio* the respondents' motion to admit amended and supplemental

---

[17] *Id.*

petition for lack of jurisdiction. Section 1, Rule 9 of the Rules of Court allows this, to wit:

> **Section 1.** Defenses and objections not pleaded.
>
> Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that **the court has no jurisdiction** over the subject matter, that **there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment** or by statute of limitations, the court shall **dismiss** the claim.
>
> [Emphases Supplied]

The respondents argue that even assuming for the sake of argument that the RTC-Branch 57 did not have jurisdiction to hear the action for the cancellation of *lis pendens*, it was already mooted by the decision rendered in LRC Case No. M-5469. They claim that the LRC case filed by the Republic was the primordial reason for the amendment and supplementation of the original petition.

The Court is not persuaded.

When the respondents filed their original complaint/petition in LRC Case No. M-5469 before RTC-Branch 57 sometime in July 2010, the decision of the CFI-Pasig in Civil Case No. 6379 had not yet been executed. Thus, the Republic acted pursuant to Section 107 of PD No. 1529 which reads as follows:

> **Section 107.** *Surrender of withhold duplicate certificates*. — Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if not any reason the

outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

The Republic was compelled to do so because the respondents failed or refused to surrender their owners' duplicate copies of the subject TCTs. The respondents did not deny the fact that they were duly notified of the said LRC proceedings but they failed to participate therein. So, on September 12, 2011, RTC-Branch 138 rendered a decision in favor of the Republic and against the respondents. To reiterate, the decision declared, among others, the owner's duplicate copies of TCT Nos. 75239, 76129 and 77577 null and void, cancelled the same and directed the RD-Makati to issue new owner's duplicate copies of the subject TCTs in the name of the Republic. Thereafter, TCT Nos. 006-2012000526, 006-2012000527 and 006-2012000528 were issued.

Fully aware of the said adverse decision in the LRC case, the respondents made matters worse for them by allowing said decision to become final and executory through their inaction. Jurisprudence has always been one in saying that a judgment that attains finality becomes immutable and unalterable. Thus:

> The principle of immutability of a final judgment stands as one of the pillars supporting a strong, credible, and effective court. The principle prohibits any alteration, modification, or correction of final and executory judgments as what remains to be done is the purely ministerial enforcement or execution of the judgment.
>
> On this point, the Court has repeatedly declared:
>
> It is a hornbook rule that once a judgment has become final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment.
>
> The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice that at the risk

of occasional errors, the judgment of adjudicating bodies must become final and executory on some definite date fixed by law. [. . .], the Supreme Court reiterated that the doctrine of immutability of judgment is adhered to by necessity notwithstanding occasional errors that may result thereby, since litigations must somehow come to an end for otherwise, it would be even more intolerable than the wrong and injustice it is designed to protect.

Once a judgment is issued by the court in a case, and that judgment becomes final and executory, the principle of immutability of judgments automatically operates to bar any modification of the judgment. The modification of a judgment requires the exercise of the court's discretion. At that stage — when the judgment has become final and executory — the court is barred from exercising discretion on the case; the bar exists even if the modification is only meant to correct an erroneous conclusion of fact or law as these are discretionary acts that rest outside of the court's purely ministerial jurisdiction.[18]

On the CA's remark that Florentino's acquittal necessarily rendered the forfeiture of the properties ineffective and invalid, it clearly was an *obiter dictum*. Moreover, it had no substantial or procedural basis. The cases were separate and distinct from one another. Indeed, there is no law, rule or jurisprudence that mandates the automatic dismissal of a forfeiture case after an acquittal in the criminal case for malversation. Illustrative of this point is *Ferdinand R. Marcos, Jr. v. Republic of the Philippines*,[19] where it was ruled:

As early as *Almeda v. Judge Perez*, we have already delineated the difference between criminal and civil forfeiture and classified the proceedings under R.A. 1379 as belonging to the latter, viz.:

> "Forfeiture proceedings may be either civil or criminal in nature, and may be in *rem or in personam*. If they are under a statute such that if an indictment is presented the forfeiture can be included in the criminal case, they are criminal in nature, although they may be civil in form; and where it must be gathered from the statute that the action is meant to be criminal in its

[18] *Spouses Tabalno v. Dingal, Sr.*, G.R. No. 191526, October 5, 2015.

[19] 686 Phil. 980 (2012).

> nature it cannot be considered as civil. If, however, the proceeding does not involve the conviction of the wrongdoer for the offense charged the proceeding is of a civil nature; and under statutes which specifically so provide, where the act or omission for which the forfeiture is imposed is not also a misdemeanor, such forfeiture may be sued for and recovered in a civil action."

In the first place a proceeding under the Act (Rep. Act No. 1379) does not terminate in the imposition of a penalty but merely in the forfeiture of the properties illegally acquired in favor of the state. (Sec. 6) In the second place the procedure outlined in the law leading to forfeiture is that provided for in a civil action. Thus there is a petition (Sec. 3), then an answer (Sec. 4), and lastly, a hearing. The preliminary investigation which is required prior to the filing of the petition, in accordance with Sec. 2 of the Act, is provided expressly to be one similar to a preliminary investigation in a criminal case. If the investigation is only similar to that in a criminal case, but the other steps in the proceedings are those for civil proceedings, it stands to reason that the proceeding is not criminal. . . . . (citations omitted)

Forfeiture cases impose neither a personal criminal liability, nor the civil liability that arises from the commission of a crime (ex delicto). The liability is based solely on a statute that safeguards the right of the State to recover unlawfully acquired properties. Executive Order No. 14 (E.O. No. 14), Defining the Jurisdiction Over Cases Involving the Ill-gotten Wealth of Former President Ferdinand Marcos, authorizes the filing of forfeiture suits that will proceed independently of any criminal proceedings. Section 3 of E.O. 14 empowered the PCGG to file independent civil actions separate from the criminal actions.[20]

Besides, the CA itself recognized that it had no bearing. In fact, it wrote that it was not within the thrust of a petition for *certiorari*.

The remedy of the respondents is to file the necessary motion or action before the court having jurisdiction over the main case, if still permitted by the rules. It is to be remembered,

---

[20] *Id.* at 996-997.

however, that prescription and estoppel do not lie against the State.[21]

WHEREFORE, the petition is **GRANTED**. Accordingly, the February 20, 2015 Decision of the Court of Appeals in CA-G.R. SP No. 133803 is **REVERSED** and **SET ASIDE**.

Civil Case No. 10-658 pending before the Regional Trial Court, Branch 57, Makati City is hereby ordered **DISMISSED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 217508. April 18, 2016]

JOSEPH SCOTT PEMBERTON, *petitioner, vs.* **HON. LEILA M. DE LIMA, in her capacity as the Secretary of Justice, JUDGE ROLINE GINEZ-JABALDE, in her capacity as Presiding Judge of Branch 74 of the Regional Trial Court of Olongapo City, and MARILOU LAUDE *y* SERDONCILLO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE SECRETARY OF JUSTICE COMMITTED NO GRAVE ABUSE OF DISCRETION IN SUSTAINING THE FINDING OF PROBABLE CAUSE.— There is no basis

---

[21] *Republic v. Bacas*, G.R. No. 182913, November 20, 2013, 710 SCRA 411, 433.

to doubt that respondent De Lima judiciously scrutinized the evidence on record. Based on respondent De Lima's assessment, there was ample evidence submitted to establish probable cause that petitioner murdered the victim: *First,* the killing of Laude has been indubitably confirmed. *Second,* the various pieces of evidence so far presented in this case, x x x lead to no other conclusion than that respondent was the perpetrator of the crime. *Third,* the results of the physical examination conducted on respondent and Laude's cadaver, as well as the ocular inspection of the crime scene, demonstrate the attendant qualifying circumstances of treachery, abuse of superior strength, and cruelty. *Finally,* the killing is neither parricide nor infanticide as provided under the RPC, as amended. Hence, the charge of murder. The convergence of the foregoing circumstances all taken together leads to the fair and reasonable inference that respondent is probably guilty of killing Laude through treachery, abuse of superior strength, and cruelty. x x x Respondent De Lima's finding of probable cause against petitioner was not rendered with grave abuse of discretion. Rather, her determination was based on a careful evaluation of evidence presented.

2. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; PETITIONER WAS FULLY ACCORDED DUE PROCESS DURING PRELIMINARY INVESTIGATION.— [P]etitioner was fully accorded due process in the preliminary investigation proceedings. This Court has explained that the essence of due process is an opportunity to be heard: The essence of due process is that a party is afforded a reasonable opportunity to be heard in support of his case; what the law abhors and prohibits is the absolute absence of the opportunity to be heard. When the party seeking due process was in fact given several opportunities to be heard and to air his side, but it was by his own fault or choice that he squandered these chances, then his cry for due process must fail. Petitioner had multiple opportunities to controvert the evidence presented during the preliminary investigation. He was directed to file a counter-affidavit, which was an opportunity to refute the allegations against him. Petitioner was also given the opportunity to seek reconsideration of the initial finding of probable cause.

3. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; A PETITION FOR *CERTIORARI* QUESTIONING THE VALIDITY OF THE PRELIMINARY INVESTIGATION

IS RENDERED MOOT BY THE ISSUANCE OF A WARRANT OF ARREST.— Respondent De Lima's manifestation regarding the conviction of petitioner of the crime of homicide is well-taken. However, even without the conviction, this Petition has already been rendered moot and academic by virtue of the judicial finding of probable cause in the form of the Regional Trial Court's issuance of an arrest warrant against petitioner.

APPEARANCES OF COUNSEL

Rowena Garcia-Flores, Benjamin S. Tolosa, Jr., and *Filemon Ray L. Javier* for petitioner.

Office of the Solicitor General for public respondents.

Roque and Butuyan Law Offices for private respondent.

D E C I S I O N

LEONEN, *J.*:

This resolves a Petition for Certiorari[1] praying that the Resolutions dated January 27, 2015[2] and February 20, 2015[3] of respondent Secretary of Justice Leila M. De Lima (Secretary De Lima) in I.S. No. III-10-INV-14J-01102[4] be reversed and set aside.[5]

A complaint for murder was filed by the Philippine National Police-Olongapo City Police Office and private respondent

---

[1] *Rollo*, pp. 3-71. The Petition is filed under Rule 65 of the 1997 Rules of Civil Procedure.

[2] *Id.* at 75-87. The Resolution was penned by Undersecretary Jose Vicente B. Salazar for the Secretary of Justice.

[3] *Id.* at 88-96. The Resolution was penned by Secretary of Justice Leila M. De Lima.

[4] The case was entitled "*Philippine National Police-Olongapo City; Marilou Laude y Serdoncillo v. L/CPL Joseph Scott Pemberton*."

[5] *Rollo*, p. 67, Petition for *Certiorari*.

Marilou Laude y Serdoncillo (Laude) against petitioner Joseph Scott Pemberton (Pemberton).[6]

On October 17, 2014, Pemberton received a Subpoena[7] issued by the City Prosecutor of Olongapo City giving him 10 days from receipt within which to file a counter-affidavit.[8] Laude filed an Omnibus Motion[9] dated October 21, 2014 praying that the City Prosecutor of Olongapo City issue subpoenas addressed to: (a) "Pemberton, directing him to present himself for the lifting of his fingerprint and of buccal swabs during the clarificatory hearing set on [November 5,] 2014;"[10] and (b) the Philippine National Police Crime Laboratory, directing the Chief of Office to assign forensic personnel to gather fingerprints and buccal swabs from Pemberton and subject him to "forensic examination and analysis, including DNA testing."[11] Pemberton opposed this in his Opposition to the Omnibus Motion dated 21 October 2014[12] dated October 27, 2014.[13] He also filed a Manifestation and Omnibus Motion: (1) For Clarification; (2) To Declare Absence of Probable Cause for Murder or Any Other Crime Against [Petitioner]; and (3) By Way of Ad Cautela [sic] Prayer, in the Event that this Honorable Office does not Declare the Absence of Probable Cause, at the very least, To Reduce the Charge to Homicide Considering the Lack of Circumstances Qualifying the Offense to Murder[14] dated October 27, 2014.[15]

---

[6] *Id.* at 81, Department of Justice Resolution dated January 27, 2015.

[7] *Id.* at 164-165.

[8] *Id.* at 15, Petition for *Certiorari*.

[9] *Id.* at 171-179.

[10] *Id.* at 16, Petition for *Certiorari*.

[11] *Id.*

[12] *Id.* at 180-190.

[13] *Id.* at 16-17, Petition for *Certiorari*.

[14] *Id.* at 191-203.

[15] *Id.* at 17, Petition for *Certiorari*.

During the preliminary investigation on October 27, 2014, the City Prosecutor of Olongapo City stated that Pemberton's right to file a counter-affidavit was deemed waived.[16] In the Order dated October 29, 2014, the City Prosecutor directed the Philippine National Police Crime Laboratory to obtain latent fingerprint and buccal swabs from Pemberton and "to submit . . . the results of the forensic examination within a period of three (3) weeks . . . from the date of actual collection of the specimen[s.]"[17]

Pemberton filed a Manifestation with Omnibus Motion: 1) to Determine Probable Cause on the Basis of Evidence Submitted as of 27 October 2014; and 2) For Reconsideration of the Order dated 29 October 2014[18] dated November 4, 2014.[19]

However, the City Prosecutor of Olongapo City continued to evaluate the evidence and conducted ocular inspections in connection with the preliminary investigation.[20] Through the Resolution dated December 15, 2014, it "found probable cause against [Pemberton] for the crime of murder."[21] On the same day, an Information[22] for murder was filed against Pemberton before the Regional Trial Court of Olongapo City.[23] The case was docketed as Criminal Case No. 865-2014 and was raffled to Branch 74 of the Regional Trial Court.[24] The trial court issued a warrant of arrest.[25]

---

[16] *Id.* at 204, Minutes of the preliminary investigation hearing on October 27, 2014.

[17] *Id.* at 18, Petition for *Certiorari*.

[18] *Id.* at 212-223.

[19] *Id.* at 18, Petition for *Certiorari*.

[20] *Id.* at 18-19.

[21] *Id.* at 20.

[22] *Id.* at 271-273.

[23] *Id.* at 20, Petition for *Certiorari*.

[24] *Id.*

[25] *Id.*

On December 18, 2014, Pemberton filed his Petition for Review before the Department of Justice.[26] On the same day, he filed a Motion to Defer the Proceedings[27] before the Regional Trial Court.[28]

In the Resolution dated January 27, 2015, Secretary De Lima denied Pemberton's Petition for Review[29] and stated that based on the evidence on record, there was "no reason to alter, modify, or reverse the resolution of the City Prosecutor of Olongapo City."[30] Pemberton's Motion for Reconsideration was likewise denied for lack of merit in the Resolution dated February 20, 2015.[31]

Aggrieved, Pemberton filed this Petition for Certiorari with application for the ex-parte issuance of a temporary restraining order and/or writ of preliminary injunction.[32]

Pemberton argues that in sustaining a finding of probable cause, Secretary De Lima committed grave abuse of discretion amounting to excess or absence of jurisdiction based on the following grounds: (a) Secretary De Lima took into account additional evidence which the City Prosecutor allegedly had no authority to receive and which Pemberton had no opportunity to address and rebut, thereby denying him due process of law;[33] (b) Secretary De Lima found probable cause to charge Pemberton with the crime of murder when "the evidence on record does not support the existence of probable cause to indict [him] . . . with either homicide or murder[;]"[34] and (c) Secretary De

---

[26] *Id.* at 21.

[27] *Id.* at 406-409.

[28] *Id.* at 23, Petition for *Certiorari*.

[29] *Id.* at 87, Department of Justice Resolution dated January 27, 2015.

[30] *Id.* at 81.

[31] *Id.* at 96.

[32] *Id.* at 3, Petition for Review.

[33] *Id.* at 24.

[34] *Id.*

Lima found that "the killing was attended with the qualifying circumstances of treachery, abuse of superior strength[,] and cruelty despite prevailing jurisprudence dictating that the elements of these qualifying circumstances . . . be established by direct evidence."[35]

Secretary De Lima, through the Office of the Solicitor General, points out that this Petition is procedurally infirm. The Petition assails the appreciation of evidence and law by Secretary De Lima, which are "errors of judgment . . . [that] cannot be remedied by a writ of certiorari."[36] Further, by filing this Petition before this court and not the Court of Appeals, Pemberton violated the principle of hierarchy of courts.[37] Moreover, the case is moot and academic, considering that the Regional Trial Court has convicted Pemberton for the crime charged.[38]

Thus, for resolution are the following issues:

First, whether respondent Secretary Leila M. De Lima committed grave abuse of discretion in sustaining the finding of probable cause against petitioner Joseph Scott Pemberton, thereby denying petitioner due process of law;

Second, whether petitioner violated the principle of hierarchy of courts by filing his Petition before this Court instead of the Court of Appeals; and

Lastly, whether this case has been rendered moot and academic.

We deny the Petition for Certiorari for lack of merit and for being moot and academic.

I

In *Alafriz v. Nable*,[39] this Court defined grave abuse of discretion:

---

[35] *Id.*

[36] *Id.* at 566, Office of the Solicitor General's Comment.

[37] *Id.* at 566-567.

[38] *Id.* at 573-574.

[39] 72 Phil. 278 (1941) [Per *J.* Moran, *En Banc*].

Certiorari lies where a court has acted without or in excess of jurisdiction or with grave abuse of discretion. "Without jurisdiction" means that the court acted with absolute want of jurisdiction. There is "excess of jurisdiction" where the court has jurisdiction but has transcended the same or acted without any statutory authority. "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[40] (Citations omitted)

In *Ching v. Secretary of Justice*,[41] this Court expounded on the evidence required for a determination of probable cause:

Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon probable cause of reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction. A finding of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed by the suspect.[42]

This was reiterated in *Chan v. Secretary of Justice*:[43]

Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and

---

[40] *Id.* at 280.

[41] 517 Phil. 151 (2006) [Per *J.* Callejo, Sr., First Division].

[42] *Id.* at 171, citing *Nava v. Commission on Audit*, 419 Phil. 544, 554 (2001) [Per *J.* Buena, *En Banc*].

[43] *Chan v. Formaran III*, *et al.*, 572 Phil. 118 (2008) [Per *J.* Nachura, Third Division].

requires more than bare suspicion but less than evidence which would justify a conviction.[44]

There is no basis to doubt that respondent De Lima judiciously scrutinized the evidence on record. Based on respondent De Lima's assessment, there was ample evidence submitted to establish probable cause that petitioner murdered the victim:

First, the killing of Laude has been indubitably confirmed.

Second, the various pieces of evidence so far presented in this case, *i.e.*, the CCTV footage of Ambyanz showing Gelviro, Laude and respondent leaving the club together; the unequivocal testimonies of Gelviro and Gallamos positively identifying respondent as the person who was last seen with Laude on the night he died; the result of the general physical examination conducted on respondent showing abrasions and light scratches on different parts of his body; his latent print on one of the condoms found at the crime scene; and the unequivocal testimonies of respondent's fellow Marine servicemen who were with him on that fateful night, lead to no other conclusion than that respondent was the perpetrator of the crime.

Third, the results of the physical examination conducted on respondent and Laude's cadaver, as well as the ocular inspection of the crime scene, demonstrate the attendant qualifying circumstances of treachery, abuse of superior strength, and cruelty.

Finally, the killing is neither parricide nor infanticide as provided under the RPC, as amended. Hence, the charge of murder.

The convergence of the foregoing circumstances all taken together leads to the fair and reasonable inference that respondent is probably guilty of killing Laude through treachery, abuse of superior strength, and cruelty.

Maintaining his innocence, respondent points out the lack of any direct evidence linking him to the crime. We are not persuaded.

Absence of direct evidence does not preclude a finding of probable cause. It has been the consistent pronouncement of the Supreme Court that, in such cases, the prosecution may resort to circumstantial evidence. Crimes are usually committed in secret and under conditions

---

[44] *Id.* at 132.

where concealment is highly probable. If direct evidence is insisted upon under all circumstances, the guilt of vicious felons who committed heinous crimes in secret or in secluded places will be hard, if not impossible, to prove.

In view of the importance of the qualifying circumstances as the bases for respondent's indictment for the crime of murder, the same are heretofore discussed and explained.

There is treachery when these two elements occur: (1) the employment of means of execution that give the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted.

Treachery clearly attended the killing of Laude. The evidence reveals that respondent choked him from behind. The autopsy results as well as the examination conducted by the NCIS indicate that there were visible pressure marks and a circular purplish discoloration around his neck. In addition, the Medico Legal Report No. A14-163RCLO5 shows that the external portion of the right horn of his larynx is contused and that there is hematoma on the upper inner portions of the larynx below the glottis. It is apparent that the manner of attack employed by respondent rendered Laude unable to defend himself or to retaliate.

It has been repeatedly held that the essence of treachery is the sudden attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor. We note that the short span of time it took to kill Laude indicates the suddenness of the attack. According to the separate testimonies of certain witnesses, the lifeless body of Laude was discovered thirty (30) minutes after Gelviro left the room.

Moreover, the absence of provocation on the part of Laude to warrant such vicious attack need not be debated. He went with respondent on his own volition to engage in sexual acts in exchange for money. Thus, he most probably did not expect to be in danger and, consequently, he was unlikely unable to defend himself against the unwarranted attack.

In appreciating the element of abuse of superior strength, it is not only necessary to evaluate the physical conditions of the protagonists or opposing forces and the arms or objects employed

by both sides, but it is also necessary to analyse the incidents and episodes constituting the total development of the event. We aptly note that respondent is a member of [the] United States Marine Corps, which is known to have the strictest recruitment standards among the Uniformed Services of the United States Armed Forces. In view of the rigorous physical and mental training requirements for enlistment, all members of the Marine Corps possess superior strength and exceptional combat skills. On the other hand, Laude, albeit biologically a man, is a transgender who chose to adapt (*sic*) a woman's physical appearance and behavior. Thus, it is clear that there is manifest physical disparity between respondent and Laude and that the former took advantage of his superior strength to cause the death of Laude, as evidenced by the multiple abrasions and contusions found on the latter.

On the other hand, there is cruelty when the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him unnecessary physical pain in the consummation of the criminal act. The test is whether respondent deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission or inhumanly increased the victim's suffering or outraged or scoffed at his person or corpse. The autopsy results that Laude died of "asphyxia due to drowning and strangulation" shows that while he was still breathing, respondent drowned him by forcefully submerging his head in the water inside the toilet bowl. This grisly scenario, coupled with Laude's other major injuries, clearly show that he suffered excessively prior to his death. Respondent opted to kill him in a manner that increased his suffering and caused him unnecessary physical pain before his death. Drowning Laude in a toilet bowl evidently indicates respondent's intention to degrade him.[45] (Citations omitted)

Respondent De Lima's finding of probable cause against petitioner was not rendered with grave abuse of discretion. Rather, her determination was based on a careful evaluation of evidence presented.

---

[45] *Rollo*, pp. 82-85, Department of Justice Resolution dated January 27, 2015.

Moreover, petitioner was fully accorded due process in the preliminary investigation proceedings. This Court has explained that the essence of due process is an opportunity to be heard:

> The essence of due process is that a party is afforded a reasonable opportunity to be heard in support of his case; what the law abhors and prohibits is the absolute absence of the opportunity to be heard. When the party seeking due process was in fact given several opportunities to be heard and to air his side, but it was by his own fault or choice that he squandered these chances, then his cry for due process must fail.[46] (Citations omitted)

Petitioner had multiple opportunities to controvert the evidence presented during the preliminary investigation. He was directed to file a counter-affidavit, which was an opportunity to refute the allegations against him. Petitioner was also given the opportunity to seek reconsideration of the initial finding of probable cause.

II

In *The Diocese of Bacolod v. Commission on Elections*,[47] we explained the role of this Court in relation to the doctrine of hierarchy of courts:

> This brings us to the issue of whether petitioners violated the doctrine of hierarchy of courts in directly filing their petition before this court.
>
> Respondents contend that petitioners' failure to file the proper suit with a lower court of concurrent jurisdiction is sufficient ground for the dismissal of their petition. They add that observation of the hierarchy of courts is compulsory, citing *Heirs of Bertuldo Hinog v. Melicor*. While respondents claim that while there are exceptions to the general rule on hierarchy of courts, none of these are present in this case.

---

[46] *Suyan v. People*, G.R. No. 189644, July 2, 2014, 729 SCRA 1, 9-10 [Per *C.J.* Sereno, First Division].

[47] G.R. No. 205728, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf> [Per *J.* Leonen, *En Banc*].

On the other hand, petitioners cite *Fortich v. Corona* on this court's discretionary power to take cognizance of a petition filed directly to it if warranted by "compelling reasons, or [by] the nature and importance of the issues raised. . . ." Petitioners submit that there are "exceptional and compelling reasons to justify a direct resort [with] this Court."

In *Bañez, Jr. v. Concepcion*, we explained the necessity of the application of the hierarchy of courts:

> The Court must enjoin the observance of the policy on the hierarchy of courts, and now affirms that the policy is not to be ignored without serious consequences. The strictness of the policy is designed to shield the Court from having to deal with causes that are also well within the competence of the lower courts, and thus leave time to the Court to deal with the more fundamental and more essential tasks that the Constitution has assigned to it. The Court may act on petitions for the extraordinary writs of *certiorari*, prohibition and mandamus only when absolutely necessary or when serious and important reasons exist to justify an exception to the policy.

In *Bañez*, we also elaborated on the reasons why lower courts are allowed to issue writs of *certiorari*, prohibition, and mandamus, citing *Vergara v. Suelto*:

> The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefore. Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.

The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.

The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[48]

---

[48] *Id.* at 12-14, citing *Heirs of Bertuldo Hinog v. Melicor*, 495 Phil. 422, 432 (2005) [Per *J.* Austria-Martinez, Second Division]; *Fortich v. Corona*, 352 Phil. 461, 480 (1998) [Per *J.* Martinez, Second Division]; *Bañez, Jr. v. Concepcion*, 693 Phil. 399, 412 (2012) [Per *J.* Bersamin, First Division], in turn citing *Vergara v. Suelto*, 240 Phil. 719, 732-733 (1987) [Per *J.* Narvasa, First Division]; *Ynot v. Intermediate Appellate*

We proceeded to name exceptional cases, where direct resort to this Court may be allowed:

First, a direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time. A direct resort to this court includes availing of the remedies of certiorari and prohibition to assail the constitutionality of actions of both legislative and executive branches of the government.

In this case, the assailed issuances of respondents prejudice not only petitioners' right to freedom of expression in the present case, but also of others in future similar cases. The case before this court involves an active effort on the part of the electorate to reform the political landscape. This has become a rare occasion when private citizens actively engage the public in political discourse. To quote an eminent political theorist:

> [T]he theory of freedom of expression involves more than a technique for arriving at better social judgments through democratic procedures. It comprehends a vision of society, a faith and a whole way of life. The theory grew out of an age that was awakened and invigorated by the idea of new society in which man's mind was free, his fate determined by his own powers of reason, and his prospects of creating a rational and enlightened civilization virtually unlimited. It is put forward as a prescription for attaining a creative, progressive, exciting and intellectually robust community. It contemplates a mode of life that, through encouraging toleration, skepticism, reason and initiative, will allow man to realize his full potentialities. It spurns the alternative of a society that is tyrannical, conformist, irrational and stagnant.

In a democracy, the citizen's right to freely participate in the exchange of ideas in furtherance of political decision-making is recognized. It deserves the highest protection the courts may provide, as public participation in nation-building is a fundamental principle in our Constitution. As such, their right to engage in free expression of ideas must be given immediate protection by this court.

Court, 232 Phil. 615, 621 (1987) [Per *J.* Cruz, *En Banc*]. See *J.M. Tuason & Co., Inc. et al. v. Court of Appeals, et al.*, 113 Phil. 673, 681 (1961) [Per *J.* J.B.L. Reyes, *En Banc*]; *Espiritu v. Fugoso*, 81 Phil. 637, 639 (1948) [Per *J.* Perfecto, *En Banc*].

A second exception is when the issues involved are of transcendental importance. In these cases, the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence. The doctrine relating to constitutional issues of transcendental importance prevents courts from the paralysis of procedural niceties when clearly faced with the need for substantial protection.

In the case before this court, there is a clear threat to the paramount right of freedom of speech and freedom of expression which warrants invocation of relief from this court. The principles laid down in this decision will likely influence the discourse of freedom of speech in the future, especially in the context of elections. The right to suffrage not only includes the right to vote for one's chosen candidate, but also the right to vocalize that choice to the public in general, in the hope of influencing their votes. It may be said that in an election year, the right to vote necessarily includes the right to free speech and expression. The protection of these fundamental constitutional rights, therefore, allows for the immediate resort to this court.

Third, cases of first impression warrant a direct resort to this court. In cases of first impression, no jurisprudence yet exists that will guide the lower courts on this matter. In *Government of the United States v. Purganan*, this court took cognizance of the case as a matter of first impression that may guide the lower courts:

> In the interest of justice and to settle once and for all the important issue of bail in extradition proceedings, we deem it best to take cognizance of the present case. Such proceedings constitute a matter of first impression over which there is, as yet, no local jurisprudence to guide lower courts.

This court finds that this is indeed a case of first impression involving as it does the issue of whether the right of suffrage includes the right of freedom of expression. This is a question which this court has yet to provide substantial answers to, through jurisprudence. Thus, direct resort to this court is allowed.

Fourth, the constitutional issues raised are better decided by this court. In *Drilon v. Lim*, this court held that:

> . . . it will be prudent for such courts, if only out of a becoming modesty, to defer to the higher judgment of this Court in the consideration of its validity, which is better determined after

> a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion.

In this case, it is this court, with its constitutionally enshrined judicial power, that can rule with finality on whether COMELEC committed grave abuse of discretion or performed acts contrary to the Constitution through the assailed issuances.

Fifth, the time element presented in this case cannot be ignored. This case was filed during the 2013 election period. Although the elections have already been concluded, future cases may be filed that necessitate urgency in its resolution. Exigency in certain situations would qualify as an exception for direct resort to this court.

Sixth, the filed petition reviews the act of a constitutional organ. COMELEC is a constitutional body. In *Albano v. Arranz*, cited by petitioners, this court held that "[i]t is easy to realize the chaos that would ensue if the Court of First Instance of each and every province were [to] arrogate itself the power to disregard, suspend, or contradict any order of the Commission on Elections: that constitutional body would be speedily reduced to impotence."

In this case, if petitioners sought to annul the actions of COMELEC through pursuing remedies with the lower courts, any ruling on their part would not have been binding for other citizens whom respondents may place in the same situation. Besides, this court affords great respect to the Constitution and the powers and duties imposed upon COMELEC. Hence, a ruling by this court would be in the best interest of respondents, in order that their actions may be guided accordingly in the future.

Seventh, petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression.

In this case, the repercussions of the assailed issuances on this basic right constitute an exceptionally compelling reason to justify the direct resort to this court. The lack of other sufficient remedies in the course of law alone is sufficient ground to allow direct resort to this court.

Eighth, the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the

broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy." In the past, questions similar to these which this court ruled on immediately despite the doctrine of hierarchy of courts included citizens' right to bear arms, government contracts involving modernization of voters' registration lists, and the status and existence of a public office.

This case also poses a question of similar, if not greater import. Hence, a direct action to this court is permitted.

It is not, however, necessary that all of these exceptions must occur at the same time to justify a direct resort to this court. While generally, the hierarchy of courts is respected, the present case falls under the recognized exceptions and, as such, may be resolved by this court directly.[49]

A direct invocation of this Court's original jurisdiction to issue these writs should be allowed only when there are special

---

[49] *Id.* at 15-18, citing *Aquino III v. COMELEC*, 631 Phil. 595, 612-613 (2010) [Per *J*. Perez, *En Banc*]; *Magallona v. Ermita*, 671 Phil. 243, 256-257 (2011) [Per *J*. Carpio, *En Banc*]; Thomas I. Emerson, *TOWARD A GENERAL THEORY OF THE FIRST AMENDMENT*, Faculty Scholarship Series, Paper 2796 (1963), as cited in *Gonzales, et al. v. COMELEC*, 137 Phil. 471, 493-494 (1969) [Per *J*. Fernando, *En Banc*]; Initiatives for *Dialogue and Empowerment through Alternative Legal Services, Inc. (IDEALS, INC.) v. Power Sector Assets and Liabilities Management Corporation (PSALM)*, 696 Phil. 486, 519 (2012) [Per *J*. Villarama, Jr., *En Banc*]; *Agan, Jr. v. PIATCO*, 450 Phil. 744, 805 (2003) [Per *J*. Puno, *En Banc*]; *Soriano v. Laguardia*, 605 Phil. 43, 99 (2009) [Per *J*. Velasco, Jr., *En Banc*]; *Mallion v. Alcantara*, 536 Phil. 1049, 1053 (2006) [Per *J*. Azcuna, Second Division]; *Government of the United States v. Purganan*, 438 Phil. 417, 439 (2002) [Per *J*. Panganiban, *En Banc*]; *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140 [Per *J*. Cruz, *En Banc*]; *Albano v. Arranz*, 114 Phil. 318, 322 (1962) [Per *J*. J.B.L. Reyes, *En Banc*]; *Chong v. Dela Cruz*, 610 Phil. 725, 728 (2009) [Per *J*. Nachura, Third Division], in turn citing *Gelindon v. De la Rama*, G.R. No. 105072, December 9, 1993, 228 SCRA 322, 326-327 [Per *J*. Vitug, Third Division]; *Chavez v. Romulo*, G.R. No. 157036, June 9, 2004, 431 SCRA 534 [Per *J*. Sandoval-Gutierrez, *En Banc*]; *COMELEC v. Quijano-Padilla*, 438 Phil. 72 (2002) [Per *J*. Sandoval-Gutierrez, *En Banc*]; *Buklod ng Kawaning EIIB v. Zamora*, 413 Phil. 281 (2001) [Per *J*. Sandoval-Gutierrez, *En Banc*].

and important reasons clearly and specifically set out in the petition.[50]

In this case, petitioner alleges that the case against him has been scheduled for an expedited trial.[51] Thus, petitioner claims that it is necessary "to expeditiously arrive at a definitive ruling as to whether . . . respondent [De Lima] committed grave abuse of discretion . . . in issuing the [a]ssailed [r]esolutions."[52] In his view, a direct invocation of this Court's original jurisdiction is necessary. Petitioner argues that without this Court's intervention, a situation may result where "the trial has already concluded[,] while the issue on whether there exists probable cause to charge [petitioner] with the crime of murder . . . has not been settled with finality."[53]

This argument is completely bereft of merit. It is not clear why any action by the Court of Appeals, which has concurrent original jurisdiction in petitions for certiorari under Rule 65, cannot be considered as sufficient for review of petitioner's case.

Furthermore, the possibility of the conclusion of the trial of the case against petitioner is not a reason that is special and important enough to successfully invoke this Court's original jurisdiction. Once there has been a judicial finding of probable cause, an executive determination of probable cause is irrelevant. Consequently, even assuming that grave abuse of discretion somehow taints an executive finding of probable cause, such grave abuse of discretion has no effect in a trial. Whether respondent De Lima, indeed, committed grave abuse of discretion in relation to the executive determination of probable cause is irrelevant to the trial itself.

---

[50] *Tolentino v. People*, 532 Phil. 429, 433 (2006) [Per *J.* Sandoval-Gutierrez, Second Division].

[51] *Rollo*, pp. 11-12, Petition for *Certiorari*.

[52] *Id.* at 12.

[53] *Id.*

III

A petition for certiorari questioning the validity of the preliminary investigation in any other venue is rendered moot by the issuance of a warrant of arrest and the conduct of arraignment. In *De Lima v. Reyes*:[54]

The filing of the information and the issuance by the trial court of the respondent's warrant of arrest has already rendered this Petition moot.

It is settled that executive determination of probable cause is different from the judicial determination of probable cause. In *People v. Castillo and Mejia*:

> There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. *Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.*
>
> The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.

---

[54] G.R. No. 209330, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209330.pdf> [Per *J.* Leonen, Second Division].

The courts do not interfere with the prosecutor's conduct of a preliminary investigation. The prosecutor's determination of probable cause is solely within his or her discretion. Prosecutors are given a wide latitude of discretion to determine whether an information should be filed in court or whether the complaint should be dismissed.

A preliminary investigation is "merely inquisitorial," and is only conducted to aid the prosecutor in preparing the information. It serves a two-fold purpose: first, to protect the innocent against wrongful prosecutions; and second, to spare the state from using its funds and resources in useless prosecutions. . . .

. . . . . .

Once the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused's guilt or innocence rests within the sound discretion of the court. In *Crespo v. Mogul*:

> The filing of a complaint or information in Court initiates a criminal action. The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case. When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.
>
> The preliminary investigation conducted by the fiscal for the purpose of determining whether a *prima facie* case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration

of the Court, the only qualification is that the action of the Court must not impair the substantial rights of the accused or the right of the People to due process of law.

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.

However, one may ask, if the trial court refuses to grant the motion to dismiss filed by the fiscal upon the directive of the Secretary of Justice will there not be a vacuum in the prosecution? A state prosecutor to handle the case cannot possibly be designated by the Secretary of Justice who does not believe that there is a basis for prosecution nor can the fiscal be expected to handle the prosecution of the case thereby defying the superior order of the Secretary of Justice.

The answer is simple. The role of the fiscal or prosecutor as We all know is to see that justice is done and not necessarily to secure the conviction of the person accused before the Courts. Thus, in spite of his [or her] opinion to the contrary, it is the duty of the fiscal to proceed with the presentation of evidence of the prosecution to the Court to enable the Court to arrive at its own independent judgment as to whether the accused should be convicted or acquitted. The fiscal should not shirk from the responsibility of appearing for the People of the Philippines even under such circumstances much less should he [or she] abandon the prosecution of the case leaving it to the hands of a private prosecutor for then the entire proceedings will be null and void. The least that the fiscal should do is to continue to appear for the prosecution although he [or she] may turn over the presentation of the evidence to the private prosecutor but still under his direction and control.

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court, any disposition of the case as to 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 [or she] cannot

> *impose his [or her] 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, it would be ill-advised for the Secretary of Justice to proceed with resolving respondent's Petition for Review pending before her. It would be more prudent to refrain from entertaining the Petition considering that the trial court already issued a warrant of arrest against respondent. The issuance of the warrant signifies that the trial court has made an independent determination of the existence of probable cause. . . .

. . . . . .

Here, the trial court has already determined, independently of any finding or recommendation by the First Panel or the Second Panel, that probable cause exists for the issuance of the warrant of arrest against respondent. Probable cause has been judicially determined. Jurisdiction over the case, therefore, has transferred to the trial court. A petition for *certiorari* questioning the validity of the preliminary investigation in any other venue has been rendered moot by the issuance of the warrant of arrest and the conduct of arraignment.[55] (Emphasis in the original)

---

[55] *Id.* at 16-20, citing *People v. Castillo and Meji*a, 607 Phil. 754, 764-765 (2009) [Per *J.* Quisumbing, Second Division], in turn citing *Paderanga v. Drilon*, 273 Phil. 290, 296 (1991) [Per *J.* Regalado, *En Banc*], *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568, 620-621 (1996) [Per *J.* Davide, Jr., En Banc], *Ho v. People*, 345 Phil. 597, 611 (1997) [Per *J.* Panganiban, *En Banc*]; *Pilapil v. Sandiganbayan*, G.R. No. 101978, April 7, 1993, 221 SCRA 349, 357 [Per *J.* Nocon, *En Banc*]; and *Crespo v. Mogul*, 235 Phil. 465, 474-476 (1987) [Per *J.* Gancayco, *En Banc*], in turn citing *Herrera v. Barretto*, 25 Phil. 245 (1913) [Per *J.* Moreland, *En Banc*], *U.S. v. Limsiongco*, 41 Phil. 94 (1920) [Per *J.* Malcolm, *En Banc*], *De la Cruz v. Moir*, 36 Phil. 213 (1917) [Per *J.* Moreland, *En Banc*], RULES OF COURT, Rule 110, Sec. 1, RULES OF CRIM. PROC. (1985), Sec. 1, 21 C.J.S. 123;

Respondent De Lima's manifestation regarding the conviction of petitioner of the crime of homicide[56] is well-taken. However, even without the conviction, this Petition has already been rendered moot and academic by virtue of the judicial finding of probable cause in the form of the Regional Trial Court's issuance of an arrest warrant against petitioner.

WHEREFORE, the Petition for Certiorari is **DISMISSED**. The January 27, 2015 Resolution and the February 20, 2015 Resolution of respondent Secretary of Justice Leila M. De Lima in I.S. No. III-10-INV-14J-01102 are **AFFIRMED**.

SO ORDERED.

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

Carrington, *U.S. v. Barreto*, 32 Phil. 444 (1917) [*Per Curiam*, *En Banc*], *Asst. Provincial Fiscal of Bataan v. Dollete*, 103 Phil. 914 (1958) [Per *J.* Montemayor, *En Banc*], *People v. Zabala*, 58 O.G. 5028, *Galman v. Sandiganbayan*, 228 Phil. 42 (1986) [Per *C.J.* Teehankee, *En Banc*], *People v. Beriales*, 162 Phil. 478 (1976) [Per *J.* Concepcion, Jr., Second Division], *U.S. v. Despabiladeras,* 32 Phil. 442 (1915) [Per *J.* Carson, En Banc], *U.S. v. Gallegos,* 37 *P*hil. 289 (1917) [Per *J.* Johnson, *En Banc*], *People v. Hernandez*, 69 Phil. 672 (1964) [Per *J.* Labrador, En Banc], *U.S. v. Labial*, 27 Phil. 82 (1914) [Per *J.* Carson, *En Banc*], *U.S. v. Fernandez*, 17 Phil. 539 (1910) [Per *J.* Torres, *En Banc*], *People v. Velez*, 77 Phil. 1026 (1947) [Per *J.* Feria, *En Banc*].

[56] *Rollo*, pp. 573-574, Office of the Solicitor General's Comment.

SECOND DIVISION

[G.R. No. 217930. April 18, 2016]

SPOUSES JORGE NAVARRA and CARMELITA NAVARRA, *petitioners, vs.* **YOLANDA LIONGSON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; PRINCIPLE OF IMMUTABILITY OF FINAL JUDGMENT, EXPLAINED; EXCEPTIONS.— Well-settled is the rule that a judgment that has acquired finality "becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land." The rationale of this doctrine is to avoid delay in the administration of justice and in order to put an end to judicial controversies. x x x Nonetheless, this doctrine may be relaxed in order to serve substantial justice in case compelling circumstances that clearly warrant the exercise of the Court's equity jurisdiction are extant. Thus, like any other rule, it has exceptions, such as: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finaity of the decision rendering its execution unjust and inequitable. After all, the rules of procedure intend to promote the ends of justice, thus, their strict and rigid application must always be eschewed when it would subvert its primary objective.

2. ID.; ID.; ID.; OPTIONS OF THE COURT WHEN THERE ARE TWO OR MORE CONFLICTING FINAL JUDGMENTS INVOLVED IN RESOLVING A CASE.— Where a certain case comprises two or more conflicting judgments which are final and executory, the Court, in the case of *Collantes v. Court of Appeals (Collantes),* offered three (3) options in resolving the same. First, the court may opt to require the parties to assert their claims anew; second, to determine which judgment came first; and third, to determine

which of the judgments had been rendered by a court of last resort. In the case of *Heirs of Maura So v. Obliosco,* the Court stated that it was more equitable to apply the second and third options mentioned in *Collantes.* It, thus, sustained the *earlier* decisions over the current ones, as they already had vested rights over the winning party, and accorded more respect to the decisions of this Court than those made by the lower courts. The Court, in *Government Service Insurance System v. Group Management Corporation,* also resorted to the second and third options and affirmed the finality of the earlier decisions rendered by the Court.

3. ID.; ID.; ID.; ID.; THE COURT DEEMED IT MORE EQUITABLE TO DETERMINE WHICH JUDGMENT CAME FIRST AND SUSTAINED ITS FINALITY.— [T]he Court agrees with the CA that it would be more equitable to make use of the second option mentioned in *Collantes* and sustain the finality of the earlier decisions rendered by the RTC and the CA in CA-G.R. SP No. 104667. To recall, the RTC decision in the complaint for damages was promulgated as early as May 2, 2001 and became final and executory on August 30, 2004. The only reason why the said decision was not immediately executed was the petitioners' insistence on the improper substitution of plaintiff. This issue, however, was laid to rest on October 8, 2009 by the CA when it rendered its decision in CA-G.R. SP No. 104667. The CA declared that the decision and the proceedings in the said case were not rendered nugatory notwithstanding the belated compliance with the rules on substitution as none of the parties was denied due process. The appellate court further stated that the rule on the substitution by heirs was not a matter of jurisdiction, but a requirement of due process. It follows therefore, that when due process is not violated as when the right of the representative or heir is recognized and protected, noncompliance or belated formal compliance with the rules cannot affect the validity of a promulgated decision. Moreover, the Court notes that petitioners did not question the propriety of the May 2, 2001 decision in their petition in CA-G.R. SP No. 104667 but even admitted the finality and executory nature of the said decision and their only concern was how the said decision would be executed without a valid substitution of the plaintiff.

4. ID.; ID.; PRINCIPLE OF *RES JUDICATA*, DEFINED AND EXPLAINED; REQUISITES THAT MUST CONCUR TO SERVE AS AN ABSOLUTE BAR TO A SUBSEQUENT ACTION.— [T]he October 28, 2009 decision of the CA in CA-G.R. SP No. 104667 constituted *res judicata* with respect to the latter case in CA-G.R. SP No. 105568. *"Res judicata* is defined as 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Based on this principle, a final judgment or order on the merits, rendered by a competent court on any matter within its jurisdiction, "is conclusive in a subsequent case between the same parties and their successor-in-interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity." Simply put, "a final judgment on the merits rendered by a court of competent jurisdiction, is conclusive as to the rights of the parties and their privies and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action." For *res judicata* to serve as an absolute bar to a subsequent action, the following requisites must concur: (a) the former judgment is final; (b) it was rendered by a court having jurisdiction over the subject matter and the parties; (c) it is a judgment on the merits; and, (d) there is, between the first and second actions, identity of parties, of subject matter and of cause of action.

5. ID.; ID.; PRINCIPLE OF *RES JUDICATA* BY CONCLUSIVENESS OF JUDGMENT, APPLIED; WHEN THE DECISION CONCERNING PLAINTIFF'S SUBSTITUTION BECAME CONCLUSIVE ON THE PARTIES, IT CANNOT BE ALTERED BY FILING ANOTHER PETITION IN THE GUISE OF QUESTIONING THE EXECUTION BUT ACTUALLY INVOKING THE ALLEGED NULLITY OF THE SAID SUBSTITUTION OF PLAINTIFF.— In the present case, there is no quibble that all the elements adverted to above obtain in this case. There is no dispute that the May 2, 2001 RTC decision had become final and executory and the entry of judgment was issued on August 30, 2004. There is no question either that the RTC had jurisdiction over the subject matter and the parties, and that the decision was a judgment on the merits. The controversy arose when petitioners questioned the propriety of the substitution of Jose before the CA in CA-G.R. SP

No. 104667 and subsequently the July 25, 2008 RTC order and its August 1, 2008 writ of execution in CA-G.R. SP No. 105568, which was raffled to a different division of the CA. Although petitioners would like to impress to this Court that the issues raised in two cases before the CA were anchored on different causes of action, the Court rules otherwise. Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit can never again be raised in any future case between the same parties even involving a different cause of action. The CA decision in CA-G.R. SP No. 104667 concerning the validity of plaintiff's substitution became conclusive on the parties. Thus, petitioners cannot again seek refuge by filing their second petition (CA-G.R. SP No. 105568) in the guise of questioning the order of execution but actually invoking the alleged nullity of the substitution of plaintiff. Petitioners cannot evade or avoid the application of *res judicata* by simply varying the form of his action or adopting a different method of presenting their case.

APPEARANCES OF COUNSEL

Jephte S. Daliva for petitioners.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the August 28, 2014 Amended Decision[1] and the April 16, 2015 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 105568, which reversed its December 8, 2011 Decision[3] and recalled and set aside the entry of judgment issued on January 6, 2012.

---

[1] *Rollo*, pp. 39-48. Penned by Associate Justice Samuel H. Gaerlan with Associate Justices Ramon R. Garcia and Danton Q. Bueser, concurring.

[2] *Id.* at 50-52.

[3] Records (Vol. I), pp. 1072-1084. Penned by then Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Normandie B. Pizarro and Ramon R. Garcia, concurring.

The Antecedents:

On September 23, 1993, Jose Liongson (*Jose*), the deceased husband of respondent Yolanda Liongson (*Yolanda*), filed a complaint for damages based on malicious prosecution against spouses Jorge and Carmelita Navarra (*Spouses Navarra*) and spouses Ruben and Cresencia Bernardo (*Spouses Bernardo*) [collectively referred as defendant spouses], before the Regional Trial Court, Branch 255, Las Piñas City (*RTC*).

After the presentation and formal offer of their respective evidence, the parties were required to file their respective memoranda.

On January 4, 2001, Atty. Salvador B. Aguas (*Atty. Aguas*), counsel of Jose, filed the Motion for Time to Submit Motion for Substitution of Plaintiff with Motion for Suspension/ Commencement of Counting of Period in Filing Pleadings[4] informing the RTC of the death of Jose and praying for time to submit a motion for substitution pending receipt of the death certificate.

On May 2, 2001, a Decision[5] was rendered in favor of Jose ordering defendant spouses to pay ₱500,000.00 for moral damages; ₱200,000.00 for exemplary damages; ₱20,000.00 for reimbursement of expenses; ₱35,000.00 for substantial number of appearance, ₱50,000.00 for attorney's fees; and the costs of suit.

On July 13, 2001, defendant spouses filed their Motion for Declaration of Nullity of the Decision and/or Notice of Appeal[6] based on the absence of a valid substitution of Jose.

Consequently, Atty. Aguas filed the Motion for Substitution,[7] dated July 30, 2001, praying that Jose be substituted by his surviving wife, Yolanda.

---

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

[5] *Id.* at 672-674. Penned by then Presiding Judge Florentino M. Alumbres.

[6] *Id.* at 677-679.

[7] *Id.* at 684-684-A.

In its Order,[8] dated May 13, 2002, the RTC denied the motion for declaration of nullity of the May 2, 2001 decision. Defendant spouses then elevated the matter before the CA, docketed as CA-G.R. CV No. 74988. In a Resolution,[9] dated July 30, 2004, the CA dismissed the petition for want of appellant's brief. On August 30, 2004, an entry of judgment[10] was issued.

Thereafter, Atty. Aguas filed a motion for execution,[11] but it was opposed by defendant spouses on the ground that no valid substitution had been made, and that the continued appearance of Atty. Aguas was *ultra vires*.[12]

In the Order,[13] dated October 28, 2005, the motion for execution was deemed withdrawn upon motion of Atty. Aguas.

On November 20, 2005, Atty. Aguas filed a pleading denominated as *Motions to Resolve Motion for Substitution of Parties, dated July 31, 2001 or Considered it Deemed Admitted, and Thereafter Issue Writ of Execution of the Judgment, dated May 2, 2001, in the name of Yolanda Liongson as Substituting Party for Plaintiff Jose Liongson*.[14] In the said motion, it was prayed that Yolanda be allowed to substitute her deceased husband and that a writ of execution be issued in her favor. Attached to the motion was a copy of the death certificate[15] of Jose indicating that the latter died on November 28, 2000.

In the Order,[16] dated March 17, 2006, the RTC denied the motion to resolve the motion for substitution of parties and the motion for issuance of a writ of execution for lack of merit.

---

[8] *Id.* at 794.

[9] *Id.* at 800.

[10] *Id.* at 801.

[11] *Id.* at 802-803.

[12] *Id.* at 807-812.

[13] *Id.* at 859.

[14] *Id.* at 864-868.

[15] *Id.* at 869.

[16] *Id.* at 903-907.

In the meantime, Yolanda filed a petition for issuance of letters of administration of the estate of Jose, her deceased husband, before the Regional Trial Court, Branch 274, Parañaque City. In the December 29, 2006 Order, the Letter of Administration was issued appointing Yolanda as administratrix of the estate of Jose.

Thus, acting as the administratrix of the estate of Jose, Yolanda filed a motion for execution of the May 2, 2001 decision.[17] It was, however, denied in an Order,[18] dated September 14, 2007, on the ground that no proper substitution had been made yet.

Unperturbed, Yolanda, thru her new counsel, Atty. Bonifacio G. Caboboy (*Atty. Caboboy*), filed her Motion to Substitute the Plaintiff Jose Liongson[19] which was finally granted by the RTC in the Order,[20] dated January 25, 2008.

Defendant spouses then filed a motion for reconsideration of the January 25, 2008 Order.[21] On May 22, 2008, the RTC denied the said motion.[22]

Defendant spouses then filed a petition for *certiorari* before the CA, docketed as *CA-G.R. SP No. 104667*, assailing the January 25, 2008 and May 22, 2008 orders of the RTC. They insisted that the issue of substitution had been laid to rest by the RTC on three (*3*) occasions and Yolanda did not question the propriety of its denial. Hence, she was forever barred from effecting the substitution.

Meanwhile, Yolanda filed her Motion for Execution of Judgment[23] which was granted by the RTC in its Order,[24] dated

---

[17] *Id.* at 909-912.

[18] *Id.* at 932-934.

[19] *Id.* at 945.

[20] *Id.* at 952-953.

[21] *Id.* at 965-974.

[22] *Id.* at 1009-1013.

[23] *Id.* at 959-960.

[24] *Id.* at 1016-1018.

July 25, 2008. On August 1, 2008, a writ of execution[25] was issued and the Notice to Pay,[26] dated August 5, 2008, was served upon defendant spouses. The latter then filed a motion to recall or hold in abeyance the implementation of the writ of execution and the sheriff's notice to pay.

Without waiting for the RTC to rule on the said motion, defendant spouses filed another petition for *certiorari* under Rule 65 of the Rules of Court before the CA, docketed as *CA-G.R. SP No. 105568*, this time questioning the July 25, 2008 Order and the August 1, 2008 Writ of Execution issued by the RTC. Defendant spouses insisted that the RTC gravely abused its discretion when it allowed the substitution and then issued the writ of execution.

In its January 16, 2009 Order,[27] the RTC denied the motion to recall or hold in abeyance the implementation of the August 1, 2008 writ of execution and the August 5, 2008 sheriff's notice to pay for lack of merit. Thereafter, the notice of garnishment and the notice of levy were issued. Spouses Navarra's property, covered by TCT No. 103473, was levied and subsequently sold in a public auction pursuant to the writ of execution.[28]

Meanwhile, on October 28, 2009, the CA rendered a Decision,[29] in **CA-G.R. SP No. 104667**, dismissing the petition for *certiorari* and declaring the substitution of plaintiff in order. The CA held that the rule on substitution was not a matter of jurisdiction but a requirement of due process; and that considering that both parties had already completed the presentation of their evidence in chief before Jose died, neither of them was denied due process of law. Thus, the CA stated that the belated substitution of

---

[25] *Id.* at 1029-1030.

[26] *Id.* at 1028.

[27] *Id.* at 1064-1066.

[28] Certificate of Sale, Records (Vol. II), p. 1148.

[29] Records (Vol. I), pp. 1072-1084. Penned by then Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Normandie B. Pizarro and Ramon R. Garcia, concurring.

Jose as plaintiff to the case did not affect the validity of the final and executory judgment.

On December 8, 2011, a decision[30] was rendered in *CA-G.R. SP No. 105568*, in favor of defendant spouses. The CA *reversed* and *set aside* the questioned RTC order granting the motion for execution and the issuance of the writ of execution. The CA held that the complaint for damages, arising from malicious prosecution filed by Jose against defendant spouses was a purely personal action that did not survive upon his death; and because the action was deemed abated upon his death, the RTC was found to have gravely abused its discretion when it allowed the substitution of Jose and issued the writ of execution. The CA further stated that upon the death of Jose, the RTC lost jurisdiction over the case and the decision rendered therein was a void judgment; hence, all acts performed pursuant thereto and all claims emanating therefrom had no legal effect.

On January 6, 2012, the December 8, 2011 decision of the CA in CA-G.R. SP No. 105568 became final and executory and the entry of judgment[31] was issued.

On December 16, 2013, almost two years later, Yolanda filed her Urgent Omnibus Motion[32] praying for the recall/lifting of the entry of judgment and for the admission of the attached motion for reconsideration. Yolanda contended that she was totally unaware of this petition for *certiorari* filed before the CA and docketed as CA-G.R. SP No. 105568; that although notices were sent to her counsel, Atty. Caboboy, the latter did not inform or furnish her with copies of the notices and the petition; that Atty. Caboboy did not file any comment on the petition or a motion for reconsideration; and that Atty. Caboboy's gross negligence and mistake should not bind her because the

---

[30] *Rollo*, pp. 106-116. Penned by then Associate Justice Amelita G. Tolentino with Associate Justices Ramon R. Garcia and Samuel H. Gaerlan, concurring.

[31] Records (Vol. II), p. 1166.

[32] *Id.* at 1206-1223.

said negligence and mistake would amount to deprivation of her property without due process of law.

On August 28, 2014, the CA promulgated an amended decision in CA-G.R. SP No. 105568. While the CA took note that no comment was filed by defendant spouses despite notice, it granted the omnibus motion and the motion for reconsideration filed by Yolanda. The appellate court recalled and set aside the entry of judgment and reversed its December 8, 2011 decision in the interest of substantial justice. The CA discovered that the appellate court rendered two conflicting decisions in CA-G.R. SP No. 104667 and CA-G.R. SP No. 105568. In CA-G.R. SP No. 104667, earlier filed by defendant spouses, the appellate court arrived at a decision allowing the substitution of Jose. The same issue of substitution was debunked in the December 8, 2011 CA decision in CA-G.R. SP No. 105568.

In its amended decision, the CA did not apply the general rule that the negligence of counsel would bind the client so as not to deprive Yolanda of her right to due process of law. On the merits, the CA ruled that the action filed by Jose before the RTC was not extinguished upon his death as it was one for recovery of damages for injury to his person caused by defendant spouses' tortuous conduct of maliciously filing an unfounded suit.

Spouses Navarra (*petitioners*) filed their separate motions for reconsideration, but both were denied by the CA in a Resolution,[33] dated April 16, 2015.

Hence, this petition anchored on the following —

GROUNDS FOR THE PETITION

THE COURT OF APPEALS DECIDED THE INSTANT CASE IN A WAY NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.

---

[33] *Rollo*, pp. 50-52. Penned by Associate Justice Samuel H. Gaerlan with Associate Justices Ramon R. Garcia and Danton Q. Bueser, concurring.

A. THE COURT OF APPEALS BREACHED THE WELL-SETTLED RULE THAT A FINAL AND EXECUTORY JUDGMENT MAY NO LONGER BE MODIFIED IN ANY RESPECT, EVEN IF THE MODIFICATION IS MEANT TO CORRECT WHAT IS PERCEIVED TO BE AN ERRONEOUS CONCLUSION OF LAW OR FACT.

B. THE COURT OF APPEALS ERRED WHEN IT AMENDED A FINAL AND EXECUTORY DECISION UPON PRIVATE RESPONDENT'S MERE MOTION FOR RECONSIDERATION.

C. THE COURT OF APPEALS LEGALLY ERRED IN EXCEPTING THE INSTANT CASE FROM THE RULE THAT THE MISTAKE OR NEGLIGENCE OF COUNSEL BINDS THE CLIENT.

D. AT ALL EVENTS, THE COURT OF APPEALS LEGALLY ERRED IN DISMISSING THE PETITION IN CA-G.R. SP NO. 105568.[34]

Petitioners argue that it is beyond the power of the CA to amend its original decision in this case, dated December 8, 2011, for it violates the principle of finality of judgment and its immutability. They point out that the said CA decision had acquired finality, hence, it could no longer be modified in any respect even if the modification was meant to correct erroneous conclusions of fact or law, or it would be made by the court that rendered it or by the highest court of the land.

Petitioners also aver that there was no conflict in the decisions rendered by the CA in CA-G.R. SP No. 104667 and in the present case as the two cases involved different issues. The former case ruled on the validity of the January 25, 2008 Order of the RTC which granted the substitution of Jose by Yolanda, while the present case questioned the July 25, 2008 Order of the RTC which *granted* the motion for *execution* of judgment filed by Yolanda.

---

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

Finally, petitioners assert that the CA erred when it granted the motion for reconsideration filed by Yolanda after almost two years from the time the decision was rendered. They point out that Yolanda did not even indicate in her motion for reconsideration the exact date of her receipt of the copy of the December 8, 2011 decision and that it could not be presumed that she learned of it only two (*2*) years after its issuance. They contend that the respondent was negligent because she waited for two long years before she filed a motion for reconsideration. They added that she should have made efforts to ascertain the status of the case considering that she was appointed administratrix of the estate of Jose.

Respondent Yolanda counters that the CA was correct when it reversed and set aside its December 8, 2011 decision and dismissed the petition for *certiorari* as the issues therein had already been laid to rest in the October 28, 2009 CA decision in CA-G.R. SP No. 104667. She argues that because the petitions in both CA-G.R. SP No. 104667 and CA-G.R. SP No. 105568, involved the same issues and parties under similar factual and legal settings, the decision rendered in the first case became final and could no longer be changed, revised or reversed.

All the arguments by both parties boil down to the lone issue of whether or not the CA erred and violated the principle of immunity of judgment when it amended its December 8, 2011 decision.

The Court's Ruling

The petition is not meritorious.

Well-settled is the rule that a judgment that has acquired finality "becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land."[35] The rationale of this doctrine is to avoid delay

---

[35] *FGU Insurance Corporation (now BPI/MS Insurance Corp.) v. RTC of Makati, Branch 66*, 659 Phil. 117, 122-123 (2011).

in the administration of justice and in order to put an end to judicial controversies. In the case of *Manotok Realty, Inc. v. CLT Realty Development Corp.*,[36] the Court explained the principle of immunity of judgment in this wise:

> The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[37]

Nonetheless, this doctrine may be relaxed in order to serve substantial justice in case compelling circumstances that clearly warrant the exercise of the Court's equity jurisdiction are extant.[38] Thus, like any other rule, it has exceptions, such as: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[39] After all, the rules of procedure intend to promote the ends of justice, thus, their strict and rigid application must always be eschewed when it would subvert its primary objective.[40]

The issue posed before the Court is not of first impression. It involves three conflicting final and executory judgments rendered by the RTC and the CA. The first is the May 2, 2001 RTC decision which granted the complaint for damages. The second is the October 28, 2009 CA decision in CA-G.R. SP No. 104667 which granted the motion for substitution and the

---

[36] 512 Phil. 679, 708 (2005).

[37] *Id.* at 708.

[38] *FGU Insurance Corporation (now BPI/MS Insurance Corp.) v. RTC of Makati, Branch 66*, *supra* note 35, at 123.

[39] *Id.*

[40] *Ginete v. Court of Appeals*, 357 Phil. 36, 51 (1998).

motion for execution. The third, which is obviously in conflict with the first and second judgment, is the December 8, 2011 CA decision in CA-G.R. SP No. 105568 which not only *reversed* and *set aside* the motion for execution but also declared the May 2, 2001 RTC decision a void judgment.

Where a certain case comprises two or more conflicting judgments which are final and executory, the Court, in the case of *Collantes v. Court of Appeals*[41] (*Collantes*), offered three (3) options in resolving the same. First, the court may opt to require the parties to assert their claims anew; second, to determine which judgment came first; and third, to determine which of the judgments had been rendered by a court of last resort.

In the case of *Heirs of Maura So v. Obliosco*,[42] the Court stated that it was more equitable to apply the second and third options mentioned in *Collantes*. It, thus, sustained the *earlier* decisions over the current ones, as they already had vested rights over the winning party, and accorded more respect to the decisions of this Court than those made by the lower courts.

The Court, in *Government Service Insurance System v. Group Management Corporation*,[43] also resorted to the second and third options and affirmed the finality of the earlier decisions rendered by the Court. The Court held that:

> In *Collantes*, this Court applied the first option and resolved the conflicting issues anew. However, resorting to the first solution in the case at bar would entail disregarding not only the final and executory decisions of the Lapu-Lapu RTC and the Manila RTC, but also the final and executory decisions of the Court of Appeals and this Court. Moreover, it would negate two decades worth of litigating. Thus, we find it *more equitable* and *practicable* to apply the second and third options consequently maintaining the finality of one of the conflicting judgments. The primary criterion under

[41] 546 Phil. 391, 407 (2007).

[42] 566 Phil. 397 (2008).

[43] 666 Phil. 277 (2011).

the second option is the time when the decision was rendered and became final and executory, such that earlier decisions should prevail over the current ones since final and executory decisions vest rights in the winning party. In the third solution, the main criterion is the determination of which court or tribunal rendered the decision. Decisions of this Court should be accorded more respect than those made by the lower courts.[44]

Guided by these jurisprudence, the Court agrees with the CA that it would be more equitable to make use of the second option mentioned in *Collantes* and sustain the finality of the earlier decisions rendered by the RTC and the CA in CA-G.R. SP No. 104667. To recall, the RTC decision in the complaint for damages was promulgated as early as May 2, 2001 and became final and executory on August 30, 2004.[45] The only reason why the said decision was not immediately executed was the petitioners' insistence on the improper substitution of plaintiff. This issue, however, was laid to rest on October 8, 2009 by the CA when it rendered its decision in CA-G.R. SP No. 104667. The CA declared that the decision and the proceedings in the said case were not rendered nugatory notwithstanding the belated compliance with the rules on substitution as none of the parties was denied due process. The appellate court further stated that the rule on the substitution by heirs was not a matter of jurisdiction, but a requirement of due process. It follows therefore, that when due process is not violated as when the right of the representative or heir is recognized and protected, noncompliance or belated formal compliance with the rules cannot affect the validity of a promulgated decision.[46] Moreover, the Court notes that petitioners did not question the propriety of the May 2, 2001 decision in their petition in CA-G.R. SP No. 104667 but even admitted the finality and executory nature of the said decision and their only concern was how the said decision would be executed without a valid substitution of the plaintiff.

---

[44] *Id.* at 322-323.

[45] Entry of Judgment, Records (Vol. I), p. 801.

[46] *Spouses De la Cruz v. Joaquin*, 502 Phil. 803, 811 (2005).

Clearly, the October 28, 2009 decision of the CA in CA-G.R. SP No. 104667 constituted *res judicata* with respect to the latter case in CA-G.R. SP No. 105568. "*Res judicata* is defined as 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.'"[47] Based on this principle, a final judgment or order on the merits, rendered by a competent court on any matter within its jurisdiction, "is conclusive in a subsequent case between the same parties and their successor-in-interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity."[48] Simply put, "a final judgment on the merits rendered by a court of competent jurisdiction, is conclusive as to the rights of the parties and their privies and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action."[49]

For *res judicata* to serve as an absolute bar to a subsequent action, the following requisites must concur: (a) the former judgment is final; (b) it was rendered by a court having jurisdiction over the subject matter and the parties; (c) it is a judgment on the merits; and, (d) there is, between the first and second actions, identity of parties, of subject matter and of cause of action.[50]

In the present case, there is no quibble that all the elements adverted to above obtain in this case. There is no dispute that the May 2, 2001 RTC decision had become final and executory and the entry of judgment was issued on August 30, 2004. There is no question either that the RTC had jurisdiction over the subject matter and the parties, and that the decision was a judgment on the merits.

---

[47] *Mallion v. Alcantara*, 536 Phil. 1049, 1054 (2006).

[48] *PCGG v. Sandiganbayan*, 590 Phil. 383, 392-393 (2008).

[49] *Republic of the Philippines (Civil Aeronautics Administration) v. Yu*, 519 Phil. 391, 398 (2006).

[50] *Enriquez v. Boyles*, G.R. No. 51025. September 22, 1993, 226 SCRA 666, 674.

The controversy arose when petitioners questioned the propriety of the substitution of Jose before the CA in CA-G.R. SP No. 104667 and subsequently the July 25, 2008 RTC order and its August 1, 2008 writ of execution in CA-G.R. SP No. 105568, which was raffled to a different division of the CA. Although petitioners would like to impress to this Court that the issues raised in two cases before the CA were anchored on different causes of action, the Court rules otherwise. Under the doctrine of conclusiveness of judgment, facts and issues actually and directly resolved in a former suit can never again be raised in any future case between the same parties even involving a different cause of action.[51] The CA decision in CA-G.R. SP No. 104667 concerning the validity of plaintiff's substitution became conclusive on the parties. Thus, petitioners cannot again seek refuge by filing their second petition (CA-G.R. SP No. 105568) in the guise of questioning the order of execution but actually invoking the alleged nullity of the substitution of plaintiff. Petitioners cannot evade or avoid the application of *res judicata* by simply varying the form of his action or adopting a different method of presenting their case.[52]

Indeed, it is time to put an end to this litigation as the enforcement of the final judgment has long been delayed. In the interest of justice, petitioners are ordered to respect and comply with the final and executory judgment of the Court. As stated in the case of *Selga v. Sony Entierro Brar*:[53]

> It must be remembered that it is to the interest of the public that there should be an end to litigation by the parties over a subject fully and fairly adjudicated. The doctrine of *res judicata* is a rule that pervades every well-regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely: (1) public policy and necessity, which dictates that it would be in the interest of the State that there should be an end to

---

[51] *Republic of the Philippines (Civil Aeronautics Administration) v. Yu*, *supra* note 50, at 397.

[52] *Mallion v. Alcantara*, 536 Phil. 1049, 1057 (2006).

[53] 673 Phil. 581 (2011).

litigation *republicae ut sit litium*; and (2) the hardship on the individual that he should be vexed twice for the same cause *nemo debet bis vexari pro una et eadem causa*. A contrary doctrine would subject public peace and quiet to the will and neglect of individuals and prefer the gratification of the litigious disposition on the part of suitors to the preservation of public tranquility and happiness.[54]

WHEREFORE, the petition is **DENIED**. The August 28, 2014 Amended Decision and the April 16, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 105568 are **AFFIRMED**.

SO ORDERED.

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

---

[54] *Id.* at 591-592.

INDEX

INDEX

ALIBI

Defense of — For alibi to prosper, it must be proved that the accused was at another place when the crime was committed and that it was physically impossible for him to have been at the scene of the crime; to determine physical impossibility, we take into consideration the distance between the place where the accused was when the crime transpired and the place where the crime was committed, as well as the facility of access between these two places. (People *vs.* Wile, G.R. No. 208066, April 12, 2016) p. 418

ANTI-CARNAPPING ACT (R.A. NO. 6539 AS AMENDED BY REPUBLIC ACT NO. 7659)

Violation of — In Sec. 14 of the Anti-Carnapping Act, the prosecution has to prove the essential requisites of carnapping and of the homicide or murder of the victim, and more importantly, it must show that the original criminal design of the culprit was carnapping and that the killing was perpetrated in the course of the commission of the carnapping or on the occasion thereof; consequently, where the elements of carnapping are not proved, the provisions of the Anti-Carnapping Act would cease to be applicable and the homicide or murder, if proven, would be punishable under the Revised Penal Code. (People *vs.* Urzais y Lanurias, G.R. No. 207662, April 13, 2016) p. 561

APPEALS

Appeals from quasi-judicial agencies — A "quasi-judicial function" is a term which applies to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature. (Remo *vs.* Administrator Edita S. Bueno, G.R. No. 175736, April 12, 2016) p. 344

(PARC). (Samahan ng Magsasaka at Mangingisda ng Sitio Naswe, Inc. [SAMMANA] *vs*. Tan, G.R. No. 196028, April 18, 2016) p. 727

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody — In order to meet the quantum of proof required in drug-related prosecutions, the chain of custody requirement under Sec. 21 of R.A. No. 9165 ensures that doubts concerning the identity of the seized drugs are removed; to show an unbroken link in the chain of custody, the prosecution's evidence must include testimony about every link in the chain, from the moment the item was seized to the time it is offered in court as evidence, such that every person who handled the evidence would acknowledge 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. (Derilo *y* Gepoleo *vs*. People, G.R. No. 190466, April 18, 2016) p. 679

— The following links must be established to ensure the preservation of the identity and integrity of the confiscated drug: 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 by the apprehending officer 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 marked illegal drug seized from the forensic chemist to the court. (*Id*.)

Illegal sale of shabu — To secure a conviction for illegal sale of *shabu,* the following elements must be present: (a) the identities of the buyer and the seller, the object of the sale and the consideration; and (b) the delivery of the thing sold and the payment for the thing; it is material to establish that the transaction or sale actually took place, and to

be required to sign the inventory and be given copies thereof. (*Id*.)

Violation of — For prosecutions involving dangerous drugs, the dangerous drug itself constitutes the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt; it is of paramount importance that the identity of the dangerous drug be so established, along with the elements of the offense charged. (Derilo *y* Gepoleo *vs*. People, G.R. No. 190466, April 18, 2016) p. 679

CO-OWNERSHIP

Concept of — A form of trust, with each owner being a trustee for each other; mere actual possession by one will not give rise to the inference that the possession was adverse because a co-owner is, after all, entitled to possession of the property; prescription does not run in favor of a co-heir or co-owner as long as he expressly or impliedly recognizes the co-ownership and cannot acquire by prescription the share of the other co-owners, absent a clear repudiation of the co-ownership; an action to demand partition among co-owners is imprescriptible, and each co-owner may demand at any time the partition of the common property. (Heirs of Feliciano Yambao *vs*. Heirs of Hermogenes Yambao, G.R. No. 194260, April 13, 2016) p. 538

— Before the partition of a land or thing held in common, no individual or co-owner can claim title to any definite portion thereof; all that the co-owner has is an ideal or abstract quota proportionate to the share in the entire land or thing; should a co-owner alienate or mortgage the co-owned property itself, the alienation or mortgage shall remain valid but only to the extent of the portion which may be allotted to him in the division upon the termination of the co-ownership; in case of foreclosure, a sale would result in the transmission only of whatever rights the seller had over the thing sold; a co-owner does not lose

COURT OF TAX APPEALS

Appeals — An appeal to the CTA from the decision of the CIR will not suspend the payment, levy, distrait, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law; when, in the view of the CTA, the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond. (Sps. Pacquiao *vs.* CTA [First Div.], G.R. No. 213394, April 6, 2016) p. 220

Powers — It behooved upon the CTA to properly determine, at least preliminarily, whether the CIR**,** in its assessment of the tax liability and its effort of collecting the same, complied with the law and the pertinent issuances of the BIR itself; the CTA should have conducted a preliminary hearing and received evidence so it could have properly determined whether the requirement of providing the required security under Sec. 11, R.A. No. 1125 could be reduced or dispensed with *pendente lite*. (Sps. Pacquiao *vs.* CTA [First Div.], G.R. No. 213394, April 6, 2016) p. 220

— The authority of the courts to issue injunctive writs to restrain the collection of tax and to dispense with the deposit of the amount claimed or the filing of the required bond is not simply confined to cases where prescription has set in; whenever it is determined by the courts that the method employed by the Collector of Internal Revenue in the collection of tax is not sanctioned by law, the bond requirement under Sec. 11 of R.A. No. 1125 should be dispensed with; the purpose of the rule is not only to prevent jeopardizing the interest of the taxpayer, but more importantly, to prevent the absurd situation wherein the court would declare that the collection by the summary methods of distrait and levy was in violation of the law, and then, in the same breath require the petitioner to deposit or file a bond as a prerequisite for the issuance of a writ of injunction. (*Id*.)

appeal without the intervention of the OSG but only insofar as the civil liability of the accused is concerned; he may also file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his interest in the civil aspect of the case. (*Id*.)

Criminal prosecution — In criminal prosecutions, it is fundamental that the accused is presumed innocent of a charge until his guilt is proven beyond reasonable doubt; the elemental acts constituting the offense must be established with moral certainty, as this finding and level of proof are the critical requisites to a finding of guilt. (Derilo *y* Gepoleo *vs*. People, G.R. No. 190466, April 18, 2016) p. 679

Duty of the prosecution — Every criminal conviction requires the prosecution to prove two (2) things: (1) the fact of the crime, i.e. the presence of all the elements of the crime for which the accused stands charged; and (2) the fact that the accused is the perpetrator of the crime; it is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion; what is required of it is to justify the conviction of the accused with moral certainty. (People *vs*. Urzais *y* Lanurias, G.R. No. 207662, April 13, 2016) p. 561

Probable cause — Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted; probable cause need not be based on clear and convincing evidence of guilt, or on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt, but it certainly demands more than bare suspicion and can never be left to presupposition, conjecture, or even convincing logic. (Joson *vs.* Office of the Ombudsman, G.R. Nos. 210220-21, April 6, 2016) p. 172

is not unreasonable, inconvenient or prejudicial to the employee; if the employer cannot overcome this burden of proof, the employee's transfer shall be tantamount to unlawful constructive dismissal. (Divine Word College of Laoag *vs*. Mina, G.R. No. 195155, April 13, 2016) p. 546

Just cause — Just and valid causes for the dismissal of an employee, viz.: (a) serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with her work; (b) gross and habitual neglect by the employee of her duties; (c) fraud or willful breach by the employee of the trust reposed in her by her employer or duly authorized representative; (d) commission of a crime or offense by the employee against the person of her employer or any immediate member of her family or her duly authorized representatives; and (e) other causes analogous to the foregoing. (Mariano *vs*. Martinez Memorial Colleges, Inc., G.R. No. 194119, April 13, 2016) p. 523

Loss of trust and confidence — An act of dishonesty by an employee who has been put in charge of the employer's money and property amounts to breach of the trust reposed by the employer, and normally leads to loss of confidence in her, and such dishonesty comes within the just and valid causes for the termination of employment under the Labor Code; in dismissing a cashier on the ground of loss of confidence, it is sufficient that there is some basis for the same or that the employer has a reasonable ground to believe that the employee is responsible for the misconduct, thus making him unworthy of the trust and confidence reposed in him. (Mariano *vs*. Martinez Memorial Colleges, Inc., G.R. No. 194119, April 13, 2016) p. 523

Management prerogative — Court has often declined to interfere in legitimate business decisions of employers, as long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements. (Mariano

provide the employee with the wherewithal during the period that he is looking for another employment. (*Id*.)

EVIDENCE

Authentication and proof of documents — Courts are not bound to give probative value or evidentiary value to the opinions of handwriting experts, as resort to handwriting experts is not mandatory. (Heirs of Corazon Afable Salud *vs.* Rural Bank of Salinas, Inc., G.R. No. 202756, April 6, 2016) p. 21

— Defective notarization will strip the document of its public character and reduce it to a private instrument; when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence. (*Id*.)

— The genuineness of a handwriting may be proved by the following: (1) A witness who actually saw the person writing the instrument; (2) A witness familiar with such handwriting and who can give his opinion thereon, such opinion being an exception to the opinion rule; (3) A comparison by the court of the questioned handwriting and admitted genuine specimen thereof; and (4) Expert evidence. (*Id*.)

— The opinion of handwriting experts are not necessarily binding upon the court, the expert's function being to place before the court data upon which the court can form its own opinion. (*Id*.)

Circumstantial evidence — It is not only by direct evidence that an accused may be convicted, but for circumstantial evidence to sustain a conviction, the following are the guidelines: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is as such as to produce a conviction beyond reasonable doubt; circumstantial evidence presented and proved must

JUDGES

Code of Judicial Conduct — A judge's failure to decide a case within the prescribed period constitutes gross inefficiency warranting the imposition of administrative sanctions; Supreme Court is not unmindful of the heavy dockets of the lower courts; upon their proper application for extension, especially in meritorious cases involving difficult questions of law or complex issues, the Court grants them additional time to decide beyond the reglementary period. (*Re*: Findings on the Judicial Audit Conducted at the 7th Mun. Circuit Trial Court, Liloan-Compostela, Liloan, Cebu, A.M. No. 12-8-59-MCTC, April 12, 2016) p. 334

— Failure to decide or resolve cases within the reglementary period constitutes gross inefficiency; the fines imposed on each judge may vary, depending on the number of cases undecided or matters unresolved by said judge within the reglementary period, plus the presence of aggravating or mitigating circumstances, such as the damage suffered by the parties as a result of the delay, the health and age of the judge, and other analogous circumstances. (*Id*.)

Complaint against — An administrative or disciplinary complaint is not the proper remedy to assail the judicial acts or magistrates of the law, particularly those related to their adjudicative functions; any errors should be corrected through appropriate judicial remedies, like appeal in due course or, in the proper cases, the extraordinary writs of *certiorari* and prohibition if the errors were jurisdictional. (Castro *vs*. Judge Mangrobang, A.M. No. RTJ-16-2455[Formerly OCA IPI No. 10-3443-RTJ], April 11, 2016) p. 267

Gross inefficiency — Judges needs to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied; every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay

JUDGMENTS

Doctrine of law of the case — 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 the issues of the case. (Heirs of Felino M. Timbol, Jr. *vs*. PNB, G.R. No. 207408, April 18, 2016) p. 854

— Whatever is once irrevocably established as the controlling legal rule or 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; as a general rule, a decision on a prior appeal of the same case is held to be the law of the case whether that question is right or wrong, the remedy of the party deeming himself aggrieved being to seek a rehearing; the doctrine applies when: (1) a question is passed upon by an appellate court; and (2) the appellate court remands the case to the lower court for further proceedings; the lower court and even the appellate courts on subsequent appeal of the case are, thus, bound by how such question had been previously settled. (*Id*.)

Final and executory judgment — A final and executory decision of the court is applicable not only to the parties thereto but also to their successors-in- interest; an action is binding on the privies of the litigants even if such privies are not literally parties to the action; their inclusion in the writ of execution does not vary or exceed the terms of the judgment. (Sps. Imperial, Jr. *vs*. Sps. Pinigat, G.R. No. 193554, April 13, 2016) p. 512

Immutability of final judgment — A judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification

LAND REGISTRATION

Certificate of title — A resolution on the issue of ownership does not subject the Torrens title issued over the disputed realties to a collateral attack; what cannot be collaterally attacked is the certificate of title and not the title itself; mere issuance of the certificate of title in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate, or that the registrant may only be a trustee, or that other parties may have acquired interest over the property subsequent to the issuance of the certificate of title. (Sps. Inalvez *vs*. Nool, G.R. No. 188145, April 18, 2016) p. 653

LAW CREATING THE NATIONAL ELECTRIFICATION ADMINISTRATION (NEA) (P.D. NO. 269)

Application of — Assignment of a project supervisor is within the power of control and supervision of the NEA. (Remo *vs.* Administrator Edita S. Bueno, G.R. No. 175736, April 12, 2016) p. 344

— NEA Rules of Procedures provides that the decisions are to be immediately executory and does not contradict the NEA Charter. (*Id*.)

— The board of directors of a regulated electric cooperative is subject to the NEA's control and supervision; NEA has power of supervision and control over electric cooperatives and the power to conduct investigations, and impose preventive or disciplinary sanctions over the board of directors. (*Id*.)

MARRIAGES

Judicial declaration of absolute nullity of marriage — A judicial declaration of absolute nullity of marriage is now expressly required where the nullity of a previous marriage is invoked for purposes of contracting a second marriage; a second marriage contracted prior to the issuance of this declaration of nullity is thus considered bigamous and

— To be considered in adverse possession, the third party possessor must have done so in his own right and not merely as a successor or transferee of the debtor or mortgagor. (*Id*.)

— When the thing purchased at a foreclosure sale is in turn sold or transferred, the right to possession thereof, along with all other rights of ownership, follows the thing sold to its new owner. (*Id*.)

MOTIONS

Motion for reconsideration — While the decision of a court becomes final upon the lapse of the period to appeal by any party, but the filing of a motion for reconsideration or new trial interrupts or suspends the running of the said period, and prevents the finality of the decision or order from setting in; a motion for reconsideration allows a party to request the adjudicating court or quasi-judicial body to take second look at its earlier judgment and correct any errors it may have committed; it allows the adjudicator or judge to take a second opportunity to review the case and to grapple anew with the issues therein, and to decide again a question previously raised, there being no legal proscription imposed against the deciding body adopting thereby a new position contrary to one it had previously taken. (Sps. Florante E. Jonsay *vs.* Solidbank Corp., G.R. No. 206459, April 6, 2016) p. 78

NATIONAL INTERNAL REVENUE CODE

Tax assessment — A taxpayer should be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment is void; an assessment, in order to stand judicial scrutiny, must be based on facts; the presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption. (Sps. Pacquiao *vs.* CTA [First Div.], G.R. No. 213394, April 6, 2016) p. 220

— In the conduct of its preliminary hearing, the CTA must balance the scale between the inherent power of the State

party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit; to be properly considered as such, the party must have a real, actual, material, or substantial interest in the subject matter of the action, not a mere expectancy or a future, contingent, subordinate, or consequential interest. (Samahan ng Magsasaka at Mangingisda ng Sitio Naswe, Inc. [SAMMANA] *vs*. Tan, G.R. No. 196028, April 18, 2016) p. 727

2002 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA) RULES

Application of — Activity is permitted for manpower pooling purposes, without need of prior approval from the POEA, upon the following conditions: (1) it is done by a licensed agency; (2) the advertisement indicates in bold letters that it is for manpower pooling only; (3) no fees are collected from the applicants; and (4) the name, address and POEA license number of the agency, name and worksite of the prospective registered/accredited principal and the skill categories and qualification standards are indicated. (Asian Int'l. Manpower Services, Inc. *vs.* Dept. of Labor and Employment, G.R. No. 210308, April 6, 2016) p. 192

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Compensability — Claimant must fulfill all the requisites for compensability, to wit: 1) The seafarer's work must involve the risks described herein; 2) The disease was contracted as a result of the seafarer's exposure to the described risks; 3) The disease was contracted within a period of exposure and under such other factors necessary to contract it; and 4) There was no notorious negligence on the part of the seafarer. (Balba *vs*. Tiwala Human Resources, Inc., G.R. No. 184933, April 13, 2016) p. 501

Death benefits — In order to avail of death benefits, the death of the seafarer must be work-related and should occur during the effectivity of the employment contract; the

Verification — The verification of a pleading is a formal and not a jurisdictional requirement; it is intended to assure that the allegations in a pleading are true and correct; the court may order the correction of unverified pleadings, or it may act on them and waive strict compliance with the rules; the verification requirement is deemed substantially complied with when a person who has sufficient knowledge to swear to the truth of the allegations in the complaint or petition signs the verification; and matters alleged therein have been made in good faith or are true and correct; thus, there is substantial compliance if at least one of the petitioners makes a proper verification. (Bacolor *vs*. VL Makabali Memorial Hospital, Inc., G.R. No. 204325, April 18, 2016) p. 822

PRESUMPTIONS

Disputable presumptions — A person found in possession of a thing taken in the doing of a recent wrongful act is the taker and doer of the whole act, in this case the alleged carnapping and the homicide/murder of its owner, is limited to cases where such possession is either unexplained or that the proffered explanation is rendered implausible in view of independent evidence inconsistent thereto. (People *vs*. Urzais y Lanurias, G.R. No. 207662, April 13, 2016) p. 561

Regularity of official acts — May be rebutted by affirmative evidence of irregularity or failure to perform a duty; the presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary; thus, unless the presumption is rebutted, it becomes conclusive; every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness. (Consular Area Residents Assoc., Inc. *vs*. Casanova, G.R. No. 202618, April 12, 2016) p. 400

killing began, the perpetration of an attack with treachery cannot be presumed. (People *vs.* Vargas *y* Ramos, G.R. No. 208446, April 6, 2016) p. 144

RAPE

Commission of — A crime that is almost always committed in isolation or in secret, usually leaving only the victim to testify about the commission of the crime; the accused may be convicted of rape on the basis of the victim's sole testimony provided such testimony is logical, credible, consistent and convincing; the testimony of a young rape victim is given full weight and credence considering that her denunciation against him for rape would necessarily expose herself and her family to shame and perhaps ridicule. (People *vs*. Menaling y Canedo, G.R. No. 208676, April 13, 2016) p. 592

— Carnal knowledge of a woman who is a mental retardate is rape under Art. 266-A, par. 1(b) of the Revised Penal Code, as amended because a mentally deficient person is automatically considered incapable of giving consent to a sexual act; thus, what needs to be proven are the facts of sexual intercourse between the accused and the victim, and the victim's mental retardation. (People *vs*. Umanito, G.R. No. 208648, April 13, 2016) p. 581

— Due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself; in the resolution of rape cases, the victim's credibility becomes the primordial consideration; when the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. (People *vs.* Wile, G.R. No. 208066, April 12, 2016) p. 418

— Elements are: (a) that the offender, who must be a man, had carnal knowledge of a woman; and (b) that such act is accomplished by using force or intimidation. (*Id*.)

act; the child victim's consent is immaterial because of her presumed incapacity to discern evil from good. (*Id*.)

— The rape victim's positive testimony, coupled with the medical findings, deserves more persuasive weight than the bare denial of the accused. (*Id*.)

— Whenever the rape is committed by two or more persons, the penalty shall be *reclusion perpetua* to death; Sec. 6 of R. A. No. 9344 exempts a child above fifteen (15) years but below eighteen (18) years of age from criminal liability, unless he/she had acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with said Act. (People *vs*. Wile, G.R. No. 208066, April 12, 2016) p. 418

Qualified rape — Perpetrator's knowledge of the victim's mental disability, at the time he committed the rape, qualifies the crime and makes it punishable by death under Art. 266-B, par. 10; however, an allegation in the information of such knowledge of the offender is necessary as a crime can only be qualified by circumstances pleaded in the indictment. (People *vs*. Umanito, G.R. No. 208648, April 13, 2016) p. 581

Statutory rape — Two elements must be established to hold the accused guilty of statutory rape, namely: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below twelve years of age or demented. (People *vs*. Bugho *y* Rompal, *a.k.a.* "Jun the Magician", G.R. No. 208360, April 6, 2016) p. 130

REAL PROPERTY TAX CODE (P.D. NO. 464)

Tax assessment — Effectively informs the taxpayer of the value of a specific property, or proportion thereof subject to tax, including the discovery, listing, classification, and appraisal of properties. (Pucyutan *vs*. Mla. Electric Co., Inc., G.R. No. 197136, April 18, 2016) p. 753

business, the sheriff must instead leave a copy of the summons with a competent person in charge thereof. (Ang *vs.* Chinatrust (Phils.) Commercial Bank Corp., G.R. No. 200693, April 18, 2016) p. 791

TAXATION

Tax assessment — An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level; thereafter, the CIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied; the taxpayer may then appeal the decision on the disputed assessment or the inaction of the CIR; an assessment shall be void if the taxpayer is not informed in writing of the law and the facts on which it is based. (Commissioner of Internal Revenue *vs*. Liquigaz Phils. Corp., G.R. No. 215534, April 18, 2016) p. 874

— Substantial compliance with written notice requirement is allowed provided that the tax payer would be eventually apprised in writing. (*Id*.)

— The reason for requiring that taxpayers be informed in writing of the facts and law on which the assessment is made is the constitutional guarantee that no person shall be deprived of his property without due process of law; merely notifying the taxpayer of its tax liabilities without elaborating on its details is insufficient. (*Id*.)

— Where the final decision on disputed assessment is void for failure to comply with notice requirement, it is tantamount to a denial by inaction of the Commissioner of Internal Revenue which is appealable to the Court of Tax Appeals. (*Id*.)

UNLAWFUL DETAINER

Action for — Elements, to wit: (1) initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by the plaintiff to the defendant

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

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

C. OTHERS

D. BOOKS
(Local)

II. FOREIGN AUTHORITIES

BOOKS