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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 10117. July 25, 2016]

IN RE: RESOLUTION DATED AUGUST 14, 2013 OF THE COURT OF APPEALS IN CA-G.R. CV NO. 94656, *vs.* **ATTY. GIDEON D.V. MORTEL,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; ATTORNEYS AND ADMISSION TO THE BAR; PROCEEDINGS FOR THE DISBARMENT, SUSPENSION, OR DISCIPLINE OF ATTORNEYS MAY BE TAKEN BY THE SUPREME COURT *MOTU PROPRIO*, BUT THE LAWYER MUST HAVE THE FULL OPPORTUNITY UPON REASONABLE NOTICE TO ANSWER THE CHARGES AGAINST HIM OR HER.— This Court has the authority to discipline an errant member of the bar. Rule 139-B, Section 1 of the Rules of Court provides that "[p]roceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*[.]" However, the lawyer must have the "full opportunity upon reasonable notice to answer the charges against him [or her,] among others." Thus: RULE 138 ATTORNEYS AND ADMISSION TO BAR x x x x SEC. 30. *Attorney to be heard before removal or suspension.* – No attorney shall be removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be

heard by himself or counsel. But if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter *ex parte*.

2. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; DISCLOSURE OF CLIENT'S AFFAIRS IS ALLOWED ONLY TO PARTNERS OR ASSOCIATES OF THE LAW FIRM, UNLESS THE CLIENT PROHIBITS IT.— Atty. Jose's reading of this Court's January 20, 2014 Resolution is also highly questionable. While the Resolution was sent to his law firm, it was addressed to respondent, a lawyer not under his employ. Canon 21, Rule 21.04 of the Code of Professional Responsibility generally allows disclosure of a client's affairs only to partners or associates of the law firm, unless the client prohibits it. Respondent is not a partner or associate of MFV Jose Law Office.

3. ID.; ID.; AN ATTORNEY OWES IT TO HIMSELF AND TO HIS CLIENTS TO ADOPT AN EFFICIENT AND ORDERLY SYSTEM OF RECEIVING AND ATTENDING PROMPTLY TO ALL JUDICIAL NOTICES.— [R]espondent failed to adopt an "efficient and orderly system of receiving and attending promptly to all judicial notices." The fault was his to bear. In *Gonzales v. Court of Appeals*: We hold that an attorney owes it to himself and to his clients to adopt an efficient and orderly system of receiving and attending promptly to all judicial notices. He and his client must suffer the consequences of his failure to do so particularly where such negligence is not excusable as in the case at bar. x x x x x x. [I]n this case, respondent did not adequately inquire why he had not received any notice for the filing of Angelita De Jesus' appellant's brief." He should have assumed that the Court of Appeals would send him a notice regarding his appeal. Yet, he instructed De Leon to go to MFV Law Office only initially, and cut contact with the law firm after August 16, 2010.

4. ID.; ID.; RESPONDENT'S DISOBEDIENCE OF COURT ORDERS FOUND WILLFUL.— Respondent's disobedience of court orders, while it may not have been malicious, was certainly willful. He knew of the consequences of disregarding court orders, yet he did not take steps to prevent it from happening. He used Atty. Jose's office address for *Bank of the Philippine Islands*, but did not ensure that he could actually

receive the Court of Appeals Notices and Resolutions. That respondent was able to receive this Court's Resolution through MFV Law Office in 2014 shows that it was also possible for him to have received the Court of Appeals Notice and Resolutions from 2010 to 2013, had he only cared to do so.

5. **ID.; ID.; AS THE COURT MAY EITHER GRANT OR DENY A MOTION, OR OTHERWISE DEFER ACTION ON IT UNTIL CERTAIN CONDITIONS ARE MET, LAWYERS HAVE THE OBLIGATIONS TO APPRISE THEMSELVES OF THE COURT'S RESOLUTION, AND NOT TO SIMPLY SECOND-GUESS IT.—** Filing a motion to withdraw appeal does not result in automatic withdrawal of the appeal. The next-level court, before which a motion to withdraw appeal is filed, still needs to resolve this motion. A motion *prays for a relief* other than by a pleading. As the court may either grant or deny a motion, or otherwise defer action on it until certain conditions are met, lawyers have the obligation to apprise themselves of the court's resolution, and not to simply second-guess it. In this case, before the Court of Appeals acted on respondent's Motion, it first required proof of the client's conformity. It is not unlikely that the Court of Appeals wanted to ensure that Angelita De Jesus voluntarily agreed to the withdrawal of the appeal—that is, without force, intimidation, or coercion—and that, despite losing the case before the lower court, she was fully informed of the legal consequences of the contemplated action. Thus, respondent cannot excuse himself from complying with the Court of Appeals' July 20, 2010 Notice simply because he "belie[ved] that the case has long been closed and terminated" when he filed the Motion to Withdraw Appeal. Ignorance of the law excuses no one from compliance. Respondent could not safely assume that the case had already been closed and terminated until he received the Court of Appeals resolution on the matter.

6. **ID.; ID.; A COUNSEL WHO FAILED TO RECEIVE THE COURT OF APPEALS' NOTICE AND RESOLUTION DUE TO THE FAULT OF HIS MESSENGER CANNOT BLAME ANYONE BUT HIMSELF FOR ASSIGNING AN IMPORTANT MATTER TO AN INCOMPETENT OR IRRESPONSIBLE PERSON.—** Both respondent and Atty. Jose point a finger at Lucero, Atty. Jose's messenger, while Lucero points a finger at De Leon, respondent's messenger.

According to respondent, Lucero simply left the Resolutions in MFV Law Office's racks or in Lucero's table[.]" Lucero states that he did not know the relevance of the Court of Appeals Resolutions or the importance of these to respondent. For a law firm messenger to have no clue about the importance of a court issuance is doubtful. What is more plausible is that the messenger, being outside this Court's disciplinary arm, is serving as a convenient scapegoat. Even assuming that only the messengers are at fault, neither counsel can blame anyone but themselves for assigning an important matter to "incompetent or irresponsible person[s]." In *Gonzales*, "[i]f petitioner's counsel was not informed by his house-help of the notice which eventually got misplaced in his office file, said counsel has only himself to blame for entrusting the matter to an incompetent or irresponsible person[.]"

7. **ID.; ID.; A LAWYER CANNOT EXCUSE HIMSELF FROM COMPLYING WITH THE COURT ORDERS STATING THAT HE DID NOT ACTUALLY RECEIVE THE ORDERS, FOR AS FAR AS THE COURTS ARE CONCERNED, ORDERS AND RESOLUTIONS ARE RECEIVED BY COUNSEL THROUGH THE ADDRESS ON RECORD THEY HAVE GIVEN.—** Respondent gave the MFV Law Office's address to the Court of Appeals. Thus, this is presumably where he wanted the orders of the Court of Appeals sent. He cannot later excuse himself from complying with the court orders by stating that he did not actually receive these orders for three (3) years. Respondent is stopped from raising it as a defense. As far as courts are concerned, orders and resolutions are received by counsel through the address on record they have given.

8. **ID.; ID.; A COUNSEL'S DEFIANCE OF THE COURT OF APPEALS NOTICE AND RESOLUTIONS SHOWS A BLATANT DISREGARD OF THE SYSTEM HE HAS VOWED TO SUPPORT.—** Respondent's defiance of the Court of Appeals Notice and Resolutions shows a blatant disregard of the system he has vowed to support." When he took his oath as attorney, he has sworn to do as follows: I, do solemnly swear that x x x I will support the Constitution and *obey* the laws as well as the *legal orders of the duly constituted authorities therein* x x x and will conduct myself as a lawyer according to the best of my knowledge and discretion, *with all good fidelity as well*

to the courts as to my clients; and I impose upon myself these voluntary obligations without any mental reservation or purpose of evasion. So help me God. An oath is not an empty promise, but a solemn duty. Owing good fidelity to the court, lawyers must afford due respect to "judicial officers and other duly constituted authorities[.]" Under the Code of Professional Responsibility: CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION x x x. x x x x CANON 10 – A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT. CANON 11 – A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS. CANON 12 – A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE. In *Bantolo v. Atty. Castillon, Jr.*: Lawyers are particularly called upon to obey court orders and processes, and this deference is underscored by the fact that willful disregard thereof may subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well. Such is the situation in the instant case. We need not delve into the factual findings of the trial court and the Court of Appeals on the contempt case against respondents. Suffice it to say that *respondent lawyer's commission of the contumacious acts have been shown and proven, and eventually punished* by the lower courts.

9. ID.; ID.; WILLFUL DISOBEDIENCE OF A LAWFUL ORDER OF THE COURT OF APPEALS MAY SUBJECT THE LAWYER NOT ONLY TO PUNISHMENT FOR CONTEMPT BUT ALSO TO SUSPENSION OR REMOVAL.— In its May 16, 2012 Resolution, the Court of Appeals found respondent guilty for indirect contempt of court. On top of respondent's punishment for contempt, his willful disobedience of a lawful order of the Court of Appeals is a ground for respondent's removal or suspension. x x x. In this case, respondent utterly disrespected the lawful orders of the court by ignoring 12 Court of Appeals Resolutions. In *Ong v. Atty. Grijaldo*: [Respondent's] conduct indicates a high degree of irresponsibility. A resolution of this Court is not to be construed as a mere request, nor should it be complied with

partially, inadequately or selectively. Respondent's obstinate refusal to comply therewith not only betrays a recalcitrant flaw in his character; it also underscores his disrespect of our lawful orders which is only too deserving of reproof. Any departure from the path which a lawyer must follow as demanded by the virtues of his profession shall not be tolerated by this Court as the disciplining authority. This is especially so, as in the instant case, where respondent even deliberately defied the lawful orders of the Court for him to file his comment on the complaint, thereby transgressing Canon 11 of the Code of Professional Responsibility which requires a lawyer to observe and maintain the respect due the courts.

10. ID.; ID.; A LAWYER'S WILLFUL DISOBEDIENCE OF A LAWFUL ORDER OF THE COURT OF APPEALS CONSTITUTES GROSS MISCONDUCT AND INSUBORDINATION OR DISRESPECT OF COURT.— [R]espondent failed to justify the long delay of at least three (3) years in complying with the Court of Appeals Resolutions requiring his client's written conformity to the Motion (2010) and information on his client's current address (2011). Respondent also failed to justify the long delay in complying with other Court of Appeals Resolutions (a) requiring him to show cause why he should not be cited in contempt, and to comply with the Court of Appeals' earlier Resolutions; (b) citing him in indirect contempt and ordering him to pay a fine of ₱10,000.00; (c) reiterating the Resolutions that directed him to pay the fine and inform the Court of Appeals of his client's address, and warning him of a more severe sanction should he fail to do so; (d) requiring him to show cause why he should not be suspended from the practice of law for his refusal to pay the fine; and (e) ordering him to again to comply with the Resolution that directed him to pay the fine. Moreover, even after he found out about the developments of the case, respondent still did not take immediate actions to observe all of the Court of Appeals Resolutions. x x x Respondent's actions shatter the dignity of his profession. He exhibited disdain for court orders and processes, as well as a lack of fidelity to the court. In "taking his sweet time to effect" compliance with the Court of Appeals Resolutions, he sends the message that he is above the duly constituted judicial authorities of this land, and he looks down on them with condescension. This Court agrees with the Court

of Appeals that his acts constitute gross misconduct and insubordination or disrespect of court. Gross misconduct is defined as an "inexcusable, shameful or flagrant unlawful conduct" in administering justice, which prejudices the parties' rights or forecloses a just determination of the case. As officers of the court, lawyers themselves should be at the forefront in obeying court orders and processes. Respondent failed in this regard. His actions resulted in his client's prejudice.

11. ID.; ID.; A LAWYER'S FAILURE TO DILIGENTLY ATTEND TO THE LEGAL MATTER ENTRUSTED TO HIM CONSTITUTES NEGLIGENCE; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW IMPOSED FOR GROSS MISCONDUCT, INSUBORDINATION, AND DISRESPECT OF THE COURT OF APPEALS DIRECTIVES, AND FOR NEGLIGENCE OF THE CLIENT'S CASE.— Angelita De Jesus was prejudiced by respondent's willful disobedience of the lawful orders of the Court of Appeals. Respondent's failure to comply with the September 20, 2010 Resolution (requiring his client's conformity to the Motion to Withdraw Appeal) and November 11, 2010 Resolution (reiterating the requirement of his client's conformity to the Motion) resulted in the denial of the Motion on February 23, 2011. The period within which to appeal the February 23, 2011 denial had clearly lapsed when respondent filed the Omnibus Motion before the Court of Appeals on March 5, 2014. Dulay wanted to withdraw the appeal, but respondent's negligence and lack of prudence resulted in an outcome opposite of what Angelita De Jesus, through Dulay, sought his services for. Under the Code of Professional Responsibility: CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE. x x x 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. x x x. Here, respondent blindsided his client on the real status of *Bank of Philippine Islands*. He failed to diligently attend to the legal matter entrusted to him. The case, instead of being closed and terminated, came back to life on appeal due to his neglect and lack of diligence. x x x Respondent's "negligence shows a glaring lack of the competence and diligence required of every lawyer."

R E S O L U T I O N

LEONEN, *J.*:

This resolves an administrative complaint charging respondent Atty. Gideon D.V. Mortel (Atty. Mortel) with disobedience or defiance of lawful court orders, amounting to gross misconduct and insubordination or disrespect.[1] The complaint arose from the proceedings before the Court of Appeals in *Bank of the Philippine Islands v. Angelita De Jesus, through her Attorney-in-Fact Jim Dulay*,[2] which Atty. Mortel handles.[3]

On July 20, 2010, the Court of Appeals issued a Notice[4] for Atty. Mortel to file an appellant's brief on behalf of his client, Angelita De Jesus,[5] within the reglementary period of 45 days from notice.[6]

Atty. Mortel recently moved out of his office at Herrera Tower, Makati City due to the high cost of maintenance.[7] Looking for a new office,[8] he requested to use the address of his friend's law firm as his address on record for *Bank of the Philippine*

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[1] *Rollo*, p. 15, Statement of Facts Re: Suspension of Atty. Gideon V. Mortel. This was signed by Associate Justice Hakim S. Abdulwahid of the Sixth Division, Court of Appeals, Manila.

[2] The case was docketed as CA-G.R. CV No. 94656.

[3] *Id*. at 2, Court of Appeals Resolution.

[4] CA. INT. RULES, Rule IV, Sec. 4(a)(1.6) provides:

SEC. 4. Processing of Ordinary Appeals. –

(a) In Civil Cases. – . . . .

1.6 Within ten (10) days from completion of the records, issue a notice to file appellant's brief within forty-five (45) days from receipt thereof. The notice shall require that a certified true copy of the appealed decision or order be appended to the brief.

[5] *Rollo*, p. 2.

[6] *Id*. at 3.

[7] *Id*. at 33, Omnibus Motion with Profuse Apologies.

[8] *Id*. at 39, Atty. Jose's Affidavit.

Islands.[9] Atty. Marcelino Ferdinand V. Jose (Atty. Jose), Managing Partner of MFV Jose Law Office, granted this request sometime in August 2010.[10] Atty. Mortel's address on record was then listed at Unit 2106, Philippine AXA Life Center, 1286 Sen. Gil Puyat Ave., Makati City,[11] the same address as MFV Jose Law Office.[12]

All communication, court orders, resolutions, notices, or other court processes addressed to MFV Jose Law Office were received by the law firm's staff.[13] The staff would pass these to the desk of Atty. Jose for monitoring and checking. Atty. Jose would then forward these to the handling lawyer in the office.[14] The law firm's messenger, Randy G. Lucero (Lucero), was tasked with informing Atty. Mortel whenever there was a resolution or order pertinent to *Bank of Philippine Islands*.[15]

Bank of Philippine Islands was not included in MFV Jose Law Office's list or inventory of cases.[16] Thus, Atty. Jose "simply attached a piece of paper with notation and instructions on the same, advising [Lucero] . . . to forward it to Atty. Mortel."[17]

Initially, Randy De Leon (De Leon), Atty. Mortel's messenger, went to MFV Law Office to inquire if it had received notices for Atty. Mortel.[18] None came at that time.[19] Thus, De Leon left his number with Lucero, and the two messengers agreed that

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[9] *Id*.

[10] *Id*.

[11] *Id*. at 4.

[12] *Id*. at 39.

[13] *Id*.

[14] *Id*.

[15] *Id*. at 41, Lucero's Affidavit.

[16] *Id*. at 39.

[17] *Id*.

[18] *Id*. at 41.

[19] *Id*.

Lucero would text De Leon should any court notice or order for Atty. Mortel arrive.[20]

On August 16, 2010, instead of heeding the Court of Appeals Notice to file the appellant's brief, Atty. Mortel moved to withdraw Angelita De Jesus' appeal[21] in light of an amicable settlement on the disputed property.[22] After the Motion to Withdraw Appeal was filed, he stopped communicating with MFV Law Office and instructed De Leon to do the same.[23]

In the Resolution dated September 20, 2010, the Court of Appeals directed Atty. Mortel to secure and submit Angelita De Jesus' written conformity to the Motion to Withdraw Appeal within five (5) days from notice.[24] Atty. Mortel did not comply.[25]

In the Resolution dated November 11, 2010, the Court of Appeals again directed Atty. Mortel to comply with the September 20, 2010 Resolution and warned him of disciplinary action should he fail to secure and submit Angelita De Jesus' written conformity to the Motion within the reglementary period.[26] Atty. Mortel did not comply.[27]

Thus, on February 23, 2011, the Court of Appeals resolved to "den[y] the motion to withdraw appeal; . . . reiterat[e] the notice dated July 20, 2010, directing [Angelita De Jesus] to file appellant's brief within . . . [45] days from notice; and . . . direc[t] Atty. Mortel to show cause why he should not be cited in contempt for non-compliance with [the Court of Appeals] order."[28]

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[20] *Id*.

[21] *Id*. at 44, Dulay's Affidavit.

[22] *Id*. at 34.

[23] *Id*. at 24, Comment.

[24] *Id*. at 2.

[25] *Id*.

[26] *Id*.

[27] *Id*.

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

The February 23, 2011 Resolution was sent to Angelita De Jesus' address on record, but it was returned with the notation "moved out" on the envelope.[29]

On March 28, 2011, the Court of Appeals resolved to direct Atty. Mortel to furnish it with Angelita De Jesus' present and complete address within 10 days from notice. Atty. Mortel did not comply.[30]

In the Resolution dated July 5, 2011, the Court of Appeals again ordered Atty. Mortel to inform it of Angelita De Jesus' address within 10 days from notice.[31] Atty. Mortel did not comply.[32]

In the Resolution dated October 13, 2011, the Court of Appeals directed Atty. Mortel, for the last time, to inform it of Angelita De Jesus' address within 10 days from notice.[33] Still, Atty. Mortel did not comply.[34]

In the Resolution dated January 10, 2012, the Court of Appeals ordered Atty. Mortel to show cause, within 15 days, why he should not be held in contempt for non-compliance with the Court of Appeals Resolutions.[35] Atty. Mortel ignored this.[36]

In the Resolution dated May 16, 2012, the Court of Appeals found Atty. Mortel liable for indirect contempt.[37] It ordered him to pay ₱10,000.00 as fine.[38] Atty. Mortel did not pay.[39]

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[29] *Id*. at 3.

[30] *Id*.

[31] *Id*.

[32] *Id*.

[33] *Id*.

[34] *Id*.

[35] *Id*.

[36] *Id*.

[37] *Id*.

[38] *Id*.

[39] *Id*.

On August 13, 2012, the Court of Appeals resolved to (1) again order Atty. Mortel to pay, within 10 days from notice, the fine of ₱10,000.00 imposed upon him under the May 16, 2012 Resolution;[40] (2) require Atty. Mortel to follow the July 5, 2011 and October 13, 2011 Resolutions that sought information from him as to his client's present address;[41] and (3) warn him that failure to comply with the Resolutions within the reglementary period will constrain the Court of Appeals "to impose a more severe sanction against him."[42] Atty. Mortel snubbed the directives.[43]

According to the Court of Appeals, the Cashier Division reported that Atty. Mortel still did not pay the fine imposed despite his receipt of the May 16, 2012, August 13, 2012, and October 17, 2012 Resolutions.[44]

In the Resolution dated April 26, 2013, the Court of Appeals directed Atty. Mortel to show cause why it should not suspend him from legal practice for ignoring its May 16, 2012 Resolution (which fined him for ₱10,000.00).[45] The April 26, 2013 Resolution was sent to his address on record at Unit 2106, Philippine AXA Life Center, 1286 Sen. Gil Puyat Ave., Makati City,[46] as shown in the registry return card.[47]

Despite having ignored 11 Court of Appeals Resolutions,[48] Atty. Mortel did not show cause for him not to be suspended.[49]

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[40] *Id*.

[41] *Id*. at 4.

[42] *Id*.

[43] *Id*.

[44] *Id*.

[45] *Id*.

[46] *Id*.

[47] *Id*.

[48] *Id*. at 2-5. The ignored Resolutions are dated September 20, 2010, November 11, 2010, February 23, 2011, March 28, 2011, July 5, 2011, October 13, 2011, January 10, 2012, May 16, 2012, August 13, 2012, October 17, 2012, and April 26, 2013.

[49] *Id*. at 5.

The Court of Appeals found that his "failure or obstinate refusal without justification or valid reason to comply with the [Court of Appeals'] directives constitutes disobedience or defiance of the lawful orders of [the Court of Appeals], amounting to gross misconduct and insubordination or disrespect."[50]

In the Resolution dated August 14, 2013, the Court of Appeals suspended Atty. Mortel from legal practice for six (6) months and gave him a stern warning against repeating his actions.[51] Atty. Mortel was also directed to comply with the previous Resolutions of the Court of Appeals. The dispositive portion of the Resolution reads:

> **WHEREFORE**, Atty. Gideon D.V. Mortel, counsel for respondent-oppositor-appellant, is hereby **SUSPENDED** from the practice of law for a period of six (6) months effective from notice, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.
>
> Further, Atty. Mortel is **DIRECTED** to comply with the May 16, 2012 *Resolution* and other related *Resolutions* issued by this Court within ten (10) days from notice hereof.
>
> Let copies of this Resolution be furnished the Supreme Court for its information and appropriate action.
>
> **SO ORDERED**.[52] (Emphasis in the original)

On October 2, 2013, pursuant to Rule 138, Section 29[53] of the Rules of Court, the Court of Appeals submitted before this

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[50] *Id*. at 15, Statement of Facts Re: Suspension of Atty. Gideon V. Mortel.

[51] *Id*. at 5.

[52] *Id*. at 5-6.

[53] RULES OF COURT, Rule 138, Sec. 29 provides:

SEC. 29. *Upon suspension by Court of Appeals or Court of First Instance, further proceedings in Supreme Court*. – Upon such suspension, the Court of Appeals or the Court of First Instance shall forthwith transmit to the Supreme Court a certified copy of the order or suspension and a full statement of the facts upon which the same was based. Upon the receipt of such certified copy and statement, the Supreme Court shall make full investigation of the facts involved and make such order revoking or extending the suspension, or removing the attorney from his office as such, as the facts warrant.

Court a certified true copy of the August 14, 2013 Resolution, which suspended Atty. Mortel from legal practice, together with a statement of facts from which the suspension order was based.[54]

On October 23, 2013, the Office of the Bar Confidant issued a Report stating that it docketed the Court of Appeals' August 14, 2013 Resolution as a regular administrative case against Atty. Mortel.[55]

In the Resolution dated January 20, 2014, this Court noted and approved the administrative case, furnished Atty. Mortel a copy of the August 14, 2013 Resolution, and required him to comment within 10 days from notice.[56] This Court forwarded it to his address on record.[57]

On February 25, 2014, Atty. Jose read this Court's January 20, 2014[58] Resolution meant for Atty. Mortel,[59] and saw that Atty. Mortel had been suspended by the Court of Appeals.[60] He "immediately tried looking for Atty. Mortel's mobile number" to inform him of this development.[61] On the following day, he was able to reach Atty. Mortel through a mutual friend.[62]

Four (4) years passed since the Court of Appeals first sent a Resolution[63] to Atty. Mortel, through MFV Jose Law Office, in 2010. Atty. Jose asked Lucero, his messenger, why these Resolutions were not forwarded to Atty. Mortel.[64]

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[54] *Rollo*, pp. 7-16.

[55] *Id*. at 18, Resolution dated January 20, 2014.

[56] *Id*.

[57] *Id*. at 39, Atty. Jose's Affidavit.

[58] Only the January 20, 2014 Resolution contained the information that Atty. Mortel was suspended by the Court of Appeals (*Id*. at 19). The Resolution dated February 9, 2015 did not contain this information (*Id*. at 48).

[59] *Rollo*, p. 39.

[60] *Id*.

[61] *Id*.

[62] *Id*.

[63] *Id*. at 2.

[64] *Id*. at 39.

Lucero stated that he would usually text De Leon, Atty. Mortel's messenger, whenever there was an order or resolution pertinent to the case.[65] However, after a few messages, De Leon no longer texted back.[66] Lucero added that he "had no other way of finding [De Leon]" and knew nothing of De Leon's whereabouts.[67] He hoped that either Atty. Mortel or De Leon would pick up the mails sent by the Court of Appeals for Atty. Mortel.[68] Not knowing how to contact Atty. Mortel's messenger, Lucero simply kept the copies in the office racks or on his table.[69]

On March 5, 2014, Atty. Mortel filed before the Court of Appeals an Omnibus Motion and Manifestation with Profuse Apologies.[70] He informed the Court of Appeals of his present address at No. 2806 Tower 2, Pioneer Highlands, Mandaluyong City.[71] He also prayed for (1) the reinstatement of the Motion to Withdraw Appeal, (2) the acceptance of his compliance with the September 20, 2010 and November 11, 2010 Resolutions of the Court of Appeals (which sought for his client's conformity to the Motion), (3) the grant of his Motion, and (4) the recall of all previous orders or resolutions of the Court of Appeals.[72]

In his Comment[73] dated March 7, 2014, Atty. Mortel argues that he honestly believed that the case was already closed and terminated in light of his Motion to Withdraw Appeal.[74] Atty. Mortel avers that "[h]e did not expect that a requirement of

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[65] *Id*.

[66] *Id*. at 41.

[67] *Id*.

[68] *Id*.

[69] *Id*. at 39.

[70] *Id*. at 32-38.

[71] *Id*. at 37.

[72] *Id*. at 32.

[73] *Id*. at 20-27-A.

[74] *Id*. at 20.

conformity of the client would be needed in as much as the act of counsel binds the client[.]"[75] According to him, the filing of a motion to withdraw appeal is a matter of right, which did not need his client's conformity.[76] Thus, he did not bother to visit MFV Jose Law Office again or send his messenger to check with the law firm if there were resolutions or orders for him.[77]

According to Atty. Mortel, the Court of Appeals Resolutions never reached him.[78] He interposes the defense of "sheer lack of or absence of knowledge . . . as all Resolutions of the Court [of Appeals] were received by the messenger of MFV Jose Law Office but not forwarded to him."[79] Finally, he claims that he had no reason to refuse to comply, had he known of the orders or resolutions.[80]

In the Resolution[81] dated February 9, 2015, this Court noted Atty. Mortel's Comment and required the Sixth Division of the Court of Appeals Manila to file a reply within 10 days from notice.

In the Resolution[82] dated May 30, 2016, this Court dispensed with the filing of the reply.

For resolution are the following issues:

First, whether there are grounds for this Court to probe into Atty. Marcelino Ferdinand V. Jose's possible administrative liability; and

Second, whether respondent Atty. Gideon D.V. Mortel should be imposed a disciplinary sanction.

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[75] *Id*.

[76] *Id*. at 21.

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

[78] *Id*. at 34.

[79] *Id*. at 20.

[80] *Id*.

[81] *Id*. at 48.

[82] *Id*. at 52.

I

This Court has the authority to discipline an errant member of the bar.[83] Rule 139-B, Section 1 of the Rules of Court provides that "[p]roceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*[.]"[84] However, the lawyer must have the "full opportunity upon reasonable notice to answer the charges against him [or her,] among others."[85] Thus:

> RULE 138
>
> ATTORNEYS AND ADMISSION TO BAR
>
> . . . .
>
> SEC. 30. *Attorney to be heard before removal or suspension*. — No attorney shall be removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel. But if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter *ex parte*.

Implicit in Atty. Jose and respondent's arrangement is that Atty. Jose would update respondent should there be any communication sent to respondent through his law firm, and that respondent would regularly check with the law firm if any court-delivered mail arrives for him.[86]

Yet, Atty. Jose failed to measure up to his part of the deal. He delegated everything to his messenger without adequately supervising him. All communication, court orders, resolutions, notices, or other court processes addressed to MFV Jose Law Office go through Atty. Jose's desk for monitoring and checking.[87]

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[83] RULES OF COURT, Rule 139-B.

[84] RULES OF COURT, Rule 139-B, Sec. 1.

[85] RULES OF COURT, Rule 138, Sec. 30.

[86] *Id*. at 33.

[87] *Id*. at 39.

Having monitored and checked at least 12 envelopes[88] from the Court of Appeals meant for respondent, Atty. Jose could have followed up with Lucero if respondent was *actually* receiving the Court of Appeals' orders or resolutions. This is a fairly simple task requiring a quick yes or no, accomplishable in a few seconds. As Managing Partner of his firm, Atty. Jose can be expected to have supervisory duties over his firm's associates and support staff, among others.

Alternatively, Atty. Jose could have contacted respondent himself. That he did not know respondent's number[89] does not suffice. It bears stressing that Atty. Jose and respondent are acquaintances and have common connections.[90]

In the first place, Atty. Jose showed that he could easily get respondent's new number through a mutual friend. Yet, he only did so four (4) years later.[91] In today's age of email, social media, web messaging applications, and a whole gamut of digital technology easing people's connectivity whenever and wherever they are, it is fairly easy to get connected with someone without even leaving one's location.

Atty. Jose is fully aware of the importance of following court orders and processes. It is reasonable to expect him to extend assistance to the lawyer to whom he lent his office address—and in doing so, to the Court of Appeals—in the speedy and efficient administration of justice in *Bank of the Philippine Islands.*

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[88] *Id*. at 2-5. It is common practice for Philippine courts to issue orders or resolutions in sealed envelopes. These 12 envelopes contain the Resolutions dated September 20, 2010, November 11, 2010, February 23, 2011, March 28, 2011, July 5, 2011, October 13, 2011, January 10, 2012, May 16, 2012, August 13, 2012, October 17, 2012, April 26, 2013, and August 14, 2013.

[89] *Id*. at 39.

[90] *Id*. at 33.

[91] A total of four (4) years passed between 2010 and 2014. Atty. Mortel made the address request in 2010 (*Id*. at 40, Atty. Jose Affidavit). He stopped communicating with MFV Jose Law Office after August 16, 2010 (*Id*. at 24, Comment). Meanwhile, Atty. Jose began to look for Atty. Mortel's number on February 25, 2014 (*Id*. at 41, Atty. Jose Affidavit).

Atty. Jose's reading of this Court's January 20, 2014 Resolution[92] is also highly questionable. While the Resolution was sent to his law firm,[93] it was addressed to respondent, a lawyer not under his employ.[94]

Canon 21, Rule 21.04[95] of the Code of Professional Responsibility generally allows disclosure of a client's affairs only to partners or associates of the law firm, unless the client prohibits it. Respondent is not a partner or associate of MFV Jose Law Office.[96]

Even assuming that this Court's January 20, 2014 Resolution is independent of *Bank of Philippine Islands*, the present case being administrative in nature, Atty. Jose's action still invites suspicion.

Article III, Section 3(1) of the 1987 Constitution guarantees that:

ARTICLE III
Bill of Rights

. . .

SECTION 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

Under Article 32 of the Civil Code:

ARTICLE 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

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[92] *Rollo*, p. 39.

[93] *Id*.

[94] *Id*. at 41.

[95] Code of Professional Responsibility, Canon 21, Rule 21.04 provides:

Rule 21.04 - A lawyer may disclose the affairs of a client of the firm to partners or associates thereof unless prohibited by the client.

[96] *Rollo*, p. 41.

. . .

(11) The privacy of communication and correspondence[.]

Atty. Jose took hold of this Court's correspondence meant for respondent and read it.[97] On February 25, 2014, he "*look[ed]* into the said case [and] *noticed* that the Resolution . . . was already in the pink form issued by the Supreme Court. [He] *saw* the word 'suspended' and, *upon perusal*, saw that [respondent] was now subjected to an administrative case[.]"[98]

Atty. Jose may claim that he did so out of concern. However, if he were truly concerned, his proper recourse would have been to inform respondent about receiving mail from this Court, not to read it. Moreover, he would have informed respondent, as early as 2010, that his law firm received several Court of Appeals correspondences, and that these letters kept arriving for respondent until 2013.[99]

Therefore, under Rule 138, Section 30[100] of the Rules of Court, this Court directs Atty. Jose to show cause, within 10 days from receipt of a copy of this Resolution, why he should not be administratively sanctioned for failing to ensure respondent's prompt receipt of the Court of Appeals Resolutions, and for reading this Court's Resolution addressed to respondent.

II

Atty. Jose stated under oath that respondent requested to use MFV Jose Law Office's address as his mailing address only

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[97] *Id*. at 39.

[98] *Id*. Emphasis supplied.

[99] *Id*. at 2-4.

[100] RULES OF COURT, Rule 138, Sec. 30 provides:

SEC. 30. *Attorney to be heard before removal or suspension*. — No attorney shall be removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel. But if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter *ex parte.*

in August 2010,[101] after respondent had already filed his appeal.[102] The exact day in August is unknown.

Assuming respondent's request was granted as early as August 1, 2010, this does not help him in any way. The Court of Appeals Notice for respondent to file an appellant's brief was issued one (1) month earlier, on July 20, 2010, when respondent still presumably used his old address on record at Herrera Tower, Rufino St., corner Valero St., Makati City.[103]

Thus, respondent's sending De Leon, his messenger, to the new forwarding address at MFV Jose Law Office to get updates anytime between August 1, 2010[104] and August 16, 2010 (when he filed the Motion) would certainly have yielded no result. In this hypothetical scenario, the Court of Appeals would have sent the Notice to his old address on record. That he allegedly did not receive the July 20, 2010 Notice from the Court of Appeals was, therefore, his own lookout.

Assuming MFV Law Office accommodated respondent's request after August 16, 2010, there could have been no instance where respondent sent De Leon to MFV Law Office, if this Court were to believe his statement that he stopped contacting MFV Law Office *after* he filed the Motion.[105]

In either case, respondent had been remiss in his duty to keep himself informed on the status of the case.

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[101] *Rollo*, p. 39.

[102] Although the records do not show when Atty. Mortel filed the appeal, it certainly happened before July 20, 2010, the date when the Court of Appeals issued the Notice for Atty. Mortel to file an appellant's brief. Under Section 4(a)(1)(1.6) of the Court of Appeals Internal Rules, issuing a notice to file appellant's brief means that the appellate court has already received the appeal.

[103] *Rollo*, p. 34.

[104] In this hypothetical scenario, this would be the date when Atty. Mortel's request was granted by MFV Law Office.

[105] *Rollo*, p. 24.

Respondent presents a different version of the facts. According to him, he requested to use MFV Law Office's address "as his mailing address for the [purpose of] filing of the appeal[.]"[106] This hints that he made his request before he even elevated *Bank of the Philippine Islands* to the Court of Appeals, and precisely for that purpose.

While the records do not show when respondent filed the appeal, it certainly happened before July 20, 2010, the date when the Court of Appeals issued the Notice[107] for respondent to file an appellant's brief. Under the Internal Rules of the Court of Appeals, issuing a notice to file appellant's brief means that it has already received the appeal.[108] Thus, insofar as respondent is concerned, the July 20, 2010 Notice reached MFV Law Office,[109] not his old address on record.

Respondent further claims:

> [O]n the account of the Honorable Court [of Appeals] in its Resolution dated 14 August 2013 the Court [of Appeals] issued already a "Notice" to file appellant's brief on July 20, 2010 *signifying that there was already a notice received by the staff of M V F* [sic] *Jose Law Office but was not forwarded to the undersigned counsel*. This demonstrated that the very first Order issued by the Court [of Appeals] was received by the aforesaid law office but was not forwarded to the undersigned counsel and the same was true to all subsequent Orders or Resolutions issued by the Court of Appeals[.][110] (Emphasis supplied)

Respondent dates back his request to use MFV Law Office's address before July 20, 2010, while Atty. Jose avows that it

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[106] *Id*. at 34.

[107] *Id*. at 3.

[108] Section 4(a)(1)(1.6) of the Internal Rules of the Court of Appeals states that as soon as the Court of Appeals receives appellant's appeal, the Civil Cases Section of the Judicial Records Division shall, within ten (10) days from completion of the records, issue a notice to file appellant's brief within forty-five (45) days from receipt thereof.

[109] *Rollo*, pp. 27-28.

[110] *Id*.

happened in August 2010.[111] The inconsistent narration of facts shows that one of them did not give a truthful account on the matter.

In any of the scenarios presented, respondent's gross negligence and lack of foresight is apparent. Respondent did not make it easy for MFV Law Office to reach him personally or through his messenger.

First, respondent personally stopped visiting and communicating with the law firm after August 16, 2010.[112] A total of 12 Court of Appeals Resolutions arrived at MFV Law Office after that date.

Second, respondent asked De Leon to stop going to the law firm after August 16, 2010.[113] This may explain why De Leon no longer replied to Lucero, Atty. Jose's messenger, after a few text exchanges.[114] Lucero states that he had no idea how to find De Leon, and had not seen respondent for years.[115]

Third, Atty. Mortel did not update MFV Law Office of his or De Leon's present work or phone number(s).[116] Atty. Jose had to look for respondent's mobile number four (4) years later[117] just so he could inform respondent about this Court's Resolution.[118] Meanwhile, Lucero assumed that De Leon changed his number as De Leon could no longer be reached.[119]

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[111] *Id*. at 39.

[112] *Id*. at 24.

[113] *Id*. at 24.

[114] *Id*. at 41.

[115] *Id*.

[116] *Id*. at 42. According to Lucero, after not receiving any reply from De Leon, he assumed that the latter changed his number.

[117] Four (4) years have passed from 2010 to 2014. Atty. Mortel made the address request in 2010 (*Id*. at 40, Atty. Jose's Affidavit). He stopped communicating with MFV Jose Law Office after August 16, 2010 (*Id*. at 24, Comment). Meanwhile, Atty. Jose began to look for Atty. Mortel's number on February 25, 2014 (*Id*. at 41, Atty. Jose's Affidavit).

[118] *Rollo*, p. 39.

[119] *Id*. at 41.

Fourth, there is no allegation that respondent left other contact details to MFV Law Office, such as his home address, as a safety net.

What follows from all these is that respondent failed to adopt an "efficient and orderly system of receiving and attending promptly to all judicial notices."[120] The fault was his to bear.

In *Gonzales v. Court of Appeals*:[121]

> We hold that an attorney owes it to himself and to his clients to adopt an efficient and orderly system of receiving and attending promptly to all judicial notices. He and his client must suffer the consequences of his failure to do so particularly where such negligence is not excusable as in the case at bar. . . .
>
> Aside from his failure to adopt an organized and efficient system of managing his files and court notices, we also note that petitioner's counsel, Atty. Almadro, allowed one year to lapse before he again acted on the appeal of his client. . . . Subsequently, the notice to file the appellant's brief was received by the househelp of Atty. Almadro, petitioner's counsel, on February 21, 1996. It was only on July 11, 1996 that Atty. Almadro claims to have discovered the notice. . . . Atty. Almadro apparently never bothered to check why he had not received any notice for the filing of his client's (appellant's) brief.[122]

Similarly, in this case, respondent did not adequately inquire why he had not received any notice for the filing of Angelita De Jesus' appellant's brief."[123] He should have assumed that the Court of Appeals would send him a notice regarding his appeal. Yet, he instructed De Leon to go to MFV Law Office only initially,[124] and cut contact with the law firm after August 16, 2010.[125]

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[120] 450 Phil. 296 (2003) [Per *J.* Corona, Third Division].

[121] *Id*. at 302.

[122] *Id*. at 302-303.

[123] *Id*. at 303.

[124] *Id*. at 24.

[125] *Id*.

According to respondent, he was "completely unaware of the existence of the Court [of Appeals'] Orders or Resolutions."[126] He claims that his failure to comply was made in good faith and was not done intentionally.[127]

We are not convinced.

Respondent's disobedience of court orders, while it may not have been malicious, was certainly willful. He knew of the consequences of disregarding court orders, yet he did not take steps to prevent it from happening. He used Atty. Jose's office address for *Bank of the Philippine Islands*, but did not ensure that he could actually receive the Court of Appeals Notices and Resolutions.

That respondent was able to receive this Court's Resolution through MFV Law Office in 2014 shows that it was also possible for him to have received the Court of Appeals Notice and Resolutions from 2010 to 2013, had he only cared to do so.

III

Respondent attempts to escape liability by invoking Rule 50, Section 3[128] of the Rules of Court, which states that withdrawal of appeal is a matter of right before the filing of the appellee's brief. He claims to have honestly believed that the filing of the motion had the effect of withdrawal of appeal.[129] Thinking that the case had been closed and terminated, he forgot all about it.[130]

Respondent prides himself in wanting to become a judge, joining the 30th Prejudicature program, and taking the "masterate

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[126] *Id*. at 23.

[127] *Id*. at 27-A.

[128] RULES OF COURT, Rule 50, Sec. 3 provides:

SEC. 3. *Withdrawal of appeal*. An appeal may be withdrawn as of right at any time before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court.

[129] *Rollo*, p. 24.

[130] *Id*.

[sic] and doctoral degree[s] in law[.]"[131] In terms of legal knowledge and conduct, more is expected of him.

Filing a motion to withdraw appeal does not result in automatic withdrawal of the appeal. The next-level court, before which a motion to withdraw appeal is filed, still needs to resolve this motion. A motion *prays for a relief* other than by a pleading.[132] As the court may either grant or deny a motion, or otherwise defer action on it until certain conditions are met, lawyers have the obligation to apprise themselves of the court's resolution, and not to simply second-guess it.

In this case, before the Court of Appeals acted on respondent's Motion, it first required proof[133] of the client's conformity.[134] It is not unlikely that the Court of Appeals wanted to ensure that Angelita De Jesus voluntarily agreed to the withdrawal of the appeal—that is, without force, intimidation, or coercion—and that, despite losing the case before the lower court, she was fully informed of the legal consequences of the contemplated action.

Thus, respondent cannot excuse himself from complying with the Court of Appeals' July 20, 2010 Notice simply because he "belie[ved] that the case has long been closed and terminated" when he filed the Motion to Withdraw Appeal.[135] Ignorance of

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[131] *Id*. at 26.

[132] RULES OF COURT, Rule 15, Sec. 1 provides:

SECTION 1. *Motion defined*. — A motion is an application for relief other than by a pleading.

[133] *Id*., Rule 138, Sec. 21 provides:

SECTION 21. *Authority of attorney to appear*. — An attorney is presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client, but *the presiding judge may*. . . on reasonable grounds therefor being shown, *require* any attorney who assumes the right to appear in a case *to produce or prove the authority under which he appears*, and to disclose, whenever pertinent to any issue, the name of the person who employed him, and may thereupon make such order as justice requires.

[134] *Rollo*, p. 2.

[135] *Id*. at 24.

the law excuses no one from compliance.[136] Respondent could not safely assume that the case had already been closed and terminated until he received the Court of Appeals resolution on the matter.

IV

Both respondent[137] and Atty. Jose[138] point a finger at Lucero, Atty. Jose's messenger, while Lucero points a finger at De Leon, respondent's messenger.[139]

According to respondent, Lucero simply left the Resolutions in MFV Law Office's racks or in Lucero's table[.]"[140] Lucero states that he did not know the relevance of the Court of Appeals Resolutions or the importance of these to respondent.[141] For a law firm messenger to have no clue about the importance of a court issuance is doubtful. What is more plausible is that the messenger, being outside this Court's disciplinary arm, is serving as a convenient scapegoat.

Even assuming that only the messengers are at fault, neither counsel can blame anyone but themselves for assigning an important matter to "incompetent or irresponsible person[s]."[142] In *Gonzales*, "[i]f petitioner's counsel was not informed by his house-help of the notice which eventually got misplaced in his office files, said counsel has only himself to blame for entrusting the matter to an incompetent or irresponsible person[.]"[143]

Respondent gave the MFV Law Office's address to the Court of Appeals. Thus, this is presumably where he wanted the orders

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[136] CIVIL CODE, Art. 3.

[137] *Rollo*, p. 23.

[138] *Id*. at 39.

[139] *Id*. 41.

[140] *Id*. at 21.

[141] *Id*. at 41.

[142] *Gonzales v. Court of Appeals*, 450 Phil. 296, 302 (2003) [Per *J*. Corona, Third Division].

[143] *Id*.

of the Court of Appeals sent. He cannot later excuse himself from complying with the court orders by stating that he did not actually receive these orders for three (3) years. Respondent is estopped from raising it as a defense. As far as courts are concerned, orders and resolutions are received by counsel through the address on record they have given.

It is well-noted that respondent informed the Court of Appeals of his present address (No. 2806 Tower 2, Pioneer Highlands, Mandaluyong City) only on March 3, 2014.[144]

V

Respondent's defiance of the Court of Appeals Notice and Resolutions shows a blatant disregard of the system he has vowed to support."[145] When he took his oath as attorney, he has sworn to do as follows:

> I, do solemnly swear that . . . I will support the Constitution and *obey* the laws as well as the *legal orders of the duly constituted authorities therein* . . . and will conduct myself as a lawyer according to the best of my knowledge and discretion, *with all good fidelity as well to the courts as to my clients*; and I impose upon myself these voluntary obligations without any mental reservation or purpose of evasion. So help me God. (Emphasis supplied)

An oath is not an empty promise, but a solemn duty. Owing good fidelity to the court, lawyers must afford due respect to "judicial officers and other duly constituted authorities[.]"[146] Under the Code of Professional Responsibility:

> CANON 7 - A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION. . .
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> . . .

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[144] *Rollo*, p. 38.

[145] *Bantolo v. Castillon Jr.*, 514 Phil. 628, 633 (2005) [Per *J*. Tinga, Second Division].

[146] *Almendarez, Jr. v. Langit*, 528 Phil. 814, 821 (2006) [Per *J*. Carpio, *En Banc*].

CANON 10 - A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

CANON 11 - A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

CANON 12 - A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

In *Bantolo v. Atty. Castillon Jr.*:[147]

Lawyers are particularly called upon to obey court orders and processes, and this deference is underscored by the fact that willful disregard thereof may subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well. Such is the situation in the instant case. We need not delve into the factual findings of the trial court and the Court of Appeals on the contempt case against respondents. Suffice it to say that *respondent lawyer's commission of the contumacious acts have been shown and proven, and eventually punished* by the lower courts.[148] (Emphasis supplied)

In its May 16, 2012 Resolution, the Court of Appeals found respondent guilty for indirect contempt of court.[149] On top of respondent's punishment for contempt, his willful disobedience of a lawful order of the Court of Appeals is a ground for respondent's removal or suspension.

Rule 138, Section 27 of the Rules of Court states:

SEC. 27. *Attorneys removed or suspended by Supreme Court on what grounds*. – A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a *willful disobedience of*

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[147] 514 Phil. 628(2005) [Per *J.* Tinga, Second Division].

[148] *Id*. at 632-633.

[149] *Id*. at 3.

any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

In *Sebastian v. Atty. Bajar*,[150] this Court ordered the lawyer to file a rejoinder within 10 days from notice, but she was able to file only after one (1) year.[151] The lawyer was also ordered to comment on the complainant's manifestation, but instead of filing a comment, she submitted a manifestation about four (4) months after.[152] Suspending the lawyer for three (3) years, this Court stated that the lawyer's "cavalier attitude in repeatedly ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution."[153]

In this case, respondent utterly disrespected the lawful orders of the court by ignoring 12 Court of Appeals Resolutions.[154] In *Ong v. Atty. Grijaldo*:[155]

> [Respondent's] conduct indicates a high degree of irresponsibility. A resolution of this Court is not to be construed as a mere request, nor should it be complied with partially, inadequately or selectively. Respondent's obstinate refusal to comply therewith not only betrays a recalcitrant flaw in his character; it also underscores his disrespect of our lawful orders which is only too deserving of reproof.
>
> Any departure from the path which a lawyer must follow as demanded by the virtues of his profession shall not be tolerated by this Court as the disciplining authority. This is especially so, as in the instant case, where respondent even deliberately defied the lawful orders of the Court for him to file his comment on the complaint, thereby transgressing Canon 11 of the Code of Professional Responsibility

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[150] 559 Phil. 211 (2007) [Per *J.* Carpio, *En Banc*].

[151] *Id*. at 223.

[152] *Id*.

[153] *Id*. at 224.

[154] *Rollo*, pp. 1-5.

[155] 450 Phil. 1 (2003) [Per Curiam, *En Banc*].

which requires a lawyer to observe and maintain the respect due the courts.[156] (Emphasis supplied, citations omitted)

In *Richards v. Asoy*,[157] the lawyer failed to comply with this Court's Resolution requiring him to file a comment and show cause why he should not be administratively sanctioned or cited in contempt.[158] He was also asked to comply with this Court's other Resolution requiring him to reimburse the complainant within 10 days from notice.[159] This Court found that respondent "had gone into hiding and was evading service of pleadings/orders/processes of this Court."[160] For the lawyer's grave misconduct, this Court indefinitely suspended him from legal practice.[161] When the lawyer later sought to be readmitted to the bar, this Court denied his Petition to be reinstated.[162] The lawyer was found to have failed to justify the long delay of nine (9) years in complying with this Court's Resolutions to reimburse complainant:

> Respondent's justification for his 9-year belated "compliance" with the order for him to reimburse complainant glaringly speaks of his lack of candor, of his dishonesty, if not defiance of Court orders, qualities that do not endear him to the esteemed brotherhood of lawyers. The solemn oath which all lawyers take upon admission to the bar to dedicate their lives to the pursuit of justice is neither a mere formality nor hollow words meant to be taken lightly, but a sacred trust that lawyers must uphold and keep inviolable at all times. The lack of any sufficient justification or explanation for the nine-year delay in complying with the Court's July 9, 1987 and March 15, 1988 Resolutions to reimburse complainant betrays a clear and contumacious disregard for the lawful orders of this Court. Such disrespect on the

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[156] *Id*. at 12-13.

[157] 647 Phil. 113 (2010) [Per Curiam, *En Banc*].

[158] *Id*. at 116.

[159] *Id*.

[160] *Id*.

[161] *Id*.

[162] *Id*. at 122.

part of respondent constitutes a clear violation of the lawyer's Code of Professional Responsibility[.]

. . . .

Respondent denigrates the dignity of his calling by displaying a lack of candor towards this Court. By taking his sweet time to effect reimbursement . . . he sent out a strong message that the legal processes and orders of this Court could be treated with disdain or impunity.[163] (Citations omitted)

Here, respondent failed to justify the long delay of at least three (3) years[164] in complying with the Court of Appeals Resolutions requiring his client's written conformity to the Motion (2010)[165] and information on his client's current address (2011).[166]

Respondent also failed to justify the long delay in complying with other Court of Appeals Resolutions (a) requiring him to show cause why he should not be cited in contempt, and to comply with the Court of Appeals' earlier Resolutions;[167] (b) citing him in indirect contempt and ordering him to pay a fine of ₱10,000.00;[168] (c) reiterating the Resolutions that directed him to pay the fine and inform the Court of Appeals of his client's address, and warning him of a more severe sanction should he fail to do so;[169] (d) requiring him to show cause why he should not be suspended from the practice of law for his refusal to pay the fine; and (e) ordering him to again to comply with the Resolution that directed him to pay the fine.[170]

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[163] *Id*. at 120-121.

[164] *Rollo,* p. 33. Atty. Mortel belatedly presented Dulay's Affidavit of Conformity and Compliance (*Id*. at 44) on March 5, 2014.

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

[166] *Id*. at 3.

[167] *Id*., *citing* Court of Appeals' January 10, 2012 Resolution.

[168] *Id*., *citing* Court of Appeals' May 16, 2012 Resolution.

[169] *Id., citing* Court of Appeals' October 17, 2012 Resolution.

[170] *Id*. at 5-6.

Moreover, even after he found out about the developments of the case,[171] respondent still did not take immediate actions to observe all of the Court of Appeals Resolutions. Nowhere in the records does it show that he complied with the May 16, 2012, August 13, 2012, and October 17, 2012 Resolutions directing him to pay ₱10,000.00 as fine for his non-compliance with the earlier Court of Appeals Resolutions.

Thus, despite respondent's profuse apologies[172] to the Court of Appeals, the "evidence of atonement for [his] misdeeds is sorely wanting."[173]

In *Cuizon v. Atty. Macalino*,[174] this Court disbarred a lawyer for his obstinate failure to comply with this Court's Resolutions requiring him to file his comment and for issuing a bouncing check.[175] Found liable for contempt of court, the lawyer was ordered imprisoned until he complied with this Court's Resolution to pay a fine and submit his comment:

> By his repeated cavalier conduct, the respondent exhibited an unpardonable lack of respect for the authority of the Court.
>
> As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes.[176] (Citations omitted)

Respondent's actions shatter the dignity of his profession. He exhibited disdain for court orders and processes, as well as a lack of fidelity to the court. In "taking his sweet time to effect"[177] compliance with the Court of Appeals Resolutions,

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[171] *Id*. at 39.

[172] *Id*. at 32-38.

[173] *Richards v. Asoy*, 647 Phil. 113, 121 (2010) [Per Curiam, *En Banc*].

[174] 477 Phil. 569 (2004) [Per Curiam, *En Banc*].

[175] *Id*. at 572.

[176] *Id*. at 575.

[177] *Richards v. Asoy*, 647 Phil. 113, 121 (2010) [Per Curiam, *En Banc*].

he sends the message that he is above the duly constituted judicial authorities of this land, and he looks down on them with condescension. This Court agrees with the Court of Appeals that his acts constitute gross misconduct and insubordination or disrespect of court.

Gross misconduct is defined as an "inexcusable, shameful or flagrant unlawful conduct"[178] in administering justice, which prejudices the parties' rights or forecloses a just determination of the case.[179] As officers of the court, lawyers themselves should be at the forefront in obeying court orders and processes. Respondent failed in this regard. His actions resulted in his client's prejudice.

VI

Respondent states that "[t]he ironical truth on this legal controversy is that the client-appellant represented by undersigned counsel was satisfied, contented and has fully benefited from the legal services rendered by him."[180] Presenting the affidavit[181] of Jim Dulay (Dulay), Angelita De Jesus' Attorney-in-Fact, respondent brandishes his client's pleasure with his legal services.[182] According to respondent, "[t]he client-appellant in the same affidavit expressed that [Dulay] was not prejudiced in any manner."[183]

This is not true.

Angelita De Jesus was prejudiced by respondent's willful disobedience of the lawful orders of the Court of Appeals. Respondent's failure to comply with the September 20, 2010 Resolution (requiring his client's conformity to the Motion to Withdraw Appeal) and November 11, 2010 Resolution (reiterating

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[178] *Flores v. Atty. Mayor Jr.*, A.C. No. 7314, August 25, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/7314.pdf> 4 [Per Curiam, *En Banc*].

[179] *Id*. at 5.

[180] *Rollo*, p. 25.

[181] *Id*. at 44.

[182] *Id*. at 25.

[183] *Id*. at 26.

the requirement of his client's conformity to the Motion) resulted in the denial of the Motion on February 23, 2011.[184] The period within which to appeal the February 23, 2011 denial[185] had clearly lapsed when respondent filed the Omnibus Motion before the Court of Appeals on March 5, 2014.[186]

Dulay wanted to withdraw the appeal,[187] but respondent's negligence and lack of prudence resulted in an outcome opposite of what Angelita De Jesus, through Dulay, sought his services for. Under the Code of Professional Responsibility:

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.

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.

In *Ong*, this Court found that the lawyer violated his duty to his client in failing to update the client on the status of the case.[188] The lawyer's incompetence, neglect, and failure to update his client, in addition to his misappropriation of his client's money, led to his disbarment from the practice of law.[189]

Here, respondent blindsided his client on the real status of *Bank of Philippine Islands*. He failed to diligently attend to the legal matter entrusted to him. The case, instead of being closed and terminated, came back to life on appeal due to his neglect and lack of diligence. As the Court of Appeals correctly found:

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[184] *Id*. at 2-3, *citing* Court of Appeals' February 13, 2011 Resolution.

[185] *Id*.

[186] *Id*. at 32.

[187] *Id*. at 43.

[188] *Id*. at 5-6.

[189] *Id*. at 3.

Failure of Atty. Mortel to comply with the Resolutions of [the Court of Appeals] has prejudiced the right of his client, herein respondent-oppositor-appellant, to a just determination of her cause. His failure or obstinate refusal without justification or valid reason to comply with [the Court of Appeal's] directives constitutes disobedience or defiance of the lawful orders of [the Court of Appeals], amounting to gross misconduct and insubordination or disrespect. The foregoing acts committed by Atty. Mortel are sufficient cause for his suspension pursuant to Sec. 28, in relation to Section 27 of Rule 138 of the Rules of Court.[190]

Respondent's "negligence shows a glaring lack of the competence and diligence required of every lawyer."[191]

For his gross misconduct, insubordination, and disrespect of the Court of Appeals directives, and for his negligence of his client's case, respondent must be suspended from the practice of law for one (1) year, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

WHEREFORE, Atty. Marcelino Ferdinand V. Jose is **DIRECTED** to show cause, within ten (10) days from receipt of a copy of this Resolution, why he should not be disciplined by this Court.

Respondent Atty. Gideon D.V. Mortel is **SUSPENDED** from the practice of law for (1) year for violating Canons 7, 10, 11, 12, and 18, Rules 18.03 and 18.04 of the Code of Professional Responsibility. He is **STERNLY WARNED** that repetition of the same or similar act shall be dealt with more severely.

Let a copy of this Resolution be attached to respondent's personal records as attorney, and be furnished to the Integrated Bar of the Philippines and all courts in the country through the Office of the Court Administrator.

SO ORDERED.

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

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[190] *Rollo*, p. 5.

[191] *Ong v. Grijaldo*, 450 Phil. 1, 9 (2003) [Per Curiam, *En Banc*].

THIRD DIVISION

[G.R. Nos. 199151-56. July 25, 2016]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **THE SANDIGANBAYAN, FIFTH DIVISION, LT. GEN. LEOPOLDO S. ACOT, B/GEN. ILDEFONSO N. DULINAYAN, LT. COL. SANTIAGO B. RAMIREZ, LT. COL. CESAR M. CARIÑO, MAJ. PROCESO T. SABADO, MAJ. PACQUITO L. CUENCA, 1LT. MARCELINO M. MORALES, M/SGT. ATULFO D. TAMPOLINO, REMEDIOS "REMY" DIAZ, JOSE GADIN, JR., GLENN ORQUIOLA, HERMINIGILDA LLAVE, GLORIA BAYONA and RAMON BAYONA JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; DISTINGUISHED FROM PETITION FOR *CERTIORARI*; THE JUDGMENT THAT MAY BE APPEALED BY THE AGGRIEVED PARTY IS A JUDGMENT CONVICTING THE ACCUSED, AND NOT A JUDGMENT OF ACQUITTAL AS THE STATE IS BARRED FROM APPEALING SUCH JUDGMENT OF ACQUITTAL BY A PETITION FOR REVIEW.— A petition for review on *certiorari* under Rule 45 of the Rules of Court and a petition for *certiorari* under Rule 65 of the Rules of Court are two and separate remedies. A petition under Rule 45 brings up for review errors of judgment, while a petition for *certiorari* under Rule 65 covers errors of jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. Grave abuse of discretion is not an allowable ground under Rule 45. A petition for review under Rule 45 of the Rules of Court is a mode of appeal: x x x. However, the provision must be read in relation to Section 1, Rule 122 of the Revised Rules of Court, which provides that any party may appeal from a judgment or final order "unless the accused will thereby be placed in double jeopardy." Therefore, the judgment that may be appealed by

the aggrieved party envisaged in Rule 45 is a judgment convicting the accused, and not a judgment of acquittal. The State is barred from appealing such judgment of acquittal by a petition for review.

2. ID.; ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; A JUDGMENT OF ACQUITTAL OR THE DISMISSAL OF CRIMINAL CASES MAY BE ASSAILED IN A PETITION FOR *CERTIORARI* WITHOUT PLACING THE ACCUSED IN DOUBLE JEOPARDY WHERE THE COURT A QUO ACTED WITHOUT JURISDICTION OR GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION OR A DENIAL OF DUE PROCESS.— [A] judgment of acquittal may be assailed by the People in a petition for *certiorari* under Rule 65 of the Rules of Court without placing the accused in double jeopardy. However, in such case, the People is burdened to establish that the court *a quo*, in this case, the Sandiganbayan, acted without jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction or a denial of due process. In the case of *People v. Asis*, it was held that: A petition for *certiorari* under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the appellate level. In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable. The rule, however, is not without exception. In several cases, the Court has entertained petitions for *certiorari* questioning the acquittal of the accused in, or the dismissals of, criminal cases. x x x Thus, the instant petition for *certiorari* is the correct remedy in seeking to annul the Resolutions of public respondent Sandiganbayan for allegedly having been issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction which granted the motions to quash or dismiss filed by private respondents which were premised on the ground of inordinate delay in the conduct of the preliminary investigation amounting to a violation of their rights to speedy disposition of their cases.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; IN THE DETERMINATION OF WHETHER THE RIGHT HAS BEEN VIOLATED, A MERE MATHEMATICAL RECKONING OF THE TIME INVOLVED IS NOT

SUFFICIENT, BUT MUST CONSIDER THE LENGTH OF DELAY, THE REASONS FOR THE DELAY, THE ASSERTION OR FAILURE TO ASSERT SUCH RIGHT BY THE ACCUSED; AND THE PREJUDICE CAUSED BY THE DELAY.— We go now to the issue of whether there was a violation of the right of the private respondents to speedy disposition of their cases. This right is enshrined in Article III of the Constitution, which declares: *Section 16*. All persons shall have the right to a speedy disposition of their cases before all judicial, *quasi*-judicial or administrative bodies. The constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial. In this accord, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice. This right, however, like the right to a speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays. The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.

4. **ID.; ID.; THE OFFICE OF THE OMBUDSMAN; HAS THE INHERENT DUTY NOT ONLY TO CAREFULLY GO THROUGH THE PARTICULARS OF THE CASE BUT ALSO TO RESOLVE THE SAME WITHIN THE PROPER LENGTH OF TIME, AND ITS DUTIFUL PERFORMANCE SHOULD NOT ONLY BE GAUGED BY THE QUALITY OF THE ASSESSMENT, BUT ALSO BY THE REASONABLE PROMPTNESS OF ITS DISPENSATION.—** [T]he Court cannot agree with the petitioner that the delay in the proceedings could be excused by the fact that the case had to undergo careful review and revision through the different levels in the Office of the Ombudsman before it is finally approved, in addition to the steady stream of cases which it had to resolve. Verily, the Office of the Ombudsman was created under the mantle of the

Constitution, mandated to be the "protector of the people" and, as such, required to "act promptly on complaints filed in any form or manner against officers and employees of the Government, or of any subdivision, agency or instrumentality thereof, in order to promote efficient service." Precisely, the Office of the Ombudsman has the inherent duty not only to carefully go through the particulars of the case but also to resolve the same within the proper length of time. Its dutiful performance should not only be gauged by the quality of the assessment, but also by the reasonable promptness of its dispensation. Thus, barring any extraordinary complication, such as the degree of difficulty of the questions involved in the case or any event external thereto that effectively stymied its normal work activity – any of which have not been adequately proven by the petitioner in the case at bar – there appears to be no justifiable basis as to why the Office of the Ombudsman could not have earlier resolved the preliminary investigation proceedings against the private respondents.

5. **ID.; ID.; BILL OF RIGHTS; RIGHT TO DUE PROCESS AND SPEEDY DISPOSITION OF CASES; VIOLATED.—** In view of the unjustified length of time miring the Office of the Ombudsman's resolution of the case, as well as the concomitant prejudice that the delay in this case has caused, it is undeniable that respondent's constitutional right to due process and speedy disposition of cases had been violated. As the institutional vanguard against corruption and bureaucracy, the Office of the Ombudsman should create a system of accountability in order to ensure that cases before it are resolved with reasonable dispatch and to equally expose those who are responsible for its delays, as it ought to determine in this case.

6. **ID.; ID.; ID.; ID.; IT IS THE DUTY OF THE PROSECUTOR TO EXPEDITE THE PROSECUTION OF THE CASE REGARDLESS OF WHETHER THE PETITIONER DID NOT OBJECT TO THE DELAY OR THAT THE DELAY WAS WITH HIS ACQUIESCENCE PROVIDED IT WAS NOT DUE TO CAUSES ATTRIBUTABLE TO HIM.—** Petitioner likewise partly puts the blame on the respondents that they did not take any steps whatsoever to accelerate the disposition of the matter. In the case of *Cervantes v. Sandiganbayan*, wherein it was held that there was a delay of six (6) years, this Court stated that it is the duty of the prosecutor

to expedite the prosecution of the case regardless of whether the petitioner did not object to the delay or that the delay was with his acquiescence provided it was not due to causes attributable to him. This was explained in *Coscolluela v. Sandiganbayan*, to wit: x x x. Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo*. A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.

7. **ID.; ID.; ID.; ID.; THE RIGHT TO SPEEDY DISPOSITION OF CASES IS NOT MERELY HINGED TOWARDS THE OBJECTIVE OF SPURRING DISPATCH IN THE ADMINISTRATION OF JUSTICE BUT ALSO TO PREVENT THE OPPRESSION OF THE CITIZEN BY HOLDING A CRIMINAL PROSECUTION SUSPENDED OVER HIM FOR AN INDEFINITE TIME; THE LOOMING UNREST, AS WELL AS THE TACTICAL DISADVANTAGES CARRIED BY THE PASSAGE OF TIME, SHOULD BE WEIGHED AGAINST THE STATE AND IN FAVOR OF THE INDIVIDUAL.—** [T]he Court recognizes the prejudice caused to the private respondents caused by the lengthy delay in the proceedings against them. We do not agree with the petitioner that respondents did not suffer any damage because respondents Acot and Dulinayan were able to get their clearances. The right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest, as well as the tactical disadvantages carried by the passage of time, should be weighed against the State and in favor of the individual.

8. ID.; ID.; ID.; ID.; THE ADJUDICATION OF CASES MUST NOT ONLY BE DONE IN AN ORDERLY MANNER THAT IS IN ACCORD WITH THE ESTABLISHED RULES OF PROCEDURE BUT MUST ALSO BE PROMPTLY DECIDED TO BETTER SERVE THE ENDS OF JUSTICE, AS AN EXCESSIVE DELAY IN THE DISPOSITION OF CASES RENDERS THE RIGHTS OF THE PEOPLE GUARANTEED BY THE CONSTITUTION AND BY VARIOUS LEGISLATIONS INUTILE.— [T]he contention is that the State cannot be bound by the mistakes committed by the public officers involved in the review of the case and that the right of the State to prosecute erring officers involved in this ₱89 Million-Peso Fiasco cannot be prejudiced. We should take note that equally true is the constitutional right of the respondents to the speedy disposition of cases and the constitutional mandate for the Ombudsman to act promptly on complaints. The Constitutional guarantee against unreasonable delay in the disposition of cases was intended to stem the tide of disenchantment among the people in the administration of justice by our judicial and quasi-judicial tribunals. The adjudication of cases must not only be done in an orderly manner that is in accord with the established rules of procedure but must also be promptly decided to better serve the ends of justice. Excessive delay in the disposition of cases renders the rights of the people guaranteed by the Constitution and by various legislations inutile.

APPEARANCES OF COUNSEL

Benjamin C. Delos Santos for respondent Lt. Gen. Leopoldo S. Acot.

Abelardo T. Domondon for respondent B/Gen. Ildefonso N. Dulinayan.

Santiago M. Beltran, Jr. for respondents Ramirez, Cariño, Sabado, Cuenca, Morales, Orquiola & Llave.

Jose V. Aspiras for respondent Remedios Diaz.

Romulo Yap Law Office for respondent Jose Gadin, Jr.

D E C I S I O N

PERALTA, *J.*:

Before us is a special civil action for *certiorari*[1] under Rule 65 of the Rules of Court which seeks to annul and set aside the Resolutions dated September 16, 2011 and October 15, 2010 by public respondent Sandiganbayan for allegedly having been issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, and to reinstate the six (6) Informations for Violation of Section 3 (e) of Republic Act (*R.A.*) No. 3019 otherwise known as the "Anti-Graft and Corrupt Practices Act" filed against all private respondents.

The assailed Resolution dated October 15, 2010 granted the motions to quash or dismiss filed by private respondents Lt. Gen. Leopoldo S. Acot (*Acot*), B/Gen. Ildefenso N. Dulinayan (*Dulinayan*), Lt. Col. Santiago B. Ramirez (*Ramirez*), Lt. Col. Cesar M. Cariño (*Cariño*), Maj. Proceso T. Sabado (*Sabado*), Maj. Pacquito L. Cuenca (*Cuenca*), 1Lt. Marcelino M. Morales (*Morales*), M/Sgt. Atulfo D. Tampolino (*Tampolino*) and Remedios Diaz (*Diaz*). The assailed Resolution dated September 16, 2011 denied petitioner's Motion for Reconsideration of the October 15, 2010 Resolution and granted the motions to quash filed by respondents Jose Gadin, Jr. (*Gadin*), Glenn Orquiola (*Orquiola*), Herminigilda Llave (*Llave*), Gloria Bayona and Ramon Bayona, Jr.[2]

The motions to quash or dismiss filed by private respondents were premised on the ground of inordinate delay in the conduct of the preliminary investigation amounting to a violation of their constitutional rights to due process of law and to a speedy disposition of the cases.

The facts of the case, as culled from the records, are as follows:

Sometime on December 28, 1994, a letter-complaint was filed by one Carmelita U. Ramirez before the Office of the Ombudsman

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[1] *Rollo*, p. 2.

[2] *Rollo*, p. 64.

for the Military and other Law Enforcement Officers (*MOLEO*) alleging, among others, that private respondents conspired and defrauded the government in the amount of Eighty-Nine Million Pesos (₱89M) through ghost deliveries.[3] The complaint prompted the MOLEO to immediately conduct a fact-finding investigation. It discovered that a similar fact-finding body within the Philippine Air Force, more particularly the Office of the Inspector General (*OTIG*), found that based on the audit of the AFP's Program and Evaluation and Management Analysis Division (*PEMRAD*), Office of the Deputy Chief of Staff for Comptrollership OJ6, there were ghost deliveries of assorted supplies and materials at the 5th Fighter Wing Basa Air Base amounting to ₱24,430,029.00 and unaccounted supplies and materials worth ₱42,592,257.61.[4]

On February 22, 1995, the records and report of the OTIG were subsequently forwarded to the MOLEO, after which, MOLEO commenced conducting the preliminary investigation against private respondents.[5] The last counter-affidavit was filed on March 11, 1996.[6]

On April 12, 1996, MOLEO Investigator Rudiger G. Falcis prepared a Resolution recommending that all private respondents be indicted for six counts of Violation of Section 3 (e) of R.A. 3019 and six counts of the crime of Malversation of Public Funds through Falsification of Public Documents (Article 217, in relation to Articles 171 and 172, of the Revised Penal Code).[7] Then Director Orlando C. Casimiro of the Criminal and Administrative Investigation Bureau concurred in the findings, and the same was recommended for approval by B/Gen Manuel B. Casaclang (Ret), Deputy Ombudsman for the Military.[8]

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[3] Petition, *rollo*, p. 7; Comment to Petition, *rollo*, p. 75; Resolution, *rollo*, p. 55.

[4] Petition, *rollo*, pp. 7-8; Comment to Petition, *rollo*, p. 75.

[5] *Ibid;* Resolution, *rollo*, p. 55.

[6] Comment to Petition, *rollo*, p. 75; Resolution, *rollo*, p. 55.

[7] *Rollo*, p. 8; Comment to Petition, *rollo*, p. 76; Resolution, *rollo*, p. 55.

[8] Petition, *rollo*, p. 8; Comment to Petition, *rollo*, p. 76.

On July 10, 1996, Special Prosecution Officer III Reynaldo Mendoza issued a Memorandum recommending the filing of violation of Section 3 (e) of R.A. 3019 and the dismissal of the charges for Malversation of Public Funds.[9] This Memorandum was approved by Deputy Ombudsman Orlando Casimiro.[10]

On January 12, 1998, Special Prosecutor Leonardo Tamayo issued a Memorandum recommending the dropping of charges against private respondents Acot and Dulinayan on the ground that the supplies involved were among those that had undergone the regular and proper procedure. This recommendation was approved by then Ombudsman Aniano Desierto on March 2, 1998.[11] On even date, Ombudsman Aniano Desierto also approved the Resolution dated April 12, 1996 with the following note — *"with the modifications as to the respondents as recommended by SP Tamayo and as to the scope as recommended by the OSP."*[12]

On January 12, 1999, the case was subjected to another re-evaluation by the MOLEO.[13]

In 2003, upon the assumption of then Ombudsman Simeon V. Marcelo, the case underwent another thorough review upon the recommendation of the MOLEO.[14]

On April 27, 2005, MOLEO, received the records of the case for the preparation of the Informations to be filed with the court.[15]

On July 7, 2005, MOLEO, through its investigation team, issued a Memorandum recommending for another thorough

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[9] *Rollo*, pp. 8 and 76, respectively; Resolution, *rollo*, p. 56.

[10] Resolution, *rollo*, p. 56.

[11] *Rollo*, pp. 8 and 56; approved January 16, 1998 according to Dulinayan, *rollo*, pp. 76-77.

[12] *Rollo*, pp. 56 and 77.

[13] *Id.* at 9.

[14] *Id.*

[15] *Id.*

review of the case arguing against the dismissal of the charges against private respondents Acot and Dulinayan.[16] The Memorandum was recommended for approval by then Deputy Ombudsman Orlando Casimiro.[17]

On September 19, 2005, then Ombudsman Simeon V. Marcelo referred the case to the Office of the Legal Affairs (*OLA*) for a thorough review of the case.[18]

On June 25, 2007, a Review Memorandum was prepared by Assistant Special Prosecutor Terence S. Fernando and was recommended for approval by Assistant Ombudsman Dina Joy Tenala containing the opinion of the OLA that "the April 12, 1996 Resolution did not become final and executory and that the doctrine relied upon for the dismissal of the case against Acot and Dulinayan is not applicable and that probable cause exists based on evidence."[19]

On October 23, 2008, then Over-all Deputy Ombudsman Orlando C. Casimiro approved the said Review Memorandum.[20]

On October 6, 2009, six Informations were filed before the Sandiganbayan docketed as SB-09-CRM-0184 to 189 charging private respondents for violation of Section 3 (e) of R.A. 3019.

The arraignment was set on November 20, 2009. On November 9, 2009, respondent Dulinayan filed a Motion to Quash/Dismiss and Motion to Defer Arraignment. On December 1, 2009, respondent Acot filed an Omnibus Motion to Quash and Defer Arraignment. On February 8, 2010, a Motion to Quash/Dismiss and for Deferment of Arraignment was filed by respondents Ramirez, Cariño, Sabado, Cuenca and Morales wherein they adopted the motions of respondents Dulinayan and Acot.[21] On

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[16] *Rollo*, p. 56.

[17] Comment to Petition, *rollo*, p. 77.

[18] *Rollo*, p. 9.

[19] Resolution, *rollo*, p. 56.

[20] *Id.*

[21] *Rollo*, p. 48.

February 19, 2010, a Motion to Quash was filed by respondent Tampolino.[22]

In their separate motions to quash, respondents Dulinayan, Acot, Ramirez, Cariño, Sabado, Cuenca and Morales argued, among others, that their right to speedy disposition of cases was violated when it took the Office of the Ombudsman almost fifteen (15) years to file their case before the court.

In the Comment or Opposition filed by the petitioner, it stated that the respondents failed to invoke their right which must also be weighed with the right of the State to prosecute citing the case of *Corpuz v. Sandiganbayan*.[23] It further stated that the State should not be bound by the negligent act of its officers, and the laxity in the filing of the case is prejudicial to the State because it stands to lose Eighty-Nine Million Pesos (₱89M).

In his Reply, respondent Dulinayan countered that the cited cases of *Corpuz and Valencia*[24] have different factual antecedents. In the said cases, the delay was only one year and there was contributory negligence on the part of the accused. He reiterated that it took more than seven (7) years before the MOLEO requested a review of the Resolution of the Ombudsman and another four (4) years before the Informations were filed. He did not have the opportunity to invoke his right before the Ombudsman because he was not informed of the existence of the cases considering that he was able to secure clearance therefrom. His constitutional rights as embodied in the Bill of Rights take precedence over the rights of the State.

In his Reply, respondent Acot asserted that there was a power play within the Office of the Ombudsman considering that despite prior dismissal of the case against him, it was still subjected to review seven years later and a contrary recommendation was issued after four (4) more years. He claimed that the internal

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[22] *Id.* at 42.

[23] 484 Phil. 899 (2004).

[24] 510 Phil. 70 (2005).

politics in the instant case was akin to the case of *People v. Tatad*.[25]

In its Supplemental Comment/Opposition, the petitioner averred that considering the huge amount involved in the case, it had to be reviewed meticulously and scrupulously such that the resolution underwent a hierarchy of review which called for a painstaking and fastidious study of the records of the case.

On October 15, 2010, public respondent Sandiganbayan issued a Resolution granting the motions to quash on the ground that the aforesaid private respondents' right to speedy disposition of their cases was unduly violated, thus:

> A careful reading of the April 12, 1996 Resolution of the Ombudsman and the Memoranda issued reveals that this initial Resolution was the one which resulted from [the] painstaking study of the documents gathered *vis-a-vis* the counter-affidavits of the respondents. Noteworthy is the fact that the prosecution did not offer any other explanation as to the delay of the review of the Resolution except that the case had to be reviewed meticulously and scrupulously, that the Resolution underwent a hierarchy of review and calls for painstaking and fastidious study of the records of the case. Upon review by OLA, no new documents were studied but there was merely a revisit of the cited case. Such would not require a "painstaking study or grueling review" as claimed by the Prosecution. Thus, the length of time it took to conduct its review is undoubtedly more than what was called for.
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> Though the Prosecution points out that accused failed to seasonably assert their right, it must be emphasized that the prosecution has not espoused a justifiable reason for the delay in the review of the April 12, 1996 Resolution. We reiterate that the review of the said Resolution did not involve any new computations nor any other ocular inspections. It was merely a revisit and an evaluation of records already at hand and of the cited Arias case and the reasons espoused for the dismissal of the cases against Dulinayan and Acot. Neither new findings nor major changes were reflected in the said Resolution.
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> Thus, the length of seven (7) years of review is obviously vexatious and oppressive. Likewise, the length of fifteen (15) years to hold the

[25] *Rollo*, pp. 8-9.

Preliminary Investigation is too long a time to conduct it, considering the circumstances of the case. As to the claim of the Prosecution that the accused failed to assert its rights, we quote the ruling of the Supreme Court in the case of *Cervantes*:

> The Special Prosecutor also cited *Alvizo v. Sandiganbayan* (220 SCRA 55, 64) alleging that as in *Alvizo* the petitioner herein was "insensitive to the implications and contingencies thereof by not taking any step whatsoever to accelerate the disposition of the matter."
>
> We cannot accept the Special Prosecutor's ratiocination. It is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, regardless of whether the petitioner did not object to the delay or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him.

We must highlight the fact that there is no contributory act on the part of the accused that resulted in the delay of the Preliminary Investigation.

Based on the facts and circumstances discussed above, and after considering that the right of the accused-movants to the speedy disposition of their cases and the right of the State to punish people who violated its penal laws should be balanced, this Court resolves to grant the Motions of accused. The prosecution has utterly failed to justify the inordinate delay in the preliminary investigation of these cases.[26]

On October 15, 2010, respondent Gadin filed a Motion to Quash Information and Defer Arraignment.[27] On October 28, 2010, respondents Orquiola and Llave filed a Motion to Dismiss on the same grounds raised by the other respondents.[28] On November 7, 2010, respondents Gloria Bayona and Ramon Bayona, Jr. jointly filed a Motion for Reconsideration with Motion to Dismiss.[29]

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[26] *Id.* at 59-60.

[27] *Id.* at 33.

[28] *Id.* at 12.

[29] *Id.* at 12 and 34.

Respondents Gadin, Orquiola, Llave, Gloria Bayona and Ramon Bayona, Jr. contended, among others, that their right to speedy disposition of cases was violated due to the inordinate delay in the preliminary investigation of the case. Respondent Gadin argued that the delay deprived him from adequately defending himself since the witnesses who could testify in the processes and procedures in the Finance Department of the Philippine Air Force are no longer available and some of the documents he could have used for his defense could not anymore be found.

On November 2, 2010, petitioner filed a Motion for Reconsideration of the Sandiganbayan's Resolution dated October 15, 2010. On September 9, 2011, the Sandiganbayan denied petitioner's Motion for Reconsideration and granted the motions to quash filed by respondents Gadin, Orquiola, Llave, Bayona and Bayona, Jr.

Hence, this petition wherein petitioners impute to public respondent Sandiganbayan grave abuse of discretion amounting to lack or excess of jurisdiction when it granted all of private respondents' motion to quash and denied petitioner's motion for reconsideration.

On January 12, 2012, the Court resolved to require private respondents to comment on the instant petition.[30]

We first tackle the propriety of the petition for *certiorari* under Rule 65 of the Rules of Court. In the Comment filed by respondents Tampolino, Ramirez, Cariño, Sabado, Cuenca, Morales, Orquiola and Llave, they stated that the remedy of the petitioner should have been appeal by *certiorari* under Rule 45 because the issue is allegedly purely legal citing the case of *People v. Sandiganbayan, et al.*[31] According to the aforesaid respondents, the Resolution of the public respondent Sandiganbayan which quashed the Informations was a final order that finally disposed of the case such that the proper remedy is a petition for review

[30] *Id.* at 62.

[31] 490 Phil. 105 (2005).

under Rule 45. And that, the petition was filed beyond the fifteen-day reglementary period within which to file an appeal.

We do not agree.

A petition for review on *certiorari* under Rule 45 of the Rules of Court and a petition for *certiorari* under Rule 65 of the Rules of Court are two and separate remedies. A petition under Rule 45 brings up for review errors of judgment, while a petition for *certiorari* under Rule 65 covers errors of jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. Grave abuse of discretion is not an allowable ground under Rule 45. A petition for review under Rule 45 of the Rules of Court is a mode of appeal:[32]

> *Section 1. Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court, or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

However, the provision must be read in relation to Section 1, Rule 122 of the Revised Rules of Court, which provides that any party may appeal from a judgment or final order "unless the accused will thereby be placed in double jeopardy." Therefore, the judgment that may be appealed by the aggrieved party envisaged in Rule 45 is a judgment convicting the accused, and not a judgment of acquittal. The State is barred from appealing such judgment of acquittal by a petition for review.[33]

Instead, a judgment of acquittal may be assailed by the People in a petition for *certiorari* under Rule 65 of the Rules of Court without placing the accused in double jeopardy. However, in such case, the People is burdened to establish that the court *a quo*, in this case, the Sandiganbayan, acted without jurisdiction or grave

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[32] *Villareal v. Aliga,* 724 Phil. 47, 60 (2014), citing *People v. Sandiganbayan* (

), 524 Phil. 496, 522 (2006).

[33] *Id.*

abuse of discretion amounting to excess or lack of jurisdiction or a denial of due process.[34]

In the case of *People v. Asis,*[35] it was held that:

> A petition for *certiorari* under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the appellate level. In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable. The rule, however, is not without exception. In several cases, the Court has entertained petitions for *certiorari* questioning the acquittal of the accused in, or the dismissals of, criminal cases. x x x

Thus, the instant petition for *certiorari* is the correct remedy in seeking to annul the Resolutions of public respondent Sandiganbayan for allegedly having been issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction which granted the motions to quash or dismiss filed by private respondents which were premised on the ground of inordinate delay in the conduct of the preliminary investigation amounting to a violation of their rights to speedy disposition of their cases.

We go now to the issue of whether there was a violation of the right of the private respondents to speedy disposition of their cases. This right is enshrined in Article III of the Constitution, which declares:

> *Section 16.* All persons shall have the right to a speedy disposition of their cases before all judicial, *quasi*-judicial or administrative bodies.

The constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi -judicial.[36] In this accord, any party to a case may demand

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[34] *People v. Judge Laguio,* 547 Phil. 296, 311 (2007); *People v. Uy,* 508 Phil. 637, 649 (2005).

[35] 643 Phil. 462, 469 (2010). (Citations omitted)

[36] *Cadalin v. POEA's Administrator,* G.R. Nos. 105029-32, December 5, 1994, 238 SCRA 722, 765.

expeditious action from all officials who are tasked with the administration of justice.[37] This right, however, like the right to a speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays.[38]

The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case.[39] Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[40]

In the case at bar, the investigatory process was set in motion on December 28, 1994 when the complaint was filed with the Office of the Ombudsman, and the last Counter-Affidavit was filed on March 11, 1996. The Graft Investigation Officer came up with a Resolution on April 12, 1996, or after one (1) year, three (3) months and fifteen (15) days from the start of the investigation proceedings.

The Resolution dated April 12, 1996 recommended the filing of charges against the private respondents of violation of Section 3 (e), RA 3019 and Article 217, in relation to Articles 171 and 172 of the Revised Penal Code.

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[37] *Capt. Roquero v. The Chancellor of UP-Manila, et al.,* 628 Phil. 628, 639 (2010).

[38] *Dela Peña v. Sandiganbayan,* June 29, 2001, 412 Phil. 921, 929 (2001), citing *Cojuangco v. Sandiganbayan,* 360 Phil. 559, 587 (1998); *Blanco v. Sandiganbayan,* 399 Phil. 674, 682 (2000).

[39] *Binay v. Sandiganbayan,* 374 Phil. 413, 447 (1999); *Castillo v. Sandiganbayan,* 304 Phil. 604, 613 (2000).

[40] *Alvizo v. Sandiganbayan,* G.R. No. 101689, March 17, 1993, 220 SCRA 55, 63; *Dansal v. Fernandez,* 383 Phil. 897, 906 (2000); *Blanco v. Sandiganbayan, supra* note 38.

According to the petitioner, the Resolution was not immediately approved by the higher authorities of the Office of the Ombudsman because it was allegedly subjected to "painstaking scrutiny and review."[41] And that, as a result of this "painstaking scrutiny and review," two Memoranda were issued dated July 10, 1996 and January 12, 1998.

The Memorandum dated July 10, 1996 of Special Prosecution Officer Reynaldo Mendoza, which was approved by Deputy Ombudsman Casimiro, contained a recommendation that only cases for Violation of Section 3 (e) of RA 3019 should be filed. The Memorandum dated January 12, 1998, which was issued by Special Prosecutor Leonardo P. Tamayo, recommended the dismissal of the cases against Acot and Dulinayan. The recommendation was approved by Ombudsman Aniano Desierto on March 2, 1998. On the same date, Ombudsman Aniano Desierto approved the Resolution dated April 12, 1996 with the following note — *"with the modifications as to the respondents as recommended by SP Tamayo and as to the scope as recommended by the OSP."* Otherwise stated, the Resolution dated April 12, 1996 was finally approved by Ombudsman Aniano Desierto on March 2, 1998, but with modification so as to incorporate the recommendation of Special Prosecutor Leonardo Tamayo that the charges against respondents Acot and Dulinayan be dropped.

The aforesaid approval of the Ombudsman should have resulted in the filing of information with the court, but no action was taken thereon.

Instead, on January 12, 1999, the case was subjected to another "re-evaluation" by the MOLEO. According to the petitioner, the "thorough re-evaluation" by the MOLEO was conducted since allegedly the senior officials of the office could not agree with the recommendation to drop respondents Acot and Dulinayan believing that both appear to have instigated the crime charged.[42]

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[41] Petition, *rollo*, p. 8.

[42] *Id.* at 9.

In 2003, or after four (4) years of "thoroughly" evaluating the case, and upon the assumption of Ombudsman Simeon V. Marcelo, the case underwent another "thorough review," again, upon the recommendation of the MOLEO as alleged by the petitioner.[43] By that time, nine (9) years had already passed since the filing of the complaint.

After two (2) more years, the MOLEO recommended another "thorough review" as stated in its Memorandum dated July 7, 2005 arguing against the dismissal of the case against Acot and Dulinayan. Thus, the case was referred to the Office of Legal Affairs (*OLA*).

On June 25, 2007, a Memorandum was issued containing the opinion of the OLA that probable cause exists in the commission of the crime as against respondents Acot and Dulinayan. The OLA opinion was concurred in by Over-all Deputy Ombudsman Casimiro when he approved the Review Memorandum dated October 23, 2008. Then, it took one more year for the Office of the Ombudsman to file the Informations.

From the foregoing, it is clear that from the time the first Resolution was issued by the Office of the Ombudsman on April 12, 1996, it took more than thirteen (13) years to review and file the Informations on October 6, 2009. Otherwise stated, from the time the complaint was filed on December 28, 1994, it took petitioner almost fifteen (15) years to file the Informations.

According to *Angchangco, Jr. v. Ombudsman,*[44] inordinate delay in resolving a criminal complaint, being violative of the constitutionally guaranteed right to due process and to the speedy disposition of cases, warrants the dismissal of the criminal case.

The question therefore is — was the delay on the part of the Office of the Ombudsman vexatious, capricious, and oppressive? We answer in the affirmative.

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[43] *Id.*

[44] 335 Phil. 766, 770 (1997).

In *Tatad v. Sandiganbayan,*[45] there was a delay of almost three (3) years in the conduct of the preliminary investigation by the Tanodbayan. In ruling that such delay constituted a violation of the constitutional rights of the accused to due process and to a speedy disposition of cases, this Court took into account the following circumstances: (1) the complaint was resurrected only after Tatad had a falling out with the former President Marcos, and hence, political motivations played a vital role in activating and propelling the prosecutorial process; (2) the Tanodbayan blatantly departed from the established procedure prescribed by law for the conduct of preliminary investigation; and (3) the simple factual and legal issues involved did not justify the delay.

Likewise, in *Angchangco, Jr. v. Ombudsman*[46] and *Roque v. Office of the Ombudsman,*[47] this Court held that the delay of almost or more than six (6) years in resolving the criminal charges against the petitioners therein amounted to a violation of their constitutional rights to due process and to a speedy disposition of the cases against them, as well as the Ombudsman's own constitutional duty to act promptly on complaints filed before him.

In the present case, it took more than a decade for the Office of the Ombudsman to "re-evaluate" and "thoroughly review" the proper charges to file with the court and whether or not respondents Acot and Dulinayan should be charged. It must be stressed that the petitioner explicitly admitted in its reply to the comments of the private respondents that "the matter of the complexity of the legal issues involved was never raised by the prosecution as a reason for the delay." Instead, it tried to explain that the determination of probable cause in the instant case entails both factual and legal summations where allegedly more time was devoted to the "gathering, authentication, and validation of factual and verifiable assertions."[48]

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[45] 242 Phil. 563 (1988).

[46] *Supra* note 44.

[47] 366 Phil. 568, 576-577 (1999).

[48] Consolidated Reply, p. 8.

Specifically, the petition alleges that the belated filing of the case was caused by the following events: (a) the initial resolution issued by the MOLEO, dated April 12, 1996, took time because of the need to conduct clarificatory hearing and on account of the various motions filed by private respondents; (b) the MOLEO Resolution dated April 12, 1996 was subjected to numerous conflicting reviews by the senior officials/higher authority in the Office of the Ombudsman; (c) considering the conflict between the findings of the MOLEO investigators and the recommendation of the senior officials *vis-a-vis* the amount of money involved and the positions held by respondents Acot and Dulinayan, the case was re-opened in 2003 for another review; (d) the Office of the Ombudsman was in the midst of transferring to its new building in Agham Road, Quezon City in 2001; and (e) from 1998 to 2009, there were three (3) Ombudsmen who handled the case which affected the immediate resolution thereof in terms of the added layer of review and study before these cases were filed in court.

We are not persuaded by the reasons for the delay advanced by the petitioner. Anent the first reason, the unnecessary delay was not in the issuance of the initial Resolution on April 12, 1996 because the motions were filed before the Resolution was issued on April 12, 1996.[49] The delay came after April 12, 1996, that is, in the evaluation, re-evaluation and "thorough review" of the initial Resolution.

As to the second and third reasons, the Court cannot agree with the petitioner that the delay in the proceedings could be excused by the fact that the case had to undergo careful review and revision through the different levels in the Office of the Ombudsman before it is finally approved, in addition to the steady stream of cases which it had to resolve.[50] Verily, the Office of the Ombudsman was created under the mantle of the Constitution, mandated to be the "protector of the people" and, as such, required to "act promptly on complaints filed in any form or manner against officers and

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[49] Comment of Jose R. Gadin, Jr., *id.* at 67.

[50] *Coscolluela v. Sandiganbayan, et al.,* 714 Phil. 55, 62-63 (2013).

employees of the Government, or of any subdivision, agency or instrumentality thereof, in order to promote efficient service."[51] Precisely, the Office of the Ombudsman has the inherent duty not only to carefully go through the particulars of the case but also to resolve the same within the proper length of time. Its dutiful performance should not only be gauged by the quality of the assessment, but also by the reasonable promptness of its dispensation. Thus, barring any extraordinary complication, such as the degree of difficulty of the questions involved in the case or any event external thereto that effectively stymied its normal work activity — any of which have not been adequately proven by the petitioner in the case at bar — there appears to be no justifiable basis as to why the Office of the Ombudsman could not have earlier resolved the preliminary investigation proceedings against the private respondents.[52]

Neither are the last alleged causes of delay tolerable. Reasoning that the Office of the Ombudsman was in the midst of transferring to a new building is a lame excuse not to have resolved the matter at the earliest opportunity. In addition, the prolonged investigation of the case from 1998 to 2009 by three Ombudsmen with divergent views as to what charges should be filed and the persons to be indicted cannot be sufficient justification for the unreasonable length of time it took to resolve the controversy.

We need to emphasize, however, that the initial Resolution dated April 12, 1996 which was allegedly subjected to "painstaking scrutiny and review" (such that two conflicting findings were embodied in two Memoranda issued on July 10, 1996 and January 12, 1998) was finally approved by then Ombudsman Aniano Desierto on March 2, 1998. The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form or substance, or he may proceed with the investigation, if in his view, the complaint is due in proper form or substance.[53] But this

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[51] *Enriquez, et al. v. Office of the Ombudsman,* 569 Phil. 309, 316 (2008).

[52] *Coscolluela v. Sandiganbayan, et al., supra* note 50, at 63.

[53] *PCGG, et al. v. Desierto,* 563 Phil. 517, 525 (2007).

Resolution dated April 12, 1996 despite its final approval was again subjected to a re-evaluation and "thorough review" by the MOLEO which is but a unit of the Ombudsman such that it could not reverse the findings of the Ombudsman.[54] This was the cause of the delay which dragged on for seven (7) years, from 1998 to 2005, and another two (2) years when the case was referred to the Office of Legal Affairs of the Ombudsman.

In view of the unjustified length of time miring the Office of the Ombudsman's resolution of the case, as well as the concomitant prejudice that the delay in this case has caused, it is undeniable that respondent's constitutional right to due process and speedy disposition of cases had been violated. As the institutional vanguard against corruption and bureaucracy, the Office of the Ombudsman should create a system of accountability in order to ensure that cases before it are resolved with reasonable dispatch and to equally expose those who are responsible for its delays, as it ought to determine in this case.[55]

As to the reason advanced by the petitioner that in the year 2001 the Office of the Ombudsman was in the midst of transferring to its new building in Agham Road, Quezon City, it must be noted that the first Resolution was approved by then Ombudsman Desierto in 1998, while transfer of office occurred in 2001. A period of three (3) years, from 1998 to 2001, is ample time to review the case which started way back in 1994.

Petitioner also avers in its petition that there was the "inexplicable loss of the main folder" which deterred the prosecution of the cases as mentioned in the MOLEO Memorandum dated July 7, 2005 recommending "thorough review and re-evaluation of the case."[56] It must be noted that as early as January 12, 1999, the records were subjected to a re-evaluation by the MOLEO.[57] Yet, there was no showing or

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[54] *Rollo*, p. 81.

[55] *Coscolluela v. Sandiganbayan, et al., supra* note 50, at 67.

[56] *Rollo*, p. 17.

[57] *Id.* at 67.

any statement that efforts were exerted to locate the alleged lost folder.[58]

Petitioner likewise partly puts the blame on the respondents that they did not take any steps whatsoever to accelerate the disposition of the matter. In the case of *Cervantes v. Sandiganbayan,*[59] wherein it was held that there was a delay of six (6) years, this Court stated that it is the duty of the prosecutor to expedite the prosecution of the case regardless of whether the petitioner did not object to the delay or that the delay was with his acquiescence provided it was not due to causes attributable to him. This was explained in *Coscolluela v. Sandiganbayan,*[60] to wit:

> Records show that they could not have urged the speedy resolution of their case because they were unaware that the investigation against them was still on-going. They were only informed of the March 27, 2003 Resolution and Information against them only after the lapse of six (6) long years, or when they received a copy of the latter after its filing with the SB on June 19, 2009. In this regard, they could have reasonably assumed that the proceedings against them have already been terminated. This serves as a plausible reason as to why petitioners never followed-up on the case altogether. Instructive on this point is the Court's observation in *Duterte v. Sandiganbayan:*
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> > **Petitioners in this case, however, could not have urged the speedy resolution of their case because they were completely unaware that the investigation against them was still on-going.** Peculiar to this case, we reiterate, is the fact that petitioners were merely asked to comment, and not file counter-affidavits which is the proper procedure to follow in a preliminary investigation. **After giving their explanation and after four long years of being in the dark, petitioners, naturally, had reason to assume that the charges against them had already been dismissed.**
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> On the other hand, the Office of the Ombudsman failed to present any plausible, special or even novel reason which could

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[58] *Id.* at 36.

[59] 366 Phil. 602, 609 (1999).

[60] *Supra* note 50.

> justify the four-year delay in terminating its investigation. Its excuse for the delay — **the many layers of review that the case had to undergo and the meticulous scrutiny it had to entail — has lost its novelty and is no longer appealing, as was the invocation in the Tatad case. The incident before us does not involve complicated factual and legal issues,** specially (*sic*) in view of the fact that the subject computerization contract had been mutually cancelled by the parties thereto even before the Anti-Graft League filed its complaint. *(Emphasis and underscoring supplied)*

Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo.*

> A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.[61]

Furthermore, the Court recognizes the prejudice caused to the private respondents caused by the lengthy delay in the proceedings against them. We do not agree with the petitioner that respondents did not suffer any damage because respondents Acot and Dulinayan were able to get their clearances. The right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time.[62] Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate

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[61] *Coscolluela v. Sandiganbayan, et al., supra* note 50, at 63-64. (Citations omitted)

[62] *Corpuz v. Sandiganbayan, supra* note 23, at 917.

defense he may interpose.[63] This looming unrest, as well as the tactical disadvantages carried by the passage of time, should be weighed against the State and in favor of the individual. In the context of the right to a speedy trial, the Court in *Corpuz v. Sandiganbayan*[64] stated:

> A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis.
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> x x x Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.
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> Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States,* for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.
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> Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned

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[63] *Mari v. Gonzales,* 673 Phil. 46, 55 (2011).

[64] *Id.* at 917-919. (Citations omitted)

to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State. x x x

As pointed out by respondent Gadin in his Comment, the delay of fifteen (15) years in the filing of the Informations impair his ability to adequately defend himself for the reason that the witnesses who could testify on the processes and procedures in the PAF Finance Service Units at the time the alleged offenses were committed may no longer be found or available.

Lastly, the contention is that the State cannot be bound by the mistakes committed by the public officers involved in the review of the case and that the right of the State to prosecute erring officers involved in this ₱89 Million-Peso Fiasco cannot be prejudiced. We should take note that equally true is the constitutional right of the respondents to the speedy disposition of cases and the constitutional mandate for the Ombudsman to act promptly on complaints.[65] The Constitutional guarantee against unreasonable delay in the disposition of cases was intended to stem the tide of disenchantment among the people in the administration of justice by our judicial and quasi-judicial tribunals.[66] The adjudication of cases must not only be done in an orderly manner that is in accord with the established rules of procedure but must also be promptly decided to better serve the ends of justice. Excessive delay in the disposition of cases renders the rights of the people guaranteed by the Constitution and by various legislations inutile.[67]

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[65] 1987 Constitution, Art. XI, Sec. 12.

[66] *Capt. Roquero v. The Chancellor of UP-Manila, et al.*, *supra* note 37, at 640, citing Cruz, *Constitutional Law,* 2007 Ed., p. 295.

[67] *Matias v. Judge Plan, Jr.,* 355 Phil. 274, 282 (1998).

All told, the criminal complaints were correctly dismissed on the ground of inordinate delay of fifteen (15) years amounting to a transgression of the right to a speedy disposition of cases and therefore, the Sandiganbayan did not gravely abuse its discretion.

WHEREFORE, the petition is **DISMISSED** for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 202050. July 25, 2016]

PHILIPPINE NATIONAL OIL COMPANY and PNOC DOCKYARD & ENGINEERING CORPORATION, *petitioners, vs.* **KEPPEL PHILIPPINES HOLDINGS, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; ONLY FILIPINO CITIZENS, OR CORPORATIONS OR ASSOCIATIONS WHOSE CAPITAL IS 60% OWNED BY FILIPINO CITIZENS, ARE CONSTITUTIONALLY QUALIFIED TO OWN PRIVATE LANDS; A LEASE AGREEMENT, WHICH GAVE THE FOREIGNER-LESSEE THE OPTION TO BUY THE LAND AND PROHIBITED THE FILIPINO OWNER-LESSOR FROM SELLING OR OTHERWISE DISPOSING THE LAND, AMOUNTED TO - A VIRTUAL TRANSFER OF OWNERSHIP WHEREBY THE OWNER DIVESTS HIMSELF IN STAGES NOT ONLY OF THE RIGHT TO ENJOY THE LAND BUT ALSO OF THE

RIGHT TO DISPOSE OF IT.— Preserving the ownership of land, whether public or private, in Filipino hands is the policy consistently adopted in all three of our constitutions. Under the 1935, 1973, and 1987 Constitutions, no private land shall be transferred, assigned, or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain. Consequently, only Filipino citizens, or corporations or associations whose capital is 60% owned by Filipino citizens, are constitutionally qualified to own private lands. Upholding this nationalization policy, the Court has voided not only outright conveyances of land to foreigners, but also arrangements where the rights of ownership were gradually transferred to foreigners. In *Lui Shui*, we considered a 99-year lease agreement, which gave the foreigner-lessee the option to buy the land and prohibited the Filipino owner-lessor from selling or otherwise disposing the land, amounted to – a **virtual transfer of ownership** whereby the owner divests himself in stages not only of the right to enjoy the land (*jus possidendi, jus utendi, jus fruendi,* and *jus abutendi*) but also of the right to dispose of it (*jus disponendi*) – rights the sum total of which make up ownership.

2. **ID.; ID.; ID.; ID.; ID.;THE TERMS OF THE LEASE AGREEMENT BETWEEN LUZON STEVEDORING CORPORATION (LUSTEVECO) AND KEPPEL PHILIPPINES HOLDINGS, INC. DO NOT AMOUNT TO A VIRTUAL TRANSFER OF OWNERSHIP OF THE PRIVATE LAND TO AN ALIEN, AS THE FORMER IS NOT COMPLETELY DENIED ITS OWNERSHIP RIGHTS DURING THE COURSE OF THE LEASE BUT COULD DISPOSE OF THE LANDS OR ASSIGN ITS RIGHTS THERETO, DURING THE PENDENCY OF THE LEASE.—** The agreement was executed to enable Keppel to use the land for its **shipbuilding and ship repair business**. The industrial/commercial purpose behind the agreement differentiates the present case from *Lui She* where the leased property was primarily devoted to residential use. Undoubtedly, the establishment and operation of a shipyard business involve significant investments. Keppel's uncontested testimony showed that it incurred ₱60 million costs solely for preliminary activities to make the land suitable as a shipyard, and subsequently introduced improvements worth ₱177 million. Taking these investments

into account and the nature of the business that Keppel conducts on the land, we find it reasonable that the agreement's terms provided for an extended duration of the lease and a restriction on the rights of Lusteveco. We observe that, unlike in *Lui She*, Lusteveco was not completely denied its ownership rights during the course of the lease. It could dispose of the lands or assign its rights thereto, provided it secured Keppel's prior written consent. That Lusteveco was able to convey the land in favour of PNOC during the pendency of the lease should negate a finding that the agreement's terms amounted to a virtual transfer of ownership of the land to Keppel.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SALES; OPTION CONTRACT; DEFINED; ESSENTIAL ELEMENTS; OPTION CONTRACT DISTINGUISHED FROM SALES CONTRACT.— An option contract is defined in the second paragraph of Article 1479 of the Civil Code x x x. An **option contract** is a contract where one person (the offeror/promissor) grants to another person (the offeree/promisee) the right or privilege to buy (or to sell) a determinate thing at a fixed price, if he or she chooses to do so within an agreed period. As a contract, it must necessarily have the essential elements of subject matter, consent, and consideration. Although an option contract is deemed a preparatory contract to the principal contract of sale, it is separate and distinct therefrom, thus, its essential elements should be distinguished from those of a sale. In an option contract, the **subject matter** is the *right or privilege* to buy (or to sell) a determinate thing for a price certain, while in a sales contract, the subject matter is the determinate thing itself. The **consent** in an option contract is the acceptance by the offeree of the offeror's *promise to sell (or to buy)* the determinate thing, *i.e.*, the offeree agrees to hold the *right or privilege to buy (or to sell)* within a specified period. This acceptance is different from the acceptance of the offer itself whereby the offeree asserts his or her right or privilege to buy (or to sell), which constitutes as his or her consent to the sales contract. The **consideration** in an option contract may be anything of value, unlike in a sale where the purchase price must be in money or its equivalent. There is sufficient consideration for a promise if there is any benefit to the offeree or any detriment to the offeror.

4. ID.; ID.; ID.; ID.; THE CONSIDERATION FOR THE OPTION CONTRACT SHOULD BE CLEARLY

SPECIFIED AS SUCH IN THE OPTION CONTRACT OR CLAUSE; THE OFFEREE MUST BEAR THE BURDEN OF PROVING THAT A SEPARATE CONSIDERATION FOR THE OPTION CONTRACT EXISTS.— PNOC claims the option contract is void for want of consideration distinct from the purchase prioce for the land. x x x. [T]he consideration for an option contract does not need to be monetary and may be anything of value. However, **when the consideration is not monetary, the consideration must be clearly specified *as such* in the option contract or clause.** x x x. **When the written agreement itself does not state the consideration for the option contract, the offeree or promisee bears the burden of proving the existence of a separate consideration for the option**. The offeree cannot rely on Article 1354 of the Civil Code, which presumes the existence of consideration, since Article 1479 of the Civil Code is a specific provision on option contracts that explicitly requires the existence of a consideration distinct from the purchase price. In the present case, none of the above rules were observed. We find nothing in paragraph 5 of the Agreement indicating that the grant to Lusteveco of the option to convert the purchase price for Keppel shares was intended by the parties as the consideration for Keppel's option to buy the land; Keppel itself as the offeree presented no evidence to support this finding. On the contrary, the option to convert the purchase price for shares should be deemed part of the consideration for the contract of sale itself, since the shares are merely an alternative to the actual cash price. x x x. Given our finding that the Agreement did not categorically refer to any consideration to support Keppel's option to buy and for Keppel's failure to present evidence in this regard, we cannot uphold the existence of an option contract in this case.

5. **ID.; ID.; ID.; ID.; WHEN AN OPTION TO BUY OR TO SELL IS NOT SUPPORTED BY A CONSIDERATION SEPARATE FROM THE PURCHASE PRICE, THE OPTION CONSTITUTES AS AN OFFER TO BUY OR SELL, WHICH MAY BE WITHDRAWN BY THE OFFEROR AT ANY TIME PRIOR TO THE COMMUNICATION OF THE OFFEREE'S ACCEPTANCE; WHEN THE OFFER IS DULY ACCEPTED, A MUTUAL PROMISE TO BUY AND SELL ENSUES AND THE PARTIES' RESPECTIVE**

OBLIGATIONS BECOME RECIPROCALLY DEMANDABLE.— The absence of a consideration supporting the option contract, however, does not invalidate an offer to buy (or to sell). x x x. [W]hen an option to buy or to sell is not supported by a consideration separate from the purchase price, the option constitutes as an offer to buy or to sell, which may be withdrawn by the offeror at any time prior to the communication of the offeree's acceptance. When the offer is duly accepted, a mutual promise to buy and to sell under the first paragraph of Article 1479 of the Civil Code ensues and the parties' respective obligations become reciprocally demandable. Applied to the present case, we find that **the offer to buy the land was timely accepted by Keppel.** As early as 1994, Keppel expressed its desire to exercise its option to buy the land. Instead of rejecting outright Keppel's acceptance, PNOC referred the matter to the Office of the Government Coporate Counsel (*OGCC*). In its Opinion No. 160, series of 1994, the OGCC opined that Keppel "did not yet have the right to purchase the Bauan lands." On account of the OGCC opinion, the PNOC did not agree with Keppel's attempt to buy the land; nonetheless, the PNOC made no categorical withdrawal of the offer to sell provided under the Agreement. By 2000, Keppel had met the required Filipino equity proportion and duly communicated its acceptance of the offer to buy to PNOC. Keppel met with the board of directors and officials of PNOC who interposed no objection to the sale. It was only when the amount of purchase price was raised that the conflict between the parties arose, with PNOC backtracking in its position and questioning the validity of the option. Thus, when Keppel communicated its acceptance, the offer to purchase the Bauan land stood, not having been withdrawn by PNOC. **The offer having been duly accepted, a contract to sell the land ensued which Keppel can rightfully demand PNOC to comply with.**

6. **POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; KEPPEL'S FAILURE TO PROVE THE NATURE AND COMPOSITION OF ITS SHAREHOLDINGS COULD NOT PREVENT IT FROM VALIDLY EXERCISING ITS OPTION TO BUY THE LAND.—** In *Gamboa v. Teves,* the Court declared that the "**legal and beneficial ownership** of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals."

Clarifying the ruling, the Court decreed that the 60% Filipino ownership requirement **applies separately to each class of shares**, whether with or without voting rights x x x. Although the ruling was made in the context of ownership and operation of public utilities, the same should be applied to the ownership of public and private lands, since the same proportion of Filipino ownership is required and the same nationalist policy pervades. The uncontested fact is that, as of November 2000, Keppel's capital is 60% Filipino-owned. However, there is nothing in the records showing the nature and composition of Keppel's shareholdings, *i.e.*, whether its shareholdings are divided into different classes, and 60% of each share class is legally and beneficially owned by Filipinos – understandably because when Keppel exercised its option to buy the land in 2000, the *Gamboa* ruling had not yet been promulgated. The Court cannot deny Keppel its option to buy the land by retroactively applying the *Gamboa* ruling without violating Keppel's vested right. Thus, Keppel's failure to prove the nature and composition of its shareholdings in 2000 could not prevent it from validly exercising its option to buy the land.

7. ID.; ID.; ID.; ID.; ID.; KEPPEL MUST BE ALLOWED TO PROVE WHETHER IT MEETS THE REQUIRED FILIPINO EQUITY OWNERSHIP AND PROPORTION BEFORE IT CAN ACQUIRE FULL TITLE TO THE LAND.— The Court cannot completely disregard the effect of the *Gamboa* ruling; the 60% Filipino equity proportion is a continuing requirement to hold land in the Philippines. Even in *Gamboa*, the Court prospectively applied its ruling, thus enabling the public utilities to meet the nationality requirement before the Securities and Exchange Commission commences administrative investigations and cases, and imposes sanctions for noncompliance on erring corporations. In this case, Keppel must be allowed to prove whether it meets the required Filipino equity ownership and proportion in accordance with the *Gamboa* ruling before it can acquire full title to the land.

LEONEN, *J.*, *dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; LEASE OF PRIVATE LAND TO AN ALIEN FOR A REASONABLE PERIOD OF TIME IS VALID, EXCEPT WHEN THE

CIRCUMSTANCES ATTENDANT TO A LEASE CONTRACT ARE USED AS A SCHEME TO CIRCUMVENT THE CONSTITUTIONAL PROHIBITION AGAINST ALIEN OWNERSHIP OF PRIVATE LANDS.— The Constitution has consistently adopted a policy aligned with the conservation of national patrimony. In Article XIII, Section 5 of the 1935 Constitution: ARTICLE XIII Conservation and Utilization of Natural Resources x x x Section 5. Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines. The prohibition on alien ownership of private lands was carried over in Article XIV, Section 14 of the 1973 Constitution: x x x. The absolute prohibition was likewise included in the 1987 Constitution: x x x. The law is categorical that no private land shall be transferred, assigned, or conveyed except to Filipino citizens or former natural-born citizens, as well as to corporations with at least 60% of the capital owned by Filipino citizens. Although the sale of private land to an alien is absolutely prohibited, this is not true with the lease of private land. This Court has upheld the validity of a lease to an alien for a reasonable period of time. Rather, what this Court frowns upon is when the circumstances attendant to a lease contract are used as a scheme to circumvent the constitutional prohibition.

2. **ID.; ID.; ID.; ID.; ID.; IF AN ALIEN IS GIVEN A 50-YEAR LEASE AND AN OPTION TO BUY, UNDER WHICH THE FILIPINO OWNER CAN NEITHER SELL NOR DISPOSE OF THE PROPERTY, THEN THE ARRANGEMENT IS A VIRTUAL TRANSFER OF OWNERSHIP WHERE THE OWNER SLOWLY DIVESTS HIMSELF OR HERSELF NOT ONLY OF THE RIGHT TO ENJOY THE LAND BUT ALSO OF THE RIGHT TO DISPOSE OF IT.—** In *Llantino v. Co Liong Chong*, this Court emphasized how seemingly innocuous acts, when put together, can have the nefarious effect of disregarding the law in place: x x x. This echoes this Court's pronouncements in *Philippine Banking Corporation v. Lui She*: *Taken singly, the contracts show nothing that is necessarily illegal, but considered collectively, they reveal an insidious pattern to subvert by indirection what the Constitution directly prohibits.* To be sure, a lease to an alien for a reasonable period

is valid. So is an option giving an alien the right to buy real property on condition that he is granted Philippine citizenship x x x. x x x x But if an alien is given not only a lease of, but also an option to buy, a piece of land, by virtue of which the Filipino owner cannot sell or otherwise dispose of his property, this to last for 50 years, then it becomes clear that the arrangement is a virtual transfer of ownership whereby the owner divests himself in stages not only of the right to enjoy the land (*jus possidendi, jus utendi, jus fruendi* and *jus abutendi*) but also of the right to dispose of it (*jus disponendi*) – rights the sum total of which make up ownership. It is just as if today the possession is transferred, tomorrow, the use, the next day, the disposition, and so on, until ultimately all the rights of which ownership is made up are consolidated in an alien. x x x Respondent did not just lease the land for 25 years. If respondent still failed to qualify to own private land under Philippine law, its lease would be automatically renewed for another 25 years. The total purchase price of ₱4,090,000.00 was discounted at the rate of 16% annually for the first 25 years, and was even due to drop down to an absurd ₱100.00 for the following 25 years. Thus, this Court is led to believe that the lease amounts paid were applied to the total purchase price of ₱4,090,000.00, which is a peculiar feature in an agreement that purports to be a lease, but is a common practice in sales on installment basis. Finally, LUSTEVECO had to obtain the consent of respondent before it could sell or transfer its rights to the property to third parties. Applying *Lui She*, if an alien is given a 50-year lease and an option to buy, under which the Filipino owner can neither sell nor dispose of the property, then the arrangement is a virtual transfer of ownership where the owner slowly divests himself or herself not only of the right to enjoy the land but also of the right to dispose of it.

3. ID.; ID.; ID.; LEASE AGREEMENT IN CASE AT BAR DECLARED UNCONSTITUTIONAL FOR VIOLATING THE CONSTITUTIONAL PROHIBITION ON ALIEN OWNERSHIP OF PRIVATE LANDS.— The ponencia puts much emphasis on the improvements that respondent made on the property for it to be suitable for its shipyard business. It points out that respondent incurred "₱60 million costs solely for preliminary activities to make the land suitable as a shipyard, and subsequently introduced improvements worth of ₱177

million." It likewise notes, with approval, that the terms of the Agreement were reasonable, in light of the nature of business conducted by respondent x x x. However, no matter how reasonable its terms may be from a business perspective, the long-term lease between LUSTEVECO and respondent still is a virtual transfer of ownership to an alien and, thus, a circumvention of the constitutional prohibition on foreign ownership of private land. To allow the Agreement to stand would effectively render the ownership of property a hollow concept. It would make a mockery of our fundamental law. As for the validity of the option contract, x x x no option contract was created in this case x x x. Considering the unconstitutionality of the Agreement and the lack of an option contract, petitioners cannot be bound to sell the parcel of land to respondent.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.
Sycip Salazar Hernandez and Gatmaitan for respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari* filed under Rule 45 of the Rules of Court, appealing the decision dated 19 December 2011[1] and resolution dated 14 May 2012[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 86830. These assailed CA rulings affirmed *in toto* the decision dated 12 January 2006[3] of the Regional Trial Court (*RTC*) of Batangas City, Branch 84, in Civil Case No. 7364.

THE FACTS

The 1976 Lease Agreement and Option to Purchase

[1] Penned by CA Associate Justice Leoncia Real-Dimagiba, with CA Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison concurring, *rollo*, pp. 38-63.

[2] *Id*. at 64-65.

[3] Penned by RTC Presiding Judge Paterno V. Tac-an, *id.* at 76-100.

Almost 40 years ago or on 6 August 1976, the respondent Keppel Philippines Holdings, Inc.[4] (*Keppel*) entered into a **lease agreement**[5] (*the agreement*) with Luzon Stevedoring Corporation (*Lusteveco*) covering 11 hectares of land located in Bauan, Batangas. The lease was for a period of 25 years for a consideration of ₱2.1 million.[6] At the option of Lusteveco, the rental fee could be totally or partially converted into equity shares in Keppel.[7]

At the end of the 25-year lease period, Keppel was given the **"firm and absolute option to purchase"**[8] **the land** for ₱4.09 million, ***provided*** **that it had acquired the necessary qualification to own land under Philippine laws at the time the option is exercised**.[9] Apparently, when the lease agreement was executed, less than 60% of Keppel's shareholding was Filipino-owned, hence, it was not constitutionally qualified to acquire private lands in the country.[10]

If, at the end of the 25-year lease period (or in 2001), Keppel remained unqualified to own private lands, the agreement provided that the lease would be automatically renewed for another 25 years.[11] Keppel was further allowed to exercise the option to purchase the land up to the 30th year of the lease (or in 2006), also on the condition that, by then, it would have acquired the requisite qualification to own land in the Philippines.[12]

Together with Keppel's lease rights and option to purchase, Lusteveco warranted not to sell the land or assign its rights to the

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[4] Previously known as Keppel Philippines, Shipyard, Inc., *id*. at 76.

[5] Copy of Agreement dated 6 August 1976, *id.* at 101-106.

[6] Agreement, par. 2, *id*. at 103.

[7] *Ibid*.

[8] Agreement, par. 5, *id*. at 104.

[9] *Ibid.*

[10] *See* 1973 Constitution, Article XIV, Section 14.

[11] Agreement, par. 5, *rollo*, p. 104.

[12] *Id*. at 105.

land for the duration of the lease unless with the prior written consent of Keppel.[13] Accordingly, when the petitioner Philippine National Oil Corporation[14] (*PNOC*) acquired the land from Lusteveco and took over the rights and obligations under the agreement, Keppel did not object to the assignment so long as the agreement was annotated on PNOC's title.[15] With PNOC's consent and cooperation, the agreement was recorded as Entry No. 65340 on PNOC's Transfer of Certificate of Title No. T-50724.[16]

The Case and the Lower Court Rulings

On 8 December 2000, Keppel wrote PNOC informing the latter that at least 60% of its shares were now owned by Filipinos.[17] Consequently, Keppel expressed its readiness to exercise its option to purchase the land. Keppel reiterated its demand to purchase the land several times, but on every occasion, PNOC did not favourably respond.[18]

To compel PNOC to comply with the Agreement, Keppel instituted a **complaint for specific performance** with the RTC on 26 September 2003 against PNOC.[19] PNOC countered Keppel's claims by contending that the agreement was illegal for circumventing the constitutional prohibition against aliens holding lands in the Philippines.[20] It further asserted that the option contract was void, as it was unsupported by a separate

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[13] Agreement, par. 6, *id*. at 105.

[14] Lusteveco's assets, including the land subject of the agreement, were originally acquired by PNOC's subsidiary, PNOC Shipyard Corporation, in 1979. PNOC Shipyard Corporation was renamed as PNOC Dockyard and Engineering Corporation (*PDEC*). PDEC's assets were thereafter turned over to PNOC for winding-up and liquidation, *id.* at 80, 84.

[15] *Id.* at 85.

[16] *Ibid.*

[17] *Id*. at 77.

[18] *Id*. at 77-78.

[19] *Id*. at 76.

[20] *Id*. at 94.

valuable consideration.[21] It also claimed that it was not privy to the agreement.[22]

After due proceedings, **the RTC rendered a decision**[23] **in favour of Keppel and ordered PNOC to execute a deed of absolute sale** upon payment by Keppel of the purchase price of ₱4.09 million.[24]

PNOC elevated the case to the CA to appeal the RTC decision.[25] Affirming the RTC decision *in toto*, **the CA upheld Keppel's right to acquire the land**.[26] It found that since the option contract was embodied in the agreement – a reciprocal contract – the consideration was the obligation that each of the contracting party assumed.[27] Since Keppel was already a Filipino-owned corporation, it satisfied the condition that entitled it to purchase the land.[28]

Failing to secure a reconsideration of the CA decision,[29] PNOC filed the present Rule 45 petition before this Court to assail the CA rulings.

THE PARTIES' ARGUMENTS and THE ISSUES

PNOC argues that the CA failed to resolve the constitutionality of the agreement. It contends that the terms of the agreement amounted to a virtual sale of the land to Keppel who, at the time of the agreement's enactment, was a foreign corporation and, thus, violated the 1973 Constitution.

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[21] *Id*. at 95.

[22] *Id*. at 94.

[23] *Supra* note 3.

[24] *Rollo,* p. 99.

[25] *Id*. at 38.

[26] *Supra* note 1.

[27] *Rollo,* pp. 60-61.

[28] *Id*. at 61.

[29] CA Resolution of 14 May 2012 denying PNOC's motion for reconsideration, *supra* note 2.

Specifically, PNOC refers to (a) the 25-year duration of the lease that was automatically renewable for another 25 years[30]; (b) the option to purchase the land for a nominal consideration of ₱100.00 if the option is exercised anytime between the 25th and the 30th year of the lease[31]; and (c) the prohibition imposed on Lusteveco to sell the land or assign its rights therein during the lifetime of the lease.[32] Taken together, PNOC submits that these provisions amounted to a virtual transfer of ownership of the land to an alien which act the 1973 Constitution prohibited.

PNOC claims that the agreement is no different from the lease contract in *Philippine Banking Corporation v. Lui She*,[33] which the Court struck down as unconstitutional. In *Lui She*, the lease contract allowed the gradual divestment of ownership rights by the Filipino owner-lessor in favour of the foreigner-lessee.[34] The arrangement in *Lui She* was declared as a scheme designed to enable the parties to circumvent the constitutional prohibition.[35] PNOC posits that a similar intent is apparent from the terms of the agreement with Keppel and accordingly should also be nullified.[36]

PNOC additionally contends the illegality of the option contract for lack of a separate consideration, as required by Article 1479 of the Civil Code.[37] It claims that the option contract

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[30] *Rollo*, pp. 22-23.

[31] *Ibid*.

[32] *Id*.

[33] 128 Phil. 53 (1967).

[34] *Id*. at 66-68.

[35] *Ibid.*

[36] *Rollo,* pp. 25-27.

[37] Article 1479 of the Civil Code states:

A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.

is distinct from the main contract of lease and must be supported by a consideration other than the rental fees provided in the agreement.[38]

On the other hand, Keppel maintains the validity of both the agreement and the option contract it contains. It opposes the claim that there was "virtual sale" of the land, noting that the option is subject to the condition that Keppel becomes qualified to own private lands in the Philippines.[39] This condition ripened in 2000, when at least 60% of Keppel's equity became Filipino-owned.

Keppel contends that the agreement is not a scheme designed to circumvent the constitutional prohibition. Lusteveco was not proscribed from alienating its ownership rights over the land but was simply required to secure Keppel's prior written consent.[40] Indeed, Lusteveco was able to transfer its interest to PNOC without any objection from Keppel.[41]

Keppel also posits that the requirement of a separate consideration for an option to purchase applies only when the option is granted in a separate contract.[42] In the present case, the option is embodied in a reciprocal contract and, following the Court's ruling in *Vda. De Quirino v. Palarca*,[43] the option is supported by the same consideration supporting the main contract.

From the parties' arguments, the following **ISSUES** emerge:

First, the constitutionality of the Agreement, *i.e.*, whether the terms of the Agreement amounted to a virtual sale of the land to Keppel that was designed to circumvent the constitutional prohibition on aliens owning lands in the Philippines.

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[38] *Rollo*, pp. 27-33.

[39] *Id.* at 163.

[40] *Id.* at 161.

[41] *Id*. at 161-162.

[42] *Id*. at 164-165.

[43] 139 Phil. 488 (1969).

Second, the validity of the option contract, *i.e.,* whether the option to purchase the land given to Keppel is supported by a separate valuable consideration.

If these issues are resolved in favour of Keppel, a *third* issue emerges – one that was not considered by the lower courts, but is critical in terms of determining Keppel's right to own and acquire full title to the land, *i.e.*, whether Keppel's equity ownership meets the 60% Filipino-owned capital requirement of the Constitution, in accordance with the Court's ruling in *Gamboa v. Teves*.[44]

THE COURT'S RULING

I. The constitutionality of the Agreement

The Court **affirms** the constitutionality of the Agreement.

Preserving the ownership of land, whether public or private, in Filipino hands is the policy consistently adopted in all three of our constitutions.[45] Under the 1935,[46] 1973,[47] and 1987[48] Constitutions, no private land shall be transferred, assigned, or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain. Consequently, only Filipino citizens, or corporations or associations whose capital is 60% owned by Filipino citizens, are constitutionally qualified to own private lands.

Upholding this nationalization policy, the Court has voided not only outright conveyances of land to foreigners,[49] but also arrangements where the rights of ownership were gradually

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[44] 696 Phil. 276, 341 (2012).

[45] See *Krivenko v. Register of Deeds*, 79 Phil. 461, 473 (1947).

[46] 1935 Constitution, Article XIII, Section 5.

[47] 1973 Constitution, Article XIV, Section 14.

[48] 1987 Constitution, Article XII, Section 7.

[49] *Supra* note 45, at 481.

transferred to foreigners.[50] In *Lui Shui*,[51] we considered a 99-year lease agreement, which gave the foreigner-lessee the option to buy the land and prohibited the Filipino owner-lessor from selling or otherwise disposing the land, amounted to –

> a **virtual transfer of ownership** whereby the owner divests himself in stages not only of the right to enjoy the land (*jus possidendi, jus utendi, jus fruendi,* and *jus abutendi*) but also of the right to dispose of it (*jus disponendi*) — rights the sum total of which make up ownership.[52] [emphasis supplied]

In the present case, PNOC submits that a similar scheme is apparent from the agreement's terms, but a review of the overall circumstances leads us to reject PNOC's claim.

The agreement was executed to enable Keppel to use the land for its **shipbuilding and ship repair business**.[53] The industrial/commercial purpose behind the agreement differentiates the present case from *Lui She* where the leased property was primarily devoted to residential use.[54] Undoubtedly, the establishment and operation of a shipyard business involve significant investments. Keppel's uncontested testimony showed that it incurred ₱60 million costs solely for preliminary activities to make the land suitable as a shipyard, and subsequently introduced improvements worth ₱177 million.[55] Taking these investments into account and the nature of the business that Keppel conducts on the land, we find it reasonable that the agreement's terms provided for an extended duration of the lease and a restriction on the rights of Lusteveco.

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[50] *Supra* note 33.

[51] *Id*. at 66-68.

[52] *Id*. at 68.

[53] *Rollo*, p. 101.

[54] *Supra* note 33, at 51. The leased property in *Lui She* was used as the home/restaurant of the lessor.

[55] *Rollo*, pp. 140-141.

We observe that, unlike in *Lui She*,[56] Lusteveco was not completely denied its ownership rights during the course of the lease. It could dispose of the lands or assign its rights thereto, provided it secured Keppel's prior written consent.[57] That Lusteveco was able to convey the land in favour of PNOC during the pendency of the lease[58] should negate a finding that the agreement's terms amounted to a virtual transfer of ownership of the land to Keppel.

II. The validity of the option contract

II.A An option contract must be supported by a separate consideration that is either clearly specified as such in the contract or duly proven by the offeree/promisee.

An option contract is defined in the second paragraph of Article 1479 of the Civil Code:

> Article 1479. x x x An accepted promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price.

An **option contract** is a contract where one person (the offeror/promissor) grants to another person (the offeree/promisee) the right or privilege to buy (or to sell) a determinate thing at a fixed price, if he or she chooses to do so within an agreed period.[59]

As a contract, it must necessarily have the essential elements of subject matter, consent, and consideration.[60] Although an option contract is deemed a preparatory contract to the principal contract of sale,[61] it is separate and distinct

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[56] *Supra* note 33, at 67-68.

[57] Agreement, par. 6, *rollo*, p. 105.

[58] *Id*. at 80.

[59] See *Equatorial v. Mayfair*, 332 Phil. 525 (1996) and *Tuazon v. Del Rosario-Suarez*, 652 Phil. 274, 283 (2010), both citing *Beaumont v. Prieto*, 41 Phil 670, 686-687 (1916).

[60] CIVIL CODE, Article 1318.

[61] *Carceller v. CA*, 362 Phil. 332, 338-339 (1999).

therefrom,[62] thus, its essential elements should be distinguished from those of a sale.[63]

In an option contract, the **subject matter** is the *right or privilege* to buy (or to sell) a determinate thing for a price certain,[64] while in a sales contract, the subject matter is the determinate thing itself.[65] The **consent** in an option contract is the acceptance by the offeree of the offeror's *promise to sell (or to buy)* the determinate thing, *i.e.*, the offeree agrees to hold the *right or privilege to buy (or to sell)* within a specified period. This acceptance is different from the acceptance of the offer itself whereby the offeree asserts his or her right or privilege to buy (or to sell), which constitutes as his or her consent to the sales contract. The **consideration** in an option contract may be anything of value, unlike in a sale where the purchase price must be in money or its equivalent.[66] There is sufficient consideration for a promise if there is any benefit to the offeree or any detriment to the offeror.[67]

In the present case, PNOC claims the option contract is void for want of consideration distinct from the purchase price for the land.[68] The option is incorporated as paragraph 5 of the Agreement and reads as

5. If within the period of the first [25] years [Keppel] becomes qualified to own land under the laws of the Philippines, it has the

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[62] *Asuncion v. CA*, G.R. No. 109125, December 2, 1994, 238 SCRA 602, 613; *Equatorial v. Mayfair*, *supra* note 59.

[63] The essential elements of a contract of sale are enumerated in Article 1458 of the Civil Code.

[64] *JMA House, Inc. v. Sta Monica Industrial and Development Corporation,* 532 Phil. 233, 263 (2006).

[65] CIVIL CODE, Articles 1458 and 1460.

[66] *San Miguel Properties Philippines v. Spouses Huang*, 391 Phil. 636, 645 (2000).

[67] *Supra* note 64, at 264.

[68] *Rollo*, pp. 27-33.

firm and absolute option to purchase the above property for a total price of [₱4,090,000.00] at the end of the 25th year, discounted at 16% annual for every year before the end of the 25th year, which amount may be converted into equity of [Keppel] at book value prevailing at the time of sale, or paid in cash at Lusteveco's option.

However, if after the first [25] years, [Keppel] is still not qualified to own land under the laws of the Republic of the Philippines, [Keppel's] lease of the above stated property shall be automatically renewed for another [25] years, under the same terms and conditions save for the rental price which shall be for the sum of ₱4,090,000.00... and which sum may be totally converted into equity of [Keppel] at book value prevailing at the time of conversion, or paid in cash at Lusteveco's option.

If anytime within the second [25] years up to the [30th] year from the date of this agreement, [Keppel] becomes qualified to own land under the laws of the Republic of the Philippines, [Keppel] has the firm and absolute option to buy and Lusteveco hereby undertakes to sell the above stated property for the nominal consideration of [₱100.00.00]...[69]

Keppel counters that a separate consideration is not necessary to support its option to buy because the option is one of the stipulations of the lease contract. It claims that a separate consideration is required only when an option to buy is embodied in an independent contract.[70] It relies on *Vda. de Quirino v. Palarca*,[71] where the Court declared that the option to buy the leased property is supported by the same consideration as that of the lease itself: "in reciprocal contracts [such as lease], the obligation or promise of each party is the consideration for that of the other."[72]

In considering Keppel's submission, we note that the Court's ruling in 1969 in *Vda. de Quirino v. Palarca* has been taken out of context and erroneously applied in subsequent cases. In

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[69] *Rollo*, pp. 194-195.

[70] *Id*. at 164-167.

[71] *Supra* note 43.

[72] *Ibid.*

2004, through *Bible Baptist Church v. CA*,[73] we revisited *Vda. de Quirino v. Palarca* and observed that the option to buy given to the lessee Palarca by the lessor Quirino was in fact supported by a separate consideration: Palarca paid a higher amount of rent and, in the event that he does not exercise the option to buy the leased property, gave Quirino the option to buy the improvements he introduced thereon. These additional concessions were separate from the purchase price and deemed by the Court as sufficient consideration to support the option contract.

Vda. de Quirino v. Palarca, therefore, should not be regarded as authority that the mere inclusion of an option contract in a reciprocal lease contract provides it with the requisite separate consideration for its validity. **The reciprocal contract should be closely scrutinized and assessed whether it contains additional concessions that the parties intended to constitute as a consideration for the option contract, separate from that of the purchase price.**

In the present case, paragraph 5 of the agreement provided that should Keppel exercise its option to buy, Lusteveco could opt to convert the purchase price into equity in Keppel. *May Lusteveco's option to convert the price for shares be deemed as a sufficient separate consideration for Keppel's option to buy?*

As earlier mentioned, the consideration for an option contract does not need to be monetary and may be anything of value.[74] However, **when the consideration is not monetary, the consideration must be clearly specified *as such* in the option contract or clause**.[75]

In *Villamor v. CA*,[76] the parties executed a deed expressly acknowledging that the purchase price of ₱70.00 per square

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[73] 486 Phil. 625, 634-634 (2004).

[74] *Supra* note 66.

[75] *Bible Baptist Church v. CA, supra* note 73, at 635, and *Navotas Industrial Corporation v. Cruz*, 506 Phil. 511, 530 (2005).

[76] 279 Phil. 664 (1991).

meter "was greatly higher than the actual reasonable prevailing value of lands in that place at that time."[77] The difference between the purchase price and the prevailing value constituted as the consideration for the option contract. Although the actual amount of the consideration was not stated, it was ascertainable from the contract whose terms evinced the parties' intent to constitute this amount as consideration for the option contract.[78] Thus, the Court upheld the validity of the option contract.[79] In the light of the offeree's acceptance of the option, the Court further declared that a bilateral contract to sell and buy was created and that the parties' respective obligations became reciprocally demandable.[80]

When the written agreement itself does not state the consideration for the option contract, the offeree or promisee bears the burden of proving the existence of a separate consideration for the option.[81] The offeree cannot rely on Article 1354 of the Civil Code,[82] which presumes the existence of consideration, since Article 1479 of the Civil Code is a specific provision on option contracts that explicitly requires the existence of a consideration distinct from the purchase price.[83]

In the present case, none of the above rules were observed. We find nothing in paragraph 5 of the Agreement indicating that the grant to Lusteveco of the option to convert the purchase price for Keppel shares was intended by the parties as the consideration for Keppel's option to buy the land; Keppel itself

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[77] *Id*. at 668.

[78] *Id*. at 675-676.

[79] *Ibid*. However, the contract could no longer be enforced due to the unreasonable delay in enforcing the right, *id*. at 676.

[80] *Id.*

[81] *Supra* note 64, at 26.

[82] CIVIL CODE, Article 1354, which states:

Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary.

[83] *Sanchez v. Rigos,* 150-A Phil. 714, 720 (1972).

as the offeree presented no evidence to support this finding. On the contrary, the option to convert the purchase price for shares should be deemed part of the consideration for the contract of sale itself, since the shares are merely an alternative to the actual cash price.

There are, however cases where, despite the absence of an express intent in the parties' agreements, the Court considered the additional concessions stipulated in an agreement to constitute a sufficient separate consideration for the option contract.

In *Teodoro v. CA*,[84] the sub-lessee (*Teodoro*) who was given the option to buy the land assumed the obligation to pay not only her rent as sub-lessee, but also the rent of the sub-lessor (*Ariola*) to the primary lessor (*Manila Railroad Company*).[85] In other words, Teodoro paid an amount over and above the amount due for her own occupation of the property, and this amount was found by the Court as sufficient consideration for the option contract.[86]

In *Dijamco v. CA*,[87] the spouses Dijamco failed to pay their loan with the bank, allowing the latter to foreclose the mortgage.[88] Since the spouses Dijamco did not exercise their right to redeem, the bank consolidated its ownership over the mortgaged property.[89] The spouses Dijamco later proposed to purchase the same property by paying a purchase price of ₱622,095.00 (equivalent to their principal loan) and a monthly amount of ₱13,478.00 payable for 12 months (equivalent to the interest on their principal loan). They further stated that should they fail to make a monthly payment, the proposal should be automatically revoked and all payments be treated as rentals

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[84] 239 Phil. 533 (1987).

[85] *Id*. at 547.

[86] *Id*. at 547-548.

[87] 483 Phil. 203 (2004).

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

[89] *Ibid*.

for their continued use of the property.[90] The Court treated the spouses Dijamco's proposal to purchase the property as an option contract, and the consideration for which was the monthly interest payments.[91] Interestingly, this ruling was made despite the categorical stipulation that the monthly interest payments should be treated as rent for the spouses Dijamco's continued possession and use of the foreclosed property.

At the other end of the jurisprudential spectrum are cases where the Court refused to consider the additional concessions stipulated in agreements as separate consideration for the option contract.

In *Bible Baptist Church v. CA*,[92] the lessee (Bible Baptist Church) paid in advance ₱84,000.00 to the lessor in order to free the property from an encumbrance. The lessee claimed that the advance payment constituted as the separate consideration for its option to buy the property.[93] The Court, however, disagreed noting that the ₱84,000.00 paid in advance was eventually offset against the rent due for the first year of the lease, "such that for the entire year from 1985 to 1986 the [Bible Baptist Church] did not pay monthly rent."[94] Hence, the Court refused to recognize the existence of a valid option contract.[95]

What *Teodoro*, *Dijamco*, and *Bible Baptist Church* show is that the determination of whether the additional concessions in agreements are sufficient to support an option contract, is fraught with danger; in ascertaining the parties' intent on this matter, a court may read too much or too little from the facts before it.

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[90] *Id*. at 210.

[91] *Id*. at 213-214.

[92] *Supra* note 73, at 631.

[93] *Ibid.*

[94] *Id.* at 632. The same rationale was adopted in *Navotas Industrial Corporation v. Cruz*, 506 Phil. 511, 540 (2005).

[95] *Bible Baptist Church v. CA*, *supra* note 73, at 636-637.

For uniformity and consistency in contract interpretation, the better rule to follow is that **the consideration for the option contract should be clearly specified *as such* in the option contract or clause. Otherwise, the offeree must bear the burden of proving that a separate consideration for the option contract exists.**

Given our finding that the Agreement did not categorically refer to any consideration to support Keppel's option to buy and for Keppel's failure to present evidence in this regard, we cannot uphold the existence of an option contract in this case.

II.B. An option, though unsupported by a separate consideration, remains an offer that, if duly accepted, generates into a contract to sell where the parties' respective obligations become reciprocally demandable

The absence of a consideration supporting the option contract, however, does not invalidate an offer to buy (or to sell). **An option unsupported by a separate consideration stands as an unaccepted offer to buy (or to sell) which, when properly accepted, ripens into a contract to sell.** This is the rule established by the Court en banc as early as 1958 in *Atkins v. Cua Hian Tek*,[96] and upheld in 1972 in *Sanchez v. Rigos*.[97]

Sanchez v. Rigos reconciled the apparent conflict between Articles 1324 and 1479 of the Civil Code, which are quoted below:

> Article 1324. When the offerer has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, **except when the option is founded upon a consideration, as something paid or promised.**
>
> Article 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

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[96] 102 Phil. 948 (1958).

[97] *Supra* note 83.

An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promissor if the promise is supported by a consideration distinct from the price. [emphases supplied]

The Court *en banc* declared that there is no distinction between these two provisions because the scenario contemplated in the second paragraph of Article 1479 is the same as that in the last clause of Article 1324.[98] Instead of finding a conflict, *Sanchez v. Rigos* harmonised the two provisions, consistent with the established rules of statutory construction.[99]

Thus, when an offer is supported by a separate consideration, a valid option *contract* exists, *i.e.*, there is a **contracted offer**[100] which the offeror cannot withdraw from without incurring liability in damages.

On the other hand, when the offer is not supported by a separate consideration, the offer stands but, in the absence of a binding contract, the offeror may withdraw it any time.[101] In either case, once the acceptance of the offer is duly communicated *before* the withdrawal of the offer, a bilateral contract to buy and sell is generated which, in accordance with the first paragraph of Article 1479 of the Civil Code, becomes reciprocally demandable.[102]

Sanchez v. Rigos expressly overturned the 1955 case of *Southwestern Sugar v. AGPC*,[103] which declared that

a unilateral promise to buy or to sell, even if accepted, is only binding if supported by a consideration... In other words**, an accepted unilateral promise can only have a binding effect if supported by a consideration,** which means that **the option can still be**

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[98] *Id*. at 722-724.

[99] *Ibid*.

[100] C. Villanueva, *Law on Sales* (2004 ed.) at 154.

[101] *Sanchez v. Rigos*, *supra* note 97, at 723.

[102] *Adelfa Properties, Inc. v. CA*, 310 Phil. 623, 641 (1995).

[103] 97 Phil. 249 (1955).

withdrawn, even if accepted, if the same is not supported by any consideration.[104] [emphasis supplied]

The *Southwestern Sugar* doctrine was based on the reasoning that Article 1479 of the Civil Code is distinct from Article 1324 of the Civil Code and is a provision that specifically governs options to buy (or to sell).[105] As mentioned, *Sanchez v. Rigos* found no conflict between these two provisions and accordingly abandoned the *Southwestern Sugar* doctrine.

Unfortunately, without expressly overturning or abandoning the *Sanchez* ruling, subsequent cases reverted back to the *Southwestern Sugar* doctrine.[106] In 2009, *Eulogio v. Apeles*[107] referred to *Southwestern Sugar v. AGPC* as the controlling doctrine[108] and, due to the lack of a separate consideration, refused to recognize the option to buy as an offer that would have resulted in a sale given its timely acceptance by the offeree. In 2010, *Tuazon v. Del Rosario-Suarez*[109] referred to *Sanchez v. Rigos* but erroneously cited as part of its *ratio decidendi* that portion of the *Southwestern Sugar* doctrine that *Sanchez* had expressly abandoned.[110]

Given that the issue raised in the present case involves the application of Article 1324 and 1479 of the Civil Code, it becomes imperative for the Court [*en banc*] to clarify and declare here which between *Sanchez* and *Southwestern Sugar* is the controlling doctrine.

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[104] *Id*. at 251-252.

[105] *Id*. at 252.

[106] See *Rural Bank of Parañaque v. Remolado*, 220 Phil. 95, 97 (1985) and *Natino v. IAC*, 274 Phil. 602, 613 (1991). *See* also *Nool v. CA*, 340 Phil. 106. In contrast, *Carceller v. CA*, 362 Phil. 332, 338-339 (1999) adopted the ruling in *Sanchez v. Rigos*.

[107] 596 Phil. 613 (2009).

[108] *Id*. at 628.

[109] 652 Phil. 274 (2010).

[110] *Id*. at 286-287.

The Constitution itself declares that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*."[111] *Sanchez v. Rigos* was an *en banc* decision which was affirmed in 1994 in *Asuncion v. CA*,[112] also an *en banc* decision, while the decisions citing the *Southwestern Sugar* doctrine are all division cases.[113] Based on the constitutional rule (as well as the inherent logic in reconciling Civil Code provisions), there should be no doubt that ***Sanchez v. Rigos* remains as the controlling doctrine**.

Accordingly, when an option to buy or to sell is not supported by a consideration separate from the purchase price, the option constitutes as an offer to buy or to sell, which may be withdrawn by the offeror at any time prior to the communication of the offeree's acceptance. When the offer is duly accepted, a mutual promise to buy and to sell under the first paragraph of Article 1479 of the Civil Code ensues and the parties' respective obligations become reciprocally demandable.

Applied to the present case, we find that **the offer to buy the land was timely accepted by Keppel**.

As early as 1994, Keppel expressed its desire to exercise its option to buy the land. Instead of rejecting outright Keppel's acceptance, PNOC referred the matter to the Office of the Government Corporate Counsel (*OGCC*). In its Opinion No. 160, series of 1994, the OGCC opined that Keppel "did not yet have the right to purchase the Bauan lands."[114] On account of the OGCC opinion, the PNOC did not agree with Keppel's attempt to buy the land;[115] nonetheless, the PNOC made no categorical withdrawal of the offer to sell provided under the Agreement.

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[111] CONSTITUTION, Article VIII, Section 4 (3). See also 1973 Constitution, Article X, Section 2 (3).

[112] *Supra* note 62.

[113] *Eulogio v. Apeles* was from the Third Division, while *Tuazon v. Del Rosario-Suarez* was from the First Division.

[114] *Rollo*, p. 35.

[115] *Ibid*.

By 2000, Keppel had met the required Filipino equity proportion and duly communicated its acceptance of the offer to buy to PNOC.[116] Keppel met with the board of directors and officials of PNOC who interposed no objection to the sale.[117] It was only when the amount of purchase price was raised that the conflict between the parties arose,[118] with PNOC backtracking in its position and questioning the validity of the option.[119]

Thus, when Keppel communicated its acceptance, the offer to purchase the Bauan land stood, not having been withdrawn by PNOC. **The offer having been duly accepted, a contract to sell the land ensued which Keppel can rightfully demand PNOC to comply with.**

III. Keppel's constitutional right to acquire full title to the land

Filipinization is the spirit that pervades the constitutional provisions on national patrimony and economy. The Constitution has reserved the ownership of public and private lands,[120] the ownership and operation of public utilities,[121] and certain areas of investment[122] to Filipino citizens, associations, and corporations. To qualify, sixty per cent (60%) of the association or corporation's capital must be owned by Filipino citizens. Although the 60% Filipino equity proportion has been adopted in our Constitution since 1935, it was only in 2011 that the Court interpreted what the term *capital* constituted.

In *Gamboa v. Teves*,[123] the Court declared that the "**legal and beneficial ownership** of 60 percent of the outstanding

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

[117] *Ibid*.

[118] Keppel claimed that PNOC demanded an additional amount on top of the purchase price stated in the agreement, *id*. at 36.

[119] *Ibid*.

[120] CONSTITUTION, Article XII, Sections 2, 3, and 7.

[121] *Id*., Section 11.

[122] *Id*., Section 10.

[123] 668 Phil. 1 (2011).

capital stock must rest in the hands of Filipino nationals."[124] Clarifying the ruling, the Court decreed that the 60% Filipino ownership requirement **applies separately to each class of shares**, whether with or without voting rights,[125] thus:

> Applying uniformly the 60-40 ownership requirement in favour of Filipino citizens to each class of shares, regardless of differences in voting rights, privileges and restrictions, guarantees effective Filipino control of public utilities, as mandated by the Constitution.[126]

Although the ruling was made in the context of ownership and operation of public utilities, the same should be applied to the ownership of public and private lands, since the same proportion of Filipino ownership is required and the same nationalist policy pervades.

The uncontested fact is that, as of November 2000, Keppel's capital is 60% Filipino-owned.[127] However, there is nothing in the records showing the nature and composition of Keppel's shareholdings, *i.e.*, whether its shareholdings are divided into different classes, and 60% of each share class is legally and beneficially owned by Filipinos – understandably because when Keppel exercised its option to buy the land in 2000, the *Gamboa* ruling had not yet been promulgated. The Court cannot deny Keppel its option to buy the land by retroactively applying the *Gamboa* ruling without violating Keppel's vested right. Thus, Keppel's failure to prove the nature and composition of its shareholdings in 2000 could not prevent it from validly exercising its option to buy the land.

Nonetheless, the Court cannot completely disregard the effect of the *Gamboa* ruling; the 60% Filipino equity proportion is a continuing requirement to hold land in the Philippines. Even in *Gamboa*, the Court prospectively applied its ruling, thus

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[124] *Id*. at 57.

[125] 696 Phil. 276, 341 (2012).

[126] *Ibid*.

[127] *Rollo*, p. 81.

enabling the public utilities to meet the nationality requirement before the Securities and Exchange Commission commences administrative investigation and cases, and imposes sanctions for noncompliance on erring corporations.[128] In this case, Keppel must be allowed to prove whether it meets the required Filipino equity ownership and proportion in accordance with the *Gamboa* ruling before it can acquire full title to the land.

In view of the foregoing, the Court **AFFIRMS** the decision dated 19 December 2011 and the resolution dated 14 May 2012 of the CA in CA-G.R. CV No. 86830 insofar as these rulings uphold the respondent Keppel Philippines Holdings, Inc.'s option to buy the land, and **REMANDS** the case to the Regional Trial Court of Batangas City, Branch 84, for the determination of whether the respondent Keppel Philippines Holdings, Inc. meets the required Filipino equity ownership and proportion in accordance with the Court's ruling in *Gamboa v. Teves,* to allow it to acquire full title to the land.

SO ORDERED.

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

Leonen, J., see separate dissent.

DISSENTING OPINION

LEONEN, *J.*:

I am unable to join the ponencia in its ruling affirming the constitutionality of the Agreement between Luzon Stevedoring Corporation (LUSTEVECO) — the rights and obligations of which were later acquired by its successor-in-interest, petitioners Philippine National Oil Company (PNOC) and PNOC Dockyard & Engineering Corporation — and respondent Keppel Philippines Holdings, Inc. (KPHI).

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[128] *Supra* note 124, at 360-361.

The Constitution has consistently adopted a policy aligned with the conservation of national patrimony. In Article XIII, Section 5 of the 1935 Constitution:

> ARTICLE XIII
> Conservation and Utilization of Natural Resources
>
> . . .
>
> Section 5. Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines.

The prohibition on alien ownership of private lands was carried over in Article XIV, Section 14 of the 1973 Constitution:

> ARTICLE XIV
> THE NATIONAL ECONOMY AND THE PATRIMONY OF THE NATION
>
> . . .
>
> **Section 14.** Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

The absolute prohibition was likewise included in the 1987 Constitution:

> ARTICLE XII
> National Economy and Patrimony
>
> . . .
>
> SECTION 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

The law is categorical that no private land shall be transferred, assigned, or conveyed except to Filipino citizens

or former natural-born citizens,[1] as well as to corporations with at least 60% of the capital owned by Filipino citizens.[2]

Although the sale of private land to an alien is absolutely prohibited, this is not true with the lease of private land. This Court has upheld the validity of a lease to an alien for a reasonable period of time.[3] Rather, what this Court frowns upon is when the circumstances attendant to a lease contract are used as a scheme to circumvent the constitutional prohibition.[4] In *Llantino v. Co Liong Chong,*[5] this Court emphasized how seemingly innocuous acts, when put together, can have the nefarious effect of disregarding the law in place:

> If an alien is given not only a lease of, but also an option to buy, a piece of land, by virtue of which the Filipino owner cannot sell or otherwise dispose of his property, this to last for 50 years, then it becomes clear that the arrangement is a virtual transfer of ownership whereby the owner divests himself in stages not only of the right to enjoy the land *(jus possidendi, jus utendi, jus fruendi, and just abutendi)* — rights, the sum of which make up ownership. It is just as if today the possession is transferred, tomorrow the use, the next day disposition, and so on, until ultimately all the rights of which ownership is made up of are consolidated in an alien.[6] (Citations omitted)

This echoes this Court's pronouncements in *Philippine Banking Corporation v. Lui She*:[7]

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[1] CONST., Art. XII, Sec. 8 provides:

> SECTION 8. Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.

[2] CONST., Art. XII, Sec. 2.

[3] *Krivenko v. Register of Deeds,* 79 Phil. 461, 480-481 (1947) [Per *C.J.* Moran, Second Division].

[4] *Llantino v. Co Liong Chong,* 266 Phil. 645, 651 (1990) [Per *J.* Paras, Second Division].

[5] 266 Phil. 645 (1990) [Per *J.* Paras, Second Division].

[6] *Id.* at 651.

[7] 128 Phil. 53 (1967) [Per *J.* Castro, *En Banc*].

Taken singly, the contracts show nothing that is necessarily illegal, but considered collectively, they reveal an insidious pattern to subvert by indirection what the Constitution directly prohibits. To be sure, a lease to an alien for a reasonable period is valid. So is an option giving an alien the right to buy real property on condition that he is granted Philippine citizenship. . . .

. . .

But if an alien is given not only a lease of, but also an option to buy, a piece of land, by virtue of which the Filipino owner cannot sell or otherwise dispose of his property, this to last for 50 years, then it becomes clear that the arrangement is a virtual transfer of ownership whereby the owner divests himself in stages not only of the right to enjoy the land *(jus possidendi, jus utendi, jus fruendi* and *jus abutendi)* but also of the right to dispose of it *(jus disponendi)* — rights the sum total of which make up ownership. It is just as if today the possession is transferred, tomorrow, the use, the next day, the disposition, and so on, until ultimately all the rights of which ownership is made up are consolidated in an alien. And yet this is just exactly what the parties in this case did within this pace of one year, with the result that Justina Santos' ownership of her property was reduced to a hollow concept. If this can be done, then the Constitutional ban against alien landholding in the Philippines, as announced in *Krivenko v. Register of Deeds,* is indeed in grave peril.[8] (Emphasis supplied)

In this case, petitioners insist that the Lease Agreement between LUSTEVECO and respondent is a virtual sale and, thus, violates the constitutional prohibition against alien ownership of private lands.[9]

Seen individually, the rights granted to respondent under paragraphs 2, 5, and 6 of the Agreement seem like standard fare in a typical lease agreement. However, when these rights are taken collectively, it becomes clear that the Agreement is a sale masquerading as a lease. Paragraphs 2 and 5 of the Agreement read:

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[8] *Id*. at 67-68, citing *Krivenko v. Register of Deeds,* 79 Phil. 461, 480-481 (1947) [Per *C.J.* Moran, Second Division].

[9] *Rollo,* pp. 21-27, Petition.

2. The lease shall be for a term of twenty-five (25) years from and after the execution of this agreement, for a consideration of ₱2.1 million, Philippine currency, for 11 hectares, subject to a proportionate adjustment on the total area leased on the basis of the final survey. The rental may be totally or partially converted into equity of KPSI at par of ₱100.00 per share at such time of intervals and for such amounts as may be opted by LUSTEVECO, subject to two (2) months prior notice being given in writing to KPSI within a period of four (4) years from date of this agreement.

. . .

5. [I]f within the *period of the first twenty-five (25)* years KPSI becomes qualified to own land under the laws of the Philippines, it has the firm and absolute option to purchase the above property for a total price of four million and ninety thousand (₱4,090,000.00) pesos, Philippine currency, at the end of the 25th year, *discounted at 16% annually for every year before the end of the 25th year,* which amount may be converted into equity of KPSI at the book value prevailing at the time of the sale, or paid in cash at LUSTEVECO's option.

However, if after the first twenty-five (25) years, KPSI is still not qualified to own land under the laws of the Republic of the Philippines, KPSI's lease of the above stated property shall be *automatically renewed for another twenty five (25) years,* under the same terms and conditions save for the rental price which sum shall be for the sum of ₱4,090,000.00, Philippine Currency, and which may be totally converted into equity of KPSI at book value prevailing at the time of conversion, or paid in cash at LUSTEVECO's option.

If anytime within the second twenty five (25) years up to the thirtieth (30th) year from the date of this agreement KPSI becomes qualified to own land under the laws of the Republic of the Philippines, KPSI has the firm and absolute option to buy and LUSTEVECO hereby undertakes to sell the stated property for the *nominal consideration of One Hundred Pesos (₱100.00) Philippine Currency*.[10] (Emphasis supplied)

Paragraph 6 of the Agreement reads:

6. LUSTEVECO warrants that it shall not sell the properties hereunder leased, nor assign its rights herein, to third parties during

[10] *Id*. at 40-41.

the lifetime of the lease, *without the prior consent of KPSI.*[11] (Emphasis supplied)

Respondent did not just lease the land for 25 years. If respondent still failed to qualify to own private land under Philippine law, its lease would be automatically renewed for another 25 years. The total purchase price of ₱4,090,000.00 was discounted at the rate of 16% annually for the first 25 years, and was even due to drop down to an absurd ₱100.00 for the following 25 years.

Thus, this Court is led to believe that the lease amounts paid were applied to the total purchase price of ₱4,090,000.00, which is a peculiar feature in an agreement that purports to be a lease, but is a common practice in sales on installment basis.

Finally, LUSTEVECO had to obtain the consent of respondent before it could sell or transfer its rights to the property to third parties.

Applying *Lui She,* if an alien is given a 50-year lease and an option to buy, under which the Filipino owner can neither sell nor dispose of the property, then the arrangement is a virtual transfer of ownership where the owner slowly divests himself or herself not only of the right to enjoy the land but also of the right to dispose of it.

As the prohibition against alien landholding stems from the Constitution itself, that the lower courts did not deem it necessary to pass upon the issue is questionable. The Regional Trial Court of Batangas City, in its January 12, 2006 Decision,[12] summarized its findings to two paragraphs and effectively declared the constitutionality of the Agreement by calling it a "valid agreement":[13]

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[11] *Id*. at 22.

[12] *Id*. at 76-100. The Decision, docketed as Civil Case No. 7364, was penned by Presiding Judge Paterno V. Tac-An of Branch 84.

[13] *Id*. at 99.

APPRECIATION OF EVIDENCE

The findings of the Court are:

1. The Agreement of Lease/Purchase between the plaintiff and the defendant PNOC's predecessor LUSTEVECO dated August 6, 1976. Exhibit "A" on the Bauan Lands is a *valid agreement* that was subject to a suspensive condition, that is, the turn-over of the real properties would be subject of the fulfillment of the condition that plaintiff would have attained the status of a 60% Filipino-owned corporation;

2. That plaintiff has substantially complied with its obligation, under which the said agreement, including the payment of Four Million Ninety Thousands [sic] pesos (₱4,090,000.00) which was effected by consignation with the Clerk of Court on April 29, 2005.[14] (Emphasis supplied)

The Court of Appeals likewise declared the Agreement valid in its December 19, 2011 Decision.[15] However, instead of discussing the constitutionality of the lease, it chose to focus on the option contract that emanated from the lease. The Court of Appeals held:

Succinctly, this Court is of the opinion that it is with no doubt that paragraph 5 of the "Agreement" fits squarely into the definition of an option contract, nonetheless We find that the provision of Article 1479 of the Civil Code is not applicable. As the option to purchase was integrated in the agreement, the parties have reciprocal obligations to each other. Applying Consuelo Vda. De Quirino case, there is no need for a separate consideration in the aforementioned agreement between KPHI and PNOC, PDEC as their obligation to each other constitutes the consideration.[16]

The ponencia puts much emphasis on the improvements that respondent made on the property for it to be suitable for its

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[14] *Id*.

[15] *Id*. at 38-63. The Decision, docketed as CA-G.R. CV No. 86830, was penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison of the Eighth Division, Court of Appeals, Manila.

[16] *Id*. at 60-61.

shipyard business.[17] It points out that respondent incurred "₱60 million costs solely for preliminary activities to make the land suitable as a shipyard, and subsequently introduced improvements worth ₱177 million."[18] It likewise notes, with approval, that the terms of the Agreement were reasonable, in light of the nature of business conducted by respondent:

> The agreement was executed to enable Keppel to use the land for its shipbuilding and ship repair business. The industrial/commercial purpose behind the agreement differentiates the present case from Lui Shei [sic] where the leased property was primarily devoted to residential use. Undoubtedly, the establishment and operation of a shipyard business involve significant investments. Keppel's uncontested testimony showed that it incurred ₱60 million costs solely for preliminary activities to make the land suitable as a shipyard, and subsequently introduced improvements worth ₱177 million. Taking these investments into account and the nature of the business that Keppel conducts on the land, *we find it reasonable that the agreement's terms provided for an extended duration of the lease and a restriction on the rights of Lusteveco*.[19] (Emphasis supplied)

However, no matter how reasonable its terms may be from a business perspective, the long-term lease between LUSTEVECO and respondent still is a virtual transfer of ownership to an alien and, thus, a circumvention of the constitutional prohibition on foreign ownership of private land. To allow the Agreement to stand would effectively render the ownership of property a hollow concept. It would make a mockery of our fundamental law.

As for the validity of the option contract, I concur with the ponencia's finding that no option contract was created in this case:

> For uniformity and consistency in contract interpretation, the better rule to follow is that *the consideration for the option contract should be clearly specified as such in the option contract or clause.*

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[17] *Ponencia*, p. 6.

[18] *Id.*

[19] *Id.*

Otherwise, the offeree must bear the burden of proving that a separate consideration for the option contract exists.

Given our finding that the Agreement did not categorically refer to any consideration to support Keppel's option to buy and for Keppel's failure to present evidence in this regard, we cannot uphold the existence of an option contract in this case.[20] (Emphasis in the original)

Considering the unconstitutionality of the Agreement and the lack of an option contract, petitioners cannot be bound to sell the parcel of land to respondent.

ACCORDINGLY, I vote to **REVERSE** the December 19, 2011 Decision and the May 14, 2012 Resolution of the Court of Appeals in CA G.R. CV No. 86830. The Lease Agreement between Luzon Stevedoring Corporation and respondent Keppel Philippines Holdings, Inc. must be declared void ab initio for violating the constitutional prohibition on alien landholding.

SECOND DIVISION

[G.R. No. 202514. July 25, 2016]

ANNA MARIE L. GUMABON, *petitioner, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; COVERS ONLY QUESTIONS OF LAW; EXCEPTIONS; PRESENT.— As a general rule, a petition for review under Rule 45 of the Rules of Court covers *only* questions of law. Questions of fact are not reviewable and cannot be passed upon by the Court in the exercise of its power to review

[20] *Id.* at 11.

under Rule 45. There are, however, exceptions to the general rule. Questions of fact may be raised before this Court in any of these instances: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. The present case falls under two of the exceptions, particularly that the CA's findings are contrary to the RTC's findings, and that the CA's findings of fact are premised on absent evidence and contradicted by the evidence on record.

2. ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; WHEN THE DEBTOR INTRODUCES SOME EVIDENCE OF PAYMENT, THE BURDEN OF GOING FORWARD WITH THE EVIDENCE – AS DISTINCT FROM THE BURDEN OF PROOF – SHIFTS TO THE CREDITOR, WHO HAS A DUTY TO PRODUCE EVIDENCE TO SHOW NON-PAYMENT.— It is a settled rule in evidence that the one who alleges payment has the burden of proving it. The burden of proving that the debt had been discharged by payment rests upon the debtor once the debt's existence has been fully established by the evidence on record. When the debtor introduces some evidence of payment, the burden of going forward with the evidence – as distinct from the burden of proof – shifts to the creditor. Consequently, the creditor has a duty to produce evidence to show non- payment. In the present case, both the CA and the RTC declared that the PNB has the burden of proving payment.

3. ID.; ID.; ADMISSIBILITY; EVIDENCE, TO BE ADMISSIBLE, MUST BE RELEVANT AND COMPETENT.— Evidence, to be admissible, must comply

with two qualifications: (a) relevance and (b) competence. Evidence is relevant if it has a relation to the fact in issue as to induce a belief in its existence or nonexistence. On the other hand, evidence is competent if it is not excluded by the law or by the Rules of Court.

4. ID.; ID.; ID.; DOCUMENTARY EVIDENCE; BEST EVIDENCE RULE; THE ORIGINAL COPY OF THE DOCUMENT MUST BE PRESENTED WHENEVER THE CONTENT OF THE DOCUMENT IS UNDER INQUIRY; EXCEPTIONS.— One of the grounds under the Rules of Court that determines the competence of evidence is the best evidence rule. Section 3, Rule 130 of the Rules of Court provides that the original copy of the document must be presented whenever the content of the document is under inquiry. However, there are instances when the Court may allow the presentation of secondary evidence in the absence of the original document. Section 3, Rule 130 of the Rules of Court enumerates these exceptions: (a) when the original has been lost, or destroyed, or cannot be produced in court, without bad faith on the part of the offeror; (b) when the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice; (c) when the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and (d) when the original is a public record in the custody of a public officer or is recorded in a public office. x x x The PNB cannot simply substitute the mere photocopies of the subject documents for the original copies without showing the court that any of the exceptions under Section 3 of the Rule 130 of the Rules of Court applies.

5. COMMERCIAL LAW; BANKS AND BANKING; BANKS ARE EXPECTED TO TREAT THE ACCOUNTS OF THEIR DEPOSITORS WITH METICULOUS CARE, ALWAYS HAVING IN MIND THE FIDUCIARY NATURE OF THEIR RELATIONSHIP.— The PNB's failure to give a justifiable reason for the absence of the original documents and to maintain a record of Anna Marie's transactions only shows the PNB's dismal failure to fulfill its fiduciary duty to Anna Marie. The Court expects the PNB to "treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature

of their relationship." The Court explained in *Philippine Banking Corporation v. CA*, the fiduciary nature of the bank's relationship with its depositors, to wit: The business of banking is imbued with public interest. The stability of banks largely depends on the confidence of the people in the honesty and efficiency of banks. In *Simex International (Manila) Inc. v. Court of Appeals* we pointed out **the depositor's reasonable expectations from a bank and the bank's corresponding duty to its depositor**, as follows: In every case, the depositor expects the bank to treat his account **with the utmost fidelity**, whether such account consists only of a few hundred pesos or of millions. **The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible.** This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs.

6. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; OFFER AND OBJECTION; WITHOUT A FORMAL OFFER OF EVIDENCE, COURTS CANNOT TAKE NOTICE OF THE EVIDENCE EVEN IF THE SAME HAS BEEN PREVIOUSLY MARKED AND IDENTIFIED; EXCEPTIONS.— The PNB claimed that it had already paid the amount of $10,058.01 covered by FXCTD No. 993902. x x x . To further support its claim, the PNB annexed the affidavit of the PNB New York's bank officer about the fund transfer. The PNB, however, failed to formally offer the afiidavit as evidence. x x x . **The affidavit of the PNB New York's branch officer is also inadmissible** in the light of the following self-explanatory provision of the Rules of Court: "Sec. 34. *Offer of evidence*. – The court shall consider no evidence which has not been formally offered. x x x" Formal offer means that the offeror shall inform the court of the purpose of introducing its exhibits into evidence. Without a formal offer of evidence, courts cannot take notice of this evidence even if this has been previously marked and identified. x x x. In *People v. Napat-a, People v. Mate,* and *Heirs of Romana Saves, et al. v. Escolastico Saves, et al.*, we recognized the exception from the requirement of a formal offer of evidence, namely: (a) the evidence must have been duly identified by testimony duly recorded; and (b) the evidence must have been incorporated in the records of the case.

7. ID.; ID.; ADMISSIBILITY; HEARSAY EVIDENCE; AN AFFIDAVIT IS MERELY HEARSAY EVIDENCE WHEN ITS AFFIANT OR MAKER DID NOT TAKE THE WITNESS STAND.— It is unmistakable that the PNB did not include the affidavit of the PNB New York's bank officer in its formal offer of evidence to corroborate Anna Rose's SOA. Although the affidavit was included in the records and identified by Fernandez, it remains inadmissible for being **hearsay**. Jurisprudence dictates that an affidavit is merely hearsay evidence when its affiant or maker did not take the witness stand. In the present case, Fernandez is not the proper party to identify the affidavit executed by the PNB New York's bank officer since he is not the affiant. Therefore, the affidavit is inadmissible.

8. COMMERCIAL LAW; BANKS AND BANKING; TO DISCHARGE A DEBT, THE BANK MUST PAY TO SOMEONE AUTHORIZED TO RECEIVE THE PAYMENT, AND IT ACTS AT ITS PERIL WHEN IT PAYS DEPOSITS EVIDENCED BY A CERTIFICATE OF DEPOSIT, WITHOUT ITS PRODUCTION AND SURRENDER AFTER PROPER INDORSEMENT.— [W]e remind the PNB of the negotiability of a certificate of deposit as it is a written acknowledgment by the bank of the receipt of a sum of money on deposit which the bank promises to pay to the depositor, to the latter's order, or to some other person or the latter's order. To discharge a debt, the bank must pay to someone authorized to receive the payment. A bank acts at its peril when it pays deposits evidenced by a certificate of deposit, without its production and surrender after proper indorsement. Again, as the RTC had correctly stated, the PNB should not have allowed the withdrawals, if there were indeed any, without the presentation of the covering foreign certificates of time deposit. There are no irregularities on Anna Marie's certificates to justify the PNB's refusal to pay the stated amounts in the certificates when it was presented for payment. Therefore, the PNB is liable for Anna Marie's claims since it failed to prove that it had already been discharged from its obligation.

9. ID.; ID.; BANKS ARE REQUIRED TO ASSUME A DEGREE OF DILIGENCE HIGHER THAN THAT OF A GOOD FATHER OF A FAMILY.— Section 2 of Republic Act No. 8791, declares the State's recognition of the "fiduciary nature

of banking that requires high standards of integrity and performance." It cannot be overemphasized that the banking business is impressed with public interest. The trust and confidence of the public to the industry is given utmost importance. Thus, the bank is under obligation to treat its depositor's accounts with meticulous care, having in mind the nature of their relationship. The bank is required to assume a degree of diligence higher than that of a good father of a family. [T]he PNB was negligent for its failure to update and properly handle Anna Marie's accounts. This is patent from the PNB's letter to Anna Marie, admitting the error and unauthorized withdrawals from her account. Moreover, Anna Marie was led to believe that the amounts she has in her accounts would remain because of the *Deed of Waiver and Quitclaim* executed by her, her mother, and PNB. Assuming *arguendo* that Anna Marie made the contested withdrawals, due diligence requires the PNB to record the transactions in her passbooks.

10. ID.; ID.; THE BANK IS NOT ABSOLVED FROM LIABILITY BY THE FACT THAT IT WAS THE BANK'S EMPLOYEE WHO COMMITTED THE WRONG AND CAUSED DAMAGE TO THE DEPOSITOR, FOR BANKS ARE EXPECTED TO EXERCISE THE HIGHEST DEGREE OF DILIGENCE IN THE SELECTION AND SUPERVISION OF THEIR EMPLOYEES.— The Court has established in a number of cases the standard of care required from banks, and the bank's liability for the damages sustained by the depositor. The bank is not absolved from liability by the fact that it was the bank's employee who committed the wrong and caused damage to the depositor. Article 2180 of the New Civil Code provides that the owners and managers of an establishment are responsible for damages caused by their employees while performing their functions. In addition, we held in *PNB v. Pike*, that although the bank's employees are the ones negligent, a bank is primarily liable for the employees' acts because banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees. Indeed, a great possibility exists that Salvoro was involved in the unauthorized withdrawals. Anna Marie entrusted her accounts to and made her banking transactions only through him. Salvaro's unexplained disappearance further confirms this Court's suspicions. The Court is alarmed that he was able to repeatedly

do these unrecorded transactions without the bank noticing it. This only shows that the PNB has been negligent in the supervision of its employees.

11. CIVIL LAW; DAMAGES; CONTRIBUTORY NEGLIGENCE; CONDUCT ON THE PART OF THE INJURED PARTY, CONTRIBUTING AS A LEGAL CAUSE TO THE HARM HE HAS SUFFERED, WHICH FALLS BELOW THE STANDARD TO WHICH HE IS REQUIRED TO CONFORM FOR HIS OWN PROTECTION; NOT PROVED.— As to contributory negligence, the Court agrees with the RTC that the PNB failed to substantiate its allegation that Anna Marie was guilty of contributory negligence. Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection. Whether contributory negligence transpired is a factual matter that must be proven. In the present case, Anna Marie cannot be held responsible for entrusting her account with Salvoro. As shown in the records, Salvoro was the bank's time deposit specialist. Anna Marie cannot thus be faulted if she engaged the bank's services through Salvoro for transactions related to her time deposits. The Court also cannot accept the CA's conclusion that there was connivance between Anna Marie and Salvoro. This conclusion is simply not supported by the records and is therefore baseless.

12. ID.; ID.; AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES, PROPER.— [W]e hold that Anna Marie is entitled to moral damages of ₱100,000.00. In cases of breach of contract, moral damages are recoverable only if the defendant acted fraudulently or in bad faith, or is guilty of gross negligence amounting to bad faith, or in clear disregard of his contractual obligations. Anna Marie was able to establish the mental anguish and serious anxiety that she suffered because of the PNB's refusal to honor its obligations. Anna Marie is likewise entitled to exemplary damages of ₱50,000.00. Article 2229 of the New Civil Code imposes exemplary damages by way of example or correction for the public good. To repeat, banks must treat the accounts of its depositors with meticulous care and always have in mind the fiduciary nature of its relationship with them. Having failed to observe these, the

award of exemplary damages is justified. As exemplary damages are awarded herein and as Anna Marie was compelled to litigate to protect her interests, the award of attorney's fees and expenses of litigation of ₱150,000.00 is proper.

13. ID.; ID.;ACTUAL AND COMPENSATORY DAMAGES; LEGAL INTEREST OF 12% AND 6% PER ANNUM, IMPOSED.— [W]e impose legal interest pursuant to the guidelines in *Nacar v. Gallery Frames*. We held in that case that for interest awarded on actual and compensatory damages, the interest rate is imposed as follows: 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum [changed to 6% per annum starting July 1, 2013] to be computed from default, *i.e.*, from extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code. x x x 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest x x x shall be 6% per annum from such finality until its satisfaction. x x x We note that pursuant to the Bangko Sentral ng Pilipinas-Monetary Board Circular No. 799, the legal interest rate is 6% per annum effective July 1, 2013. The new rate is applicable prospectively; thus, the 12% per annum shall still apply until June 30, 2013. In the present case, Anna Marie filed her complaint on August 12, 2004. PNB is therefore liable for legal interest of 12% per annum from August 12, 2004 until June 30, 2013, and 6% per annum from July 1, 2013, until its full satisfaction.

APPEARANCES OF COUNSEL

Adaza Adaza & Adaza Law Office for petitioner.
PNB Legal Department for respondent.

D E C I S I O N

BRION, *J.*:

Before us is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by Anna Marie Gumabon (*Anna Marie*) assailing the December 16, 2011 decision[2] and June 26, 2012 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV. No. 96289. The CA reversed the Regional Trial Court (*RTC*)'s ruling[4] in Civil Case No. Q-04-53432 favoring Anna Marie.

The Facts

On August 12, 2004, Anna Marie filed a complaint for recovery of sum of money and damages before the RTC against the Philippine National Bank (*PNB*) and the PNB Delta branch manager Silverio Fernandez (*Fernandez*). The case stemmed from the PNB's refusal to release Anna Marie's money in a consolidated savings account and in two foreign exchange time deposits, evidenced by ***Foreign Exchange Certificates of Time Deposit* (*FXCTD*).**

In 2001, Anna Marie, together with her mother Angeles and her siblings Anna Elena and Santiago, (*the Gumabons*) deposited with the PNB Delta Branch $10,945.28 and $16,830.91, for which they were issued FXCTD Nos. **A-993902**[5] and **A-993992**,[6] respectively.

The Gumabons also maintained eight (8) savings accounts[7] in the same bank. Anna Marie decided to consolidate the eight

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[1] *Rollo,* pp. 3-20.

[2] *Id*. at 21-38. Penned by CA Associate Justice Stephen C. Cruz and concurred in by Associate Justices Vicente S.E. Veloso and Danton Q. Bueser of the Special Fourteenth Division.

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

[4] *Id*. at 55-79.

[5] Exhibit "A", RTC records, p. 17.

[6] Exhibit "B", *id*. at 18.

[7] Exhibits "M" to "M-7", *id*. at 232-239.

(8) savings accounts and to withdraw ₱2,727,235.85 from the consolidated savings account to help her sister's financial needs.

Anna Marie called the PNB employee handling her accounts, Reino Antonio Salvoro (*Salvoro*), to facilitate the consolidation of the savings accounts and the withdrawal. When she went to the bank on April 14, 2003, she was informed that she could not withdraw from the savings accounts since her bank records were missing and Salvoro could not be contacted.

On April 15, 2003, Anna Marie presented her two FXCTDs, but was also unable to withdraw against them. Fernandez informed her that the bank would still verify and investigate before allowing the withdrawal since Salvoro had not reported for work.

Thus, Anna Marie sent two demand letters[8] dated April 23 and April 25, 2003 to the PNB.

After a month, the PNB finally consolidated the savings accounts and issued a passbook for **Savings Account (*SA*) No. 6121200**.[9] The PNB also confirmed that the total deposits amounted to ₱2,734,207.36. Anna Marie, her mother, and the PNB executed a *Deed of Waiver and Quitclaim* dated May 23, 2003[10] to settle all questions regarding the consolidation of the savings accounts. After withdrawals, the balance of her consolidated savings account was ₱250,741.82.

On July 30, 2003, the PNB sent letters to Anna Marie to inform her that the PNB refused to honor its obligation under FXCTD Nos. 993902 and 993992,[11] and that the PNB withheld the release of the balance of ₱250,741.82 in the consolidated savings account.[12] According to the PNB, Anna Marie pre-terminated, withdrew and/or debited sums against her deposits.

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[8] *Id*. at 244; Exhibit "C", *id*. at 19-20, and Exhibit "H", *id*. at 30.

[9] Exhibits "D" and "D-1", *id*. at 21-22.

[10] Exhibit "G", *id*. at 28-29.

[11] Exhibit "I", *id*. at 31-32.

[12] Exhibit "P", *id*. at 240.

Thus, Anna Marie filed before the RTC a **complaint** for sum of money and damages against the PNB and Fernandez.[13]

As to the two FXCTDs, Anna Marie contended that the PNB's refusal to pay her time deposits is contrary to law. The PNB cannot claim that the bank deposits have been paid since the certificates of the time deposits are still with Anna Marie.[14]

As to the consolidated savings account, Anna Marie stated that the PNB had already acknowledged the account's balance in the *Deed of Waiver and Quitclaim* amounting to ₱2,734,207.36. As of January 26, 2004, the remaining balance was ₱250,741.82. PNB presented no concrete proof that this amount had been withdrawn.

Anna Marie prayed that the PNB and Fernandez be held solidarily liable for actual, moral, and exemplary damages, as well as attorney's fees, costs of suit, and legal interests because of the PNB's refusal to honor its obligations.

In its **answer**,[15] the PNB argued that: (1) Anna Marie is not entitled to the balance of the consolidated savings account based on *solutio indebiti*; (2) the PNB already paid the $10,058.01 covered by FXCTD No. 993902; (3) the PNB is liable to pay only $10,718.87 of FXCTD No. 993992, instead of the full amount of $17,235.41; and (4) Anna Marie is guilty of contributory negligence. The PNB's arguments are discussed below.

First, Anna Marie is not entitled to the alleged balance of ₱250,741.82. The PNB's investigation showed that Anna Marie withdrew a total of ₱251,246.81[16] from two of the eight savings accounts and she used this amount to purchase manager's check No. 0000760633.[17] Hence, ₱251,246.81 should be deducted from

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[13] RTC Records, pp. 1-16, Volume 1.

[14] CA records, p. 236.

[15] RTC records, pp. 41-52.

[16] ₱100,408.65 and ₱150,838.17 = ₱251, 246.81.

[17] Exhibit "15", RTC records, p. 70.

the sum agreed upon in the *Deed of Waiver and Quitclaim*. The PNB offered photocopies of the PNB's **miscellaneous ticket**[18] and the **manager's check** as evidence to prove the withdrawals. The PNB argued that unjust enrichment would result if Anna Marie would be allowed to collect ₱250,741.82 from the consolidated savings account without deducting her previous withdrawal of ₱251,246.81.

Second, Anna Marie is not entitled to receive $10,058.01 covered by FXCTD No. 993902. Based on the PNB's records, Anna Marie pre-terminated FXCTD No. 993902 on March 11, 2002, and used the deposit, together with another deposit covered by FXCTD No. 993914 (for $8,111.35), to purchase a **foreign demand draft** (FX Demand Draft No. 4699831) payable to Anna Rose/Angeles Gumabon. The PNB presented a facsimile copy of **Anna Rose's Statement of Account (*SOA*)**[19] from the PNB Bank to prove that the amount covered by FXCTD No. 993902 was already paid.

Third, Anna Marie is only entitled to receive $10,718.87 instead of the full amount of $17,235.41 covered by FXCTD No. 993992 because: (a) the amount of $1,950.00 was part of the money used by Anna Marie to purchase the manager's check; (2) the amount of $2,566.54 was credited to Current Account No. 227-810961-8 owned by Anna Marie's aunt, Lolita Lim; and (3) the amount of $2,000.00 was credited to Current Account No. 2108107498 of Anna Marie and Savings Account No. 212-5057333 of Anna Marie/or Angeles or Santiago/or Elena (all surnamed Gumabon). Hence, these amounts should be deducted from the amount payable to Anna Marie.

Finally, the PNB alleged that Anna Marie was guilty of contributory negligence in her bank dealings.

In her reply,[20] Anna Marie argued that the best evidence of her withdrawals is the withdrawal slips duly signed by her and

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[18] Exhibit "14", *id*. at 69.

[19] Exhibits "19", "19-a","19-b", *id*. at 75-77.

[20] RTC records, pp. 84-96.

the passbooks pertaining to the accounts. PNB, however, failed to show any of the withdrawal slips and/or passbooks, and also failed to present sufficient evidence that she used her accounts' funds.

The RTC Ruling

The RTC ruled in Anna Marie's favour.[21]

The RTC held that the PNB had not yet paid the remaining balance of $10,058.01 under FXCTD No. 993902. Anna Marie's SOA,[22] which the PNB relied upon, is a mere photocopy and does not satisfy the best evidence rule. Moreover, there is no indication on the stated amounts in the SOA that the funds have come from FXCTD No. 993902.[23] The PNB failed to obtain the deposition of a PNB Bank officer or present any other evidence to show that the amounts stated in the SOA came from FXCTD No. 993902. The RTC also held that the alleged pre-termination of FXCTD No. 993902 on March 11, 2002, is hard to believe since the certificate shows that the last entry was made on March 24, 2003, with a reflected balance of $10,058.01.

On FXCTD No. 993992, the RTC held that the PNB failed to prove Anna Marie's alleged withdrawals. These alleged withdrawals are not reflected at the back of the certificate. Anna Marie's ledger was also not presented as evidence to show that several withdrawals had been made against FXCTD No. 993992.

On the consolidated savings account, the RTC held that the PNB failed to prove that Anna Marie withdrew the balance of ₱250,741.82. The RTC excluded PNB's evidence, *i.e., photocopies of the miscellaneous ticket and manager's check,* to prove the alleged withdrawals, since these documents were just photocopies and thus failed to satisfy the best evidence rule.

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[21] RTC decision dated October 26, 2010. Penned by Acting Presiding Judge Fernando T. Sagun, Jr. *Rollo*, pp. 55-79.

[22] Exhibit 19, p. 75.

[23] CA records, p. 252.

The RTC awarded damages to Anna Marie due to the PNB's mishandling of her account through its employee, Salvoro. The RTC also held that the PNB failed to establish Anna Marie's contributory negligence.

In conclusion, the RTC ordered the PNB to pay Anna Marie these amounts:

(1) Actual damages of:

(a) $10,058.01, as the outstanding balance of FXCTD No. 993902;
(b) $20,244.42, as the outstanding balance of FXCTD No. 993992;and
(c) ₱250,741.82, as the outstanding balance of SA No. 6121200;

(2) ₱100,000.00 as moral damages;
(3) ₱50,000.00 as exemplary damages;
(4) ₱150,000.00 as attorney's fees; and
(5) Costs of suit.

From this ruling, the PNB appealed before the CA.

The CA Ruling

The CA **reversed** the RTC's ruling.[24]

The CA held that the PNB had paid the actual amounts claimed by Anna Marie in her complaint. The CA noted Anna Marie's suspicious and exclusive dealings with Salvoro and the Gumabons' instruction to Salvoro to make unauthorized and unrecorded withdrawals. Hence, there are no entries of withdrawals reflected in Anna Marie's passbook.

The CA also considered Anna Rose's SOA as proof that the PNB had paid the remaining balance of $10,058.01 on FXCTD No. 993902. The CA held that the PNB verified the SOA and it was corroborated by the **affidavit**[25] of the PNB Branch Operations Officer in New York. The CA stated that the RTC

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[24] CA decision dated December 16, 2011. *Rollo,* pp. 21-38.

[25] Exhibit "20", RTC records, p. 78.

should have allowed the taking of the deposition of the PNB bank officer.

The CA also relied on the PNB's investigation and concluded that the PNB had already paid the amounts claimed by Anna Marie under FXCTD Nos. 993902 and 993992.

As to Anna Marie's consolidated savings account, the CA gave credence to the miscellaneous ticket and the manager's check presented by the PNB to prove that it had already paid the balance.

Anna Marie moved but failed to obtain reconsideration of the CA's decision; hence, the present petition.[26]

The Petition

Anna Marie filed the present petition for review to question the CA's decision and resolution which reversed the RTC's ruling.

Anna Marie argues that: *first*, the CA should not have disregarded the RTC's conclusive findings; *second,* the CA erred in considering the PNB New York bank officer's affidavit because it was not formally offered as evidence; *third,* the CA erroneously relied on a foreign demand draft[27] to prove the PNB's payment of the amount due under FXCTD No. 993902; *fourth,* the CA erroneously considered the miscellaneous ticket and the manager's check because these documents are mere photocopies and inadmissible under the best evidence rule; and *fifth,* the CA's conclusion about a purported "connivance" between Anna Marie and Salvoro has no evidentiary basis.

In its comment, the PNB counters that: *first,* the CA can rectify the RTC's factual findings since the RTC committed errors in its appreciation of the evidence; *second*, the RTC completely ignored the PNB's several evidence proving its payment of Anna Marie's FXCTDs; *third,* Anna Marie did not refute the PNB's allegations of payment; *fourth,* the CA has the right to review even those exhibits which were excluded

[26] CA Resolution dated June 26, 2012.

[27] Exhibit "18", RTC records, p. 349.

by the RTC; and *fifth,* the CA correctly ruled that the PNB should not be faulted about the unrecorded transactions, and that the PNB had done its duty to its depositors when it conducted investigations and an internal audit of Anna Marie's accounts.

The Issues

The issue before this Court is whether Anna Marie is entitled to the payment of the following amounts:

(a) $10,058.01 or the outstanding balance under FXCTD No. 993902;
(b) $20,244.42 for FXCTD No. 993992;
(c) ₱250,741.82 for SA No. 6121200; and
(3) Damages.

Our Ruling

We grant the petition and reverse the CA's ruling.

The core issue raised in the present petition is a question of fact. As a general rule, a petition for review under Rule 45 of the Rules of Court covers *only* questions of law. Questions of fact are not reviewable and cannot be passed upon by the Court in the exercise of its power to review under Rule 45.[28]

There are, however, exceptions to the general rule. Questions of fact may be raised before this Court in any of these instances: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the

[28] *Westmont Investment Corp. v. Francia, Jr.*, G.R. No. 194128, December 7, 2011, 661 SCRA 787, 797.

petitioners main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[29]

The present case falls under two of the exceptions, particularly that the CA's findings are contrary to the RTC's findings, and that the CA's findings of fact are premised on absent evidence and contradicted by the evidence on record.

We note that the CA considered pieces of evidence which are inadmissible under the Rules of Court, particularly the manager's check and the corresponding miscellaneous ticket, Anna Rose's SOA, and the affidavit of the PNB New York's bank officer. The inadmissibility of these documents is explained more fully in the following discussion.

PNB failed to establish the fact of payment to Anna Marie in FXCTD Nos. 993902 and 993992, and SA No. 6121200.

It is a settled rule in evidence that the one who alleges payment has the burden of proving it.[30] The burden of proving that the debt had been discharged by payment rests upon the debtor once the debt's existence has been fully established by the evidence on record. When the debtor introduces some evidence of payment, the burden of going forward with the evidence – as distinct from the burden of proof – shifts to the creditor. Consequently, the creditor has a duty to produce evidence to show non-payment.[31]

In the present case, both the CA and the RTC declared that the PNB has the burden of proving payment. The lower courts,

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[29] *Macasero v. Southern Industrial Gases*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 504.

[30] *Jimenez v. NLRC*, 326 Phil. 89-90 (1996).

[31] *Saberola v. Suarez*, G.R. No. 151227, July 14, 2008, 558 SCRA 135, 146-147.

however, differed in resolving the question of whether the PNB presented sufficient evidence of payment to shift the burden of evidence to Anna Marie. The RTC ruled that the PNB failed to do so, after excluding PNB's evidence, *i.e., miscellaneous ticket, manager's check, and the affidavit of the PNB New York's bank officer,* based on the rules of evidence. The CA, on the other hand, considered the excluded evidence and found that the PNB presented sufficient proof of payment.

i. The PNB's alleged payment of the amount covered by SA No. 6121200

The PNB alleged that it had already paid the balance of the consolidated savings account (SA No. 6121200) amounting to ₱250,741.82. It presented the manager's check to prove that Anna Marie purchased the check using the amounts covered by the Gumabon's two savings accounts which were later part of Anna Marie's consolidated savings account. The PNB also presented the miscellaneous ticket to prove Anna Marie's withdrawal from the savings accounts.

The RTC denied the admission of the manager's check and the miscellaneous ticket since the original copies were never presented.[32] The PNB moved to tender the excluded evidence and argued that even without the presentation of the original copies, the photocopies are admissible because they have been identified by Fernandez.[33]

Evidence, to be admissible, must comply with two qualifications: (a) relevance and (b) competence. Evidence is relevant if it has a relation to the fact in issue as to induce a belief in its existence or nonexistence.[34] On the other hand, evidence is competent if it is not excluded by the law or by the Rules of Court.[35]

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[32] RTC records, p. 387.

[33] *Id*. at 411.

[34] Rule 128, Rules of Court, Sec. 4.

[35] *Id*., Sec. 3.

One of the grounds under the Rules of Court that determines the competence of evidence is the best evidence rule. Section 3, Rule 130 of the Rules of Court provides that the original copy of the document must be presented whenever the content of the document is under inquiry.[36]

However, there are instances when the Court may allow the presentation of secondary evidence in the absence of the original document. Section 3, Rule 130 of the Rules of Court enumerates these exceptions:

(a) when the original has been lost, or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) when the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) when the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) when the original is a public record in the custody of a public officer or is recorded in a public office.

While the RTC cannot consider the excluded evidence to resolve the issues, such evidence may still be admitted on appeal

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[36] "Sec. 3. *Original document must be produced; exceptions.* – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases: (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror; (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice; (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and (d) When the original is a public record in the custody of a public officer or is recorded in a public office."

provided there has been tender of the excluded evidence under Section 40 of Rule 132 of the Rules of Court.[37]

The PNB cannot simply substitute the mere photocopies of the subject documents for the original copies without showing the court that any of the exceptions under Section 3 of Rule 130 of the Rules of Court applies. The PNB's failure to give a justifiable reason for the absence of the original documents and to maintain a record of Anna Marie's transactions only shows the PNB's dismal failure to fulfill its fiduciary duty to Anna Marie.[38] The Court expects the PNB to "treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship."[39] The Court explained in *Philippine Banking Corporation v. CA,*[40] the fiduciary nature of the bank's relationship with its depositors, to wit:

> The business of banking is imbued with public interest. The stability of banks largely depends on the confidence of the people in the honesty and efficiency of banks. In *Simex International (Manila) Inc. v. Court of Appeals* we pointed out **the depositor's reasonable expectations from a bank and the bank's corresponding duty to its depositor**, as follows:
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> In every case, the depositor expects the bank to treat his account **with the utmost fidelity**, whether such account consists only of a few hundred pesos or of millions. **The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible.** This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs. (emphasis and underscoring supplied)

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[37] "Sec. 40. *Tender of excluded evidence.*– If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony."

[38] *Philippine Banking Corporation v. Court of Appeals*, G.R. No. 127469, January 15, 2004, 419 SCRA 487, 505-506.

[39] *Id.*

[40] *Id*.

Consequently, the CA should **not** have admitted the subject documents even if the PNB tendered the excluded evidence.

Notably, the PNB clearly admitted in the executed *Deed of Waiver and Quitclaim* that it owed Anna Marie ₱2,734,207.36 under the consolidated savings account. After a number of uncontested transactions, the remaining balance of Anna Marie's deposit became **₱250,741.82**. The inevitable conclusion is that PNB's obligation to pay ₱250,741.82 under SA No. 6121200 subsists.

ii. The PNB's alleged payment of the amount covered by FXCTD No. 993902

The PNB claimed that it had already paid the amount of $10,058.01 covered by FXCTD No. 993902. It presented the foreign demand draft dated March 11, 2002 which Anna Marie allegedly purchased with the funds of FXCTD No. 993902. In addition, the PNB also presented Anna Rose's SOA to show that there was a fund transfer involving the contested amount. To further support its claim, the PNB annexed the affidavit of the PNB New York's branch officer about the fund transfer. The PNB, however, failed to formally offer the affidavit as evidence.

Anna Marie moved for the exclusion of the photocopy of Anna Rose's SOA for failing to conform to the best evidence rule. The RTC granted her motion and denied its admission. When the case reached the CA, the CA stated that the RTC should have considered the evidence in the light of the PNB's identification of the SOA as an exact copy of the original and the claim that it is corroborated by the affidavit of the PNB New York's bank officer.

The PNB explained that its failure to present the original copy of Anna Rose's SOA was because the original was not in the PNB's possession.

We rule that the **SOA is inadmissible** because it fails to qualify as relevant evidence. As the RTC correctly stated,

the SOA "does not show which of the amount stated therein came from the funds of Certificate of Time Deposit No. A-993902."[41]

The affidavit of the PNB New York's bank officer is also inadmissible in the light of the following self-explanatory provision of the Rules of Court:

"Sec. 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. x x x."[42]

Formal offer means that the offeror shall inform the court of the purpose of introducing its exhibits into evidence. Without a formal offer of evidence, courts cannot take notice of this evidence even if this has been previously marked and identified.[43]

In *Heirs of Pedro Pasag v. Parocha*,[44] we reiterated the importance of a formal offer of evidence. Courts are mandated to rest their factual findings and their judgment only and strictly upon the evidence offered by the parties at the trial. The formal offer enables the judge to know the purpose or purposes for which the proponent is presenting the evidence. It also affords the opposing parties the chance to examine the evidence and to object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.

In *People v. Napat-a*,[45] *People v. Mate*,[46] and *Heirs of Romana Saves, et al. v. Escolastico Saves, et al.*,[47] we recognized the exceptions from the requirement of a formal offer of evidence,

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[41] *Rollo*, p. 74.

[42] Rule 132, Rules of Court.

[43] *Star Two (SPV-AMC), Inc. v. Ko*, G.R. No. 185454, March 23, 2011, 646 SCRA 371, 375-376.

[44] G.R. No. 155483, April 27, 2007, 522 SCRA 410, 416.

[45] G.R. No. 84951, November 14, 1989, 179 SCRA 403, 407.

[46] G.R. No. L-34754, March 27, 1981, 103 SCRA 484, 493.

[47] G.R. No. 152866, October 6, 2010, 632 SCRA 236, 246.

namely: (a) the evidence must have been duly identified by testimony duly recorded; and (b) the evidence must have been incorporated in the records of the case.

It is unmistakable that the PNB did not include the affidavit of the PNB New York's bank officer in its formal offer of evidence to corroborate Anna Rose's SOA. Although the affidavit was included in the records and identified by Fernandez, it remains inadmissible for being **hearsay**. Jurisprudence dictates that an affidavit is merely hearsay evidence when its affiant or maker did not take the witness stand.[48]

In the present case, Fernandez is not the proper party to identify the affidavit executed by the PNB New York's bank officer since he is not the affiant. Therefore, the affidavit is inadmissible.

Thus, the PNB failed to present sufficient and admissible evidence to prove payment of the $10,058.01.This failure leads us to conclude that the PNB is still liable to pay the amount covered by FXCTD No. 993902.

iii. The PNB's alleged payment of the amount covered by FXCTD No. 993992

The PNB alleged that Anna Marie's claim over FXCTD No. 993992 should only be limited to $5,857.79. It presented the manager's check, which admissibility we have heretofore discussed and settled, and the miscellaneous tickets.

We cannot absolve the PNB from liability based on these miscellaneous tickets alone. As the RTC correctly stated, the transactions allegedly evidenced by these tickets were neither posted at the back of Anna Marie's certificate, nor recorded on her ledger to show that several withdrawals had been made on the account.

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[48] *Dantis v. Maghinang, Jr.,* G.R. No. 191696, April 10, 2013, 695 SCRA 599, 610.

At this point, we remind the PNB of the negotiability of a certificate of deposit as it is a written acknowledgment by the bank of the receipt of a sum of money on deposit which the bank promises to pay to the depositor, to the latter's order, or to some other person or the latter's order.[49] To discharge a debt, the bank must pay to someone authorized to receive the payment.[50] A bank acts at its peril when it pays deposits evidenced by a certificate of deposit, without its production and surrender after proper indorsement.[51]

Again, as the RTC had correctly stated, the PNB should not have allowed the withdrawals, if there were indeed any, without the presentation of the covering foreign certificates of time deposit. There are no irregularities on Anna Marie's certificates to justify the PNB's refusal to pay the stated amounts in the certificates when it was presented for payment.

Therefore, the PNB is liable for Anna Marie's claims since it failed to prove that it had already been discharged from its obligation.

PNB is liable to Anna Marie for actual, moral, and exemplary damages as well as attorney's fees for its negligent acts as a banking institution.

Since the PNB is clearly liable to Anna Marie for her deposits, the Court now determines PNB's liability for damages under existing laws and jurisprudence.

Section 2 of Republic Act No. 8791,[52] declares the State's recognition of the "fiduciary nature of banking that requires

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[49] *Far East Bank and Trust Company v. Querimit*, G.R. No. 148582, January 16, 2002, 373 SCRA 665, 671.

[50] *Id*.

[51] *Id*.

[52] The General Banking Law of 2000.

high standards of integrity and performance." It cannot be overemphasized that the banking business is impressed with public interest. The trust and confidence of the public to the industry is given utmost importance.[53] Thus, the bank is under obligation to treat its depositor's accounts with meticulous care, having in mind the nature of their relationship.[54] The bank is required to assume a degree of diligence higher than that of a good father of a family.[55]

As earlier settled, the PNB was negligent for its failure to update and properly handle Anna Marie's accounts. This is patent from the PNB's letter to Anna Marie, admitting the error and unauthorized withdrawals from her account. Moreover, Anna Marie was led to believe that the amounts she has in her accounts would remain because of the *Deed of Waiver and Quitclaim* executed by her, her mother, and PNB. Assuming *arguendo* that Anna Marie made the contested withdrawals, due diligence requires the PNB to record the transactions in her passbooks.

The Court has established in a number of cases the standard of care required from banks, and the bank's liability for the damages sustained by the depositor. The bank is not absolved from liability by the fact that it was the bank's employee who committed the wrong and caused damage to the depositor.[56] Article 2180 of the New Civil Code provides that the owners

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[53] *Philippine Savings Bank v. Chowking Food Corporation*, G.R. No. 177526, July 4, 2008, 557 SCRA 318, 330.

[54] *Simex International Incorporated v. CA*, G.R. No. 88013, March 19, 1990, 183 SCRA 360, 367.

[55] *Consolidated Bank and Trust Corporation v. CA*, G.R. No. 138569, September 11, 2003, 410 SCRA 328, 341 (2003).

[56] *Far East Bank and Trust Company v. Tentmakers Group Inc.*, G.R. No. 171050, July 4, 2012, 675 SCRA 546, 556-557; *Philippine Bank of Commerce v. Court of Appeals*, G.R. No. 97626, March 14, 1997, 269 SCRA 695, 708-710; *Metropolitan Bank and Trust Company v. Cabilzo*, G.R. No. 154469, December 6, 2006, 510 SCRA 259, 270-271.

and managers of an establishment are responsible for damages caused by their employees while performing their functions.[57]

In addition, we held in *PNB v. Pike,*[58] that although the bank's employees are the ones negligent, a bank is primarily liable for the employees' acts because banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees.

Indeed, a great possibility exists that Salvoro was involved in the unauthorized withdrawals. Anna Marie entrusted her accounts to and made her banking transactions only through him. Salvaro's unexplained disappearance further confirms this Court's suspicions. The Court is alarmed that he was able to repeatedly do these unrecorded transactions without the bank noticing it. This only shows that the PNB has been negligent in the supervision of its employees.

As to contributory negligence, the Court agrees with the RTC that the PNB failed to substantiate its allegation that Anna Marie was guilty of contributory negligence.

Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.[59] Whether contributory negligence transpired is a factual matter that must be proven.

In the present case, Anna Marie cannot be held responsible for entrusting her account with Salvoro. As shown in the records, Salvoro was the bank's time deposit specialist. Anna Marie

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[57] "Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible. x x x The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions. x x x"

[58] G.R. No. 157845, September 20, 2005, 470 SCRA 328, 341.

[59] *Valenzuela v. Court of Appeals,* 323 Phil. 374, 388 (1996).

cannot thus be faulted if she engaged the bank's services through Salvoro for transactions related to her time deposits.

The Court also cannot accept the CA's conclusion that there was connivance between Anna Marie and Salvoro. This conclusion is simply not supported by the records and is therefore baseless.

In these lights, we hold that Anna Marie is entitled to moral damages of ₱100,000.00. In cases of breach of contract, moral damages are recoverable only if the defendant acted fraudulently or in bad faith, or is guilty of gross negligence amounting to bad faith, or in clear disregard of his contractual obligations.[60] Anna Marie was able to establish the mental anguish and serious anxiety that she suffered because of the PNB's refusal to honor its obligations.

Anna Marie is likewise entitled to exemplary damages of ₱50,000.00. Article 2229 of the New Civil Code imposes exemplary damages by way of example or correction for the public good. To repeat, banks must treat the accounts of its depositors with meticulous care and always have in mind the fiduciary nature of its relationship with them.[61] Having failed to observe these, the award of exemplary damages is justified.

As exemplary damages are awarded herein[62] and as Anna Marie was compelled to litigate to protect her interests,[63] the award of attorney's fees and expenses of litigation of ₱150,000.00 is proper.

Finally, we impose legal interest pursuant to the guidelines in *Nacar v. Gallery Frames*.[64] We held in that case that for interest awarded on actual and compensatory damages, the interest rate is imposed as follows:

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[60] *The Metropolitan Bank and Trust Company v. Rosales*, G.R. No. 183204, January 13, 2014, 713 SCRA 75, 88.

[61] *Solidbank Corporation v. Sps. Arrieta*, 492 Phil. 95, 97 (2005).

[62] Art. 2208 (1), New Civil Code.

[63] *Id*., par. (2).

[64] G.R. No. 189871, August 13, 2013, 703 SCRA 439, 441.

> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum [changed to 6% per annum starting July 1, 2013] to be computed from default, *i.e.*, from extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
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> x x x x x x x x x
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> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest x x x shall be 6% per annum from such finality until its satisfaction. x x x

We note that pursuant to the Bangko Sentral ng Pilipinas-Monetary Board Circular No. 799, the legal interest rate is 6% per annum effective July 1, 2013. The new rate is applicable prospectively; thus, the 12% per annum shall still apply until June 30, 2013.

In the present case, Anna Marie filed her complaint on August 12, 2004. PNB is therefore liable for legal interest of 12% per annum from August 12, 2004 until June 30, 2013, and 6% per annum from July 1, 2013, until its full satisfaction.

WHEREFORE, the petition is **GRANTED**. The assailed December 16, 2011 decision and June 26, 2012 resolution of the Court of Appeals is hereby reversed. The October 26, 2010 decision of the Regional Trial Court is **REINSTATED with MODIFICATIONS**. Thus, the Philippine National Bank is **ORDERED** to pay Anna Marie Gumabon the following:

(1) Actual damages of:

(a) $10,058.01, as the outstanding balance of FXCTD No. 993902;

(b) $20,244.42, as the outstanding balance of FXCTD No. 993992; and

(c) ₱250,741.82, as the outstanding balance of SA No. 6121200;

(2) Legal interest of twelve percent (12%) *per annum* of the total actual damages from August 12, 2004 to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full satisfaction;

(3) ₱100,000.00 as moral damages;

(4) ₱50,000.00 as exemplary damages;

(5) ₱150,000.00 as attorney's fees; and

(7) Costs of suit.

Let a copy of this Decision be furnished the Financial Consumers Protection Department of the Bangko Sentral ng Pilipinas, for information and possible action in accordance with the Bangko Sentral ng Pilipinas' mandate to protect the banking public.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 204267. July 25, 2016]

LUZ S. ALMEDA, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN (MINDANAO) and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO A SPEEDY DISPOSITION OF A CASE; ANY PARTY TO A CASE MAY REMAND EXPEDITIOUS ACTION FROM ALL OFFICIALS WHO ARE WITH THE ADMINISTRATION OF JUSTICE AND

IT INCLUDES WITHIN ITS CONTEMPLATION THE PERIODS BEFORE, DURING AND AFTER TRIAL, SUCH AS PRELIMINARY INVESTIGATIONS AND FACT-FINDING INVESTIGATIONS CONDUCTED BY THE OFFICE OF THE OMBUDSMAN.— Section 16, Article III of the 1987 Constitution guarantees that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." This right applies to all cases pending before all judicial, quasi-judicial or administrative bodies; it is "not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial. In this accord, any party to a case may demand expeditious action to [sic] all officials who are tasked with the administration of justice." It "includes within its contemplation the periods before, during and after trial," such as preliminary investigations and fact-finding investigations conducted by the Office of the Ombudsman.

2. ID.; ID.; ID.; ELABORATED.— [T]he right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its 'salutary objective' is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual. x x x [T]he right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant

are weighed, and such factors as length of the delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered.

3. **ID.; ID.; ID.; A MERE MATHEMATICAL RECKONING OF THE TIME IS NOT SUFFICIENT, AS A PARTICULAR REGARD MUST BE TAKEN OF THE FACTS AND CIRCUMSTANCES PECULIAR TO EACH CASE.—** "The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case." For this reason, "[a] balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis."

4. **ID.; ID.; ID.; RESPONDENTS IN PRELIMINARY INVESTIGATION PROCEEDINGS ARE NOT REQUIRED TO FOLLOW UP ON THEIR CASES, AS IT IS THE STATE'S DUTY TO EXPEDITE THE SAME WITHIN THE BOUNDS OF REASONABLE TIMELINESS.—** Regarding delays, it may be said that "[i]t is almost a universal experience that the accused welcomes delay as it usually operates in his favor, especially if he greatly fears the consequences of his trial and conviction. He is hesitant to disturb the hushed inaction by which dominant cases have been known to expire." These principles should apply to respondents in other administrative or quasi-judicial proceedings as well. It must also be remembered that generally, respondents in preliminary investigation proceedings are not required to follow up on their cases; it is the State's duty to expedite the same "within the bounds of reasonable timeliness." A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.

5. **ID.; ID.; ID.; IT IS THE DUTY OF THE PROSECUTOR TO SPEEDILY RESOLVE THE COMPLAINT, AS MANDATED BY THE CONSTITUTION, REGARDLESS OF WHETHER THE RESPONDENT DID NOT OBJECT TO THE DELAY OR THAT THE DELAY WAS WITH HIS ACQUIESCENCE PROVIDED THAT IT WAS NOT DUE TO CAUSES DIRECTLY ATTRIBUTABLE TO HIM, AS**

DELAY PREJUDICES THE RESPONDENT AND THE STATE.— "It is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, regardless of whether the (respondent) did not object to the delay or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him." Failure or inaction may not have been deliberately intended, yet unjustified delay nonetheless causes just as much vexation and oppression. Indeed, delay prejudices the accused or respondent — and the State just the same. x x x Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy. Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. x x x

6. ID.; ID.; ID.; INORDINATE DELAY IN RESOLVING A CRIMINAL COMPLAINT IS VIOLATIVE OF THE CONSTITUTIONALLY GUARANTEED RIGHT TO DUE PROCESS AND TO THE SPEEDY DISPOSITION OF CASES, WHICH WARRANTS THE DISMISSAL OF THE CRIMINAL CASE.— Not only should the adjudication of cases be "done in an orderly manner that is in accord with the established rules of procedure but must also be promptly decided to better serve the ends of justice. Excessive delay in the disposition of cases renders the rights of the people guaranteed by the Constitution and by various legislations inutile." x x x [T]he Court has held that inordinate delay in resolving a criminal complaint is violative of the constitutionally guaranteed right to due process and to the speedy disposition of cases, which

warrants the dismissal of the criminal case. Using the foregoing as guides and applying them to the instant case, the Court finds that petitioner's right to a speedy disposition of OMB-MIN-01-0183 was violated, which must result in the dismissal thereof.

7. ID.; ID.; ID.; THE PASSAGE OF TIME AFFECTS THE PARTIES' AND THEIR WITNESSES' ABILITY TO PREPARE A CASE OR DEFENSE, SECURE WITNESSES, AND PRESERVE HONOR AND REPUTATION, RESOURCES, MEMORY, AND EVIDENCE.— [T]he pendency of OMB-MIN-01-0183 undoubtedly prejudiced petitioner. The case hung like a hangman's cord above her all these years, causing distress, anxiety, and embarrassment. As was held in the *Corpuz* case, the passage of time affects the parties' and their witnesses' ability to prepare a cogent case or defense; secure witnesses; and preserve honor and reputation, financial resources, memory, and evidence. x x x [T]he Ombudsman's explanation for the delay is not at all acceptable. Instead, it can be seen that it failed to apply a basic rule that in the investigation and prosecution of public officers and employees accused of graft, specific rules on jurisdiction based on rank apply. What ensued was an administrative "ping-pong," as petitioner puts it.

APPEARANCES OF COUNSEL

Almeda Lozada & Associates for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for *Certiorari*[1] seeks to set aside the September 6, 2012 Order[2] of the Office of the Ombudsman for Mindanao (Ombudsman) in OMB-MIN-01-0183 denying herein petitioner's

[1] *Rollo*, pp. 3-39.

[2] *Id.* at 40-51; penned by Graft Investigation and Prosecution Officer II Hilde C. dela Cruz-Likit and approved by Deputy Ombudsman for Mindanao Humphrey T. Monteroso.

Motion for Reconsideration[3] of the Ombudsman's March 19, 2003 Resolution[4] indicting her for violation of Section 3 (g) of Republic Act No. 3019 (RA 3019),[5] and directing that the corresponding Information therefor be filed with the Regional Trial Court of Dapa, Surigao del Norte.

Factual Antecedents

In 2001, petitioner Luz S. Almeda, then Schools Division Superintendent of the Department of Education, Culture and Sports (DepEd), Surigao del Norte, and several other public officers and employees were charged administratively and criminally before the Ombudsman, in connection with the alleged improper use and disbursement of the Countrywide Development Fund (CDF) allotted to petitioner's co-respondent Constantino H. Navarro, Jr. (Navarro), Surigao del Norte Congressman, and implemented through the Department of Interior and Local Government (DILG) and the DepEd. The criminal charges were consolidated and docketed as OMB-MIN-01-0183. On March 19, 2003, a Resolution was issued in said case by Graft Investigation and Prosecution Officer (GIPO) II Hilde C. dela Cruz-Likit (dela Cruz-Likit), to the effect that probable cause existed to indict petitioner and her co-accused for violation of Sections

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[3] *Id.* at 86-104.

[4] *Id.* at 52-85; penned by Graft Investigation and Prosecution Officer II Hilde C. dela Cruz-Likit and approved by Ombudsman Simeon V. Marcelo.

[5] The Anti-Graft and Corrupt Practices Act, which provides:

> Sec. 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x x x x x x
>
> (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

3 (e) and (g) of RA 3019.[6] This Resolution was disapproved in part by then Ombudsman Simeon V. Marcelo (Marcelo), who made minor modifications and instructions thereto.

The Office of the Special Prosecutor (OSP) then took over the case, and it prepared the corresponding Information against petitioner, which was approved by then Special Prosecutor Dennis M. Villa-Ignacio and Marcelo. On May 19, 2003, the Information was forwarded to the Deputy Ombudsman for Mindanao, who in turn indorsed and forwarded the same, together with the Ombudsman's Resolution, to the Provincial Prosecutor of Surigao del Norte on June 3, 2003, for appropriate filing in court.[7]

Petitioner received a copy of the Ombudsman's March 19, 2003 Resolution on May 29, 2003. On July 3, 2003, she filed via a commercial courier service[8] her Motion for Reconsideration, with a prayer for reversal of the Ombudsman's ruling and to hold in abeyance the filing of an information against her until the motion is resolved. An advance copy of the motion was transmitted to the Ombudsman by fax on June 16, 2003.[9]

On July 7, 2003, petitioner filed a Motion to Hold in Abeyance the Filing of Information[10] before the Office of the Provincial Prosecutor of Surigao del Norte, which in turn referred the said motion to the Ombudsman.[11]

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[6] Section 3 (e) states:

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[7] *Rollo*, pp. 183-184.

[8] LBC.

[9] *Rollo*, pp. 4, 46-47, 237.

[10] *Id.* at 105-106.

[11] *Id.* at 9, 184, 237.

On July 18, 2003, dela Cruz-Likit issued an Order[12] giving due course to petitioner's Motion for Reconsideration and a similar motion filed by one of her co-respondents. The Order states, among others:

> In their Motions for Reconsiderations [sic], both respondents-movants are united in pointing to co-respondent ex-Congressman Constantino H. Navarro, Jr., as the one who entered into the transaction of purchasing the nine computers delivered to DepEd Siargao, which transaction is made the basis of their indictment for Violation of Section 3(g) of RA 3019.
>
> Before taking further action on the motions thus filed, let copies thereof be served to respondent Constantino H. Navarro Jr. and to complainant, or them to file their respective Comment or Opposition thereto.
>
> WHEREFORE, PREMISES considered, this office resolves to give due course to the motions under consideration. Accordingly, let copies of the Motions for Reconsideration and Motion to Hold in Abeyance the Filing of Information be served to then Representative Constantino H. Navarro, Jr. and to COA Auditors Rosalinda G. Salvador and Mila L. Lopez, who are hereby directed to file their Comment and or [sic] Opposition thereto within ten (10) days from receipt hereof. Failure to comply with this order will be deemed a waiver and the herein motions will be resolved accordingly.
>
> SO ORDERED.[13]

Navarro filed his Comment[14] to petitioner's Motion for Reconsideration.

On August 25, 2003, petitioner filed before the Ombudsman her Supplemental motion for reconsideration.[15]

Through a June 16, 2004 Indorsement of the Ombudsman for Mindanao, petitioner's motion for reconsideration and all other pleadings, orders, and communications relative thereto were forwarded to Marcelo for appropriate action, pursuant to Office

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[12] *Id.* at 114-116.

[13] *Id.* at 115.

[14] *Id.* at 117-121.

[15] *Id.* at 108-113.

Order No. 31 entitled ("Review and Consideration of Motions for Reconsideration Filed in Relation to Orders and Resolutions Issued by the Tanodbayan," which pertains to cases where the Ombudsman disapproves orders, resolutions, or decisions emanating from sectoral offices, and considering that the OSP has taken over the case.[16]

In another Indorsement dated October 11, 2004, then Deputy Ombudsman for Mindanao Antonio E. Valenzuela forwarded a copy of an October 11, 2004 Order which ultimately closed and terminated OMB-MIN-01-0183 as far as the Ombudsman for Mindanao is concerned, pursuant to an August 4, 2004 Order issued by Marcelo ordering the OSP to conduct the preliminary investigation of the case.[17]

On May 25, 2010, petitioner sent a letter of even date to the Ombudsman, seeking the early resolution of her motions.[18] However, the letter was not acted upon, as the handling Graft Investigation and Prosecution Officer (GIPO), dela Cruz-Likit, was then on official study leave and no GIPO was as yet assigned to the case.[19]

On September 1, 2011, petitioner filed before the Ombudsman a Manifestation,[20] seeking resolution of her Motion for Reconsideration. On November 18, 2011, she filed a second Manifestation[21] with the Ombudsman with a prayer for dismissal of OMB-MIN-01-0183 as against her.

Meanwhile, petitioner received copies of Indorsements dated September 28, 2011 and December 9, 2011 and signed by Deputy Ombudsman for Mindanao Humphrey T. Monteroso, referring and forwarding to the OSP petitioner's September 1, 2011

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[16] *Id.* at 185.

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

[18] *Id.* at 186.

[19] *Id.*

[20] *Id.* at 122-124.

[21] *Id.* at 125-127.

Manifestation and other pleadings and documents filed in OMB-MIN-01-0183, and noting and informing that the entire record of the case has been forwarded previously to the OSP.[22]

On August 8, 2012, petitioner filed a third Manifestation before the Ombudsman, instead of the OSP, entitled "Manifestation Reiterating the Right of the Accused to Speedy Trial with Prayer for Dismissal of the Case."[23] This time petitioner bewailed the inaction and procedure taken by the Ombudsman and OSP in not taking cognizance of OMB-MIN-01-0183 and instead indorsing and repeatedly tossing the case back and forth to each other. She cited a June 18, 2012 Memorandum[24] within the OSP recommending that her Motion for Reconsideration and Manifestations be resolved by the Ombudsman for Mindanao instead and not the OSP, which had no jurisdiction over petitioner since she is not a high-ranking public official charged before the *Sandiganbayan*; she also noted a June 21, 2012 Indorsement[25] by the OSP to the Ombudsman for Mindanao, referring back petitioner's Motion for Reconsideration and Manifestations for action by the latter. She claimed that as a result, her Motion for Reconsideration remained unresolved to date; that said flip-flopping attitude of these two offices resulted in unwarranted delay and unending torment, which has unduly affected her work; and consequently, her constitutional right to speedy trial was violated. Petitioner thus prayed for dismissal of her case.

On September 6, 2012, the Ombudsman through dela Cruz-Likit issued the assailed Order denying petitioner's Motion for Reconsideration, stating as follows:

> This resolves the Motions for Reconsideration filed by respondents Luz S. Almeda and Miguela S. Ligutom, seeking reconsideration to [sic] the Resolution dated March 19, 2003, indicting them for Violation of Section 3(g) of RA No. 3019.

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[22] *Id.* at 174.

[23] *Id.* at 175-177.

[24] *Id.* at 189-191.

[25] *Id.* at 188; signed by Special Prosecutor Wendell E. Barreras-Sulit.

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The motions should be denied.

As informed by respondent Almeda, she received a copy of the approved Resolution on May 29, 2003. Her motion for reconsideration dated June 12, 2003, with request to hold in abeyance the filing of the Information in court, was sent through the Courier on July 3, 2003. On the other hand, respondent Ligutom's Motion for Reconsideration, with request to hold in abeyance the filing of the Information in court, was filed on June 9, 2003. While counsel of respondent Almeda sent by fax an advance copy of the Motion for Reconsideration on June 16, 2003, both motions were still filed out of time.

Section 7(a), Rule II, of Administrative Order No. 07, which provides for the Ombudsman Rules of Procedure in criminal cases, states:

> *"Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where the information has already been filed in court."*

Accordingly, the motions, on procedural grounds, should be denied.

On the other hand, the matters raised by respondents Almeda and Ligutom in their motions for reconsideration were already passed upon by this Office, and need not be discussed all over again. Moreover, these are evidentiary in nature, and are best threshed out in court.

x x x x x x x x x

We also took note of respondents Almeda's [sic] and Ligutom's manifestation for the dismissal of the case for alleged violation of their right to speedy trial, on the ground that until now, no information was filed in court, and that their Motions for Reconsideration were not resolved despite the lapse of a considerable period of time.

OMB-MIN could not be faulted for the non-filing of the Information in court because as the records would show, both respondents Almeda and Ligutom were the ones who moved to hold in abeyance the filing of the Information. The motions to hold in abeyance the filing of the

Information were not only filed with this Office, but also with the Office of the Provincial Prosecutor of Surigao del Norte, and as shown by the records, the Information was already indorsed to the OPP but was indorsed back to OMB-MIN, in view of the motions to hold in abeyance the filing of such Information in court. Significantly, OMB-MIN has nothing to do with the delay in the resolution of the motions for reconsideration because as the records would show, all motions and pleadings filed by respondents were appropriately and timely acted upon.

WHEREFORE, Premises considered, the motions for reconsideration are hereby DENIED. Let the corresponding Information for Violation of Section 3(g) of RA No. 3019 approved by then Ombudsman Simeon V. Marcelo, be filed with the Regional Trial Court of Dapa, Surigao del Norte.

SO ORDERED.[26]

Hence, the instant Petition.

Issues

In a February 5, 2014 Resolution,[27] this Court resolved to give due course to the instant Petition, which contains the following assignment of errors:

V.a

DID PUBLIC RESPONDENT VIOLATE PETITIONER'S CONSTITUTIONAL RIGHT TO SPEEDY TRIAL AND PROMPT DISPOSITION OF CASES WHEN IT FAILED TO RESOLVE THE MOTION FOR RECONSIDERATION AND MOTION TO HOLD IN ABEYANCE THE FILING OF INFORMATION FOR A PERIOD OF NINE (9) YEARS FROM THE DATE OF ITS FILING?

V.b

GIVEN THE FACTS OF THE CASE, DID THE RESPONDENT OMBUDSMAN ACT WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO ORDER THE DISMISSAL OF THE CASE

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[26] *Id.* at 40, 46-50.

[27] *Id.* at 267-268.

DESPITE THE CLEAR AND PATENT VIOLATION OF THE PETITIONER'S CONSTITUTIONAL RIGHT TO SPEEDY TRIAL AND PROMPT DISPOSITION OF CASES?[28]

Petitioner's Arguments

In seeking reversal of the assailed Order and dismissal of OMB-MIN-01-0183 as against her, with additional prayer for injunctive relief, petitioner contends in her Petition and Opposition[29] to the Ombudsman's Comment, which the Court treats as her Reply[30] that the Ombudsman's failure to promptly act on her case for nine years from the filing of her motion for reconsideration, or from July 2003 to September 2012, is a violation of her constitutional right to a speedy disposition of her case; that despite her repeated manifestations and follow-ups, no action was taken on her case; that the Ombudsman and OSP's actions constitute gross neglect and indifference; that the Ombudsman's erroneous action of endorsing her case to the OSP despite the fact that the latter had no jurisdiction over her is the sole cause of the long period of inaction and delay which prejudiced her; and that contrary to the Ombudsman's argument, she should not be deemed estopped, for filing a motion to suspend the filing of the information against her, from claiming her right to a speedy disposition of her case.

Respondents' Arguments

In their joint Comment,[31] respondents contend that there is no grave abuse of discretion on the part of the Ombudsman in denying petitioner's motion for reconsideration; that her constitutional right to speedy disposition of her case was not violated, as the delay in the proceedings was not attended by vexatious, capricious, and oppressive acts on the Ombudsman's part; that in determining whether the right is violated, each

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[28] *Id.* at 17.

[29] *Id.* at 257-262.

[30] *Id.* at 265; Resolution dated August 14, 2013.

[31] *Id.* at 232-250.

case must be approached on an *ad hoc* basis, and the length of and reasons for the delay, assertion or failure to assert the right, prejudice caused by the delay, and the conduct of the parties, must be carefully considered and balanced;[32] that the delay in the resolution of petitioner's motion for reconsideration and filing of the information in court was justified in that petitioner's motion for reconsideration was filed out of time and she herself sought to hold in abeyance the filing of the information; that for being equally responsible for the delay, petitioner is not entitled to dismissal of her case; and that no injunctive relief should issue as petitioner has no right *in esse* that needs to be protected since, as a public officer who serves on public trust, she has no vested right to her position.

Our Ruling

The Court grants the Petition.

Section 16, Article III of the 1987 Constitution guarantees that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." This right applies to all cases pending before all judicial, quasi-judicial or administrative bodies;[33] it is "not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial. In this accord, any party to a case may demand expeditious action to [sic] all officials who are tasked with the administration of justice."[34] It "includes within its contemplation the periods before, during and after trial,"[35] such as preliminary investigations and fact-finding investigations conducted by the Office of the Ombudsman.[36]

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[32] Citing *Bernat v. Sandiganbayan,* G.R. No. 158018, May 20, 2004, 428 SCRA 787; *Mendoza-Ong v. Sandiganbayan,* 483 Phil. 451 (2004); and *Corpuz v. Sandiganbayan,* 484 Phil. 899 (2004).

[33] *People v. Sandiganbayan,* 723 Phil. 444, 489 (2013).

[34] *Coscolluela v. Sandiganbayan,* 714 Phil. 55, 61 (2013).

[35] *Id.* at 67, citing *Dansal v. Judge Fernandez, Sr.,* 383 Phil. 897, 905 (2000).

[36] *People v. Sandiganbayan, supra* note 33 at 490-491.

[T]he right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its 'salutary objective' is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual. x x x[37]

[T]he right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed, and such factors as length of the delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered.[38]

"The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case."[39] For this reason, "[a] balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an *ad hoc* basis."[40]

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[37] *Coscolluela v. Sandiganbayan, supra* note 34 at 65.

[38] *Gonzales v. Sandiganbayan* (*1st Div.*), 276 Phil. 323, 333-334 (1991).

[39] *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001).

[40] *Corpuz v. Sandiganbayan, supra* note 32 at 917.

Regarding delays, it may be said that "[i]t is almost a universal experience that the accused welcomes delay as it usually operates in his favor, especially if he greatly fears the consequences of his trial and conviction. He is hesitant to disturb the hushed inaction by which dominant cases have been known to expire."[41] These principles should apply to respondents in other administrative or quasi-judicial proceedings as well. It must also be remembered that generally, respondents in preliminary investigation proceedings are not required to follow up on their cases; it is the State's duty to expedite the same "within the bounds of reasonable timeliness."[42]

A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.[43]

"It is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, regardless of whether the (respondent) did not object to the delay or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him."[44] Failure or inaction may not have been deliberately intended, yet unjustified delay nonetheless causes just as much vexation and oppression.[45] Indeed, delay prejudices the accused or respondent — and the State just the same.

x x x Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on

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[41] *People v. Lacson,* 448 Phil. 317, 388 (2003).

[42] *Coscolluela v. Sandiganbayan, supra* note 34 at 64.

[43] *Id.*, citing *Barker v. Wingo,* 407 U.S. 514 (1972).

[44] *Cervantes v. Sandiganbayan,* 366 Phil. 602, 609 (1999).

[45] *Licaros v. Sandiganbayan,* 421 Phil. 1075, 1092 (2001).

his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. x x x[46]

Not only should the adjudication of cases be "done in an orderly manner that is in accord with the established rules of procedure but must also be promptly decided to better serve the ends of justice. Excessive delay in the disposition of cases renders the rights of the people guaranteed by the Constitution and by various legislations inutile."[47]

Finally, the Court has held that inordinate delay in resolving a criminal complaint is violative of the constitutionally guaranteed right to due process and to the speedy disposition of cases, which warrants the dismissal of the criminal case.[48]

Using the foregoing as guides and applying them to the instant case, the Court finds that petitioner's right to a speedy disposition of OMB-MIN-01-0183 was violated, which must result in the dismissal thereof.

First of all, the preliminary investigation proceedings in said case took more than 11 long years to resolve, or from March 23, 2001 when the proceedings were initiated and docketed,[49] to September 6, 2012, when petitioner's Motion for Reconsideration was denied.

Secondly, the delay in the proceedings was caused solely by the repeated indorsement of the Ombudsman and the OSP, which may be attributed to the Ombudsman's failure to realize that petitioner was not under the jurisdiction of the OSP or the

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[46] *Corpuz v. Sandiganbayan, supra* note 32 at 917-918.

[47] *Capt. Roquero v. The Chancellor of UP-Manila,* 628 Phil. 628, 640 (2010).

[48] *Angchangco, Jr. v. Hon. Ombudsman,* 335 Phil. 766, 770 (1997).

[49] *Rollo*, p. 180.

Sandiganbayan. Moreover, when dela Cruz-Likit, the handling GIPO, went on official study leave, no GIPO was assigned to OMB-MIN-01-0183; as a result, the case was neglected. Even if, as respondents argue, petitioner's Motion for Reconsideration was tardy and that she filed a motion to defer the filing of the information, these have no bearing as in fact they are irrelevant to the issue; the fact remains that the Ombudsman's resolution of the case took too long; the fact that the ground for denying the Motion for Reconsideration involved a simple procedural issue highlights the Ombudsman's failure to timely resolve the same.

Third, petitioner had no hand in the delay. As a matter of fact, she sent a letter and filed written manifestations seeking the immediate resolution of her case. While they were filed only in 2010 and 2011, petitioner's letter and manifestations cannot be considered late, and no waiver or acquiescence may be attached to the same, as she was not required as a rule to follow up on her case; instead, it is the State's duty to expedite the same.

Fourth, the pendency of OMB-MIN-01-0183 undoubtedly prejudiced petitioner. The case hung like a hangman's cord above her all these years, causing distress, anxiety, and embarrassment. As was held in the *Corpuz*[50] case, the passage of time affects the parties' and their witnesses' ability to prepare a cogent case or defense; secure witnesses; and preserve honor and reputation, financial resources, memory, and evidence.

Finally, the Ombudsman's explanation for the delay is not at all acceptable. Instead, it can be seen that it failed to apply a basic rule that in the investigation and prosecution of public officers and employees accused of graft, specific rules on jurisdiction based on rank apply. What ensued was an administrative "ping-pong," as petitioner puts it.

In Coscolluela,[51] the fact that it took the Ombudsman eight years to resolve a case under preliminary investigation was considered violative of the right to speedy disposition of cases.

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[50] *Supra* note 32.

[51] *Supra* note 34.

In *Cervantes*,[52] it took the OSP six years from the filing of the initiatory complaint before deciding to file an information; this was struck down as well. In *Tatad v. Sandiganbayan,*[53] a three-year delay in the termination of the preliminary investigation by the *Tanodbayan* was considered violative of the right. In *Lopez, Jr. v. Office of the Ombudsman,*[54] the preliminary investigation was resolved close to four years from the time all the counter- and reply-affidavits were submitted to the Ombudsman, and this was similarly struck down. In *People v. Sandiganbayan*,[55] the fact-finding investigation and preliminary investigation by the Ombudsman lasted nearly five years and five months, which the Court considered an inordinate delay. The same is true in *Angchangco, Jr.*[56] and *Roque v. Office of the Ombudsman,*[57] where the delay involved a period of six years, more or less. In *Licaros*,[58] the failure of the *Sandiganbayan* to decide the case even after the lapse of more than 10 years after it was submitted for decision was declared to involve "more than just a mere procrastination in the proceedings."

WHEREFORE, the Petition is **GRANTED**. The September 6, 2012 Order of the Office of the Ombudsman for Mindanao in OMB-MIN-01-0183 is **REVERSED** and **SET ASIDE.** OMB-MIN-01-0183 and all proceedings or actions arising therefrom are ordered **DISMISSED.**

SO ORDERED.

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

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[52] *Supra* note 44.

[53] 242 Phil. 563 (1988).

[54] 417 Phil. 39 (2001).

[55] *Supra* note 33.

[56] *Supra* note 48.

[57] 366 Phil. 568 (1999).

[58] *Supra* note 45 at 1090.

SECOND DIVISION

[G.R. No. 206054. July 25, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MINNIE TUMULAK *y* CUENCA,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. No. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. To prove that a sale transaction had taken place, the following elements must be proved: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the **delivery of the thing sold** and the payment.

2. **ID.; ID.; ID.; SO LONG AS THE POLICE OFFICER WENT THROUGH THE MOTION AS A BUYER AND HIS OFFER WAS ACCEPTED BY THE SELLER AND THE DRUG WAS DELIVERED TO THE POLICE OFFICER, THE CRIME WAS CONSUMMATED BY THE DELIVERY OF THE GOODS.—** The commission of the offense of illegal sale of prohibited drugs requires merely the consummation of the selling transaction *which happens the moment the buyer receives the drug from the seller.* So long as the police officer went through the motion as a buyer and his offer was accepted by the seller and *the drug was delivered to the police officer*, the crime was **consummated by the delivery of the goods**. In other words, what is important is that the poseur-buyer received the drug from the accused. In the present case, Mitch did not deliver to SI Oliveros all thirty (30) ecstasy tablets; instead they were merely confiscated when she was arrested before she could go to the restroom of Café Adriatico.

3. **ID.; ID.; ATTEMPTED SALE OF DANGEROUS DRUGS; ELEMENTS THEREOF, ESTABLISHED; UNDER THE RULE ON VARIANCE, WHILE THE ACCUSED CANNOT**

BE CONVICTED OF THE OFFENSE OF ILLEGAL SALE OF DANGEROUS DRUGS BECAUSE THE SALE WAS NEVER CONSUMMATED, SHE MAY BE CONVICTED FOR THE ATTEMPT TO SELL AS IT IS NECESSARILY INCLUDED IN THE ILLEGAL SALE OF DANGEROUS DRUGS.— Under the rule on variance, while Mitch cannot be convicted of the offense of illegal sale of dangerous drugs because the sale was never consummated, she may be convicted for the attempt to sell as it is necessarily included in the illegal sale of dangerous drugs. A crime is attempted when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution, which should produce the felony, by reason of some cause or accident other than his own spontaneous desistance. In the present case, Mitch intended to sell ecstasy and commenced by overt acts the commission of the intended crime by showing the substance to SI Oliveros. To our mind, showing a sample is an overt act of selling dangerous drugs since it reveals the intention of the offender to sell it to the poseur-buyer. Also, in requiring SI Oliveros to show the ₱60,000.00 before she delivers the ecstasy tablets, Mitch's intent to sell was established. More importantly, the only reason why the sale was aborted is because the police officers identified themselves as such and placed Mitch under arrest – a cause that is other than her own spontaneous desistance. x x x [A]ll elements for the offense of attempted sale of dangerous drugs was established in this case.

4. **ID.; ID.; SECTION 21 THEREOF; CHAIN OF CUSTODY REQUIREMENT; A TESTIMONY ABOUT A PERFECT CHAIN IS NOT ALWAYS THE STANDARD AS IT IS ALMOST ALWAYS IMPOSSIBLE TO OBTAIN AN UNBROKEN CHAIN, FOR WHAT IS OF UTMOST IMPORTANCE IS THE PRESERVATION OF THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS.—** We demand that proof beyond reasonable doubt is observed in establishing the *corpus delicti* – the body of the crime whose core is the confiscated illicit drug. In meeting this quantum of proof, the chain of custody requirement under Section 21 of R.A. No. 9165 ensures that doubts concerning the identity of the drug are removed. As a rule, strict compliance with the prescribed procedure under Section 21 is required because of the illegal drug's unique characteristic that renders

it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise. x x x. Admittedly, a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items.

5. **ID.; ID.; ID.; ID.; IN CASE OF NON-COMPLIANCE WITH THE PRESCRIBED PROCEDURE, THE PROSECUTION LOSES THE BENEFIT OF INVOKING THE PRESUMPTION OF REGULARITY AND BEARS THE BURDEN OF PROVING – WITH MORAL CERTAINTY – THAT THE ILLEGAL DRUG PRESENTED IN COURT IS THE SAME DRUG THAT WAS CONFISCATED FROM THE ACCUSED DURING HIS ARREST.—** By not complying strictly with the prescribed procedure, the exception found in the Implementing Rules and Regulations of R.A. 9165 operates. This saving clause, however, applies only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution, thus loves the benefit of invoking the presumption of regularity and bears the burden of proving – **with moral certainty** – that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.

6. **ID.; ID.; ID.; NEITHER THE FAILURE TO IMMEDIATELY MARK THE CONFISCATED ITEMS AT THE PLACE OF ARREST NOR THE FAILURE TO CONDUCT A PHYSICAL INVENTORY AND TO PHOTOGRAPH THE ITEMS SEIZED WILL RENDER THE ACCUSED'S ARREST ILLEGAL OR THE ITEMS CONFISCATED FROM HIM INADMISSIBLE IN EVIDENCE, AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SAID ITEMS HAVE BEEN PRESERVED.—** The failure to immediately mark the confiscated items at the place of arrest does not render them inadmissible nor impair the integrity of the seized drugs. In fact, marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. Moreover, the failure to conduct a physical inventory and to photograph the items seized from the accused will not render his arrest illegal or the items

confiscated from him inadmissible in evidence as long as the integrity and evidentiary value of the said items have been preserved. The identity and evidentiary value of the confiscated drug in this case were preserved because SI Oliveros marked the seized items at the nearest police station, thereby ensuring that – even though they were turned over from one hand to another – the drugs presented and identified in court were the same items confiscated from Mitch.

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

BRION, *J.*:

We resolve the appeal of accused-appellant Minnie Tumulak y Cuenca @ Mitch (*Mitch*) assailing the July 30, 2012 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 03960. The CA decision affirmed the January 29, 2009 decision[2] of the Regional Trial Court (*RTC*), Branch 16, Manila, convicting Mitch for the crime of illegal sale of dangerous drugs, defined and punished under Section 5 of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

THE CASE

In an information dated August 14, 2002, Mitch was formally charged of illegal sale of dangerous drugs. The information reads:

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[1] *Rollo*, pp. 2-22; penned by Associate Justice Remedios A. Salazar-Fernando, and concurred in by Associate Justice Normandie B. Pizarro and Associate Justice Manuel M. Barrios.

[2] *CA rollo,* pp. 24-31; by Presiding Judge Carmelita S. Manahan.

That on or about July 31, 2002, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there willfully and unlawfully sell or offer for sale to one SI Arthur R. Oliveros, a poseur-buyer, thirty (30) yellow tablets with "TP" engraved on each tablet and contained in three (3) heat-sealed transparent plastic sachets with each sachet containing ten (10) tablets and each weighing TWO POINT FOUR NINE ZERO SEVEN (2.4907) GRAMS, TWO POINT FOUR NINE FOUR TWO (2.4942), and TWO POINT FOUR FIVE NINE NINE (2.4599) GRAMS or a total of SEVEN POINT FOUR THOUSAND FOUR HUNDRED FORTY-EIGHT (7.4448) grams of ecstasy containing methylenedioxymethamphetamine, which is a dangerous drug.

Contrary to law.

In her arraignment on September 9, 2002, Mitch pleaded not guilty to the charge.

The evidence of the prosecution shows – on July 31, 2002, a buy-bust operation was organized at the Narcotics Division of the National Bureau of Investigation (*NBI*) pursuant to a tip given by a confidential informant, who was able to set up a sale for thirty (30) ecstasy tablets. Special Investigator Arthur R. Oliveros (*SI Oliveros*) was designated as the poseur-buyer. After the meeting, the buy-bust team proceeded to Starbucks Coffee at Remedios Circle, Manila, where they would locate the confidential informant.

SI Oliveros was the only one among the team who went inside Starbucks Coffee to meet with the confidential informant. Upon arriving at the designated place, he saw the confidential informant sitting beside Mitch and another female companion. When SI Oliveros approached their table, he was asked if he had brought the ₱60,000.00 to buy ecstasy. He showed Mitch and the confidential informant the pre-marked ₱500-bill and the boodle money he pulled out from his pocket. Following this, Mitch made a call and then instructed SI Oliveros to proceed to Café Adriatico. All four (4) of them left Starbucks Coffee together and walked to Café Adriatico.

SI Oliveros, the confidential informant, Mitch, and the other female companion sat at a table inside Café Adriatico. Thereafter, Mitch pulled out one (1) ecstasy tablet and gave it to SI Oliveros so he could examine it. SI Oliveros held the tablet and observed that the tablet was yellow in color with the mark "TP" on it.

When SI Oliveros asked about the other twenty-nine (29) ecstasy tablets, Mitch demanded that he give her the ₱60,000.00 first so she could count it inside the restroom. SI Oliveros complied and handed her a white envelope containing two (2) pre-marked ₱500-bills and the boodle money. Then Mitch excused herself to go to the restroom.

SI Oliveros followed Mitch on her way to the restroom, together with his back-up, Special Investigator Ronald C. Abulencia (*SI Abulencia*). Before Mitch could enter the restroom, SI Oliveros and SI Abulencia introduced themselves as NBI agents and arrested her. SI Oliveros inspected her bag and found all thirty (30) pieces of ecstasy tablets equally distributed inside three (3) separate transparent plastic sachets. SI Abulencia also recovered the two (2) pre-marked ₱500-bills from her.

After they had made the arrest, the buy-bust team brought Mitch to their office along with the confiscated items.

Mitch, on the other hand, narrated a different version of what happened – before she got arrested on July 31, 2002, she was allegedly working at Infinity KTV Club and Restaurant when she received a call from her friend named Sarah. When she picked up the phone, Sarah was already crying and asked Mitch to meet her at Café Adriatico saying she would just explain everything when they met. Hesitant at first, Mitch eventually gave in and left to meet Sarah.

Upon arriving at Café Adriatico, Mitch saw Sarah seated beside two (2) male companions. Mitch then sat down at their table and noticed that Sarah's eyes were red. Mitch asked what was going on but Sarah just kept saying "sorry, sorry, Mitch." Feeling uneasy and nervous as to why Sarah was apologizing, Mitch went to the restroom.

Before reaching the restroom on the second floor of the restaurant, Mitch heard one of Sarah's companions call her. When she turned around, the man showed Mitch his NBI ID and said "*sumama ka nalang samin*." Thereafter, Mitch was dragged out of Café Adriatico and brought to the NBI office.

The RTC found Mitch guilty beyond reasonable doubt of the crime of illegal sale of dangerous drugs. It held that the prosecution was able to prove that (1) the arrest resulted from a valid buy-bust operation where SI Oliveros allegedly purchased thirty (30) ecstasy tablets from Mitch; and (2) the confiscated drugs identified in court were the same items found in Mitch's possession.

The RTC did not give much credibility to Mitch's defense of denial and frame-up. Apart from her solitary testimony, Mitch did not adduce any credible evidence that the trial court could rely on to consider her defense. The trial court gave more credence to the testimonies of the NBI agents because there was no plausible evidence presented to suggest any improper motive in arresting Mitch. It also held that Mitch's denial cannot prevail over the positive testimonies and the physical evidence against her.

Accordingly, the RTC sentenced Mitch to suffer the penalty of life imprisonment and to pay a fine of ₱1,000,000.00.

On appeal, the CA essentially affirmed the RTC's ruling and held that the prosecution was able to prove that the sale transaction had taken place and the existence of the confiscated drugs. In this case, Mitch handed to SI Oliveros one (1) ecstasy tablet for examination and demanded that the ₱60,000.00 be given to her before she would give him the remaining twenty-nine (29) ecstasy tablets. The appellate court said that her act was already tantamount to delivery and consummation of the sale of dangerous drugs; and that Mitch's failure to hand over the remaining twenty-nine (29) ecstasy tablets is immaterial.

Further, the CA ruled that noncompliance with Section 21 of R.A. No. 9165 will not render the confiscated drugs inadmissible because the integrity and evidentiary value of the

seized items were preserved from the moment they were seized up to the time they were presented in court.

OUR RULING

We find merit in **MODIFYING** the CA's decision and **CONVICTING** Mitch of the offense – attempted sale of dangerous drugs.

The illegal sale of dangerous drugs is not consummated when the seller fails to deliver the illegal drug to the buyer.

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.[3] To prove that a sale transaction had taken place, the following elements must be proved: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the **delivery of the thing sold** and the payment.[4]

The commission of the offense of illegal sale of prohibited drugs requires merely the consummation of the selling transaction *which happens the moment the buyer receives the drug from the seller*.[5] So long as the police officer went through the motion as a buyer and his offer was accepted by the seller and *the drug was delivered to the police officer*, the crime was **consummated by the delivery of the goods**.[6] In other words,

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[3] *People v. Dela Cruz,* G.R. No. 205821, October 1, 2014, 737 SCRA 486, 494, citing *People v. Morales*, G.R. No. 172873, March 19, 2010, 616 SCRA 223, 235.

[4] *People v. Montevirgen*, G.R. No. 189840, December 11, 2013, 712 SCRA 459, 467, citing *People v. Dilao*, 555 Phil. 394, 409 (2007). See also *People v. Esguerra*, G.R. No. 97959, April 7, 1993, 221 SCRA 261, 265.

[5] *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555, 563.

[6] *People v. Lakibul*, G.R. No. 94337, January 27, 1993, 217 SCRA 575, 580-581, citing *People v. De la Cruz*, G.R. No. 87607, October 31, 1990, 191 SCRA 160.

what is important is that the poseur-buyer received the drug from the accused.[7]

In the present case, Mitch did not deliver to SI Oliveros all thirty (30) ecstasy tablets; instead they were merely confiscated when she was arrested before she could go to the restroom of Café Adriatico. This fact was shown when SI Oliveros testified:

Q. And once inside the Café Adriatico what happened next?
A. Once inside the Café Adriatico, the accused, Minnie Tumulak showed [a] sample tablet of ecstacy, sir, and gave it to me for examination.

Q. When you said sample table[t], how many tablets?
A. One (1) piece, sir.

Q. [Were] you be able to hold that tablet?
A. Yes, sir.

Q. Did you examine it?
A. I just looked [at] the tablet, sir.

Q. What happened after you looked at the tablet?
A. I just looked at the tablet with markings TP and I told her about the 29 other tablets, sir.

Q. What was the reply of the seller?
A. She first demanded that I give to her the Sixty Thousand Pesos (₱60,000.00) so that she may count the money before giving the remaining 29 pieces of ecstasy, sir.

Q. What did you do after she demanded you the ₱60,000.00?
A. I gave the two (2) pieces of marked money with the boodle money placed inside the white envelope to the accused and she immediately excused herself to go to the comfort room to count the money, sir.

Q. What did you do after the seller went to the comfort room?

[7] See *People v. Ponferada*, G.R. No. 101004, March 17, 1993, 220 SCRA 46.

A. After the seller went upstairs, because the comfort room was situated upstairs, on the second floor, I immediately followed her together with [SI Abulencia], sir.

Q. And what happened after you followed her to the second floor?
A. Before the accused could enter the comfort room, we immediately identified ourselves as NBI Operatives and announced the apprehension and immediately placed the accused under arrest after recovering the other 29 pieces of alleged ecstasy tablets inside her bag, sir.[8]

On cross-examination, SI Oliveros clarified that all thirty (30) ecstasy tablets were in fact not delivered to him:

Q. Is it not that your agreement was for you to purchase or to score, that's the term, of thirty (30) tablets?
A. Yes sir. The transaction was to deliver thirty (30) tablets.

Q. Initially, you were shown [with] that one (1) tablet, am I right?
A. Yes sir.

Q. Where is that one (1) tablet which is shown to you as sample of the whole of the tablets?
A. Sir, it was taken from one of the sachets placed inside her bag.

Q. **Where is that tablet?**
A. **It was placed <u>again</u> inside one of the sachets, sir.**

Q. Do you have any marking on that one (1) tablet being shown to you?
A. I have no marking except that it has [with] the marking "TP" on said tablet, sir.

Q. "TP" on said tablet? What I mean Mr. Witness is do you have any marking on that one (1) tablet allegedly shown to you for purposes of identification?
A. None, sir.

[8] TSN, November 13, 2002, pp. 12-13.

Q. So you cannot identify that one (1) tablet as shown to you because you have no marking?
A. No sir, because they have the same size and marking.

Q. You did not separate that one (1) tablet from the other twenty-nine (29) tablets for purposes of putting a mark on it, am I right?
A. No sir.

Q. Right now, if you are shown with that one (1) tablet you can never tell us whether or not that one tablet is the one being showed to you?
A. No sir.[9]

From the foregoing testimony, it can be seen that the element of delivery of the dangerous drug is missing because Mitch never handed SI Oliveros, the poseur-buyer, all thirty (30) ecstasy tablets, the object of the illegal sale.

The offense of attempted sale is necessarily included in the crime of illegal sale of dangerous drugs.

Under the rule on variance,[10] while Mitch cannot be convicted of the offense of illegal sale of dangerous drugs because the sale was never consummated, she may be convicted for the attempt to sell as it is necessarily included in the illegal sale of dangerous drugs.[11]

A crime is attempted when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution, which should produce the felony, by reason of some cause or accident other than his own spontaneous desistance.[12]

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[9] TSN, December 18, 2002, pp. 17-19.

[10] RULES OF COURT, Rule 120, Sections 4 & 5.

[11] See *People v. Adam*, G.R. No. 143842, October 13, 2003, 459 SCRA 676, 684.

[12] REVISED PENAL CODE, Article 6.

In the present case, Mitch intended to sell ecstasy and commenced by overt acts the commission of the intended crime by showing the substance to SI Oliveros. To our mind, showing a sample is an overt act of selling dangerous drugs since it reveals the intention of the offender to sell it to the poseur-buyer. Also, in requiring SI Oliveros to show the ₱60,000.00 before she delivers the ecstasy tablets, Mitch's intent to sell was established.

More importantly, the only reason why the sale was aborted is because the police officers identified themselves as such and placed Mitch under arrest – a cause that is other than her own spontaneous desistance.

All told, all elements for the offense of attempted sale of dangerous drugs was established in this case.

The preservation of the identity and evidentiary value of the confiscated drugs is necessary to convict the accused of the crime of illegal possession of dangerous drugs.

We demand that proof beyond reasonable doubt is observed in establishing the *corpus delicti* – the body of the crime whose core is the confiscated illicit drug.[13] In meeting this quantum of proof, the chain of custody requirement under Section 21 of R.A. No. 9165 ensures that doubts concerning the identity of the drug are removed.

As a rule, strict compliance with the prescribed procedure under Section 21 is required because of the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.

Mitch contends that the prosecution failed to establish the integrity and identity of the seized drugs because the buy-bust team failed to comply with Section 21. She claims that there was no physical inventory of the confiscated items, as well as any marking and photographing in the presence of selected public officials.

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[13] *People v. Capuno*, G.R. No. 185715, January 19, 2011, 640 SCRA 233, 248.

Admittedly, a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items.[14]

By not complying strictly with the prescribed procedure, the exception found in the Implementing Rules and Regulations of R.A. 9165 operates.[15] This saving clause, however, applies only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving – **with moral certainty** – that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.

In the present case, SI Oliveros marked the three (3) sachets containing the ecstasy tablets with "MCT-1," "MCT-2" and "MCT-3," which were then turned over to the NBI Forensic Chemistry Division for examination.

In a Certificate dated August 1, 2002, the forensic analyst certified that SI Oliveros submitted to her office for laboratory examination thirty (30) yellow tablets with "TP" engraved on each tablet, and contained in three (3) heat-sealed transparent plastic sachets marked "MCT-1", "MCT-2" and "MCT-3", with each sachet containing ten (10) tablets. After examination, the specimens tested positive for the presence of methylenedioxymethamphetamine, commonly known as ecstasy.

The failure to immediately mark the confiscated items at the place of arrest does not render them inadmissible nor impair

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[14] *Asiatico v. People*, G.R. No. 195005, September 12, 2011, 657 SCRA 443, 451-452.

[15] " x x x Provided, further, that noncompliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items x x x."

the integrity of the seized drugs. In fact, marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[16]

Moreover, the failure to conduct a physical inventory and to photograph the items seized from the accused will not render his arrest illegal or the items confiscated from him inadmissible in evidence as long as the integrity and evidentiary value of the said items have been preserved.[17]

To our mind, the identity and evidentiary value of the confiscated drug in this case were preserved because SI Oliveros marked the seized items at the nearest police station, thereby ensuring that – even though they were turned over from one hand to another – the drugs presented and identified in court were the same items confiscated from Mitch. The marking at the NBI office was excused considering that the place of arrest was relatively near the office, and that it was impractical to mark the confiscated items inside a restaurant with a lot of people.

WHEREFORE, the July 30, 2012 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03960 is hereby **MODIFIED**: Minnie Tumulak y Cuenca @ Mitch is found guilty beyond reasonable doubt of attempted sale of 7.4448 grams of methylenedioxymethamphetamine (MDMA) or ecstasy, punished under Section 26, in relation to Section 5, of R.A. No. 9165, and sentenced to suffer the penalty of life imprisonment. She is likewise ordered to pay a fine of ₱500,000.00.

SO ORDERED.

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

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[16] *Imson v. People,* G.R. No. 193003, July 13, 2011, 653 SCRA 826, 836, citing *People v. De Guzman*, G.R. No. 177569, November 28, 2007, 539 SCRA 306, 317.

[17] *People v. Salvador*, G.R. No. 190621, February 10, 2014, 715 SCRA 617, 621, citing *People v. De Jesus*, G.R. No. 198794, February 6, 2013, 690 SCRA 180, 199.

SECOND DIVISION

[G.R. No. 206906, July 25, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FLORDILINA RAMOS,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; WHEN THE APPELLANT IS REPRESENTED BY A COUNSEL *DE OFFICIO* AND HE FAILS TO FILE HIS BRIEF WITHIN THE PERIOD PRESCRIBED BY THE RULES, THE APPEAL SHALL NOT BE DISMISSED OUTRIGHT.— [O]ur rules of procedure are more lenient to appellants who are represented by a counsel *de officio* when it comes to filing their briefs. The Rules of Court provides that the CA may dismiss the appeal if the appellant fails to file his brief within the period prescribed by the rules, **except where the appellant is represented by a counsel *de officio*.** In *De Guzman v. People*, we clarified that if the appellant is represented by a counsel *de parte* and he fails to file his brief on time, the appeal may be dismissed by the CA with notice to the appellant. However, the rule takes exception when the appellant is represented by a counsel *de officio*. In other words, when it comes to appellants represented by a counsel *de officio*, the appeal should not be dismissed outright as the rule on filing briefs on time – applied to appellants represented by a counsel *de parte* – is not automatically applied to them.

2. ID.; ID.; ID.; THE COURT OF APPEALS HAS DISCRETION TO CONSIDER AN APPEAL DESPITE FAILURE TO FILE AN APPELLANT'S BRIEF ON TIME; PROCEDURAL RULES TAKE A STEP BACK WHEN IT WOULD SUBVERT OR FRUSTRATE THE ATTAINMENT OF JUSTICE, ESPECIALLY WHEN THE LIFE AND LIBERTY OF THE ACCUSED IS AT STAKE.— If Ramos' appeal is denied due course, a person could be wrongfully imprisoned for life over a mere technicality. It is not contended that Ramos failed to perfect her appeal within the reglementary period; her counsel merely failed to file her appellant's brief within the period accorded to her. We must remember that there

is a distinction between the failure to file a notice of appeal within the reglementary period and the failure to file a brief within the period granted by the appellate court. The former results in the failure of the appellate court to acquire jurisdiction over the appealed decision resulting in its becoming final and executory upon failure of the appellant to move for reconsideration. The latter simply results in the abandonment of the appeal which can lead to its dismissal upon failure to move for its reconsideration. Considering that we suspend our own rules to exempt a particular case where the appellant failed to perfect its appeal within the reglementary period, we should grant more leeway to exempt a case from the stricture of procedural rules when the appellate court has already obtained jurisdiction. We concede that it is upon the sound discretion of the CA to consider an appeal despite the failure to file an appellant's brief on time. However, we are not unfamiliar with the time-honored doctrine that procedural rules take a step back when it would subvert or frustrate the attainment of justice, especially when the life and liberty of the accused is at stake. Based on this consideration, we can consider this case as an exception given that the evidence on record fails to show that Ramos is guilty beyond reasonable doubt.

3. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. No. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; THE DETAILS OF THE PURPORTED TRANSACTION MUST CLEARLY AND ADEQUATELY SHOW THE INITIAL CONTACT BETWEEN THE POSEUR-BUYER AND THE PUSHER, THE OFFER TO PURCHASE, THE PAYMENT OF CONSIDERATION, AND THE DELIVERY OF THE ILLEGAL DRUG.—** In the illegal sale of dangerous drugs pursuant to a buy-bust operation, the details of the purported transaction must clearly and adequately show (1) the initial contact between the poseur-buyer and the pusher, (2) the offer to purchase, (3) the payment of consideration, and (4) the delivery of the illegal drug. The manner by which all these transpired, whether or not through an informant, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully led to the commission of an offense.

4. **ID.; ID.; ID.; ID.; FAILURE TO PRESENT THE POSEUR-BUYER WHEN FATAL TO THE PROSECUTION'S**

CASE.— We have previously ruled that failure to present the poseur-buyer is fatal to the prosecution's case under the following circumstances: (1) if there is no person other than the poseur-buyer who witnessed the drug transaction; (2) if there is no explanation for the non-appearance of the poseur-buyer and reliable eyewitnesses who could testify in his place; (3) if the witnesses other than the poseur-buyer did not hear the conversation between the pusher and poseur-buyer; and (4) if the accused vehemently denies selling any prohibited drugs coupled with the inconsistent testimonies of the arresting officers or coupled with the possibility that there exist reasons to believe that the arresting officers had motives to testify falsely against the appellant.

5. ID.; ID.; ID.; THE PROSECUTION MUST PROVE THE EXISTENCE OF THE *CORPUS DELICTI* OR THE ACTUAL DRUGS CONFISCATED FROM THE ACCUSED.— The common circumstance in the foregoing cases is that the arresting officers had no personal knowledge of the fact that an illegal drug transaction transpired. In this case, none of the police operatives were actually present while the poseur-buyer was transacting with Ramos. To be sure, the police officers had personal knowledge of what was going on because they saw everything while inside a tinted car ten (10) meters away, and that prior to the buy-bust operation, they had already planned what was going to happen. The prosecution, therefore, was still able to prove all the elements of the illegal sale even though the poseur-buyer did not testify on how he transacted with Ramos. However, contrary to the findings of the lower courts, we find that the prosecution failed to properly prove the existence of the *corpus delicti* or the actual drugs confiscated from Ramos. After reviewing the records of the case, we find that the integrity and evidentiary value of the seized drugs were not preserved as the evidence on record manifests serious doubts in the handling of the confiscated items.

6. ID.; ID.; SECTION 21 THEREOF; CHAIN OF CUSTODY REQUIREMENTS; THE MARKING OF THE SEIZED DRUGS MUST BE MADE IN THE PRESENCE OF THE ACCUSED AND UPON IMMEDIATE CONFISCATION, WHICH CONTEMPLATES EVEN MARKING AT THE NEAREST POLICE STATION OR OFFICE OF THE APPREHENDING TEAM.— The procedure laid down in

Section 21, Article II of R.A. No. 9165 was crafted by Congress as a safety precaution to address potential police abuses by narrowing the window of opportunity for tampering with evidence. Out of all the requirements laid down, the most important is the immediate marking and the physical inventory of the seized drugs xxx. To comply with this provision and to establish the first link in the chain of custody, what is required is that the marking be made in the presence of the accused and upon immediate confiscation. Considering that immediate confiscation has no exact definition, we have held that marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team. After re-examining the records, we find that there is no evidence, testimonial or otherwise, on the exact details before the marking of the seized drugs. The evidence on record only show that the plastic sachet of *shabu* the confidential informant bought from Ramos and the other ten (10) plastic sachets inside the Vick Vaporub jar recovered from her were surrendered to one SPO1 Roland Navales. The records of this case lack any evidence showing how the allegedly seized drugs were preserved by the confidential informant and by the arresting officers before the turnover at the police station.

7. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE PRESUMPTION OF REGULARITY CANNOT PREVAIL OVER THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE AND CANNOT, BY ITSELF, CONSTITUTE PROOF OF GUILT BEYOND REASONABLE DOUBT, FOR WHEN THE PRESUMPTION OF REGULARITY IS CHALLENGED BY EVIDENCE, IT CANNOT SERVE AS BINDING PROOF.—** As for the other ten (10) plastic sachets of *shabu* found inside the Vick Vaporub jar recovered after Ramos' arrest, the trial court erred in relying on the presumption of regularity. Contrary to the trial court's findings, we find that there were allegations and evidence that should have led it to be careful in relying on this presumption. In fact, it was the trial court that solicited that Ramos was living with her live-in partner and his father before they were arrested. From this fact, it would not be implausible for the police officers to have the motive to implicate her in drug transactions. While it is laudable that police officers exert earnest efforts in catching

drug pushers, they must always be advised to do this within the bounds of the law. More importantly, the presumption of regularity cannot prevail over the constitutional presumption of innocence and cannot, by itself, constitute proof of guilt beyond reasonable doubt. The presumption of regularity is just a presumption disputable by contrary proof; when challenged by evidence, it cannot serve as binding proof.

8. ID.; ID.; ID.; ID.; WITHOUT THE PRESUMPTION OF REGULARITY, THE TESTIMONIES OF THE POLICE WITNESSES MUST STAND ON THEIR OWN MERITS AND THE DEFENSE CANNOT BE BURDENED WITH HAVING TO DISPUTE THESE TESTIMONIES.— Without the presumption of regularity, the testimonies of the police witnesses must stand on their own merits and the defense cannot be burdened with having to dispute these testimonies. Here, the absence of any testimony or other evidence surrounding the handling of the ten (10) plastic sachets of *shabu* before they were turned over becomes fatal for the prosecution because we cannot be certain – without presuming regularity – that the drugs had not been tampered with by Ramos' arresting officers. x x x. [T]he gaps in the prosecution's evidence proving the identity and evidentiary value of the prohibited items allegedly seized do not establish proof beyond reasonable doubt that the drugs identified in court were the same items confiscated from Ramos.

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

BRION, *J.*:

We resolve the appeal of accused-appellant Flordilina L. Ramos @ "Dinay" (*Ramos*) assailing the **February 2, 2011** and the **July 5, 2012** resolutions[1] of the Court of Appeals (*CA*) in

[1] *Rollo*, pp. 3-7; CA *rollo,* pp. 13-14, 60-62.

CA-G.R. CR-HC No. 00983. The CA dismissed Ramos' appeal because she failed to timely file an appellant's brief after she had appealed the RTC decision[2] finding her guilty beyond reasonable doubt for violating Sections 5 and 11, Article II of Republic Act (*RA*) No. 9165.[3]

THE CASE

In two (2) separate informations, the prosecutor charged Ramos for illegal sale and illegal possession of *shabu*. On arraignment, Ramos pleaded not guilty to both charges.

The evidence for the prosecution reveals that on June 22, 2005, at around 4:00 p.m., police operatives conducted a buy-bust operation against Ramos and another person named Carolina Porponio (*Porponio*). The police officers were inside a tinted vehicle parked about ten (10) meters away from where the confidential informant met with the subjects. From inside the car, they saw their informant hand the pre-marked ₱100.00 bill to Ramos who, in turn, gave one (1) transparent plastic sachet suspected to contain *shabu* from a Vicks Vaporub jar. When the transaction was completed, the police officers quickly alighted the vehicle and advanced to the place where the sale happened. They immediately arrested the subjects and, after frisking Ramos, they recovered the Vicks Vaporub jar which contained ten (10) more plastic sachets of *shabu*.

Ramos, on the other hand, gave a different version of what transpired. She claimed that in the afternoon of June 22, 2005, on the way home from fetching her daughter from school, she was suddenly arrested by four (4) policemen. Her wallet was taken from her after she was frisked. Thereafter, she was brought to the police station where she was charged for selling *shabu*.

Ramos also testified that she personally knew two (2) of her arresting officers as they were her neighbors. She said that she does not know why they would falsely accuse her of

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[2] CA *rollo*, pp. 36-39; RTC records, pp. 126-129.

[3] Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

selling *shabu*. However, the trial court solicited from Ramos that she was living with her live-in partner and his father, who were both arrested for illegal drug transactions a few years earlier.

In its July 31, 2007 decision, the RTC found that the elements for illegal sale and possession were substantially proven by the prosecution. The trial court said that even though the poseur-buyer was not disclosed, the police actually saw how the drug sale transpired. It also held that the seized drugs from Ramos were the same drugs that were brought to the crime laboratory for examination and were properly marked, identified, presented, and admitted in evidence.

The RTC accordingly sentenced Ramos to suffer the penalty of life imprisonment for illegal sale of dangerous drugs, and imprisonment of twelve (12) years and one (1) day to fourteen (14) years for illegal possession. Ramos was likewise ordered to pay a fine of ₱500,000.00 and ₱200,000.00 for the respective offenses.

When the case was appealed, the CA dismissed it because Ramos' counsel failed to file her appellant's brief within the period required by law.

The Public Attorney's Office (*PAO*), acting as Ramos's counsel *de officio*, filed a motion for reconsideration and to admit the appellant's brief explaining that the notice from the CA was inadvertently sent to the handling lawyer when he had, at that time, already been relieved of his duties at the PAO Regional Special and Appealed Cases Unit. The handling lawyer admitted that he was unable to track the progress of his cases since he assumed that the present case had already been assigned to another lawyer.

In the attached appellant's brief, Ramos argued that the non-presentation of the poseur-buyer is fatal to the prosecution's case as the identity of the buyer, which was not proven in this case, is one of the essential elements to prove in the illegal sale of dangerous drugs. Considering that Ramos denied outright the allegations and gave a totally different version of the events,

it was incumbent upon the prosecution to rebut her allegations by presenting the alleged poseur-buyer. Having failed to do so, the presumption that evidence willfully suppressed would be adverse if produced, therefore, arises.

Moreover, Ramos contended that the police officers could not have seen the minuscule plastic sachet of *shabu* ten (10) meters away from where the alleged transaction had taken place, and taking into account that they were inside a tinted vehicle. Thus, any information that the police officers gathered from the poseur-buyer was indubitably hearsay because he never testified during trial.

With regard to the *corpus delicti*, Ramos pointed out the flaws in the post-seizure custody of the drugs allegedly recovered from her: (1) it was only at the police station - not at the place where the drugs were confiscated - where the police officers marked the confiscated items; and (2) there were no identifying marks placed on the seized drugs immediately after confiscation and prior to the turnover to the investigating officer.[4]

Without dwelling on the merits of Ramos's appeal, the CA denied the motion for reconsideration and affirmed the dismissal of her appeal. The appellate court noted that it took Ramos almost two (2) years before she actually filed her brief, and that the explanation given by the PAO lawyer was not persuasive enough to justify the belated filing of the appellant's brief.

Aggrieved, Ramos filed the present appeal before this Court.

OUR RULING

After carefully examining the records of this case, we find merit in **REVERSING** the resolutions of the CA as the evidence against Ramos is insufficient to sustain her conviction for both offenses; accordingly, Ramos should be **ACQUITTED** on grounds of reasonable doubt.

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[4] It must be noted that Ramos was arrested along with Carolina Porponio who is likewise suspected for selling *shabu*.

Failure to file an applellant's brief within the prsecibed period is not fatal to the case of the accused if there are substantial considereation in giving due course to the appeal.

At the onset, our rules of procedure are more lenient to appellants who are represented by a counsel *de officio* when it comes to filing their briefs. The Rules of Court provides that the CA may dismiss the appeal if the appellant fails to file his brief within the period prescribed by the rules; **except where the appellant is represented by a counsel *de officio***.[5]

In *De Guzman v. People*,[6] we clarified that if the appellant is represented by a counsel *de parte* and he fails to file his brief on time, the appeal may be dismissed by the CA with notice to the appellant. However, the rule takes exception when the appellant is represented by a counsel *de officio*.[7]

In other words, when it comes to appellants represented by a counsel *de officio*, the appeal should not be dismissed outright as the rule on filing briefs on time - applied to appellants represented by a counsel *de parte* - is not automatically applied to them.

In the case at bar, the PAO received the notice to file brief that the CA sent to the PAO in Cebu City, on February 19, 2009. The notice contained an advisory that all the evidence was already attached to the record available to the appellant, and her counsel had thirty (30) days from receipt within which to file brief. The CA *rollo,* however, does not disclose that an appellant's brief was filed as of May 20, 2010.

If Ramos' appeal is denied due course, a person could be wrongfully imprisoned for life over a mere technicality. It is not contended that Ramos failed to perfect her appeal within the reglementary period; her counsel merely failed to file her appellant's brief within the period accorded to her.

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[5] Rule 124, Section 8, par. 1.

[6] 546 Phil. 654 (2007).

[7] *Id*. at 659.

We must remember that there is a distinction between the failure to file a notice of appeal within the reglementary period and the failure to file a brief within the period granted by the appellate court. The former results in the failure of the appellate court to acquire jurisdiction over the appealed decision resulting in its becoming final and executory upon failure of the appellant to move for reconsideration.[8] The latter simply results in the abandonment of the appeal which can lead to its dismissal upon failure to move for its reconsideration.[9] Considering that we suspend our own rules to exempt a particular case where the appellant failed to perfect its appeal within the reglementary period, we should grant more leeway to exempt a case from the stricture of procedural rules when the appellate court has already obtained jurisdiction.[10]

We concede that it is upon the sound discretion of the CA to consider an appeal despite the failure to file an appellant's brief on time. However, we are not unfamiliar with the time-honored doctrine that procedural rules take a step back when it would subvert or frustrate the attainment of justice, especially when the life and liberty of the accused is at stake. Based on this consideration, we can consider this case as an exception given that the evidence on record fails to show that Ramos is guilty beyond reasonable doubt.

For an accused to be convicted in illegal drug cases, the prosecution must establish all the elements of the offenses charged, as well as the corpus delicti or the dangerous drug itself.

In the illegal sale of dangerous drugs pursuant to a buy-bust operation, the details of the purported transaction must clearly

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[8] *Tamayo v. Court of Appeals,* 467 Phil. 603, 605, 608 (2004), citing *Development Bank of the Philippines v. Court of Appeals,* 411 Phil. 121 (2001). See also *Republic v. Imperial,* G.R. No. 130906, February 11, 1999, 303 SCRA 127-129: *Ginete v. Court of Appeals*, G.R. No. 127596, September 24, 1998, 296 SCRA 38; and *Carco Motor Sales, Inc. v. Court of Appeals,* G.R. No. L-44609, August 31, 1977, 78 SCRA 526.

[9] *Ibid.*

[10] *Development Bank of the Philippines vs. Court of Appeals, supra* note 8, at 515.

and adequately show (1) the initial contact between the poseur-buyer and the pusher, (2) the offer to purchase, (3) the payment of consideration, and (4) the delivery of the illegal drug.[11] The manner by which all these transpired, whether or not through an informant, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully led to the commission of an offense.[12]

In the present case, it is undisputed that the police operatives had no direct participation in the transaction, it was only the confidential-informant who transacted with Ramos. Such fact was affirmed in the direct testimony of one of the police operatives:

Q: Who acted as your poseur-buyer in your buy-bust operation?
A: Our confidential poseur-buyer.

Q: You mean to say a civilian person?
A: Yes, sir.

Q: Was there police officer in your team who went with that civilian asset when the buy-bust operation was made?
A: Only the confidential agent approached.

Q: But my question is: Was there any police officer who went with him when he approached the suspect?
A: None.[13]

In convicting Ramos, the trial court said that although the name of the poseur-buyer was not disclosed, the police officers who were there saw the confidential-informant deliver the pre-marked ₱100.00 bill to Ramos, who then handed over one (1) plastic sachet of *shabu*.

We have previously ruled that failure to present the poseur-buyer is fatal to the prosecution's case under the following circumstances: (1) if there is no person other than the poseur-

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[11] *People v. Doria,* G.R. No. 125299, January 22, 1999, 301 SCRA 668, 698.
[12] *Id.* at 699.
[13] TSN, April 21, 2005, pp. 4-5.

buyer who witnessed the drug transaction;[14] (2) if there is no explanation for the non-appearance of the poseur-buyer and reliable eyewitnesses who could testify in his place;[15] (3) if the witnesses other than the poseur-buyer did not hear the conversation between the pusher and poseur-buyer;[16] and (4) if the accused vehemently denies selling any prohibited drugs coupled with the inconsistent testimonies of the arresting officers or coupled with the possibility that there exist reasons to believe that the arresting officers had motives to testify falsely against the appellant.[17]

The common circumstance in the foregoing cases is that the arresting officers had no personal knowledge of the fact that an illegal drug transaction transpired. In this case, none of the police operatives were actually present while the poseur-buyer was transacting with Ramos.

To be sure, the police officers had personal knowledge of what was going on because they saw everything while inside a tinted car ten (10) meters away, and that prior to the buy-bust operation, they had already planned what was going to happen.[18] The prosecution, therefore, was still able to prove all the elements of the illegal sale even though the poseur-buyer did not testify on how he transacted with Ramos.

However, contrary to the findings of the lower courts, we find that the prosecution failed to properly prove the existence of the *corpus delicti* or the actual drugs confiscated from Ramos. After reviewing the records of the case, we find that the integrity and evidentiary value of the seized drugs were not preserved

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[14] *People v. Fider*, G.R. No. 105285, June 3, 1993, 223 SCRA 117.

[15] *People v. Orteza*, G.R. No. 173051, July 31, 2007, 528 SCRA 750, 759-762.

[16] *People v. Samson*, G.R. No. 101333, March 2, 1993, 219 SCRA 364.

[17] *People v. Lucero,* G.R. No. 84656, January 4, 1994, 229 SCRA 1; *People v. Sillo*, G.R. No. 91001, September 18, 1992, 214 SCRA 74.

[18] See *Pestilos v. Generoso*, G.R. No. 182601, November 10, 2014, sc.judiciary.gov.ph, where we explained when a police officer may arrest the accused without a warrant based on the officer's own determination of probable cause from his appreciation of the facts and circumstances.

as the evidence on record manifests serious doubts in the handling of the confiscated items.

It is not uncommon to reverse a conviction simply because there are gaps in the chain of custody over the confiscated items. The presence of these gaps qualifies as reasonable doubt involving the most important element in drug-related cases - the existence of the dangerous drug itself.

The procedure laid down in Section 21, Article II of R.A. No. 9165 was crafted by Congress as a safety precaution to address potential police abuses by narrowing the window of opportunity for tampering with evidence.[19] Out of all the requirements laid down, the most important is the immediate marking and the physical inventory of the seized drugs, to *wit*:

> (1) The apprehending team having initial custody and control of the drug shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and an elected public official who shall be required to sign the copies of the inventory and be given a copy thereof [.][20]

To comply with this provision and to establish the first link in the chain of custody, what is required is that the marking be made in the presence of the accused and upon immediate confiscation.[21] Considering that immediate confiscation has no exact definition, we have held that marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.[22]

After re-examining the records, we find that there is no evidence, testimonial or otherwise, on the exact details before

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[19] *People v. Ancheta,* G.R. No. 197371, June 13, 2012, sc.judiciary.gov.ph, citing *People v. Umpang,* G.R. No. 190321, April 25, 2012, 671 SCRA 324.

[20] RA No. 9165, Article II, Section 21.

[21] *People v. Ressureccion,* G.R. No. 186380, October 12, 2009, 603 SCRA 510.

[22] *Ibid*.

the marking of the seized drugs. The evidence on record only show that the plastic sachet of *shabu* the confidential informant bought from Ramos and the other ten (10) plastic sachets inside the Vicks Vaporub jar recovered from her were surrendered to one SPO1 Roland Navales. The records of this case lack any evidence showing how the allegedly seized drugs were preserved by the confidential informant and by the arresting officers before the turnover at the police station.

Furthermore, we note that the police operatives conducted not only one buy-bust operation that day. The testimony of one of the arresting officers reveals that they saw the confidential informant negotiate two (2) transactions that day - one was with Ramos and the other was with Porponio. Thus, considering that the confiscated items were only marked at the police station and absent any evidence on how the confidential informant possessed the drugs before turning them over, we cannot be absolutely sure that what was marked as evidence against Ramos was not the plastic sachet the confidential informant also bought from Porponio.

As for the other ten (10) plastic sachets of *shabu* found inside the Vicks Vaporub jar recovered after Ramos' arrest, the trial court erred in relying on the presumption of regularity. Contrary to the trial court's findings, we find that there were allegations and evidence that should have led it to be careful in relying on this presumption. In fact, it was the trial court that solicited that Ramos was living with her live-in partner and his father before they were arrested. From this fact, it would not be implausible for the police officers to have the motive to implicate her in drug transactions. While it is laudable that police officers exert earnest efforts in catching drug pushers, they must always be advised to do this within the bounds of the law.

More importantly, the presumption of regularity cannot prevail over the constitutional presumption of innocence and cannot, by itself, constitute proof of guilt beyond reasonable doubt.[23] The

[23] *People v. Sabdula*, G.R. No. 184758, April 21, 2014, sc.judiciary.gov.ph, citing *People v. Cantalejo*, G.R. No. 182790, April 24, 2009, 586 SCRA 777, 788.

presumption of regularity is just a presumption disputable by contrary proof; when challenged by evidence, it cannot serve as binding proof.[24]

Without the presumption of regularity, the testimonies of the police witnesses must stand on their own merits and the defense cannot be burdened with having to dispute these testimonies.[25] Here, the absence of any testimony or other evidence surrounding the handling of the ten (10) plastic sachets of *shabu* before they were turned over becomes fatal for the prosecution because we cannot be certain - without presuming regularity - that the drugs had not been tampered with by Ramos's arresting officers.

In sum, the gaps in the prosecution's evidence proving the identity and evidentiary value of the prohibited items allegedly seized do not establish proof beyond reasonable doubt that the drugs identified in court were the same items confiscated from Ramos.

WHEREFORE, we **REVERSE** and **SET ASIDE** the February 2, 2011 and the July 5, 2012 resolutions of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 00983. Accused-appellant Flordilina L. Ramos @ "Dinay" is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered to be **IMMEDIATELY RELEASED** from detention unless she is otherwise legally confined for another cause.

Let a copy of this Decision be sent to the Superintendent, Correctional Institution for Women, Mandaluyong City, for immediate implementation. The Superintendent of the Correctional Institution for Women is directed to report the action she has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

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

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[24] *Ibid.*

[25] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 221. See also *Dissenting Opinion* of *J.* Brion in *People v. Agulay*, 588 Phil. 247, 293-294 (2008).

EN BANC

[A.M. No. 12-8-07-CA. July 26, 2016]

RE: LETTER OF COURT OF APPEALS JUSTICE VICENTE S.E. VELOSO FOR ENTITLEMENT TO LONGEVITY PAY FOR HIS SERVICES AS COMMISSION MEMBER III OF THE NATIONAL LABOR RELATIONS COMMISSION.

[A.M. No. 12-9-5-SC. July 26, 2016]

RE: COMPUTATION OF LONGEVITY PAY OF COURT OF APPEALS JUSTICE ANGELITA A. GACUTAN.

[A.M. No. 13-02-07-SC. July 26, 2016]

RE: REQUEST OF COURT OF APPEALS JUSTICE REMEDIOS A. SALAZAR- FERNANDO THAT HER SERVICES AS MTC JUDGE AND AS COMELEC COMMISSIONER BE CONSIDERED AS PART OF HER JUDICIAL SERVICE AND INCLUDED IN THE COMPUTATION/ADJUSTMENT OF HER LONGEVITY PAY.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; LONGEVITY PAY; SECTION 42 OF BATAS PAMBANSA BLG. 129 (THE JUDICIARY REORGANIZATION ACT OF 1980); LONGEVITY PAY IS A SALARY AND SHOULD NOT BE CONFUSED WITH RANK, AS THE SAME IS AN AMOUNT EQUIVALENT TO 5% OF THE MONTHLY BASIC PAY GIVEN TO JUDGES AND JUSTICES FOR EACH FIVE YEARS OF CONTINUOUS, EFFICIENT, AND MERITORIOUS SERVICE RENDERED IN THE JUDICIARY AND IS GIVEN NOT ONLY AS AN ADDITION TO THE BASIC MONTHLY PAY BUT IT FORMS PART OF THE SALARY OF THE RECIPIENT THEREOF.—** Under Section 42 of Batas Pambansa Blg. 129,

longevity pay is an amount equivalent to 5% of the monthly basic pay given to Judges and Justices for each five years of continuous, efficient, and meritorious service rendered in the Judiciary. It is not only an amount given as an addition to the basic monthly pay but, more importantly, **it forms part of the salary of the recipient thereof.** In other words, **longevity pay is "salary"** and it should not be confused with **"rank."** That is how this Court has treated the longevity pay under Section 42 of Batas Pambansa Blg. 129 since 1986, particularly in *Re: Longevity Pay of the Associate Justices of the Sandiganbayan*. It is a treatment which reflects the Court's reading of the text of the law and its understanding of the law's legislative intent.

2. **ID.; ID.; ID.; ID.; RANK HAS NOTHING TO DO WITH THE AMOUNT OF COMPENSATION OR PAY AN OFFICIAL IS ENTITLED TO UNDER THE LAW, BUT IT PERTAINS ONLY TO THE CLASS OR STANDING IN AN ORGANIZATION OR SOCIETAL STRUCTURE.—** [T]he settled meaning of "rank," particularly that it does not include the privilege to use the title of Judge or Justice should not be used to determine the import of the term "salary" as used in the different laws. Otherwise, there would be no point in mentioning in the laws "rank" separately from "salary." "Rank" unquestionably has nothing to do with the amount of compensation or pay an official is entitled to under the law. The said term pertains only to the "class" or "standing" in an organization or societal structure.

3. **ID.; ID.; ID.; ID.; AS THE LONGEVITY PAY IS PART OF THE SALARY OF A MEMBER OF THE JUDICIARY, IT SHOULD PERFORCE BE PART OF THE SALARY OF THE PUBLIC OFFICERS GRANTED BY LAW WITH THE SAME RANK AND SALARY AS THEIR COUNTERPARTS IN THE JUDICIARY; THUS, THE INCREASE IN THE SALARY OF JUDGES AND JUSTICES BY VIRTUE OF THE LONGEVITY PAY SHOULD ALSO RESULT IN THE CORRESPONDING INCREASE IN THE SALARY OF THE PUBLIC OFFICERS WHO, UNDER RELEVANT LAWS, ENJOY THE SAME RANK AND SALARY AS THEIR JUDICIAL COUNTERPARTS.—** In conferring upon certain officials in the Executive the same salaries, aside from their rank, as those of their respective judicial counterparts, Congress intended to make the salaries of the former at par with the latter.

The legislative records support this. x x x. This legislative intent to grant certain officials of the Executive Department the same salaries as that of their respective judicial counterparts should be read in conjunction with how salary is defined in the law and treated vis-à-vis longevity pay in prevailing case law. In enacting a statute, the legislature is presumed to have been aware of, and have taken into account, prior laws and jurisprudence on the subject of legislation. x x x Thus, Congress knew, or is presumed to have known, the concept of longevity pay under Section 42 of Batas Pambansa Blg. 129 **as part of the total salary** of members of the Judiciary when it enacted Republic Act Nos. 9417, 9347, and 10071, which granted certain officials of the OSG, the NLRC, and the NPS, respectively, the same salary as their respective counterparts in the Judiciary. Moreover, armed with that knowledge, Congress is presumed to have intended to adopt the definition of "salary" (as constituting basic monthly salary plus longevity pay) when it enacted Republic Act Nos. 9417, 9347, and 10071, which will be in keeping with the legislative intent to equalize the salary of certain executive officials with members of the Judiciary. To do otherwise will negate the express legislative intent. As it is part of the salary of a member of the Judiciary, it should perforce be part of the salary of the public officers granted by law with the same rank and salary as their counterparts in the Judiciary. Accordingly, the increase in the salary of Judges and Justices by virtue of the longevity pay should also result in the corresponding increase in the salary of the public officers who, under relevant laws, enjoy the same rank and salary as their judicial counterparts. Otherwise, the law's express language and its intention to grant the same rank and salary of a member of the Judiciary to the said public officers will be defeated.

4. **ID.; ID.; ID.; ID.; THE DEFINITION OF THE SALARY OF THE MEMBERS OF THE JUDICIARY SHOULD ALSO BE THE DEFINITION OF SALARY OF THE CONCERNED PUBLIC OFFICERS WHO ENJOY THE SAME RANK AND SALARY AS JUDGES OR JUSTICES.—** [B]y enacting Republic Act Nos. 9417, 9347, and 10071, which granted certain officials of the Executive Department the same salary as their respective counterparts in the Judiciary, Congress manifested its intent to treat "salary" the way it has been treated in Batas Pambansa Blg. 129 as

interpreted by this Court, that is, basic monthly pay plus longevity pay. Since the above-mentioned laws do not make any distinction with respect to the term "salary" as it is expressly provided for in Section 42 of Batas Pambansa Blg. 129, we should not make any distinction. *Ube lex non distinguit nec nos distinguere debemus.* x x x. The longevity pay forms part of the salary of a Judge or Justice, since Section 42 of Batas Pambansa Blg. 129 says it is "added" to the said salary. Thus, the salary of the members of the Judiciary refers to their respective basic pay plus the longevity pay to which they may be entitled by virtue of their continuous, efficient, and meritorious service in the Judiciary. That should also be the definition of the "salary" of the concerned public officers who enjoy the same rank and salary as Judges or Justices, if the word "same" employed in the laws pertaining to executive officials is to be understood in its plain and ordinary meaning. A narrow and restrictive approach which limits the longevity pay under Section 42 of Batas Pambansa Blg. 129, as amended, to service rendered in the Judiciary only is to unduly restrict the definition of salary, fixing it to the basic pay. To depart from the meaning expressed by the words, is to alter the statute, to legislate and not to interpret. It is to amend the laws by judicial fiat, x x x.

5. ID.; ID.; ID.; ID.; THE LONGEVITY PAY UNDER SECTION 42 OF BATAS PAMBANSA BLG. 129 IS AMONG THE SALARIES AND BENEFITS ENJOYED BY MEMBERS OF THE JUDICIARY THAT ARE EXTENDED TO THE PUBLIC OFFICERS CONFERRED BY LAW WITH THE RANK OF JUDGES OF THE LOWER COURTS OR JUSTICES OF THE COURT OF APPEALS; SERVICES RENDERED IN THEIR RESPECTIVE OFFICES BY THE PUBLIC OFFICERS REQUIRED BY LAW HAVE THE SAME QUALIFICATIONS, RANK, AND SALARY OF THEIR COUNTERPARTS IN THE JUDICIARY ARE CONSIDERED TO BE SUBSTANTIALLY THE SAME AS SERVICE IN THE JUDICIARY FOR PURPOSES OF THE SAID PUBLIC OFFICERS' ENJOYMENT OF THE LONGEVITY PAY UNDER SECTION 42 OF BATAS PAMBANSA BLG. 129.— This Court has long recognized that the longevity pay under Section 42 of Batas Pambansa Blg. 129 is among the salaries and benefits enjoyed by members of the Judiciary that are extended to the public officers conferred

by law with the rank of Judges of the lower courts or Justices of the Court of Appeals. x x x The Resolutions in *Santiago, Gancayco, Dela Fuente,* and *Guevara-Salonga* reveal that this Court has consistently approached and applied the longevity pay provision under Section 42 of Batas Pambansa Blg. 129 liberally, that is, as applicable by statutory extension to those covered by the same qualifications and given the same rank and salary as the members of the Judiciary. They evince the view that the services rendered in their respective offices by the public officers required by law to have the same qualifications, rank, and salary of their counterparts in the Judiciary are considered to be **substantially the same as service in the Judiciary** for purposes of the said public officers' enjoyment of the longevity pay under Section 42 of Batas Pambansa Blg. 129. x x x. x x x While certain members of the Judiciary may feel an exclusive franchise to the rank, salary, and benefits accorded to them by law, we cannot impose our own views on Congress which has ample power to enact laws as it sees fit, absent any grave abuse of discretion or constitutional infraction on its part.

6. **ID.; ID.; ID.; ID.; THE EXECUTIVE CONTEMPORANEOUS CONSTRUCTION OF THE LONGEVITY PAY PROVISION OF BATAS PAMBANSA BLG. 129 IS IN ACCORDANCE WITH BOTH STATUTORY LAW AND CASE LAW; COURTS SHOULD RESPECT THE CONTEMPORANEOUS CONSTRUCTION PLACED UPON A STATUTE BY THE EXECUTIVE OFFICERS WHOSE DUTY IS TO ENFORCE IT, AND UNLESS SUCH INTERPRETATION IS CLEARLY ERRONEOUS WILL ORDINARILY BE CONTROLLED THEREBY.—** Contemporaneous construction is the interpretation or construction placed upon the statute by an executive or administrative officer called upon to execute or administer the statute. It includes the construction by the Secretary of Justice in his capacity as the chief legal adviser of the government. In this connection, the contemporaneous construction by the Department of Justice and other offices in the executive branch disclose a similar treatment of the longevity pay provision of Batas Pambansa Blg. 129 as shown by the following pertinent portions of the 2nd Indorsement dated November 21, 1988 by the then Secretary of Justice, Sedfrey A. Ordoñez: 1. Longevity

pay forms part of the salary of the recipient (Resolution of the Supreme Court in Adm. Matter No. 86-9-2394-0, Re: Longevity Pay of the Associate Justices of the Sandiganbayan). Thus, **when the law grants to certain officials of the executive department the "rank and salary" of a member of the Judiciary, it should be deemed to include longevity pay, which is part of salary; otherwise, the law's intention to grant the same rank and salary of a justice/judge to executive officials would be defeated or nullified.** x x x. [C]ourts should respect the contemporaneous construction placed upon a statute by the executive officers whose duty is to enforce it, and unless such interpretation is clearly erroneous will ordinarily be controlled thereby. As x x x shown above, the contemporaneous construction of the then Justice Secretary is in accordance with both statutory law and case law.

7. **ID.; ID.; ID.; ID.; LONGEVITY PAY IS NOT A MERE BENEFIT, BUT MUST BE TREATED AS SALARY AND EXTENDED TO CERTAIN OFFICIALS IN THE EXECUTIVE DEPARTMENT WHO ARE, BY LAW, GRANTED THE SAME SALARY AS THEIR COUNTERPARTS IN THE JUDICIARY.—** [L]ongevity pay is not a mere benefit, but is salary, as it is a component of the "total salary." That is how this Court treated longevity pay as a contemporaneous interpretation of Section 42 of Batas Pambansa Blg. 129. That is also how Congress presumably intended to treat longevity pay when it granted a salary which is the same as that of members of the Judiciary to certain officials in the Executive Department under relevant laws, including Republic Act Nos. 9417, 9347, and 10071, as Congress did not qualify or limit the term "salary" in these laws. x x x Therefore, longevity pay under Section 42 of Batas Pambansa Blg. 129 must be treated as salary and to extend it to certain officials in the Executive Department who are, by law, granted the same salary as their counterparts in the Judiciary. That is, after all, how Congress intended it to be. That is how it was interpreted in *Santiago, Gancayco, Dela Fuente,* and *Guevara-Salonga*.

8. **ID.; ID.; ID.; ID.; INCLUSION OF THE SERVICES RENDERED IN THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) IN THE COMPUTATION OF LONGEVITY PAY DOES NOT CONSTITUTE JUDICIAL**

LEGISLATION, BUT IS GROUNDED ON EXISTING LAWS, JURISPRUDENCE, AND EXECUTIVE CONTEMPORANEOUS CONSTRUCTION.— Justice Gacutan was still a Commissioner of the NLRC when Republic Act No. 9347 took effect. From the date of effectivity of the law onwards, her services as NLRC Commissioner are therefore covered by the beneficial effect of the amendment of Article 216 of the Labor Code by Republic Act No. 9347, which gave the NLRC Commissioners the same rank and salary as Associate Justices of the Court of Appeals. As Republic Act No. 9347 expresses the intent to place the NLRC Commissioners in exactly the same footing as their counterparts in the Court of Appeals, and "salary" includes longevity pay, then Justice Gacutan's longevity pay should be reckoned from August 26, 2006, the date Republic Act No. 9347 took effect, at which time she was still NLRC Commissioner. Thus, five years after that date, or on August 26, 2011, she became entitled to receive longevity pay equivalent to 5% of her monthly basic pay at that time; and, she is now entitled to adjustment of salary, allowances, and benefits only as of that date. As regards her request that her entire services as NLRC Commissioner be credited as part of her government service for the purpose of retirement under Republic Act No. 910, as amended by Republic Act No. 9946, the same may be allowed as it is in accordance with Section 1 of Republic Act No. 910, as amended by Republic Act No. 9946, which requires fifteen (15) years service in the Judiciary or in any other branch of the Government as a condition for coverage of the said law. [T]he x x x ratiocination does not constitute judicial legislation. It is firmly grounded on existing laws, jurisprudence, and executive contemporaneous construction. It was Congress which enacted Republic Act Nos. 9417, 9347, and 10071, granting certain officials of the Executive Department the same salary as their respective counterparts in the Judiciary, and "salary" refers to basic monthly pay plus longevity pay per the plain language of Section 42 of Batas Pambansa Blg. 129 x x x. It bears to stress though that it is irrefragably within the legislative power of Congress to enact Republic Act Nos. 9417, 9347, and 10071, and it is beyond the judicial power of the Court to question the wisdom behind said legislations.

BRION, *J., dissenting opinion*:

1. REMEDIAL LAW; THE JUDICIARY REORGANIZATION ACT OF 1980, (BATAS PAMBANSA 129), SECTION 42 THEREOF; LONGEVITY PAY; ALL JUDGES AND JUSTICES ARE ENTITLED TO THE SALARY PRESCRIBED FOR THEM UNDER SECTION 41 OF BP 129, BUT ONLY THOSE WHO HAVE RENDERED FIVE YEARS OF CONTINUOUS, EFFICIENT, AND MERITORIOUS SERVICE IN THE JUDICIARY ARE GRANTED MONTHLY LONGEVITY PAY EQUIVALENT TO 5% OF THE MONTHLY BASIC PAY.— ***The language and terms of Section 42 of BP 129 are very clear and unambiguous***. A plain reading of Section 42 shows that it grants longevity pay to a judge or justice (and to none other) who has rendered five years of continuous, efficient, and meritorious ***service in the Judiciary***. The granted montly longevity pay is equivalent to 5% of the monthly basic pay. Notably, ***Section 42 of BP 129 on longevity pay is separate from the provision on the salary of members of the judiciary found in Section 41 of BP 129***. This separate placement reflects the longevity pay's status as a ***separate benefit for members of the judiciary*** who have rendered "continuous, efficient and meritorious service in the judiciary;" longevity pay is not part of the salary that judges and justices are granted under Section 41. In other words, all judges and justices are entitled to the salary prescribed for them under Section 41 of BP 129, but only those who have complied with the requisites of Section 42 are entitled to receive the additional longevity pay benefit.

2. ID.; ID.; ID.; INCUMBENT JUDGES AND JUSTICES WHO HAD PREVIOUS GOVERNMENT SERVICE OUTSIDE THE JUDICIARY AND WHO HAD BEEN GRANTED EQUIVALENT JUDICIAL RANK UNDER THESE PREVIOUS POSITIONS, CANNOT CREDIT THEIR PAST NON-JUDICIAL SERVICE AS SERVICE IN THE JUDICIARY FOR PURPOSES OF SECURING BENEFITS APPLICABLE ONLY AND EARNED WHILE A MEMBER OF THE JUDICIARY, UNLESS CONGRESS BY LAW SAYS OTHERWISE AND ONLY FOR PURPOSES OF ENTITLEMENT TO SALARIES AND BENEFITS.— The inclusion of past services in another branch of government in the computation of longevity pay in the judiciary has no express

basis in law. ***None of the laws that grant similarity of salaries and benefits between executive officials and their counterparts in the judiciary mention that services in these executive positions would be included in the computation of longevity pay in the judiciary.*** In Justice Gacutan's case, her services as past National Labor Relations Commission Commissioner *(NLRC)* places her under the operation of Republic Act No. 9347 (*RA No. 9347*), which amended Article 216 of the Labor Code x x x. RA No. 9347 merely used the salary, allowances, and benefits received by CA Justices as a yardstick for the salary, allowances, and benefits to be received by NLRC commissioners. This is what RA No. 9347 meant when it granted NLRC commissioners the same salary, allowances, and benefits as CA Associate Justices. The grant of an equivalent judicial rank does not (and cannot) make an official in the executive a member of the judiciary; thus, benefits that accrue only to members of the judiciary cannot be granted to executive officials. This is a consequence of the separation of powers principle that underlies the Constitution. In more concrete terms, incumbent judges and justices who had precious government service ***outside the judiciary*** and who had been ***granted equivalent judicial rank*** under these previous positions, cannot credit their past non-judicial service as service in the judiciary for purposes of securing benefits applicable only and earned while a member of the judiciary, ***unless Congress by law says otherwise and only for purposes of entitlement to salaries and benefits.***

3. **ID.; ID.; ID.; ID.; THE GRANT OF LONGEVITY PAY FOR PAST SERVICES IN THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), BASED ON THE GRANT OF LONGEVITY PAY TO JUDGES AND JUSTICES OF THE JUDICIARY, AMOUNTS TO PROHIBITED JUDICIAL LEGISLATION.—** The grant of longevity pay for past services in the NLRC, based on the grant of longevity pay to judges and justices of the judiciary, amounts to ***prohibited judicial legislation.*** Section 42 of BP 129 is clear in requiring five years of meritorious, efficient, and continuous services ***in the judiciary***; subsequent legislation conferring the same salary and benefits that judges and justices enjoy to designated counterparts in the executive did not amend this requirement, expressly or impliedly. RA No. 9347, in particular, did not specifically provide that the services in the NLRC may

be tacked with the length of judicial service for purposes of computing longevity pay in the judiciary. Neither can the tacking of these periods be implied from the language of Article 216 of the Labor Code, as amended, as the provision merely uses the salary and benefits of CA Associate justices as a yardstick for determining the salary and benefits of NLRC commissioners. It must be pointed out that the grant of the requested longevity pay can be a ***blow disastrous to the reputation of the judiciary and to this Court's role as the final authority in interpreting the Constitution***, when the public realizes that this Court engaged in judicial legislation, through interpretation, to undeservedly favor its own judges and justices.

4. ID.; ID.; ID.; ID.; ID.; A GRANT OF LONGEVITY PAY TO EXECUTIVE OFFICIALS WOULD EFFECTIVELY BE A MISPLACED EXERCISE OF LIBERALITY AT THE EXPENSE OF PUBLIC FUNDS AND TO THE PREJUDICE OF SECTORS WHO ARE MORE IN NEED OF THESE FUNDS.— The liberal approach does not allow the inclusion of the period of services in the NLRC (or any executive office) to the period of judicial service to grant longevity pay in the judiciary. The law is clear and unequivocal in its requirements for the grant of longevity pay, and cannot thus be amended through a claimed liberal approach. The Court should not forget that liberality is not a magic wand that can ward off the clear terms and import of express legal provisions; it has a place only when, between two positions that the law can both accommodate, the Court chooses the more expansive or more generous option. ***It has no place where no choice is available at all because the terms of the law are clear and do not at all leave room for discretion***. In terms of the longevity pay's purpose, liberality has no place where service is not to the judiciary, as the element of loyalty – the virtue that longevity pay rewards – is not at all present. x x x [***t***]***he policy of liberal construction cannot and should not be to the point of engaging in judicial legislation – an act that the Constitution absolutely forbids this Court to do***. The Court may not, in the guise of interpretation, enlarge the scope of a statute or include, under its terms, situations that were not provided nor intended by the lawmakers. ***The Court cannot rewrite the law to conform to what it or certain of its Members think should be the law. Not to be forgotten is the effect of this Court's grant on the***

use of public funds: funds granted to other than the legitimate beneficiaries are misdirected funds that may be put to better use by those sectors of society who need them more.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

The Resolution dated June 16, 2015, penned by Honorable Justice Arturo D. Brion (Brion), in A.M. Nos. 12-8-07-CA, 12-9-5-SC, and 13-02-07-SC, resolved, among other matters, to deny the request of Court of Appeals (CA) Justice Angelita A. Gacutan (Gacutan) to include her services as Commissioner of the National Labor Relations Commission (NLRC) in the computation of her longevity pay.

CA Justice Gacutan filed a Motion for Reconsideration of said ruling, praying that herein *ponente's* dissent to the Resolution dated June 16, 2015, joined by five other Justices, prevails. In addition, CA Justice Gacutan submitted that the grant by the Court of her request that her services in the NLRC (as of 2006) be included in computing her longevity pay would be a reward for her past continuous services as a lifelong public servant who eventually retired from the judiciary, and that "by granting her request, there is no judicial legislation - there is only the recognition of justice and equity to which we in the judiciary stand for."

After conscientious review, the Court resolves to grant CA Justice Gacutan's Motion for Reconsideration. CA Justice Gacutan's services as NLRC Commissioner should be included in the computation of her longevity pay, but only from August 26, 2006, when Republic Act No. 9347, which amended Section 216 of the Labor Code, took effect.

Herein *ponente* had already thoroughly and extensively discussed in her Concurring and Dissenting Opinion to the Resolution dated June 16, 2015 the bases for her position - now adopted by the Court - that longevity pay under Section 42 of Batas Pambansa Blg. 129 is treated as part of salary and

extended to certain officials in the Executive Department who are, by law, granted the same salary as their counterparts in the Judiciary. Pertinent parts of said Concurring and Dissenting Opinion are worth reproducing below:

The Literal Language of the Law

Section 42 of Batas Pambansa Blg. 129, otherwise known as "The Judiciary Reorganization Act of 1980," as amended, provides:

> SEC. 42. *Longevity pay.* - A monthly longevity pay equivalent to [five percent] 5% of the monthly basic pay shall be paid to the Justices and Judges of the courts herein created for each five years of continuous, efficient, and meritorious service rendered in the judiciary: *Provided,* That in no case shall the **total salary of each Justice or Judge concerned, after this longevity pay is added**,exceed the salary of the Justice or Judge next in rank. (Emphasis supplied.)

As a rule, therefore, the grant of longevity pay under Section 42 of Batas Pambansa Blg. 129 is premised on the rendition of continuous, efficient, and meritorious service in the Judiciary, That is the express language of the law.

Nonetheless, there are existing laws which expressly require the qualifications for appointment, confer the rank, and grant the salaries, privileges, and benefits of members of the Judiciary on other public officers in the Executive Department, such as the following;

(a) the Solicitor General and Assistant Solicitor Generals of the Office of the Solicitor General (OSG); and

(b) the Chief Legal Counsel and the Assistant Chief Legal Counsel, the Chief State Prosecutor, and the members of the National Prosecution Service (NPS) in the Department of Justice.

The intention of the above laws is to establish a parity in qualifications required, the rank conferred, and the salaries and benefits given to members of the Judiciary and the public officers covered by the said laws, The said laws seek to give equal treatment to the specific public officers in the executive department and the Judges and Justices who are covered by Batas Pambansa Blg. 129, as amended, and other relevant laws. In effect, these laws recognize that public officers who are expressly identified in the laws by the special nature of their official functions render services which are as important as

the services rendered by the Judges and Justices. They acknowledge the respective roles of those public officers and of the members of the Judiciary in the promotion of justice and the proper functioning of our legal and judicial systems.

Thus, the laws operate under the principle of "equal in qualifications and equal in rank, equal in salaries and benefits received." The reasonable and logical implication of this principle is that, in the context of the dispute resolution mechanism in particular and of the justice system in general, the services rendered by the public officers concerned and the members of the Judiciary are equal in importance.

I respectfully submit the following arguments:

(1) The law is clear: the term "salary" covers basic monthly pay plus longevity pay.

(2) The concept of longevity pay as "salary" should not be confused with "rank."

(3) The legislative intent of salary increases for certain Executive officials accords with "salary" as inclusive of longevity pay.

(4) The Court's long-standing interpretation of the term "longevity pay" as part of "salary" is correct.

(5) The executive contemporaneous construction of longevity pay is consistent with the law, as interpreted by the Supreme Court.

(6) Longevity pay is not a mere "benefit."

Each of these arguments is discussed in detail below.

The law is clear: the term "salary" covers basic monthly pay plus longevity pay.

That the language of the law itself, in this case, Section 42 of Batas Pambansa Blg. 129, is the starting and referential point of discussion of longevity pay under that law is not in dispute. It provides:

> SEC. 42. *Longevity pay.* – A monthly longevity pay equivalent to [five percent] 5% of the monthly basic pay shall be paid to the Justices and Judges of the courts herein created for each five years of continuous, efficient, and meritorious service

> rendered in the judiciary: *Provided*, That in no case shall the **total salary** of each Justice or Judge concerned, **after this longevity pay is added,** exceed the salary of the Justice or Judge next in rank. (Emphases supplied.)

There is disagreement, however, on the construction of the above-quoted provision with other relevant laws, such as Section 3 of Republic Act No. 9417, Article 216 of the Labor Code, as amended by Republic Act No. 9347, and Section 16 of Republic Act No. 10071, which require the qualifications for appointment, confer the rank, and grant the same salaries, privileges, and benefits of members of the Judiciary on other public officers in the Executive Department.

For Justice Brion, "salary" used in the aforesaid other laws should not include longevity pay. He insists that Section 42 of Batas Pambansa Blg. 129 is clear and unequivocal, that longevity pay is granted to a Judge or Justice who has rendered five years of continuous, efficient, and meritorious service in the Judiciary. Service in the Judiciary within the required period is the only condition for entitlement to longevity pay under Section 42 of Batas Pambansa Blg. 129.

The approach of Justice Brion on the matter is novel. It is, however, negated by the language and intent of relevant laws, as well as by the long-standing interpretation of the Court and the Executive Branch on the matter.

The concept of longevity pay as "salary" should not to be confused with "rank."

Under Section 42 of Batas Pambansa Blg. 129, longevity pay is an amount equivalent to 5% of the monthly basic pay given to Judges and Justices for each five years of continuous, efficient, and meritorious service rendered in the Judiciary, It is not only an amount given as an addition to the basic monthly pay but, more importantly, **it forms part of the salary of the recipient thereof.**

In other words, **longevity pay is "salary"** and it should not be confused with **"rank."**

That is how this Court has treated the longevity pay under Section 42 of Batas Pambansa Blg. 129 since 1986, particularly in *Re: Longevity Pay of the Associate Justices of the Sandiganbayan,* It is a treatment which reflects the Court's reading of the text of the law and its understanding of the law's legislative intent.

x x x x

xxx [T]he settled meaning of "rank," particularly that it does not include the privilege to use the title of Judge or Justice should not be used to determine the import of the term "salary" as used in the different laws. Otherwise, there would be no point in mentioning in the laws "rank" separately from "salary." "Rank" unquestionably has nothing to do with the amount of compensation or pay an official is entitled to under the law. The said term pertains only to the "class" or "standing" in an organization or societal structure.

The legislative intent of salary increases for certain Executive officials accords with "salary" as inclusive of longevity pay.

In conferring upon certain officials in the Executive the same salaries, aside from their rank, as those of their respective judicial counterparts, Congress intended to make the salaries of the former at par with the latter. The legislative records support this.

In particular, the following portion of the interpellations in connection with Senate Bill No. 2035, which became Republic Act No. 9347, is enlightening:

> Asked by the Chair whether the proposed amendment (Section 4) to Article 216 of the Labor Code means an increase in **salaries**, Senator Ejercito Estrada (J) clarified that the section proposes that **the arbiters be at par with the judges of the regional trial courts, and the commissioners at par with the justices of the Court of Appeals.** (Emphases supplied.)

In his sponsorship speech of Senate Bill No. 2659, which became Republic Act No, 10071, Senator Francis Joseph Escudero adopted as part of his sponsorship speech several explanatory notes of related bills, including the explanatory note of Senator Edgardo Angara for Senate Bill No. 213. The relevant portion of the explanatory note reads:

> At the heart of a strong justice system is the indispensable and complementary role of the State's prosecutorial and counselling arm. The National Prosecution Service [NPS] and the Office of the Chief State Counsel [OCSC] are mandated to uphold the rule of law as a component of the justice system.

> It is sad to note, however, that our prosecutors and state counselors earn less than those in the Judiciary. Such situation has produced a migratory effect. After spending a few years in the NPS or the OCSC, they resign and join the ranks of the judiciary, x x x.
>
> This bill seeks to correct the aforementioned inequities, The increase in **salaries** and the granting of additional services and privileges to the members of the National Prosecution Service and the Office of the Chief State Counsel, will place them **at par with those in the Judiciary** [and] would deter the current practice of migration, x x x. (Emphases supplied.)

This legislative intent to grant certain officials of the Executive Department the same salaries as that of their respective judicial counterparts should be read in conjunction with how salary is defined in the law and treated vis-a-vis longevity pay in prevailing case law. In enacting a statute, the legislature is presumed to have been aware of, and have taken into account, prior laws and jurisprudence on the subject of legislation. *Manila Lodge No. 761 v. Court of Appeals* instructs:

> [I]t is presumed that when the lawmaking body enacted the statute, it had full knowledge of prior and existing laws and legislation on the subject of the statute and acted in accordance or with respect thereto. (Citation omitted.)

Thus, Congress knew, or is presumed to have known, the concept of longevity pay under Section 42 of Batas Pambansa Blg. 129 **as part of the total salary** of members of the Judiciary when it enacted Republic Act Nos. 9417, 9347, and 10071, which granted certain officials of the OSG, the NLRC, and the NPS, respectively, the same salary as their respective counterparts in the Judiciary. Moreover, armed with that knowledge, Congress is presumed to have intended to adopt the definition of "salary" (as constituting basic monthly salary plus longevity pay) when it enacted Republic Act Nos. 9417, 9347, and 10071, which will be in keeping with the legislative intent to equalize the salary of certain executive officials with members of the Judiciary. To do otherwise will negate the express legislative intent.

As it is part of the salary of a member of the Judiciary, it should perforce be part of the salary of the public officers granted by law with the same rank and salary as their counterparts in the Judiciary.

Accordingly, the increase in the salary of Judges and Justices by virtue of the longevity pay should also result in the corresponding increase in the salary of the public officers who, under relevant laws, enjoy the same rank and salary as their judicial counterparts. Otherwise, the law's express language and its intention to grant the same rank and salary of a member of the Judiciary to the said public officers will be defeated.

xxxx

In other words, by enacting Republic Act Nos. 9417, 9347, and 10071, which granted certain officials of the Executive Department the same salary as their respective counterparts in the Judiciary, Congress manifested its intent to treat "salary" the way it has been treated in Batas Pambansa Blg. 129 as interpreted by this Court, that is, basic monthly pay plus longevity pay.

Since the above-mentioned laws do not make any distinction with respect to the term "salary" as it is expressly provided for in Section 42 of Batas Pambansa Blg. 129, we should not make any distinction. *Ubi lex non distinguit nec nos distinguere debemus.*

It is in light of the legislative intent that the insistence of Justice Brion to strictly adhere to the sentence structure of Section 42 of Batas Pambansa Blg. 129, without regard to other laws on the matter, contradicts such legislative intent and constitutes judicial legislation, which will in effect treat "salary" in a way that is not borne out by the language of the law and the established Court rulings on the matter.

The longevity pay forms part of the salary of a Judge or Justice, since Section 42 of Batas Pambansa Blg. 129 says it is "added" to the said salary. Thus, the salary of the members of the Judiciary refers to their respective basic pay plus the longevity pay to which they may be entitled by virtue of their continuous, efficient, and meritorious service in the Judiciary. That should also be the definition of the "salary" of the concerned public officers who enjoy the same rank and salary as Judges or Justices, if the word "same" employed in the laws pertaining to executive officials is to be understood in its plain and ordinary meaning.

A narrow and restrictive approach which limits the longevity pay under Section 42 of Batas Pambansa Blg. 129, as amended, to service rendered in the Judiciary only is to unduly restrict the definition of

salary, fixing it to the basic pay. To depart from the meaning expressed by the words, is to alter the statute, to legislate and not to interpret. It is to amend the laws by judicial fiat, x x x.

The Court's long-standing interpretation of the term "longevity pay" as part of "salary" is correct.

This Court has long recognized that the longevity pay under Section 42 of Batas Pambansa Blg. 129 is among the salaries and benefits enjoyed by members of the Judiciary that are extended to the public officers conferred by law with the rank of Judges of the lower courts or Justices of the Court of Appeals.

The Court's Resolution dated September 12, 1985 in *Request of Judge Fernando Santiago for the Inclusion of His Services as Agrarian Counsel in the Computation of His Longevity Pay* granted Judge Santiago's request and his longevity pay was computed "from the date of his assumption of office as Agrarian Counsel on August 9, 1963 and not from the date he assumed office as Judge of the Court of First Instance on June 1, 1970." The basis of this is Section 160 of Republic Act No. 3844 which provides:

> Section 160. *Creation of Office of Agrarian Counsel.* – To strengthen the legal assistance to agricultural lessees and agricultural owner-cultivators referred to in this Code, the Tenancy Mediation Commission is hereby expanded and shall hereafter be known as the Office of the Agrarian Counsel. **The head of the Office shall hereafter be known as Agrarian Counsel and shall have the rank, qualifications and salary of First Assistant Solicitor General.** He shall be assisted by a Deputy Agrarian Counsel, who shall have the rank, qualifications and salary of Assistant Solicitor General. The Agrarian Counsel and Deputy Agrarian Counsel shall be appointed by the President with the consent of the Commission on Appointments of Congress and shall be under the direct supervision of the Secretary of Justice. (Emphasis supplied.)

Under Republic Act No. 335, as amended by Presidential Decree No. 478, the Assistant Solicitor General has the "same rank, qualifications for appointment, and salary as a Judge of the Court of First Instance," now Regional Trial Court.

In the Resolution dated July 25, 1991 in *In Re: Adjustment of Longevity Pay of Hon. Justice Emilio A. Gancayco,* this Court said:

> The Court approved the request of Justice Emilio A. Gancayco for the adjustment of his longevity pay not only for purposes of his retirement but also for his entire judicial service by including as part thereof his period of service from August 9, 1963 to September 1, 1972 as Chief Prosecuting Attorney (Chief State Prosecutor) considering that under Republic Act No. 4140, the Chief State Prosecutor is given the **same rank, qualification and salary** of a Judge of the Court of First Instance. (Emphasis supplied.)

In the Resolution dated November 19, 1992 in *Re: Adjustment of Longevity Pay of former Associate Justice Buenaventura S. dela Fuente,* this Court adverted to the *Santiago* and *Gancayco* Resolutions and said:

> This refers to the letter of former Associate Justice Buenaventura S. dela Fuente, dated September 27, 1992, requesting a recomputation of his longevity pay. It appears that former Justice dela Fuente had been the Chief Legal Counsel, Department of Justice, since June 22, 1963 until his promotion to the Court of Appeals in 1974, the **qualifications** for the appointment to which position as well as its **rank** and **salary**, pursuant to R.A. 2705, as amended by R.A. 4152, shall be the **same** as those prescribed for the first and next ranking assistant solicitors general, Accordingly, in line with the rulings of this Court in Re: Adjustment of Longevity Pay of Hon. Justice Emilio A. Gancayco, dated July 25, 1991 and Administrative Matter No. 85-8-8334-RTC. - Re: Request of Judge Fernando Santiago for the inclusion of his services as Agrarian Counsel in the computation of his longevity pay, dated September 12, 1985, the Court Resolved to (a) APPROVE the aforesaid request of former Associate Justice Buenaventura S. dela Fuente[,] and (b) AUTHORIZE the recomputation of his longevity pay from June 22, 1963, when he assumed office and began discharging the functions of Chief Legal Counsel.

In *Re: Request of Justice Josefina Guevara-Salonga, Court of Appeals, that Her Services as Assistant Provincial Fiscal of Laguna be Credited as Part of Her Services in the Judiciary for Purposes of Her Retirement,* this Court stated:

> [Republic Act No. 10071] validates the recognition of the services of *Justice Emilio A. Gancayco,* whom we credited for his service

> as Chief Prosecuting Attorney (Chief State Prosecutor), based on *Republic Act No. 4140* which likewise grants his office (as Chief Prosecuting Attorney) the rank, qualification and salary of a Judge of the Court of First Instance. In the same manner, the current law also validates the crediting of past service to *Justice Buenaventura dela Fuente* who was the Chief Legal Counsel of the Department of Justice. (Citations omitted.)

Also, in *Guevara-Salonga,* this Court granted the request of Court of Appeals Justice Guevara-Salonga for the crediting of her services as Assistant Provincial Fiscal of Laguna as part of her services in the Judiciary for purposes of her retirement pursuant to Sections 16 and 24 of Republic Act No. 10071 which respectively provide:

> Sec. 16. *Qualifications, Ranks and Appointments of Prosecutors and Other Prosecution Officers.* – x x x.
>
> Prosecutors with the rank of Prosecutor IV shall have the **same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits** as those of a judge of the Regional Trial Court.
>
> Prosecutors with the rank of Prosecutor III shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Metropolitan Trial Court.
>
> Prosecutors with the rank of Prosecutor II shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Municipal Trial Court in cities.
>
> Prosecutors with the rank of Prosecutor I shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of a Judge of the Municipal Trial Court in Municipalities.

> Sec. 24. *Retroactivity.* - The benefits mentioned in Sections 14 and 16 hereof shall be granted to all those who retired prior to the effectivity of this Act. (Emphasis supplied.)

The Resolutions in *Santiago, Gancayco, Dela Fuente,* and *Guevara-Salonga* reveal that this Court has consistently approached and applied the longevity pay provision under Section 42 of Batas Pambansa Blg. 129 liberally, that is, as applicable by statutory extension to those covered by the same qualifications and given the same rank and salary as the members of the Judiciary. They evince the view that the services rendered in their respective offices by the public officers required by law to have the same qualifications, rank, and salary of their counterparts in the Judiciary are considered to be **substantially the same as service in the Judiciary** for purposes of the said public officers' enjoyment of the longevity pay under Section 42 of Batas Pambansa Blg. 129.

x x x x

That the said laws manifest a liberal attitude towards the public officers they respectively cover is reinforced by this Court's treatment in *Re: Longevity Pay of the Associate Justices of the Sandiganbayan* of the longevity pay under Section 42 of Batas Pambansa Blg. 129 as something that "forms part of the salary of the recipient thereof." In particular, the Court adopted a liberal stance and ruled:

> [L]ongevity pay once earned and enjoyed becomes a vested right and **forms part of the salary of the recipient thereof** which may not be reduced, despite the subsequent appointment of a justice or judge next higher in rank who is not entitled to longevity pay for being new and not having acquired any longevity in the government service. Furthermore, diminution or decrease of the salary of an incumbent justice or judge is prohibited by Section 10 of Article X of the Constitution; hence, such recipient may continue to earn and receive additional longevity pay as may be warranted by subsequent services in the judiciary, because the purpose of the Longevity Pay Law is to reward justices and judges for their long and dedicated service as such. The provision of the law that the total salary of each justice or judge concerned, after adding his longevity pay, should not exceed the salary plus longevity pay of the justice or judge next higher in rank, refers only to the initial implementation of the law and does not proscribe a justice or

> judge who is already entitled to longevity pay, from continuing to earn and receive longevity pay for services rendered in the judiciary subsequent to such implementation, by the mere accident of a newcomer being appointee to the position next higher in rank, x x x. (Emphasis supplied.)

Justice Brion, however, claims that the said cases are not controlling herein, as they are allegedly a strained and erroneous application of Section 42 of Batas Pambansa Blg. 129 that should be abandoned.

Such claim of grave mistake should be premised on a clear finding that prior rulings were wrong. In this case, I do not find Justice Brion's characterization of *Santiago, Gancayco, Dela Fuente,* and *Guevara-Salonga* as "erroneous" and mere "aberrations" as proper.

xxx While certain members of the Judiciary may feel an exclusive franchise to the rank, salary, and benefits accorded to them by law, we cannot impose our own views on Congress which has ample power to enact laws as it sees fit, absent any grave abuse of discretion or constitutional infraction on its part.

x x x x

The executive contemporaneous construction of longevity pay is consistent with the law, as interpreted by the Supreme Court.

Contemporaneous construction is the interpretation or construction placed upon the statute by an executive or administrative officer called upon to execute or administer the statute. It includes the construction by the Secretary of Justice in his capacity as the chief legal adviser of the government.

In this connection, the contemporaneous construction by the Department of Justice and other offices in the executive branch disclose a similar treatment of the longevity pay provision of Batas Pambansa Blg. 129 as shown by the following pertinent portions of the 2nd Indorsement dated November 21, 1988 by the then Secretary of Justice, Sedfrey A. Ordoñez:

> 1. Longevity pay forms part of the salary of the recipient (Resolution of the Supreme Court in Adm. Matter No. 86-9-2394-0, Re: Longevity Pay of the Associate Justices of the Sandiganbayan). Thus, **when the law grants to certain officials**

of the executive department the "rank and salary" of a member of the Judiciary, it should be deemed to include longevity pay, which is part of salary; otherwise, the law's intention to grant the same rank and salary of a justice/ judge to executive officials would be defeated or nullified.

2. The statement x x x that those executive officials who were granted longevity pay "were either justice or judge of the court at the time of the grant" is not entirely correct. Former Chief State Counsel, now Court of Appeals Justice Minerva P.G. Reyes, was granted longevity pay in 1985 when she was the incumbent Chief State Counsel. Assistant Solicitors General Ramon Barcelona, Romeo dela Cruz, Zoilo Andin and Amado Aquino are presently receiving longevity pay for their length of service as Assistant Solicitors General.

3. The Supreme Court computed the longevity pay of Judge Fernando Santiago "from the date of his assumption of office as Agrarian Counsel [which was an executive office] on August 9, 1963 and not from the date he assumed office as Judge of the Court of First Instance on June 1, 1970" (Adm. Matter No. 85-8-8384-RTC). The same thing was done in the case of Justices Vicente Mendoza, Santiago Kapunan, Jose Racela, Lorna L. de la Fuente and Minerva P.G. Reyes, whose respective services in the Executive Department were credited in their favor for purposes of the longevity pay.

It bears reiterating that in the case of Justice Reyes, she has been receiving longevity pay since before her appointment in the Judiciary, that is, while she was, and on the basis of her being, Chief State Counsel x x x. The inclusion by the Supreme Court of her services as Assistant Chief State Counsel and[,] later, as Chief State Counsel in the computation of her longevity pay as a member of the Judiciary constitutes a judicial affirmance by the highest court of the land of the validity of the grant of longevity pay to her way back in 1985 while she was still an official of the Executive Department. (Emphasis supplied.)

To reiterate, the above opinion of then Justice Secretary Ordoñez constitutes contemporaneous construction of the issue at hand.

Justice Brion asserts that administrative construction is merely advisory and is not binding upon the courts. He is absolutely correct.

That is the rule. In the same vein, that rule also means that courts should respect the contemporaneous construction placed upon a statute by the executive officers whose duty is to enforce it, and unless such interpretation is clearly erroneous will ordinarily be controlled thereby.

As I have shown above, the contemporaneous construction of the then Justice Secretary is in accordance with both statutory law and case law.

Longevity pay is not a mere "benefit."

x x x x

xxx [L]ongevity pay is not a mere benefit, but is salary, as it is a component of the "total salary." That is how this Court treated longevity pay as a contemporaneous interpretation of Section 42 of Batas Pambansa Blg. 129. That is also how Congress presumably intended to treat longevity pay when it granted a salary which is the same as that of members of the Judiciary to certain officials in the Executive Department under relevant laws, including Republic Act Nos. 9417, 9347, and 10071, as Congress did not qualify or limit the term "salary" in these laws.

Section 42 of Batas Pambansa Blg. 129 clearly states that the longevity pay is "added" to the basic monthly salary and forms part of the "total salary" of a Judge or Justice. Thus, the salary of the members of the Judiciary refers to their respective basic pay plus the longevity pay to which they may be entitled by virtue of their continuous, efficient, and meritorious service in the Judiciary, That should also be the definition of the "salary" of the concerned public officers who enjoy the same salary as Judges or Justices, if the word "same" employed in the laws pertaining to executive officials is to be understood in its plain and ordinary meaning.

x x x x

Therefore, longevity pay under Section 42 of Batas Pambansa Blg. 129 must be treated as salary and to extend it to certain officials in the Executive Department who are, by law, granted the same salary as their counterparts in the Judiciary. That is, after all, how Congress intended it to be. That is how it was interpreted in *Santiago*, *Gancayco*, *Dela Fuente*, and *Guevara-Salonga*. (Citations omitted.)

CONCLUSION

x x x x

The Instant Requests Considered

Justices Veloso and Gacutan anchor their claim on Article 216 of the Labor Code, as amended by Republic Act No. 9347, which reads:

> Article 216. *Salaries, Benefits and Emoluments*. -The Chairman and **Members of the Commission shall have the same rank, receive an annual salary equivalent to, and be entitled to the same allowances, retirement and benefits as those of the** Presiding Justice and **Associate Justices of the Court of Appeals,** respectively. Labor Arbiters shall have the same rank, receive an annual salary equivalent to and be entitled to the same allowances, retirement and other benefits and privileges as those of the Judges of the Regional Trial Courts. In no case, however, shall the provision of this Article result in the diminution of the existing salaries, allowances and benefits of the aforementioned officials. (Emphases supplied.)

Republic Act No. 9347 took effect on August 26, 2006. Prior to its amendment by Republic Act No. 9347, Article 216 of the Labor Code, as amended by Republic Act No. 6715, provides:

> Article 216. *Salaries, benefits and other emoluments.* - The Chairman and **members of the Commission shall receive an annual salary at least equivalent to, and be entitled to the same allowances and benefits as, those of the** Presiding Justice and **Associate Justices of the Court of Appeals,** respectively. The Executive Labor Arbiters shall receive an annual salary at least equivalent to that of an Assistant Regional Director of the Department of Labor and Employment and shall be entitled to the same allowances and benefits as that of a Regional Director of said department. The Labor Arbiters shall receive an annual salary at least equivalent to, and be entitled to the same allowances and benefits as, that of an Assistant Regional Director of the Department of Labor and Employment. In no case, however, shall the provision of this Article result in the diminution of existing salaries, allowances and benefits of the aforementioned officials. (Emphases supplied.)

x x x x

II. A.M. No. 12-9-5-SC

Justice Gacutan was still a Commissioner of the NLRC when Republic Act No. 9347 took effect. From the date of effectivity of the law onwards, her services as NLRC Commissioner are therefore covered by the beneficial effect of the amendment of Article 216 of the Labor Code by Republic Act No. 9347, which gave the NLRC Commissioners the same rank and salary as Associate Justices of the Court of Appeals. As Republic Act No. 9347 expresses the intent to place the NLRC Commissioners in exactly the same footing as their counterparts in the Court of Appeals, and "salary" includes longevity pay, then Justice Gacutan's longevity pay should be reckoned from August 26, 2006, the date Republic Act No. 9347 took effect, at which time she was still NLRC Commissioner. Thus, five years after that date, or on August 26, 2011, she became entitled to receive longevity pay equivalent to 5% of her monthly basic pay at that time; and, she is now entitled to adjustment of salary, allowances, and benefits only as of that date.

As regards her request that her entire services as NLRC Commissioner be credited as part of her government service for the purpose of retirement under Republic Act No. 910, as amended by Republic Act No. 9946, the same may be allowed as it is in accordance with Section 1 of Republic Act No. 910, as amended by Republic Act No. 9946, which requires fifteen (15) years service in the Judiciary or in any other branch of the Government as a condition for coverage of the said law.

Clearly, the foregoing ratiocination does not constitute judicial legislation. It is firmly grounded on existing laws, jurisprudence, and executive contemporaneous construction. It was Congress which enacted Republic Act Nos. 9417, 9347, and 10071, granting certain officials of the Executive Department the same salary as their respective counterparts in the Judiciary, and "salary" refers to basic monthly pay plus longevity pay per the plain language of Section 42 of Batas Pambansa Blg. 129. Justice Brion opines that the grant of longevity pay to executive officials would effectively be a misplaced exercise of liberality at the expense of public funds and to the prejudice of sectors who are more in need of these funds. It bears to stress though that it is irrefragably within the legislative power of Congress to enact Republic Act Nos. 9417, 9347, and 10071, and it is beyond the judicial power of the Court to question the wisdom behind said legislations.

WHEREFORE, premises considered, the Court resolves to **GRANT** the Motion for Reconsideration of CA Justice Gacutan and **MODIFY** the Resolution dated June 16, 2015 in A.M. Nos. 12-8-07-CA, 12-9-5-SC, and 13-02-07-SC, insofar as to **GRANT** CA Justice Gacutan's request that her services as NLRC Commissioner be included in the computation of her longevity pay, but reckoned only from August 26, 2006, when Republic Act No. 9347 took effect.

SO ORDERED.

Carpio, Velasco, Jr., Peralta, Bersamin, del Castillo, Perez, Mendoza, Reyes, and *Caguioa, JJ.,* concur.

Sereno, C.J., Perlas-Bernabe, and *Leonen, JJ.,* join the dissenting opinion of *J.* Brion.

Brion, J., see dissenting opinion.

Jardeleza, J., no part. Prior OSG action.

DISSENTING OPINION

BRION, *J.*:

I **dissent** from the *ponencia's* grant of the Motion for Reconsideration filed by former Court of Appeals (*CA*) Associate Justice Angelita Alberto-Gacutan (*Justice Gacutan*) asking the Court to reconsider the portion of the Court's Resolution[1] in A.M. Nos. 12-8-07-CA,[2] 12-9-5-SC,[3] and 13-02-07-SC[4] affecting her longevity pay.

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[1] Dated June 16, 2015.

[2] Re: Letter of Court of Appeals Justice Vicente S.E. Veloso for Entitlement to Longevity Pay for His Services as Commission Member III of the National Labor Relations Commission.

[3] Re: Computation of Longevity Pay of Court of Appeals Justice Angelita A. Gacutan.

[4] Re: Request of Court of Appeals Justice Remedios A. Salazar-Fernando that Her Services as MTC Judge and as COMELEC Commissioner be

On June 16, 2015, the Court had previously issued a Resolution, penned by Justice Arturo D. Brion, addressing the letter-requests of several retired CA justices asking for the re-computation of their longevity pay. These letter-requests had been consolidated, and the Court held in the Resolution's disposition:

(1) NOTE the Memorandum dated February 18, 2013 of Atty. Eden T, Candelaria and the Report and Recommendation dated February 15, 2013 of Atty, Corazon G. Ferrer-Flores;

(2) GRANT the request of Associate Justice Remedios A, Salazar-Fernando that her services as Judge of the Municipal Trial Court of Sta. Rita, Pampanga, be included in the computation of her longevity pay;

(3) DENY the request of Associate Justice Remedios A. Salazar-Fernando that her services as COMELEC Commissioner be included in the computation of her longevity pay;

(4) DENY the request of Associate Justice Angelita Gacutan that her services as NLRC Commissioner be included in the computation of her longevity pay from the time she started her judicial service;

(5) DENY with finality the motion for reconsideration of Associate Justice Vicente S.E. Veloso for lack of merit; and

(6) DIRECT the Clerk of this Court to proceed with the handling of granted longevity pay benefits under Section 42 of Batas Pambansa Blg. 129, pursuant to the guidelines and declarations outlined in the Moving On portion of this Resolution. [emphasis supplied]

Justice Gacutan now asks the Court to reconsider the denial we decreed by including in the computation of her longevity pay. She noted in her motion that two members of the Court (Justice Teresita J. Leonardo-De Castro – the *ponente* of the present Resolution – and Justice Presbitero J. Velasco, Jr.) issued Opinions that grant her request, and likewise adopted the arguments of these dissenting justices.[5]

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considered as Part of Her Judicial Service and Included in the computation/ adjustment of Her longevity pay.

[5] Motion for Reconsideration of Court of Appeals Justice Angelita Alberto-Gacutan dated September 21, 2015.

Justice Gacutan specifically responded to the June 16, 2015 *ponencia's* ruling that the judiciary is not in a position to recognize past services in the Executive, a different branch of government, and cannot thus determine the continuous, efficient, and meritorious service that the grant of longevity pay requires.[6]

According to Justice Gacutan, the determination of efficiency and meritorious service in her case may not be solely determined by the judiciary. She then proceeded to enumerate her illustrious career in the Executive, in the NLRC, and in the CA, and noted that the Judicial and Bar Council would not have nominated her for the position of CA Justice if its members had not favorably considered her intelligence, integrity, character, and experience.[7]

Reasons for my Dissent

I vote to DENY with finality Justice Gacutan's Motion for Reconsideration as it does not present any new or compelling argument to justify the Court's reversal of its Decision. The arguments Justice de Castro and Justice Velasco raised in their dissents to the June 16, 2015 Resolution have been thoroughly deliberated upon by the Court in its main ruling, and thus have already been sufficiently addressed.

The Petitioner's Past Service in the Executive is not a Material Issue.

When the Court, in the June 16, 2015 Resolution, said that the judiciary is not in a position to determine past continuous, efficient, and meritorious service in the Executive, it was not a personal attack on Justice Gacutan's illustrious career in Government, *The observation was meant to expound on the concept that* ***longevity pay*** *for members of the judiciary is* ***confined to services rendered within the judiciary.*** In other words, the character of her past executive service is not a material issue in the Court's denial of her request.

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[6] Motion for Reconsideration, p. 3.

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

The grant of longevity pay in the judiciary is based on Section 42 of Batas Pambansa Blg. No. 129 (*BP 129*)[8] which provides:

> Section 42. Longevity pay. - A monthly longevity pay equivalent to 5% of the monthly basic pay shall be paid to the Justices and Judges of the courts herein created for each five years of continuous, efficient, and meritorious service rendered in the judiciary; Provided, That in no case shall the total salary of each Justice or Judge concerned, after this longevity pay is added, exceed the salary of the Justice or Judge next in rank.

Laws subsequent to BP 129 conferred the same salaries and benefits granted to members of the judiciary, and to certain public officials in the executive who had been given ranks equivalent to those granted in the judiciary. The Court clarified in the June 16, 2015 Resolution that these laws do not expand the concept of longevity pay as provided in Section 42 of BP 129, and do not operate to include services in executive positions in determining the grant of longevity pay.

The Court reached this conclusion for the following reasons:

1. The Grant of Longevity Pay is only for Judges and Justices for Service in the Judiciary.

The language and terms of Section 42 of BP 129 are very clear and unambiguous. A plain reading of Section 42 shows that it grants longevity pay to a judge or justice (and to none other) who has rendered five years of continuous, efficient, and meritorious ***service in the Judiciary.*** The granted monthly longevity pay is equivalent to 5% of the monthly basic pay.

Notably, ***Section 42 of BP 129 on longevity pay is separate from the provision on the salary of members of the judiciary found in Section 41 of BP 129.***[9] This separate placement reflects

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[8] The Judiciary Reorganization Act of 1980.

[9] According to Section 41, judges and justices shall "receive such *compensation and allowances* as may be authorized by the President along the guidelines set forth in Letter of Implementation No. 93 pursuant to Presidential Decree No. 985, as amended by Presidential Decree No. 1597." Presidential Decree No. 985 pertains to the government's Position Classification Compensation System, which provides for the salary schedule

the longevity pay's status as a ***separate benefit for members of the judiciary*** who have rendered "continuous, efficient and meritorious service in the judiciary;" longevity pay is not part of the salary that judges and justices are granted under Section 41.

In other words, all judges and justices are entitled to the salary prescribed for them under Section 41 of BP 129, but only those who have complied with the requisites of Section 42 are entitled to receive the additional longevity pay benefit.

Thus, when Section 42 of BP 129 required that the total salary of judges and justices receiving longevity pay should not exceed the salary of those next in rank, it simply meant that the addition of longevity pay cannot result in judges and justices of lower rank receiving a bigger total compensation than those with higher rank.

The salary of judges and justices depend on the salary grade (and subsequent step increments) of their positions under the Compensation and Classification System referred to in Section 41 of BP 129. The *proviso* in Section 42 of the same law operates to limit the amount of longevity pay granted when it disrupts the compensation system referred to in Section 41. It does not integrate longevity pay in the salary due to judges and justices under the compensation system, as not all of them are entitled to receive longevity pay in the first place.

2. Justice Gacutan's Request has no Basis in Law.

The inclusion of past services in another branch of government in the computation of longevity pay in the judiciary has no express basis in law.

None of the laws that grant similarity of salaries and benefits between executive officials and their counterparts in the judiciary mention that services in these executive positions would be included in the computation of longevity pay in the judiciary.

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of government employees classified according to their salary grade and corresponding salary rate. PD 985 has been subsequently replaced with Republic Act No. 6758, which provides for the current Compensation and Position Classification System of the government.

In Justice Gacutan's case, her services as past National Labor Relations Commission Commissioner (*NLRC*) places her under the operation of Republic Act No. 9347[10] (*RA No. 9347*), which amended Article 216 of the Labor Code to read:

> ART. 216. Salaries, benefits and other emoluments. — The Chairman and members of the Commission shall have the ***same rank, receive an annual salary equivalent to, and be entitled to the same allowances, retirement and benefits*** as those of the Presiding Justice and Associate Justices of the Court of Appeals, respectively. Labor Arbiters shall have the same rank, receive an annual salary equivalent to and be entitled to the same allowances, retirement and other benefits and privileges as those of the judges of the regional trial courts. In no case, however, shall the provision of this Article result in the diminution of the existing salaries, allowances and benefits of the aforementioned officials.

The "salary" that Article 216 of the Labor Code speaks of pertains to the "compensation and allowances" under Section 41 of BP 129, as found in the salary schedule of the government's Compensation and Position Classification System. Thus, Article 216 provided NLRC commissioners with the same salary received by Associate Justices of the Court of Appeals as prescribed in the salary schedule found in the government's Compensation and Position Classification System.

The Compensation and Position Classification System prescribes the salary to be received by government employees depending on the salary grade their positions are classified in.[11]

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[10] An Act Rationalizing the Composition and Functions of the National Labor Relations Commission.

[11] Section 10 of **PD 985** describes the government's Compensation in this wise:

> Section 10. The Compensation Systems. The Compensation System consists of (a) a Salary Schedule; (b) a Wage Schedule; (c) policies relating to allowances, bonuses, pension plans, and other benefits accruing to employees covered; and (d) the rules and regulations which are herein provided, including those which may be promulgated thereafter for its administration. The Salary or Wage Schedules shall each consist of twenty-eight grades, with eight prescribed steps within each grade. Each grade represents a level of work difficulty and responsibility which distinguishes it from other grades in the Schedule.

Viewed in this light, the provision of the same rank as CA Associate Justices to NLRC Commissioners in Article 216 of the Labor Code simply meant that the latter shall have the same salary grade as the former.

As an additional benefit, NLRC commissioners may be granted the longevity pay that judges and justices receive under Section 42 of BP 129, for the commissioners' meritorious, efficient, and continuous service in the NLRC. But this is ***for CONGRESS, NOT FOR THIS COURT, to decide upon and grant.*** The grant to the members of the Executive Department of this kind of benefit is an act that the Constitution exclusively assigns to Congress. This is an authority and prerogative that the Constitution exclusively grants to Congress.

To recapitulate, RA No. 9347 merely used the salary, allowances, and benefits received by CA Justices as a yardstick for the salary, allowances, and benefits to be received by NLRC commissioners. This is what RA No. 9347 meant when it granted NLRC commissioners the same salary, allowances, and benefits as CA Associate Justices.

Each class of position in the Position Classification System provided under this Decree shall be assigned a salary or wage grade. The Salary and Wage Schedules shall be administered in accordance with the rules provided in this Decree.

A similar system had been subsequently adopted through **RA 6758,** which provides:

Section 5. Position Classification System. — The Position Classification System shall consist of classes of positions grouped into four main categories, namely: professional supervisory, professional non-supervisory, sub-professional supervisory, and sub-professional non-supervisory, and the rules and regulations for its implementation.

xxx xxx xxx

Section 6. Index of Occupational Services, Position Titles and Salary Grades of the Compensation and Position Classification System. — All positions in the government covered under Section 4 hereof shall be allocated to their proper position titles and salary grades in accordance with the Index of Occupational Services, Position Titles and Salary Grades of the Compensation and Position Classification System which shall be prepared by the DBM.

The grant of an equivalent judicial rank does not (and cannot) make an official in the executive a member of the judiciary; thus, benefits that accrue only to members of the judiciary cannot be granted to executive officials. This is a consequence of the separation of powers principle that underlies the Constitution.

In more concrete terms, incumbent judges and justices who had previous government service ***outside the judiciary*** and who had been ***granted equivalent judicial rank*** under these previous positions, cannot credit their past non-judicial service as service in the judiciary for purposes of securing benefits applicable only and earned while a member of the judiciary, ***unless Congress by law says otherwise and only for purposes of entitlement to salaries and benefits.***

3. The Grant of Longevity Pay Prayed for is an Act of Judicial Legislation.

The grant of longevity pay for past services in the NLRC, based on the grant of longevity pay to judges and justices of the judiciary, amounts to ***prohibited judicial legislation.***

Section 42 of BP 129 is clear in requiring five years of meritorious, efficient, and continuous services ***in the judiciary;*** subsequent legislation conferring the same salary and benefits that judges and justices enjoy to designated counterparts in the executive did not amend this requirement, expressly or impliedly.

RA No. 9347, in particular, did not specifically provide that the services in the NLRC may be tacked with the length of judicial service for purposes of computing longevity pay in the judiciary. Neither can the tacking of these periods be implied from the language of Article 216 of the Labor Code, as amended, as the provision merely uses the salary and benefits of CA Associate justices as a yardstick for determining the salary and benefits of NLRC commissioners.

It must be pointed out that the grant of the requested longevity pay can be a **blow disastrous to the reputation of the judiciary and to this Court's role as the final authority in interpreting the Constitution,** when the public realizes that this Court engaged

in judicial legislation, through interpretation, to undeservedly favor its own judges and justices.

4. A Grant would effectively be a Misplaced Exercise of Liberality at the Expense of Public Funds and to the Prejudice of Sectors who are More in Need of these Funds.

The liberal approach does not allow the inclusion of the period of services in the NLRC (or any executive office) to the period of judicial service to grant longevity pay in the judiciary. The law is clear and unequivocal in its requirements for the grant of longevity pay, and cannot thus be amended through a claimed liberal approach.

The Court should not forget that liberality is not a magic wand that can ward off the clear terms and import of express legal provisions; it has a place only when, between two positions that the law can both accommodate, the Court chooses the more expansive or more generous option. ***It has no place where no choice is available at all because the terms of the law are clear and do not at all leave room for discretion.***[12]

In terms of the longevity pay's purpose, liberality has no place where service is not to the judiciary, as the element of loyalty — the virtue that longevity pay rewards — is not at all present.

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[12] Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed (*The Chartered Bank Employees Association v. Ople,* 138 SCRA 273 [1985]; *Luzon Surety Co., Inc. v. De Garcia,* 30 SCRA 111 [1969]; *Quijano v. Development Bank of the Philippines,* 35 SCRA 270 [1970]).

The same principle applies even in retirement laws, where all doubts are liberally construed and administered in favor of persons intended to be benefited. Liberal interpretation is not warranted where the law is clear and unambiguous. *Fetalino and Calderon v. Comelec,* G.R. No. 191890, December 04, 2012, citing *In Re: Claim of CAR Judge Noel,* Adm. Matter No. 1155-CAR, 194 Phil. 9 (1981) and *Re: Judge Alex Z. Reyes,* Adm. Matter No.91-6-007-CTA, December 21, 1992, 216 SCRA 720.

I cannot overemphasize too that ***the policy of liberal construction cannot and should not be to the point of engaging in judicial legislation — an act that the Constitution absolutely forbids this Court to do***. The Court may not, in the guise of interpretation, enlarge the scope of a statute or include, under its terms, situations that were not provided nor intended by the lawmakers. ***The Court cannot rewrite the law to conform to what it or certain of its Members think should be the law.***

Not to be forgotten is the effect of this Court's grant on the use of public funds: funds granted to other than the legitimate beneficiaries are misdirected funds that may be put to better use by those sectors of society who need them more.

For these reasons, I vote to **DENY with FINALITY** the Motion for Reconsideration filed by former Court of Appeals Associate Justice Angelita Alberto-Gacutan.

EN BANC

[A.M. No. P-16-3471. July 26, 2016]
(Formerly A.M. No. 15-06-197-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JOHN REVEL B. PEDRIÑA, Clerk III, Branch 200, Regional Trial Court, Las Piñas City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; HABITUAL TARDINESS; TO INSPIRE PUBLIC RESPECT FOR THE JUSTICE SYSTEM, COURT OFFICIALS AND EMPLOYEES SHOULD AT ALL TIMES STRICTLY OBSERVE OFFICIAL TIME, AS PUNCTUALITY IS A VIRTUE, ABSENTEEISM AND TARDINESS ARE IMPERMISSIBLE.— It is clear from the facts that respondent Pedriña has been habitually tardy. Civil Service Memorandum Circular No. 23, Series of 1998, provides

that: Any employee shall be habitually tardy if he incurs tardiness, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester or at least two (2) consecutive months during the year. He has fallen short of the stringent standard of conduct demanded from everyone connected with the administration of justice. Every person employed in the government must remember that public office is a public trust. Pursuant to this dictum, the Court issued Memorandum Circular No. 49-2003 dated December 1, 2003, reminding all government officials and employees to be accountable at all times to the people and exercise utmost responsibility, integrity, loyalty and efficiency. They must give every minute of their prescribed official time in the service to the public and must work for every centavo paid to them by the government. "This duty calls for the observance of prescribed office hours and the efficient use of official time for public service, if only to recompense the government, and ultimately, the people who shoulder the cost of maintaining the judiciary. Thus, to inspire public respect for the justice system, court officials and employees should at all times strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible."

2. **ID.; ID.; ID.; PROPER PENALTY; MORAL OBLIGATIONS, THE PERFORMANCE OF HOUSEHOLD CHORES, TRAFFIC PROBLEMS, HEALTH CONDITIONS, AND DOMESTIC AND FINANCIAL CONCERNS ARE NOT SUFFICIENT CAUSES TO EXCUSE HABITUAL TARDINESS.—** Respondent Pedriña's justification for his habitual tardiness deserves scant consideration. We have previously held that moral obligations, the performance of household chores, traffic problems, health conditions, and domestic and financial concerns are not sufficient causes to excuse habitual tardiness. Under Section 52(c)(4) of CSC Memorandum No. 19, Series of 1999, habitual tardiness is penalized as follows: First Offense – Reprimand Second Offense – Suspension of 1-30 days Third Offense – Dismissal from the service.

3. **ID.; ID.; ID.; PUBLIC INTEREST IN AN EFFICIENT AND HONEST JUDICIARY DICTATES THAT NOTICE OF FUTURE HARSHER PENALTIES SHOULD NOT BE FOLLOWED BY ANOTHER FOREWARNING OF THE**

SAME KIND, *AD INFINITUM*, BUT BY DISCIPLINE THROUGH APPROPRIATE PENALTIES.— It must be noted that this is not the first time respondent Pedriña was penalized for habitual tardiness. *First,* in the Resolution dated August 8, 2005 in A.M. 05-7-421-RTC, he was reprimanded and suspended for one (1) month. *Second*, in the Resolution dated June 5, 2013 in A.M. No. 12-9-204-RTC [P-13-3120], he was suspended for thirty (30) days. Respondent Pedriña has been repeatedly warned that a repetition of the same or similar offense of habitual tardiness shall be dealt with more severely and yet he committed the same offense for the third time. Clearly, public interest in an efficient and honest judiciary dictates that notice of future harsher penalties should not be followed by another forewarning of the same kind, *ad infinitum*, but by discipline through appropriate penalties. The Court has dismissed employees in the past for habitual absenteeism, lamenting that the offense causes inefficiency in the public service. Habitual tardiness of this frequency must be treated likewise, if we are to maintain the administration of justice orderly and efficient.

D E C I S I O N

PER CURIAM:

The Case

For the consideration of the Court is the Administrative Matter for Agenda dated April 11, 2016 prepared by the Office of the Court Administrator with the following recommendations:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

a) the instant administrative case against Mr. John Revel B. Pedriña, Clerk III, Branch 200, RTC, Las Piñas City, be **RE-DOCKETED** as a regular administrative matter; and

b) respondent Pedriña be found **GUILTY** of habitual tardiness for the third time, and accordingly, be **DISMISSED** from the service with forfeiture of retirement benefits, except accrued leave credits, and with prejudice to re-employment in the government service, including government-owned or controlled corporations.

The Facts

In a Report dated May 26, 2015, Ryan U. Lopez, Officer-in-Charge, Employees Leave Division (ELD), Office of Administrative Services (OAS), Office of the Court Administrator (OCA), transmitted the information that respondent John Revel B. Pedriña, Clerk III, Branch 200, Las Piñas City Regional Trial Court (RTC), incurred tardiness in the following months of 2014:

January	10 times
February	11 times
March	11 times
May	10 times
July	14 times
September	11 times
November	14 times
December	10 times

Photocopies of respondent Pedriña's timecards for the months of January, February, March, May, July, September, November, and December were attached to the aforementioned report.

On May 29, 2015, OCA Chief of Office Caridad A. Pabello referred the matter to Atty. Wilhelmina D. Geronga, OCA Chief of Office, Legal Office, for the filing of appropriate action and disposition.

On June 26, 2015, Court Administrator Jose Midas P. Marquez directed respondent Pedriña to comment on the report charging him with habitual tardiness.

In his Comment dated August 14, 2015, respondent Pedriña admits being habitually tardy in the aforementioned periods. He attributes his tardiness to difficulty of getting up from bed early in the morning to travel from Manila to the RTC of Las Piñas City, because he frequently suffers from severe headaches, vomiting, occasional blurred eyesight and sudden weakness in the morning. He adds that his poor body resistance and being anemic are the reasons why it is difficult for him to sleep at night. However, as observed by the OCA, respondent Pedriña

failed to provide any evidence of serious or chronic illness which could cause the same.

Respondent Pedriña likewise avers that he is doing his best in the office and increased his work output to compensate for his shortcomings. He also commits himself to reform so as to prevent being suspended again.

The Court's Ruling

The Court is disposed to accept the recommendation of the OCA.

It is clear from the facts that respondent Pedriña has been habitually tardy.

Civil Service Memorandum Circular No. 23, Series of 1998, provides that:

> Any employee shall be habitually tardy if he incurs tardiness, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester or at least two (2) consecutive months during the year.

He has fallen short of the stringent standard of conduct demanded from everyone connected with the administration of justice. Every person employed in the government must remember that public office is a public trust. Pursuant to this dictum, the Court issued Memorandum Circular No. 49-2003 dated December 1, 2003, reminding all government officials and employees to be accountable at all times to the people and exercise utmost responsibility, integrity, loyalty and efficiency. They must give every minute of their prescribed official time in the service to the public and must work for every centavo paid to them by the government.[1] "This duty calls for the observance of prescribed office hours and the efficient use of official time for public service, if only to recompense the government, and ultimately, the people who shoulder the cost

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[1] *Re: Habitual Tardiness of Cesar E. Sales, Cash Clerk III, Metropolitan Trial Court, Office of the Clerk of Court, Manila*, A.M. No. P-13-3171, January 28, 2014.

of maintaining the judiciary. Thus, to inspire public respect for the justice system, court officials and employees should at all times strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible."[2]

In *Basco v. Gregorio*,[3] this Court held:

> The exacting standards of ethics and morality imposed upon court employees and judges are reflective of the premium placed on the image of the court of justice, and that image is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat. It thus becomes the imperative and sacred duty of everyone charged with the dispensation of justice, from the judge to the lowliest clerk, to maintain the courts' good name and standing as true temples of justice. Circumscribed with the heavy burden of responsibility, their conduct at all times must not only be characterized with propriety and decorum, but above all else, must be above suspicion. Indeed, every employee of the Judiciary should be an example of integrity, probity, uprightness, honesty and diligence. x x x

Respondent Pedriña's justification for his habitual tardiness deserves scant consideration. We have previously held that moral obligations, the performance of household chores, traffic problems, health conditions, and domestic and financial concerns are not sufficient causes to excuse habitual tardiness.[4]

Under Section 52(c)(4) of CSC Memorandum No. 19, Series of 1999, habitual tardiness is penalized as follows:

First Offense	-	Reprimand
Second Offense	-	Suspension of 1-30 ays
Third Offense	-	Dismissal from the service

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[2] *Id*.; citing *Cabato v. Centino*, A.M. No. P-08-2572, November 19, 2008, 571 SCRA 390, 395.

[3] A.M. No. P-94-1026, July 6, 1995, 245 SCRA 614, 619.

[4] *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the Second Semester of 2002*, A.M. No. 00-6-09-SC, 14 August 2003, 409 SCRA 9, 15.

It must be noted that this is not the first time respondent Pedriña was penalized for habitual tardiness. *First*, in the Resolution dated August 8, 2005 in A.M. 05-7-421-RTC, he was reprimanded and suspended for one (1) month. *Second*, in the Resolution dated June 5, 2013 in A.M. No. 12-9-204-RTC [P-13-3120], he was suspended for thirty (30) days.

Respondent Pedriña has been repeatedly warned that a repetition of the same or similar offense of habitual tardiness shall be dealt with more severely and yet he committed the same offense for the third time. Clearly, public interest in an efficient and honest judiciary dictates that notice of future harsher penalties should not be followed by another forewarning of the same kind, *ad infinitum*, but by discipline through appropriate penalties.[5] The Court has dismissed employees in the past for habitual absenteeism, lamenting that the offense causes inefficiency in the public service.[6] Habitual tardiness of this frequency must be treated likewise, if we are to maintain the administration of justice orderly and efficient.[7]

WHEREFORE, presmises considered, respondent John Revel B. Pedriña, Clerk III, Branch 200, RTC, Las Piñas City is found **GUILTY** of habitual tardiness. He is hereby ordered **DISMISSED** from the service with forfeiture of retirement benefits, except accrued leave credits (if any), and with prejudice to re-employment in the government service, including government-owned or controlled corporations.

SO ORDERED.

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

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[5] *Re: Employees Incurring Habitual Tardiness in the First Semester of 2005*, 527 Phil. 1 (2006); citing *Poso v. Judge Mijares*, 436 Phil. 295 (2002).

[6] *Id*.; citing *Florendo v. Cadano,* A.M. No. P-05-1983, 20 October 2005, 473 SCRA 448; *Reyes-Macabeo v. Valle,* 448 Phil. 583 (2003); *Judge Ortiguerra v. Genota, Jr.,* 434 Phil. 787 (2002).

[7] *Id*.

EN BANC

[A.M. No. RTJ-14-2369. July 26, 2016]
(Formerly OCA I.P.I. No. 12-3907-RTJ)

DEPARTMENT OF JUSTICE, represented by SECRETARY LEILA M. DE LIMA, *petitioner, vs.* **JUDGE ROLANDO G. MISLANG, Presiding Judge, Branch 167, Regional Trial Court, Pasig City,** *respondent.*

[A.M. No. RTJ-14-2372. July 26, 2016]
(Formerly OCA I.P.I. No. 11-3736-RTJ)

HOME DEVELOPMENT MUTUAL FUND (HDMF), represented by ATTY. JOSE ROBERTO F. PO, *petitioner, vs.* **JUDGE ROLANDO G. MISLANG, Presiding Judge, Branch 167, Regional Trial Court, Pasig City,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; CHARGE OF GROSS IGNORANCE OF THE LAW; A JUDGE IS PRESUMED TO HAVE ACTED WITH REGULARITY AND GOOD FAITH IN THE PERFORMANCE OF JUDICIAL FUNCTIONS, BUT A BLATANT DISREGARD OF THE CLEAR AND UNMISTAKABLE PROVISIONS OF A STATUTE, AS WELL AS SUPREME COURT CIRCULARS ENJOINING THEIR STRICT COMPLIANCE, UPENDS THIS PRESUMPTION AND SUBJECTS THE MAGISTRATE TO CORRESPONDING ADMINISTRATIVE SANCTIONS.— Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within

the parameters of tolerable misjudgment. Such, however, is not the case with Judge Mislang. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions.

2. **ID.; ID.; ID.; ID.; WHEN THE INEFFICIENCY SPRINGS FROM A FAILURE TO RECOGNIZE SUCH A BASIC AND ELEMENTAL RULE, A LAW OR A PRINCIPLE IN THE DISCHARGE OF HIS FUNCTIONS, A JUDGE IS EITHER TOO INCOMPETENT AND UNDESERVING OF THE POSITION AND THE PRESTIGIOUS TITLE HE HOLDS OR HE IS TOO VICIOUS THAT THE OVERSIGHT OR MISSION WAS DELIBERATELY DONE IN BAD FAITH AND IN GRAVE ABUSE OF JUDICIAL AUTHORITY, WARRANTING THE JUDGE'S DISMISSAL.—** For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart. When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in

grave abuse of judicial authority. In both cases, the judge's dismissal will be in order.

3. **ID.; ID.; ID.; PERSISTENT DISREGARD OF WELL-KNOWN ELEMENTARY RULES IN FAVOR OF A PARTY REFLECTS THE JUDGE'S BAD FAITH AND PARTIALITY.—** Judge Mislang issued two (2) TROs, a writ of preliminary injunction and a *status quo* order, both of which did not satisfy the legal requisites for their issuance, in gross violation of clearly established laws and procedures which every judge has the duty and obligation to be familiar with. The antecedent incidents of the case brought before Judge Mislang were clear and simple, as well as the applicable rules. Unfortunately, he miserably failed to properly apply the principles and rules on three (3) points, *i.e.*, the prematurity of the petition, the inapplicability of the prejudicial question, and the lack of jurisdiction of the court. His persistent disregard of well-known elementary rules in favor of Lee clearly reflects his bad faith and partiality.

4. **ID.; ID.; ID.; PENALTY OF DISMISSAL FROM SERVICE IMPOSED AGAINST A JUDGE FOR HIS REPEATED INFRACTIONS AND OBSTINATE REFUSAL TO CORRECT HIS WAYS DESPITE PREVIOUS WARNINGS; THE STANDARD OF INTEGRITY APPLIED TO JUDGES IS HIGHER THAN THAT OF THE AVERAGE PERSON FOR IT IS THEIR INTEGRITY THAT GIVES THEM THE PRIVILEGE AND RIGHT TO JUDGE.—** Gross ignorance of the law, which is classified as a serious charge, is punishable by a fine of more than ₱20,000.00 but not exceeding ₱40,000.00, and suspension from office for more than three (3) but not exceeding six (6) months, without salary and other benefits, or dismissal from service. x x x. Judge Mislang's actions did not only affect the image of the judiciary, it also put his competency and even his moral character in serious doubt. In order to have a successful implementation of the Court's relentless drive to purge the judiciary of morally unfit members, officials, and personnel, a rigid set of rules of conduct must necessarily be imposed on judges. The standard of integrity applied to them is — and should be — higher than that of the average person for it is their integrity that gives them the privilege and right to judge. Considering Judge Mislang's repeated infractions and obstinate

refusal to correct his ways despite previous warnings, the Court is constrained to impose the penalty of dismissal in this case.

D E C I S I O N

***PER CURIAM*:**

This is a consolidation of the Administrative Complaints which the then Department of Justice (*DOJ*) Secretary Leila M. De Lima and Pag-IBIG Fund/Home Development Mutual Fund (*HDMF*), represented by Atty. Jose Roberto F. Po, filed against Hon. Rolando G. Mislang, Presiding Judge of the Regional Trial Court (*RTC*), Pasig City, Branch 167.

The following are the factual and procedural antecedents of the case:

On October 29, 2010, the National Bureau of Investigation (*NBI*) recommended that a preliminary investigation be conducted in view of the HDMF's Complaint Affidavit against Delfin S. Lee and other officers of Globe Asiatique Realty Holdings Corporation (*Globe Asiatique*) for the crime of syndicated estafa constituting economic sabotage under Presidential Decree No. 1689, in relation to Article 315(2)(a) of the Revised Penal Code, through the fraudulent take-out of housing loans for fake borrowers. Allegedly, these borrowers had actually no intention to apply for housing loans but were merely paid by Globe Asiatique agents to sign blank loan documents. Said loan documents were then submitted to the HDMF for processing. Because of this fraudulent scheme, the HDMF suffered damages in the amount of about ₱6.5 Billion. The DOJ then formed a panel of prosecutors to investigate the complaint, which was docketed as NPS Docket No. XVI-INV-10J-00319 (1st DOJ case). Subsequently, or on November 15, 2010, Lee, together with Globe Asiatique, filed a Complaint for specific performance and damages against the HDMF before the Makati RTC.

On December 10, 2010, the NBI Anti-Graft Division recommended that Lee, among others, be charged with the crime of syndicated estafa constituting economic sabotage. Thus,

the DOJ formed a panel of prosecutors that would handle the preliminary investigation of the complaint, which was docketed as NPS Docket No. XVI-INV-10L-00363 (2nd DOJ case). On January 27, 2011, Lee filed a Petition seeking the suspension of the proceedings in the 2nd DOJ case pending the outcome of the Makati civil case, because there were issues in the civil case which purportedly constituted a prejudicial question to the 2nd DOJ case. However, the DOJ panel issued an Omnibus Order dated February 21, 2011 which, among others, denied said petition for lack of common issues and parties. In denying Lee's prayer for suspension, the panel of prosecutors explained:

> At first glance, it may appear that the issues in Civil Case No. 10-1120 are related to the issues in NPS No. XVI-INV-10L-00363, however, a cursory reading of the pertinent records of the two cases will reveal that, in the first, the main issue is the right of GA to replace its buyers pursuant to the Memorandum of Agreement (MOA), Funding Commitment Agreement (FCA), and Collection Servicing Agreement (CSA) it entered into with HDMF while, in the second, the matter to be resolved is whether or not respondents are liable for the crime of syndicated estafa. Moreover, there is no commonality of parties in the two cases, therefore, whatever would be the decision of the court in the aforementioned civil case will certainly not affect the resolution of the herein criminal complaint. And this is true since, as shown in the complaint in Civil Case No. 10-1120, the case is not about the sale of the properties to Evelyn B. Niebres, Ronald Gabriel Perez San Nicolas, and Catherine Bacani, rather, the action was filed by GA to compel HDMF to honor the provisions of the MOA, FCA and CSA entered into by the parties and/or compel HDMF to accept the replacement buyers/borrowers as offered by GA.[1]

Lee moved for a partial reconsideration of the abovementioned Omnibus Order but the same was denied. The DOJ panel of prosecutors likewise directed him to file his counter-affidavit. On July 28, 2011, after filing his counter-affidavit, Lee filed a Petition for Injunction (with Application for Temporary Restraining Order or *TRO*) against the DOJ, which was raffled to the sala of Judge Mislang. Again, Lee sought to suspend the

[1] *Rollo* (A.M. No. RTJ-14-2369), p. 8.

preliminary investigation being conducted by the DOJ in the 2nd DOJ case, and subsequently, to likewise prevent the filing of the Information in the 1st DOJ case. On August 5, 2011, Lee's counsel inquired if the DOJ's counsel would be willing to enter into a stipulation with regard to the existence of the 2nd DOJ case and the Makati civil case. After the counsel of the DOJ had acceded to said request, the parties, with the permission of Judge Mislang, then agreed to submit for resolution the petition for injunction upon submission of their respective memoranda within fifteen (15) days, since there were no longer factual matters that needed to be threshed out in a full-blown trial. However, on August 12, 2011, after Lee had submitted his memorandum the day before, he filed an unverified Urgent Motion for the *ex-parte* resolution of his application for the issuance of a TRO. Thereafter, without waiting for the DOJ's memorandum, Judge Mislang issued Orders dated August 16, 2011 and August 26, 2011, granting Lee's petition. Thus, the HDMF and the DOJ filed separate complaints, docketed as OCA I.P.I. No. 11-3736-RTJ and OCA I.P.I. No. 12-3907-RTJ, respectively, against Judge Mislang, alleging that the latter acted in patent disregard of the rules on injunctive relief and prejudicial question, exhibited gross ignorance of the law and/or procedure, and manifested partiality and gross misconduct in issuing the assailed Orders.

After a careful review and evaluation of the case, the Office of the Court Administrator (*OCA*) recommended in both Complaints that Judge Mislang be found guilty of gross ignorance of the law and be dismissed from service, with forfeiture of retirement benefits except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.[2]

The Court's Ruling

The Court finds no compelling reason to deviate from the findings and recommendations of the OCA.

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[2] Evaluation and recommendation submitted by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Thelma C. Bahia, dated October 8, 2013.

The application for TRO for the 2nd DOJ case was incorporated in the petition for injunction. However, the DOJ was not given any notice of Lee's Urgent Motion for *ex-parte* resolution of his TRO application. And despite the parties' agreement in court to submit for resolution said petition for injunction only upon submission of their respective memoranda, Judge Mislang granted Lee's application for TRO without waiting for the DOJ's memorandum. He never conducted a hearing on either the application for TRO or on the motion for resolution of the TRO. Clearly, this is in violation of the DOJ's constitutional right to be heard and to due process. Judge Mislang's wanton disregard of the DOJ's right to due process was repeated when he granted the TRO for the 1st DOJ case. Although the application for TRO was contained in a verified petition, the DOJ was not properly served with a copy of the petition or the urgent motion for hearing. It was not likewise served with any notice of hearing. And notwithstanding the lack of proof of service, Judge Mislang still proceeded to hear the application for TRO against the 1st DOJ case during the hearing on the petition for issuance of a writ of preliminary injunction against the 2nd DOJ case.

Verily, Judge Mislang manifested serious lack of knowledge and understanding of the basic legal principles on prejudicial question and on jurisdiction in petitions for suspension of criminal action based on prejudicial questions, as prescribed by Sections 6[3] and 7,[4] Rule 111 of the Revised Rules of Criminal Procedure. The OCA adopted the ruling of the Court of Appeals (Seventeenth

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[3] **Section 6**. *Suspension by reason of prejudicial question*. — A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests.

[4] **Section 7.** *Elements of prejudicial question.* — The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.

Division) in *Department of Justice v. The Hon. Rolando Mislang, etc. and Delfin Lee,* CA-G.R. SP No. 121594, dated April 16, 2012, thus:

After a thorough and judicious study of the attendant factual and legal milieu, this Court has come to the conclusion that **no prejudicial question exists that would justify the issuance by public respondent Judge of the writ of preliminary injunction as both cases before the DOJ can proceed independently of that with the Makati RTC.**

This Court agrees with petitioner's contention that no prejudicial question exists with respect to the first DOJ case. A prejudicial question is understood in law as that which must precede the criminal action and which requires a decision before a final judgment can be rendered in the criminal action with which said question is closely connected. The civil action must be instituted prior to the institution of the criminal action. **As it was shown that the recommendation by the NBI for DOJ to investigate Lee and other officials of the GA for estafa was filed ahead of the civil case which Lee filed against HDMF before the Regional Trial Court of Makati City, the doctrine of prejudicial question is untenable in the first DOJ case.**

Moreover, it did not escape this Court's attention that when Lee moved for the issuance of a temporary restraining order to enjoin the DOJ, in the first DOJ case, . . . he did not file a petition for suspension of criminal action by reason of prejudicial question before the panel of DOJ prosecutors, in violation of the provisions of **Section 6, Rule 111 of the Revised Rules of Court. . . The rule is clear that in filing a petition for suspension of criminal action based upon a pendency of a prejudicial action in a civil action, the same should be made before the office of the prosecutor or the court conducting the preliminary investigation. If an information had already been filed before the court for trial, the petition to suspend should be filed before the court where the information was filed.**

Considering that no information has yet been filed against Lee and the action that was brought before the court *a quo* was one for injunction and damages, **the public respondent Judge gravely erred when he took cognizance of Lee's prematurely filed petition and granted his prayer for the issuance of a temporary restraining order.**

Nevertheless, even if the civil case was filed ahead of the first DOJ case, the doctrine of prejudicial question is still inapplicable.

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. . . (I)njunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and protected for the protection of society. It is only in extreme cases that injunction will lie to stop criminal prosecution. Public respondent Judge anchored his issuance of the writ on the existence of a prejudicial question. However, this Court finds that **the facts and issues in the Makati civil case are not determinative of Lee's guilt or innocence in the cases filed before the DOJ.** Verily public respondent Judge committed grave abuse of discretion amounting to lack of or in excess of jurisdiction when he issued the writ of preliminary injunction enjoining the DOJ from filing an information of estafa against Lee in the first DOJ case and from proceeding with the preliminary investigation in the second DOJ case.

WHEREFORE, in view of the foregoing, the instant Petition is hereby GRANTED. The assailed Order issued by public respondent Judge dated September 5, 2011 in Civil Case No. 73115-PSG for Injunction is **ANNULLED** and **SET ASIDE** for having been issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. The writ of preliminary injunction is hereby lifted for lack of basis both in fact and in law.[5]

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment.[6] Such, however, is not the case with Judge Mislang. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law.[7] A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions

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[5] *Rollo* (A.M. No. RTJ-14-2372), pp. 140-141. (Emphasis in the original)

[6] *Peralta v. Judge Omelio,* 720 Phil. 60, 86 (2013).

[7] *Id*.

of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions.[8]

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart. When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both cases, the judge's dismissal will be in order.[9]

Judge Mislang issued two (2) TROs, a writ of preliminary injunction and a *status quo* order, both of which did not satisfy the legal requisites for their issuance, in gross violation of clearly established laws and procedures which every judge has the duty and obligation to be familiar with. The antecedent incidents of the case brought before Judge Mislang were clear and simple, as well as the applicable rules. Unfortunately, he miserably failed

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[8] *Caguioa v. Judge Laviña,* 398 Phil. 845, 848 (2000).

[9] *Re: Complaint Against Justice John Elvi S. Asuncion of the Court of Appeals,* 547 Phil. 418, 438 (2007).

to properly apply the principles and rules on three (3) points, *i.e.*, the prematurity of the petition, the inapplicability of the prejudicial question, and the lack of jurisdiction of the court. His persistent disregard of well-known elementary rules in favor of Lee clearly reflects his bad faith and partiality.

However, Judge Mislang cannot be held administratively liable for not requiring Lee to post a bond for the issuance of a TRO. In *Bautista v. Abdulwahid,*[10] the Court dismissed the charge of gross ignorance of the law and procedure against Court of Appeals Associate Justice Hakim S. Abdulwahid for, among others, issuing an *ex-parte* TRO without requiring the posting of a bond. The Court upheld the OCA's recommendation that the complaint should be dismissed for lack of factual and legal bases, considering that the issuance of the TRO *ex-parte* was the most reasonable way to enjoin the enforcement of the final notice to vacate issued by the Municipal Trial Court without rendering the action sought to be enjoined moot and academic.

The Court notes that this is not the first time that Judge Mislang has committed a serious infraction. In fact, he has been facing a seemingly endless string of administrative charges since April 2007. In A.M. No. RTJ-08-2104,[11] one Atty. Leo C. Romero charged Judge Mislang with misrepresentation, violation of Supreme Court Administrative Circular No. 13, gross ignorance of the law, and grave abuse of discretion relative to the issuance of a search warrant against David C. Romero for violation of Article 293 (Robbery) of the Revised Penal Code. The Court then found Judge Mislang guilty and ordered him to pay a fine of ₱20,000.00, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

In A.M. No. RTJ-15-2434,[12] the Court likewise found him guilty of gross ignorance of the law. In this case, Jeffrey B.

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[10] 522 Phil. 390 (2006).

[11] *Romero v. Judge Mislang,* February 6, 2008, First Division Resolution.

[12] *Patawaran v. Judge Mislang,* August 12, 2015, Third Division Resolution.

Patawaran filed a complaint against Judge Mislang. A criminal case for unlawful importation of assorted jewelry worth millions of pesos filed by the government through the Presidential Anti-Smuggling Group had been assigned to Judge Mislang. The accused in said case, Siu Ting Alpha Kwok, was charged with violation of Section 3601, in relation to Section 2530, of the Tariff and Customs Code of the Philippines. Then after the prosecution rested its case, Kwok filed a Demurrer to Evidence which Judge Mislang granted on the ground of insufficiency of evidence. He likewise directed the Bangko Sentral ng Pilipinas (*BSP*) and the customs officer who had custody of the seized jewelry to immediately release the same to Kwok, despite the existing Warrant of Seizure and Detention issued by the Bureau of Customs. The Court had ruled that while Judge Mislang's ruling on the Demurrer to Evidence may have been a purely judicial matter, he was guilty of Gross Ignorance of the Law when he directed the immediate release of the smuggled jewelry to Kwok. As a judge, he ought to know that the RTCs are devoid of any competence to pass upon the validity or regularity of seizure and forfeiture proceedings which the Bureau of Customs conducted and to enjoin or otherwise interfere with these proceedings.[13] Also, forfeiture of seized goods in the Bureau of Customs is a proceeding against the goods and not against the owner. It is a proceeding *in rem*, which means it is directed against the *res* or the illegally imported articles, and entails a determination of the legality of their importation. Accordingly, while the accused in an unlawful importation case may turn out to be absolved from any criminal liability, it does not necessarily follow that the seized goods should also be automatically released. Indubitably, Judge Mislang's directive for the immediate release of the confiscated contraband shows his ignorance of the law and settled jurisprudence. At this instance, in view of the prior warning and the gravity of his offense, the penalty of dismissal would have been warranted.

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[13] *Rallos v. Judge Gako, Jr.*, 398 Phil. 60, 70 (2000), citing *Bureau of Customs v. Ogario,* 385 Phil. 928 (2000), further citing *Jao v. CA,* 319 Phil. 105 (1995).

Out of benevolence, however, the Court simply suspended him for six (6) months without pay, and reiterating the warning of a more serious penalty in the event of another similar transgression.

Gross ignorance of the law, which is classified as a serious charge, is punishable by a fine of more than ₱20,000.00 but not exceeding ₱40,000.00, and suspension from office for more than three (3) but not exceeding six (6) months, without salary and other benefits, or dismissal from service.[14] In *Peralta v. Judge Omelio,*[15] the Court found that Judge Omelio had already been sternly warned in two (2) previous cases that repetition of the same or similar acts shall be dealt with more severely. Yet, he still continued transgressing the norms of judicial conduct. The Court then ruled that all his past and present violations raised a serious question on his competence and integrity in the performance of his functions as a magistrate. It thus adopted the recommendation of the OCA that the supreme penalty of dismissal was the proper penalty to be imposed, since it was already the third time that he was found administratively liable. Indeed, the Court could no longer afford to be lenient this time, lest it would

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[14] Section 8 of Rule 140 on the Discipline of Judges and Justices, as amended by A.M. No. 01-8-10-SC, classifies gross ignorance of the law and gross misconduct constituting violations of the Code of Judicial Conduct as serious charges, with the following imposable penalties:

SEC. 11. *Sanctions*. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; *Provided*, however, That the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00

[15] *Supra* note 6.

give the public the impression that incompetence and repeated offenders are being countenanced in the judiciary. Judge Mislang's actions did not only affect the image of the judiciary, it also put his competency and even his moral character in serious doubt. In order to have a successful implementation of the Court's relentless drive to purge the judiciary of morally unfit members, officials, and personnel, a rigid set of rules of conduct must necessarily be imposed on judges. The standard of integrity applied to them is — and should be — higher than that of the average person for it is their integrity that gives them the privilege and right to judge.[16] Considering Judge Mislang's repeated infractions and obstinate refusal to correct his ways despite previous warnings, the Court is constrained to impose the penalty of dismissal in this case.

WHEREFORE, PREMISES CONSIDERED, the Court finds Judge Rolando G. Mislang, Regional Trial Court, Pasig City, Branch 167, **GUILTY** of Gross Ignorance of the Law in A.M. No. RTJ-14-2369 and A.M. No. RTJ-14-2372 and **ORDERS** his **DISMISSAL** from the service with **FORFEITURE** of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

SO ORDERED.

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

Velasco, Jr., J., no part, relation to a party.

Bersamin and *Jardeleza, JJ.,* no part.

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[16] *Samson v. Judge Caballero,* 612 Phil. 737, 752 (2009).

EN BANC

[A.M. OCA IPI No. 12-204-CA-J. July 26, 2016]

RE: VERIFIED COMPLAINT FOR DISBARMENT OF AMA LAND, INC. (REPRESENTED BY JOSEPH B. USITA) AGAINST COURT OF APPEALS ASSOCIATE JUSTICES HON. DANTON Q. BUESER, HON. SESINANDO E. VILLON AND HON. RICARDO G. ROSARIO.

SYLLABUS

1. **LEGAL ETHICS; JUSTICES AND JUDGES; ADMINISTRATIVE CHARGES; FILING OF TWO UNFOUNDED IDENTICAL ADMINISTRATIVE COMPLAINTS AGAINST ASSOCIATE JUSTICES OF THE COURT OF APPEALS DISPLAYED UTTER LACK OF RESPECT FOR THEIR JUDICIAL OFFICE.—** Usita's assertion that he did not disobey and defy the decision promulgated on March 11, 2014 is hollow in light of the solid and firm findings of the Court about AMALI having been prone to bring charges against judicial officers who had ruled against it in its cases. On the contrary, such assertion constitutes his continuing refusal to own his contumacious part in the filing of frivolous administrative charges against respondent Associate Justices of the CA. His tendered withdrawal of the complaint in OCA-IPI No. 12-202-CA-J is even irrelevant now considering that we dismissed his charges therein last January 15, 2013 due to their patent lack of merit. Verily, his filing of two unfounded identical administrative complaints against respondent Associate Justices of the CA displayed his utter lack of respect for their judicial office. His plea for understanding and forgiveness should be ignored for being actually insincere and frivolous.

2. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; CONTEMPT; THE POWER TO PUNISH FOR CONTEMPT MUST BE USED SPARINGLY, WITH CAUTION, RESTRAINT, JUDICIOUSNESS, DELIBERATION, AND IN DUE REGARD TO THE**

PROVISIONS OF THE LAW AND THE CONSTITUTIONAL RIGHTS OF THE INDIVIDUAL.— [W]e have frequently reminded that the power to punish for contempt must be used sparingly, with caution, restraint, judiciousness, deliberation, and in due regard to the provisions of the law and the constitutional rights of the individual. This approach impels us now to hold Usita responsible for only one count of indirect contempt by considering his forthright compliance with our directive for him to identify the members of AMALI's Board of Directors who had caused him to bring the unfounded charges as a mitigating circumstance.

3. **ID.; ID.; ID.; ID.; A CORPORATION AND ITS OFFICERS AND AGENTS MAY BE HELD LIABLE FOR CONTEMPT OF COURT FOR DISOBEYING JUDGMENTS, DECREES, OR ORDERS OF A COURT ISSUED IN A CASE WITHIN ITS JURISDICTION, OR FOR COMMITTING ANY IMPROPER CONDUCT TENDING, DIRECTLY OR INDIRECTLY, TO IMPEDE, OBSTRUCT, OR DEGRADE THE ADMINISTRATION OF JUSTICE; BRINGING OF UNFOUNDED AND UNWARRANTED ADMINISTRATIVE CHARGES AGAINST ASSOCIATE JUSTICES OF THE COURT OF APPEALS IN ORDER TO INTIMIDATE OR HARASS THEM, THEREBY DIRECTLY OR INDIRECTLY IMPEDING, OBSTRUCTING OR DEGRADING THE ADMINISTRATION OF JUSTICE CONSTITUTES INDIRECT CONTEMPT.—** Anent the liability of the x x x members of AMALI's Board of Directors, the general rule is that a corporation and its officers and agents may be held liable for contempt of court for disobeying judgments, decrees, or orders of a court issued in a case within its jurisdiction, or for committing any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice. So it must be herein. x x x The x x x members of AMALI's Board of Directors are hereby found and pronounced guilty of indirect contempt of court for thereby causing the bringing of the unfounded and unwarranted administrative charges against respondent Associate Justices of the CA in order to intimidate or harass them, thereby directly or indirectly impeding, obstructing or degrading the administration of justice.

4. **ID.; ID.; ID.; ID.; THE MEMBERS OF THE BOARD OF DIRECTORS OF THE CORPORATION CANNOT BE**

ALLOWED TO HIDE BEHIND THE SHIELD OF GOOD FAITH WHERE THEIR ADMINISTRATIVE CHARGES AGAINST THE ASSOCIATE JUSTICES OF THE COURT OF APPEALS ARE FROM THE BEGINNING BEREFT OF FACTUAL AND LEGAL MERIT AND ARE PALPABLY DESIGNED TO INTIMIDATE OR INFLUENCE THE LATTER IN RESPECT OF THE CORPORATION'S CASE IN THEIR DIVISION .— The x x x members of the AMALI Board of Directors specifically claimed that they had brought the complaints against respondent Associate Justices of the CA in their belief in good faith that they were thereby raising a valid legal issue. Their claim is preposterous, however, because the complaints were identical, and palpably designed to intimidate or influence respondent Associate Justices of the CA in respect of AMALI's case in their Division. The abovenamed members of the AMALI Board of Directors could not be allowed to hide behind the shield of good faith because their charges were from the beginning bereft of factual and legal merit.

5. **LEGAL ETHICS; JUSTICES; ADMINISTRATIVE CHARGES; NO JUDICIAL OFFICER COULD BE LEGITIMATELY HELD ADMINISTRATIVELY ACCOUNTABLE FOR THE PERFORMANCE OF HIS DUTIES AS A JUDICIAL OFFICER FOR THE REASON THAT SUCH PERFORMANCE WAS A MATTER OF DISCHARGING A PUBLIC DUTY AND RESPONSIBILITY.—** [T]here is no doubt that the x x x members of the AMALI Board of Directors, led by the late Atty. Acsay, were well aware, or, at least, ought to have known that no judicial officer could be legitimately held administratively accountable for the performance of his duties as a judicial officer for the reason that such performance was a matter of discharging a public duty and responsibility.

6. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; CONTEMPT; PUNISHMENT FOR INDIRECT CONTEMPT; ANY SANCTION, TO BE PROPER, SHOULD BE COMMENSURATE TO THE CONTUMACIOUS CONDUCT OF THE RESPONDENTS, AND THE SAME SHOULD BE MEANINGFUL AND CONDIGN; OTHERWISE, IT WOULD BE MOCKED AND DERIDED, RENDERING IT INUTILE FOR THE**

PURPOSE; PENALTY OF FINE, INSTEAD OF IMPRISONMENT, IMPOSED FOR OBSTRUCTING AND DEGRADING THE ADMINISTRATION OF JUSTICE BY RESPONDENT ASSOCIATE JUSTICES OF THE COURT OF APPEALS.— Any sanction, to be proper, should be commensurate to the contumacious conduct of Usita and the x x x members of AMALI's Board of Directors. The sanction should be meaningful and condign; otherwise, it would be mocked and derided, rendering it inutile for the purpose. It must also be within the bounds of Rule 71 of the *Rules of Court*, whose Section 7 relevantly provides: SEC. 7. *Punishment for indirect contempt*. — If the respondent is adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank, he may be punished by a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both. x x x Although the conduct we hereby seek to punish tended to obstruct and degrade the administration of justice by respondent Associate Justices of the CA, fine, instead of imprisonment, will suffice, provided the amount thereof is not petty or trivial. The need to deter litigants and those acting upon their bidding from ever trying to intimidate or influence sitting judges in the performance of their sworn duties should be recognized. This instance is a good occasion to do so.

R E S O L U T I O N

BERSAMIN, *J.*:

In the resolution promulgated on July 15, 2014,[1] the Court: (*a*) declared Joseph B. Usita guilty of two counts of indirect contempt of court under Section 3(d), Rule 71 of the *Rules of Court*, but deferred the determination and imposition of the penalties against him; (*b*) ordered Usita to disclose the names of all the members of the Board of Directors of AMA Land, Inc. (AMALI) who had authorized him to bring the two administrative charges against respondent Associate Justices of the Court of Appeals (CA); and (*c*) required Usita and a

[1] *Rollo*, pp. 1195-1199.

certain Garry de Vera to shed light on the true interest or participation of the so-called JC-AT-JC Law Offices whose office address de Vera had stated as his in the affidavit of service he had executed for purposes of this case.

Consequently, Usita submitted his compliance dated August 11, 2014,[2] wherein he again apologized for his actions, but appealed for the understanding and forgiveness of the Court. He denied having disobeyed the decision of March 11, 2014, and pointed out that the other complaint against respondent Associate Justices of the CA dated October 2, 2012 (OCA-IPI No. 12-202-CA-J entitled *Re: Verified Complaint for Disbarment of AMA Land, Inc. Represented by Joseph B. Usita v. Hon. Danton Q. Bueser, Hon. Sesinado E. Villon and Hon. Ricardo R. Rosario, Associate Justices of the Court of Appeals*) had been filed earlier than the present complaint; that he had filed the present complaint against respondent Associate Justices of the CA "*in good faith and merely to petition this Honorable Court for redress of what he believed to be a judicial wrong*;"[3] and that he was anyway withdrawing the complaint in OCA-IPI No. 12-202-CA-J as a manifestation of his "*good faith and sincere remorse for his inaction (sic)*."[4]

Regarding the participation of the so-called JC-AT-JC Law Office, Usita explained that de Vera was an employee of AMALI rendering messengerial services to the JC-AT-JC Law Office, one of the retained counsels of AMALI; and that the JC-AT-JC Law Office did not have any involvement in the filing of the administrative complaints.

De Vera submitted a *salaysay ng pagpapaliwanag*,[5] which contained explanations similar to those made by Usita.

Finally, Usita disclosed by name the members of the AMALI Board of Directors who had authorized him to file the present complaint, as follows: (a) Atty. Vicente Acsay; (b) Felizardo R.

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[2] *Id*. at 1210-1214.

[3] *Id*. at 1213.

[4] *Id*. at 1211.

[5] *Id*. at 1225-1228.

Colambo; (c), Arnel F. Hibo; (d) Darwin V. Dominguez; and (e) Alberto L. Buenviaje.

On September 30, 2014, the Court directed the abovenamed officers of AMALI to show cause in writing why they should not be held liable for indirect contempt for degrading the judicial office of respondent Associate Justices of the CA, and for interfering with the due performance of their work for the Judiciary.[6]

The aforenamed members of the AMALI Board, with the exception of Atty. Acsay who had meanwhile passed away on March 29, 2014,[7] uniformly manifested that only Atty. Acsay, Hibo and Dominguez had taken part in the meeting of the Board of Directors at which the resolution to file the present complaint had been adopted; that it was Atty. Acsay who had moved for the approval of the resolution; and that they had caused the filing of the administrative complaint in their belief that they were thereby raising a valid legal issue, without any intention of offending or disrespecting respondent Associate Justices of the CA.[8] It was further manifested that Colambo and Buenviaje had been absent from the meeting when the resolution to file the complaint had been tackled.[9]

Ruling of the Court

We first deal with the penalties to be meted on Usita.

Usita's assertion that he did not disobey and defy the decision promulgated on March 11, 2014 is hollow in light of the solid and firm findings of the Court about AMALI having been prone to bring charges against judicial officers who had ruled against it in its cases. On the contrary, such assertion constitutes his continuing refusal to own his contumacious part in the filing of frivolous administrative charges against respondent Associate Justices of

[6] *Id*. at 1229.

[7] *Id*. at 1234.

[8] *Id*. at 1234-1243 (Dominguez, Colambo, Hibo and Buenviaje submitted their joint compliance dated November 5, 2014); Colambo submitted his separate compliance with motion to admit dated November 14, 2014, *id*. at 1272-1279.

[9] *Id*. at 1272.

the CA. His tendered withdrawal of the complaint in OCA-IPI No. 12-202-CA-J is even irrelevant now considering that we dismissed his charges therein last January 15, 2013 due to their patent lack of merit. Verily, his filing of two unfounded identical administrative complaints against respondent Associate Justices of the CA displayed his utter lack of respect for their judicial office. His plea for understanding and forgiveness should be ignored for being actually insincere and frivolous.

Nonetheless, we have frequently reminded that the power to punish for contempt must be used sparingly, with caution, restraint, judiciousness, deliberation, and in due regard to the provisions of the law and the constitutional rights of the individual.[10] This approach impels us now to hold Usita responsible for only one count of indirect contempt by considering his forthright compliance with our directive for him to identify the members of AMALI's Board of Directors who had caused him to bring the unfounded charges as a mitigating circumstance.

Anent the liability of the abovenamed members of AMALI's Board of Directors, the general rule is that a corporation and its officers and agents may be held liable for contempt of court for disobeying judgments, decrees, or orders of a court issued in a case within its jurisdiction,[11] or for committing any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice.[12] So it must be herein.

The abovenamed members of the AMALI Board of Directors specifically claimed that they had brought the complaints against respondent Associate Justices of the CA in their belief in good faith that they were thereby raising a valid legal issue. Their claim is preposterous, however, because the complaints were identical, and palpably designed to intimidate or influence respondent Associate Justices of the CA in respect of AMALI's case in their Division. The abovenamed members of the AMALI Board of

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[10] *Regalado v. Go*, G.R. No. 167988, February 6, 2007, 514 SCRA 616, 632.

[11] *Heirs of Trinidad de Leon Vda. de Roxas v. Court of Appeals*, G.R. No. 138660, February 5, 2004, 422 SCRA 101, 120.

[12] Section 3(d), Rule 71 of the *Rules of Court*.

Directors could not be allowed to hide behind the shield of good faith because their charges were from the beginning bereft of factual and legal merit. In this regard, we observed in our decision of March 11, 2014, as follows:

> The filing of the meritless administrative complaints by AMALI was not only repulsive, but also an outright disrespect of the authority of the CA and of this Court. Unfounded administrative charges against judges truly degrade the judicial office, and interfere with the due performance of their work for the Judiciary. **Although the Court did not then deem fit to hold in the first administrative case AMALI or its representative personally responsible for the unfounded charges brought against respondent Justices, it is now time, proper and imperative to do so in order to uphold the dignity and reputation of respondent Justices, of the CA itself, and of the rest of the Judiciary. AMALI and its representatives have thereby demonstrated their penchant for harassment of the judges who did not do its bidding, and they have not stopped doing so even if the latter were sitting judges. To tolerate the actuations of AMALI and its representatives would be to reward them with undeserved impunity for an obviously wrong attitude towards the Court and its judicial officers.**[13]

Moreover, there is no doubt that the abovenamed members of the AMALI Board of Directors, led by the late Atty. Acsay, were well aware, or, at least, ought to have known that no judicial officer could be legitimately held administratively accountable for the performance of his duties as a judicial officer for the reason that such performance was a matter of discharging a public duty and responsibility.

The abovenamed members of AMALI's Board of Directors are hereby found and pronounced guilty of indirect contempt of court for thereby causing the bringing of the unfounded and unwarranted administrative charges against respondent Associate Justices of the CA in order to intimidate or harass them, thereby directly or indirectly impeding, obstructing or degrading the administration of justice.

Any sanction, to be proper, should be commensurate to the contumacious conduct of Usita and the abovenamed members of

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[13] *Rollo*, p. 1112.

AMALI's Board of Directors. The sanction should be meaningful and condign; otherwise, it would be mocked and derided, rendering it inutile for the purpose. It must also be within the bounds of Rule 71 of the *Rules of Court*, whose Section 7 relevantly provides:

> SEC. 7. *Punishment for indirect contempt*. – If the respondent is adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank, he may be punished by a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both. x x x

Although the conduct we hereby seek to punish tended to obstruct and degrade the administration of justice by respondent Associate Justices of the CA, fine, instead of imprisonment, will suffice, provided the amount thereof is not petty or trivial. The need to deter litigants and those acting upon their bidding from ever trying to intimidate or influence sitting judges in the performance of their sworn duties should be recognized. This instance is a good occasion to do so.

We have judicial precedents to serve as guides in determining the proper amount of fine. In *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*,[14] the Court meted on the COMELEC Chairman and four COMELEC Commissioners a fine of ₱20,000.00 each for various actions, including issuing three resolutions that were outside of the jurisdiction of the COMELEC, for degrading the dignity of the Court, for brazen disobedience to the lawful directives of the Court, and for delaying the ultimate resolution of the many incidents of the party-list case to the prejudice of the litigants and of the country. It is notable that the Court prescribed a fine of ₱5,000.00 each on the two remaining Commissioners whose actions were deemed less serious in degree. In *Heirs of Trinidad de Leon Vda. de Roxas v. Court of Appeals*,[15] we imposed a fine of ₱10,000.00 on the corporate officer who had caused the preparation and filing of the unwarranted complaint for reconveyance, damages and quieting of title in the trial court, an act that tended to impede the orderly administration of justice.

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[14] G.R. Nos. 147589 and 147613, February 18, 2003.

[15] *Supra* note 10, at 119 & 121.

In *Lee v. Regional Trial Court of Quezon City, Branch 85*,[16] the corporate officers who had acted for the corporation to frustrate the execution of the immutable judgment rendered against the corporation by a resort to various moves merited the maximum fine of ₱30,000.00 for each of them. Based on these precedents, the amount of the fine is fixed at ₱20,000.00 each for Usita, Dominguez and Hibo by virtue of their direct participation in the filing of the frivolous and contumacious complaints.

Considering that Colambo and Buenviaje did not take part in the meeting of the Board of Directors of AMALI, they are absolved of liability for indirect contempt of court. Likewise, Garry de Vera is absolved of any liability because he was a mere messenger of AMALI.

WHEREFORE, the Court:

(1) **ABSOLVES** and **PURGES** Felizardo R. Colambo, Alberto L. Buenviaje and Garry de Vera of any act of contempt of court:

(2) **DECLARES** and **PRONOUNCES** Joseph B. Usita, Darwin V. Dominguez and Arnel F. Hibo **GUILTY** of **INDIRECT CONTEMPT** for degrading the judicial office of respondent Associate Justices of the Court of Appeals, and for obstructing and impeding the due performance of their work for the Judiciary, and, **ACCORDINGLY**, metes on each of Usita, Dominguez and Hibo a fine of **₱20,000.00**, the same to be paid within 10 days from notice of this resolution.

AMA Land, Inc., Joseph B. Usita, Darwin V. Dominguez and Arnel F. Hibo are **WARNED** that a repetition of the same or similar acts shall be dealt with more severely in the future.

SO ORDERED.

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

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[16] G.R. No. 146006, April 22, 2005, 456 SCRA 538, 555.

EN BANC

[G.R. No. 209271. July 26, 2016]

INTERNATIONAL SERVICE FOR THE ACQUISITION OF AGRI-BIOTECH APPLICATIONS, INC., *petitioner, vs.* **GREENPEACE SOUTHEAST ASIA (PHILIPPINES), MAGSASAKA AT SIYENTIPIKO SA PAGPAPAUNLAD NG AGRIKULTURA (MASIPAG), REP. TEODORO CASIÑO, DR. BEN MALAYANG III, DR. ANGELINA GALANG, LEONARDO AVILA III, CATHERINE UNTALAN, ATTY, MARIA PAZ LUNA, JUANITO MODINA, DAGOHOY MAGAWAY, DR. ROMEO QUIJANO, DR. WENCESLAO KIAT, JR., ATTY. H. HARRY ROQUE, JR., FORMER SEN. ORLANDO MERCADO, NOEL CABANGON, MAYOR EDWARD S. HAGEDORN, and EDWIN MARTHINE LOPEZ,** *respondents*, **CROP LIFE PHILIPPINES, INC.,** *petitioner-in-intervention.*

[G.R. No. 209276. July 26, 2016]

ENVIRONMENTAL MANAGEMENT BUREAU OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, BUREAU OF PLANT INDUSTRY AND THE FERTILIZER AND PESTICIDE AUTHORITY OF THE DEPARTMENT OF AGRICULTURE, *petitioners, vs.* **COURT OF APPEALS, GREENPEACE SOUTHEAST ASIA (PHILIPPINES), MAGSASAKA AT SIYENTIPIKO SA PAGPAPAUNLAD NG AGRIKULTURA (MASIPAG), REP. TEODORO CASIÑO, DR. BEN MALAYANG III, DR, ANGELINA GALANG, LEONARDO AVILA III, CATHERINE UNTALAN, ATTY. MARIA PAZ LUNA, JUANITO MODINA, DAGOHOY MAGAWAY, DR. ROMEO QUIJANO, DR. WENCESLAO KIAT, JR., ATTY. H. HARRY ROQUE, JR., FORMER SEN. ORLANDO MERCADO, NOEL CABANGON, MAYOR EDWARD S. HAGEDORN, and EDWIN**

MARTHINE LOPEZ, *respondents*. **CROP LIFE PHILIPPINES, INC.,** *petitioner-in-intervention.*

[G.R. No. 209301. July 26, 2016]

UNIVERSITY OF THE PHILIPPINES LOS BAÑOS FOUNDATION, INC., *petitioner, vs.* **GREENPEACE SOUTHEAST ASIA (PHILIPPINES), MAGSASAKA AT SIYENTIPIKO SA PAGPAPAUNLAD NG AGRIKULTURA (MASIPAG), REP. TEODORO CASIÑO, DR. BEN MALAYANG III, DR. ANGELINA GALANG, LEONARDO AVILA III, CATHERINE UNTALAN, ATTY. MARIA PAZ LUNA, JUANITO MODINA, DAGOHOY MAGAWAY, DR. ROMEO QUIJANO, DR. WENCESLAO KIAT, JR., ATTY. H. HARRY L. ROQUE, JR., FORMER SEN. ORLANDO MERCADO, NOEL CABANGON, MAYOR EDWARD S. HAGEDORN, and EDWIN MARTHINE LOPEZ,** *respondents.*

[G.R. No. 209430. July 26, 2016]

UNIVERSITY OF THE PHILIPPINES LOS BAÑOS, *petitioners, vs.* **GREENPEACE SOUTHEAST ASIA (PHILIPPINES), MAGSASAKA AT SIYENTIPIKO SA PAGPAPAUNLAD NG AGRIKULTURA (MASIPAG), REP. TEODORO CASINO, DR. BEN MALAYANG III, DR. ANGELINA GALANG, LEONARDO AVILA III, CATHERINE UNTALAN, ATTY. MARIA PAZ LUNA, JUANITO MODINA, DAGOHOY MAGAWAY, DR. ROMEO QUIJANO, DR. WENCESLAO KIAT, JR., ATTY. H. HARRY L. ROQUE, JR., FORMER SEN. ORLANDO MERCADO, NOEL CABANGON, and EDWIN MARTHINE LOPEZ,** *respondents.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; AS A RULE, THE COURT IS NOT EMPOWERED TO DECIDE MOOT

QUESTIONS OR ABSTRACT PROPOSITIONS, OR TO DECLARE PRINCIPLES OR RULES OF LAW WHICH CANNOT AFFECT THE RESULT AS TO THE THING IN ISSUE IN THE CASE BEFORE IT.— As a rule, the Court may only adjudicate actual, ongoing controversies. The requirement of the existence of a "case" or an "actual controversy" for the proper exercise of the power of judicial review proceeds from Section 1, Article VIII of the 1987 Constitution: x x x Accordingly, the Court is not empowered to decide moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it. In other words, when a case is moot, it becomes non-justiciable. An action is considered "moot" when it no longer presents a justiciable controversy because the issues involved have become academic or dead or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. There is nothing for the court to resolve as the determination thereof has been overtaken by subsequent events.

2. ID.; ID.; ID.; JURISPRUDENCE RECOGNIZES FOUR INSTANCES AS EXCEPTIONS TO THE MOOTNESS PRINCIPLE.— [C]ase law states that the Court will decide cases, otherwise moot, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest are involved; *third,* when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review. Thus, jurisprudence recognizes these four instances as exceptions to the mootness principle.

3. ID.; ID.; ID.; ID.; AS A GUIDEPOST FOR THE APPLICATION OF THE EXCEPTION TO MOOTNESS PRINCIPLE BASED ON PARAMOUNT PUBLIC INTEREST, THERE SHOULD BE SOME PERCEIVABLE BENEFIT TO THE PUBLIC WHICH DEMANDS THE COURT TO PROCEED WITH THE RESOLUTION OF AN OTHERWISE MOOT QUESTION.— Jurisprudence in this jurisdiction has set no hard-and-fast rule in determining whether a case involves paramount public interest in relation to the mootness principle. However, a survey of cases would show

that, as a common guidepost for application, there should be some perceivable benefit to the public which demands the Court to proceed with the resolution of otherwise moot questions. x x x In contrast to the foregoing cases, no perceivable benefit to the public — whether rational or practical — may be gained by resolving respondents' petition for Writ of *Kalikasan* on the merits. To recount, these cases, which stemmed from herein respondents petition for Writ of *Kalikasan*, were mooted by the undisputed expiration of the Biosafety Permits issued by the BPI and the completion and termination of the *Bt talong* field trials subject of the same. These incidents effectively negated the necessity for the reliefs sought by respondents in their petition for Writ of *Kalikasan* as there was no longer any field test to enjoin. Hence, at the time the CA rendered its Decision dated May 17, 2013, the reliefs petitioner sought and granted by the CA were no longer capable of execution.

4. ID.; ID.; ID.; ID.; TWO FACTORS TO CONSIDER BEFORE A CASE IS DEEMED ONE CAPABLE OF REPETITION YET EVADING REVIEW.— Likewise, contrary to the Court's earlier ruling, these cases do not fall under the "capable of repetition yet evading review" exception. The Court notes that the petition for Writ of *Kalikasan* specifically raised issues only against the field testing of *Bt talong* under the premises of DAO 08-2002, *i.e.*, that herein petitioners failed to: (*a*) fully inform the people regarding the health, environment, and other hazards involved; and (*b*) conduct any valid risk assessment before conducting the field trial. As further pointed out by Justice Leonen, the reliefs sought did not extend far enough to enjoin the use of the results of the field trials that have been completed. Hence, the petition's specificity prevented it from falling under the above exception to the mootness rule. More obviously, the supersession of DAO 08-2002 by JDC 01-2016 clearly prevents this case from being one capable of repetition so as to warrant review despite its mootness. x x x To reiterate, the issues in these cases involve factual considerations which are peculiar only to the controversy at hand since the petition for Writ of *Kalikasan* is specific to the field testing of *Bt talong* and does not involve other GMOs. At this point, the Court discerns that there are two (2) factors to be considered before a case is deemed one capable of repetition yet evading review: (1) the challenged action was in its duration too short to be fully litigated prior

to its cessation or expiration; and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action.

5. ID.; ID.; THE POLICY OF THE COURTS IS TO AVOID RULING ON CONSTITUTIONAL QUESTIONS AND TO PRESUME THAT THE ACTS OF THE POLITICAL DEPARTMENTS ARE VALID, ABSENT A CLEAR AND UNMISTAKABLE SHOWING TO THE CONTRARY, IN DEFERENCE TO THE DOCTRINE OF SEPARATION OF POWERS; CASE AT BAR.— A cursory perusal of the petition for Writ of *Kalikasan* filed by respondents on April 26, 2012 before the Court shows that they essentially assail herein petitioners' failure to: (*a*) fully inform the people regarding the health, environment, and other hazards involved; and (*b*) conduct any valid risk assessment before conducting the field trial. However, while the provisions of DAO 08-2002 were averred to be inadequate to protect (*a*) the constitutional right of the people to a balanced and healthful ecology since "said regulation failed, among others, to anticipate '*the public implications caused by the importation of GMOs in the Philippines*'"; and (*b*) "the people from the potential harm these genetically modified plants and genetically modified organisms may cause human health and the environment, [and] thus, x x x fall short of Constitutional compliance," respondents merely prayed for its ***amendment,*** as well as that of the NBF, to define or incorporate "an independent, transparent, and comprehensive scientific and socio-economic risk assessment, public information, consultation, and participation, and providing for their effective implementation, in accord with international safety standards[.]" This attempt to assail the constitutionality of the public information and consultation requirements under DAO 08-2002 and the NBF constitutes a collateral attack on the said provisions of law that runs afoul of the well-settled rule that the constitutionality of a statute cannot be collaterally attacked as constitutionality issues must be pleaded directly and not collaterally. Verily, the policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid, absent a clear and unmistakable showing to the contrary, in deference to the doctrine of separation of powers. This means that the measure had first been carefully studied by the executive department and found to be in accord with the Constitution before it was finally enacted and approved.

LEONEN, *J.*, *concurring opinion:*

POLITICAL LAW; JUDICIAL DEPARTMENT; MOOT AND ACADEMIC RULING; A MORE BECOMING APPRECIATION OF THE JUDICIARY'S ROLE IN THE ENTIRE CONSTITUTIONAL ORDER SHOULD ALWAYS GIVE PAUSE TO GO BEYOND THE ISSUES CRYSTALLIZED BY AN ACTUAL CASE WITH A REAL, PRESENT CONTROVERSY.— I reserve opinion on whether the "exceptional character of the situation and the paramount public interest" can be a ground for ruling on a case despite it becoming moot and academic. In my view, a more becoming appreciation of the judiciary's role in the entire constitutional order should always give pause to go beyond the issues crystallized by an actual case with a real, present controversy. Going beyond the parameters of a live case may be an invitation to participate in the crafting of policies properly addressed to the other departments and organs of government. I am of the belief that the judiciary should take an attitude of principled restraint.

APPEARANCES OF COUNSEL

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Castillo Laman Tan Pantaleon & San Jose for Biotechnology Coalition of the Philippines, Inc.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court are nine (9) Motions for Reconsideration[1] assailing the Decision[2] dated December 8, 2015 of the Court (December 8, 2015 Decision), which upheld with modification the Decision[3] dated May 17, 2013 and the Resolution[4] dated September 20, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 00013.

The Facts

The instant case arose from the conduct of field trials for "bioengineered eggplants," known as *Bacillus thuringiensis (Bt) eggplant (Bt talong),* administered pursuant to the Memorandum of Undertaking[5] (MOU) entered into by herein petitioners

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[1] See (*1*) motion for reconsideration (MR) filed by Croplife Philippines, Inc. January 5, 2016 (*rollo* [G.R. No. 209276], Vol. IX, pp. 4681-4718); (2) *E-Parte* Manifestation with MR filed by ISAAA on January 7, 2016 (*id*. at 4746-4778); (*3*) MR filed by intervenor Biotechnology Coalition of the Philippines, Inc. on January 14, 2016 (*id*. at 4785-4835); (*4*) MR filed by Environmental Management Bureau, the Bureau of Plant Industry, and the Fertilizer and Pesticide Authority on January 14, 2016 (*id*. at 4836-4863); (*5*) Urgent Motion to Intervene (with [MR]-in-Intervention) filed by *Alyansa ng mga Grupong Haligi ng Agham at Teknolohiya para sa Mamamayan* (AGHAM) on February 2, 2016 (*id*. at 4903-4922); (*6*) MR filed by the University of the Philippines on February 2, 2016 (*id*. at 4945-4952); (*7*) MR filed by UPLBFI on February 3, 2016 (*id*. at 4953-4980); (*8*) Petition/[MR]-in- Intervention filed by Philippine Association of Feed Millers, Inc. on February 16, 2016 (*id*. at 4998- 5027); and (*9*) Manifestation filed by Edgar C. Talasan, *et al.* (Farmers) on January 20, 2016 adopting the arguments of the other petitioners in their respective MRs (*id*. at 4897-4902).

[2] In G.R. Nos. 209271, 209276, 209301, and 209430. *Id*. at 4530-4636.

[3] *Rollo* (G.R. No. 209271), Vol. I, pp. 135-159. Penned by Associate Justice Isaias P. Dicdican with Associate Justices Myra V. Garcia-Fernandez and Nina G. Antonio-Valenzuela concurring.

[4] *Id*. at 161-174.

[5] Dated September 24, 2010. CA *rollo*, Vol. I, pp. 82-84, including dorsal portions.

University of the Philippines Los Baños Foundation, Inc. (UPLBFI) and International Service for the Acquisition of Agri-Biotech Applications, Inc. (ISAAA), and the University of the Philippines Mindanao Foundation, Inc. (UPMFI), among others. *Bt talong* contains the crystal toxin genes from the soil bacterium *Bt*, which produces the *Cry1Ac* protein that is toxic to target insect pests. The *Cry1Ac* protein is said to be highly specific to *lepidopteran larvae* such as the fruit and shoot borer, the most destructive insect pest to eggplants.[6]

From 2007 to 2009, petitioner University of the Philippines Los Baños (UPLB), the implementing institution of the field trials, conducted a contained experiment on *Bt talong* under the supervision of the National Committee on Biosafety of the Philippines (NCBP).[7] The NCBP, created under Executive Order No. (EO) 430,[8] is the regulatory body tasked to: (*a*) "identify and evaluate potential hazards involved in initiating genetic engineering experiments or the introduction of new species and genetically engineered organisms and recommend measures to minimize risks"; and (*b*) "formulate and review national policies and guidelines on biosafety, such as the safe conduct of work on genetic engineering, pests and their genetic materials for the protection of public health, environment[,] and personnel[,] and supervise the implementation thereof."[9] Upon the completion of the contained experiment, the NCBP issued a Certificate[10] therefor stating that all biosafety measures were complied with, and no untoward incident had occurred.[11]

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[6] See *id*. at 131. See also *rollo* (G.R. No. 209276), Vol. IX, pp. 4539-4540.

[7] See *rollo* (G.R. No. 209276), Vol. IX, p. 4540. See Letter dated March 30, 2009 and Certificate of Completion of Contained Experiment issued on the same date; CA *rollo*, Vol. II, pp. 885-886.

[8] Entitled "CONSTITUTING THE NATIONAL COMMITTEE ON BIOSAFETY OF THE PHILIPPINES (NCBP) AND FOR OTHER PURPOSES" (October 15,1990).

[9] See Sections 4 (a) and 4 (b) of EO 430.

[10] See Certificate of Completion of Contained Experiment dated March 30, 2009. CA *rollo*, Vol. II, p. 886.

[11] *Rollo* (G.R. No. 209276), Vol. IX, p. 4540.

On March 16, 2010 and June 28, 2010, the Bureau of Plant Industries (BPI) issued two (2)-year Biosafety Permits[12] for field testing of *Bt talong*[13] after UPLB's field test proposal satisfactorily completed biosafety risk assessment for field testing pursuant to the Department of Agriculture's (DA) Administrative Order No. 8, series of 2002[14] (DAO 08-2002),[15] which provides for the rules and regulations for the importation and release into the environment of plants and plant products derived from the use of modern biotechnology.[16] Consequently, field testing proceeded in approved trial sites in North Cotabato, Pangasinan, Camarines Sur, Davao City, and Laguna.[17]

On April 26, 2012, respondents Greenpeace Southeast Asia (Philippines) (Greenpeace), *Magsasaka at Siyentipiko sa Pagpapaunlad ng Agrikultura (MASIPAG),* and others (respondents) filed before the Court a Petition for Writ of Continuing *Mandamus* and Writ of *Kalikasan* with Prayer for the Issuance of a Temporary Environmental Protection Order (TEPO)[18] (petition for Writ of *Kalikasan*) against herein petitioners the Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR), the BPI and the Fertilizer and Pesticide Authority (FPA) of the DA, UPLBFI, and ISAAA, and UPMFI, alleging that the *Bt talong* field trials violated their constitutional right to health and a balanced ecology considering, among others, that: (*a*) the Environmental Compliance Certificate (ECC), as required by

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[12] CA *rollo*, Vol. II, pp. 1058-1064.

[13] *Rollo* (G.R. No. 209276), Vol. IX, p. 4540.

[14] Entitled "RULES AND REGULATIONS FOR THE IMPORTATION AND RELEASE INTO THE ENVIRONMENT OF PLANTS AND PLANT PRODUCTS DERIVED FROM THE USE OF MODERN BIOTECHNOLOGY," adopted on April 3, 2002.

[15] See Biosafety Permits; CA *rollo*, Vol. II, pp. 1058-1064.

[16] *Rollo* (G.R. No. 209276), Vol. IX, p. 4539.

[17] *Id*. at 4540.

[18] CA *rollo*, Vol. I, pp. 2-69.

Presidential Decree No. (PD) 1151,[19] was not secured prior to the field trials;[20] (*b*) the required public consultations under the Local Government Code (LGC) were not complied with;[21] and (*c*) as a regulated article under DAO 08-2002, *Bt talong* is presumed harmful to human health and the environment, and that there is no independent, peer-reviewed study showing its safety for human consumption and the environment.[22] Further, they contended that since the scientific evidence as to the safety of *Bt talong* remained insufficient or uncertain, and that preliminary scientific evaluation shows reasonable grounds for concern, the precautionary principle should be applied and, thereby, the field trials be enjoined.[23]

On May 2, 2012, the Court issued[24] a Writ of *Kalikasan* against petitioners (except UPLB[25]) and UPMFI, ordering them to make a verified return within a non-extendible period of ten (10) days, as provided for in Section 8, Rule 7 of the Rules of Procedure for Environmental Cases.[26] Thus, in compliance therewith, ISAAA, EMB/BPI/FPA, UPLBFI, and UPMFI[27] filed

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[19] Entitled "PHILIPPINE ENVIRONMENTAL POLICY" dated June 16, 1977.

[20] *Rollo* (G.R. No. 209276), Vol. IX, pp. 4539-4540.

[21] *Id*. at 4541.

[22] *Id*. at 4540.

[23] See *id*. at 4541.

[24] See Resolution dated May 2, 2012 signed by Clerk of Court Enriqueta E. Vidal; CA *rollo*, Vol. I, pp. 400-401.

[25] It appears from the records that UPLB was not included as one of the parties who was issued Writ of *Kalikasan* nor furnished with a copy of the petition filed by respondents. (See Resolution dated August 17, 2012 of the CA; CA *rollo*, Vol. Ill, pp. 2114-2116. See also Transcript of Stenographic Notes [TSN] dated August 14, 2012, pp. 4-8.)

[26] *Rollo* (G.R. No. 209276), Vol. IX, p. 4542.

[27] It appears from the December 8, 2015 Decision, the Court inadvertently omitted UPMFI and UPLBFI as parties who were served of the Writ of *Kalikasan*. Also, UPLB was unintentionally included as one of the parties who were served the same. See *id*.

their respective verified returns,[28] and therein maintained that: (*a*) all environmental laws were complied with, including the required public consultations in the affected communities; (*b*) an ECC was not required for the field trials as it will not significantly affect the environment nor pose a hazard to human health; (*c*) there is a plethora of scientific works and literature, peer-reviewed, on the safety of *Bt talong* for human consumption; (*d*) at any rate, the safety of *Bt talong* for human consumption is irrelevant because none of the eggplants will be consumed by humans or animals and all materials not used for analyses will be chopped, boiled, and buried following the conditions of the Biosafety Permits; and (*e*) the precautionary principle could not be applied as the field testing was only a part of a continuing study to ensure that such trials have no significant and negative impact on the environment.[29]

On July 10, 2012, the Court issued a Resolution[30] referring the case to the Court of Appeals for acceptance of the return of the writ and for hearing, reception of evidence, and rendition of judgment.[31] In a hearing before the CA on August 14, 2012, UPLB was impleaded as a party to the case and was furnished by respondents a copy of their petition. Consequently the CA directed UPLB to file its comment to the petition[32] and, on August 24, 2012, UPLB filed its Answer[33] adopting the arguments and

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[28] See Verified Return [of the Writ of *Kalikasan* dated 02 May 2012] with Opposition to the Application for a Temporary Environmental Protection Order (TEPO) filed by ISAAA on May 21, 2012 (CA *rollo*, Vol. I, pp. 437-544); Return of the Writ filed by EMB, BPI, and FPA on May 29, 2012 (CA *rollo*, Vol. II, pp. 1266-1344); Return filed by UPLBFI on May 28, 2012 (CA *rollo*, Vol. Ill, pp. 2009-2077); and Return of the Writ filed by UPMFI on July 6, 2012 (CA *rollo*, Vol. Ill, pp. 2081-2090).

[29] See *rollo* (G.R. No. 209276), Vol. IX, pp. 4543-4544. See also *rollo* (G.R. No. 209271), Vol. I, pp. 141-143.

[30] CA *rollo*, Vol. III, pp. 2100-2101.

[31] *Rollo* (G.R. No. 209276), Vol. IX, p. 4544.

[32] See TSN dated August 14, 2012, pp. 4-17 and 45. See also CA Resolution dated August 17, 2012; CA *rollo*, Vol. II, pp. 2114-2116.

[33] CA *rollo*, Vol. Ill, pp. 2120-2123.

allegations in the verified return filed by UPLBFI. On the other hand, in a Resolution[34] dated February 13, 2013, the CA discharged UPMFI as a party to the case pursuant to the Manifestation and Motion filed by respondents in order to expedite the proceedings and resolution of the latter's petition.

The CA Ruling

In a Decision[35] dated May 17, 2013, the CA ruled in favor of respondents and directed petitioners to permanently cease and desist from conducting the *Bt talong* field trials.[36] At the outset, it did not find merit in petitioners' contention that the case should be dismissed on the ground of mootness, noting that the issues raised by the latter were "capable of repetition yet evading review" since the *Bt talong* field trial was just one of the phases or stages of an overall and bigger study that is being conducted in relation to the said genetically-modified organism[37] It then held that the precautionary principle set forth under Section I,[38] Rule 20 of the Rules of Procedure for Environmental Cases[39] is relevant, considering the Philippines' rich biodiversity and uncertainty surrounding the safety of *Bt talong*.

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[34] CA *rollo,* Vol. V, pp. 3618-3619.

[35] *Rollo* (G.R. No. 209271), Vol. I, pp. 135-159.

[36] *Id*. at 157-158.

[37] *Id*. at 145.

[38] Section 1, Rule 20 of the Rules of Procedure for Environmental Cases provides:

RULE 20
PRECAUTIONARY PRINCIPLE

Section 1. *Applicability.* — When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it.

The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.

[39] Administrative Matter No. 09-6-8-SC dated April 13, 2010, which became effective on April 29, 2010.

It noted the possible irreversible effects of the field trials and the introduction of *Bt talong* to the market, and found the existing regulations issued by the DA and the Department of Science and Technology (DOST) insufficient to guarantee the safety of the environment and the health of the people.[40]

Aggrieved, petitioners separately moved for reconsideration.[41] However, in a Resolution[42] dated September 20, 2013, the CA denied the same and remarked that introducing genetically modified plant into the ecosystem is an ecologically imbalancing act.[43] Anent UPLB's argument that the Writ of *Kalikasan* violated its right to academic freedom, the CA emphasized that the writ did not stop the research on *Bt talong* but only the procedure employed in conducting the field trials, and only at this time when there is yet no law ensuring its safety when introduced to the environment.[44]

Dissatisfied, petitioners filed their respective petitions for review on *certiorari* before this Court.

The Proceedings Before the Court

In a Decision[45] dated December 8, 2015, the Court denied the petitions and accordingly, affirmed with modification the ruling of the CA.[46] Agreeing with the CA, the Court held that the precautionary principle applies in this case since the risk of

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[40] See *rollo* (G.R. No. 209276), Vol. IX, p. 4545. See also *rollo* (G.R. No. 209271, Vol. I, pp. 146-152.

[41] See BPI, EMB, and FPA's motion for reconsideration (MR) dated June 5, 2013 (CA *rollo*, Vol. V, pp. 3860-3888); ISAAA's MR dated June 11, 2013 (*id*. at 3893-3946); UPLB's MR dated June 10, 2013 (*id*. at 3949-3958); and UPLBFI's MR dated June 10, 2013 (*id*. at 3961-3963).

[42] *Rollo* (G.R. No. 209271), Vol. I, pp. 161-174.

[43] *Id*. at 168. See also *rollo* (G.R. No. 209276), Vol. IX, p. 4546.

[44] *Rollo* (G.R. No. 209271), Vol. I, pp. 166-167. See also *rollo* (G.R. No. 209276), Vol. IX, p. 4546.

[45] In G.R. Nos. 209271, 209276, 209301, and 209430. See *rollo* (G.R. No. 209276), Vol. IX, pp. 4530- 4636.

[46] See *id*. at 4634.

harm from the field trials of *Bt talong* remains uncertain and there exists a possibility of serious and irreversible harm. The Court observed that eggplants are a staple vegetable in the country that is mostly grown by small-scale farmers who are poor and marginalized; thus, given the country's rich biodiversity, the consequences of contamination and genetic pollution would be disastrous and irreversible.[47]

The Court likewise agreed with the CA in not dismissing the case for being moot and academic despite the completion and termination of the *Bt talong* field trials, on account of the following exceptions to the mootness principle: (*a*) the exceptional character of the situation and the paramount public interest is involved; and (*b*) the case is capable of repetition yet evading review.[48]

Further, the Court noted that while the provisions of DAO 08-2002 were observed, the National Biosafety Framework (NBF) established under EO 514, series of 2006[49] which requires public participation in all stages of biosafety decision-making, pursuant to the Cartagena Protocol on Biosafety[50] which was acceded to by the Philippines in 2000 and became effective locally in 2003, was not complied with.[51] Moreover, the field testing should have been subjected to Environmental Impact Assessment (EIA), considering that it involved new technologies with uncertain results.[52]

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[47] See *id*. at 4630-4633.

[48] *Id*. at 4570, citing *Office of the Deputy Ombudsman for Luzon v. Francisco, Sr.,* 678 Phil. 679, 690 (2011).

[49] Entitled "ESTABLISHING THE NATIONAL BIOSAFETY FRAMEWORK, PRESCRIBING GUIDELINES FOR ITS IMPLEMENTATION, STRENGTHENING THE NATIONAL COMMITTEE ON BIOSAFETY OF THE PHILIPPINES, AND FOR OTHER PURPOSES," approved on March 17, 2006.

[50] "*Cartagena Protocol on Biosafety to the United Nations Convention on Biological Diversity,"* signed by the Philippines on May 24, 2000 and entered into force on September 11, 2003.

[51] See *rollo* (G.R. No. 209276), Vol. IX, pp. 4619-4623.

[52] See *id*. at 4623-4624.

Thus, the Court permanently enjoined the field testing of *Bt talong*. In addition, it declared DAO 08-2002 null and void for failure to consider the provisions of the NBF. The Court also temporarily enjoined any application for contained use, field testing, propagation, commercialization, and importation of genetically modified organisms until a new administrative order is promulgated in accordance with law.[53]

The Issues Presented in the Motions for Reconsideration

Undaunted, petitioners moved for reconsideration,[54] arguing, among others, that: (*a*) the case should have been dismissed for mootness in view of the completion and termination of the *Bt talong* field trials and the expiration of the Biosafety Permits;[55] (*b*) the Court should not have ruled on the validity of DAO 08-2002 as it was not raised as an issue;[56] and (*c*) the Court erred in relying on the studies cited in the December 8, 2015 Decision which were not offered in evidence and involved *Bt corn*, not *Bt talong*.[57]

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[53] *Id*. at 4634.

[54] See motion for reconsideration (MR) filed by Croplife Philippines, Inc. January 5, 2016 (*rollo* (G.R. No. 209276), Vol. IX, pp. 4681-4718); *Ex-Parte* Manifestation with MR filed by ISAAA on January 7, 2016 (*id*. at 4746-4778); MR filed by intervenor Biotechnology Coalition of the Philippines, Inc. on January 14, 2016 (*id*. at 4785-4835); MR filed by EMB, BPI, and FPA on January 14, 2016 (*id*. at 4836-4863); Urgent Motion to Intervene (with [MR]-in-Intervention) filed by *Alyansa ng mga Grupong Haligi ng Agham at Teknolohiya para sa Mamamayan* (AGHAM) on February 2, 2016 (*id*.at 4903-4922); MR filed by the University of the Philippines on February 2, 2016 (*id*. at 4945-4952); MR filed by UPLBFI on February 3, 2016 (*id*. at 4953-4980); and Petition/M[MR]-in-Intervention filed by Philippine Association of Feed Millers, Inc. on February 16, 2016 (*id*. at 4998-5027). See also Manifestation filed by Edgar C. Talasan, *et al*.(Farmers) on January 20, 2016 adopting the arguments of the other petitioners in their respective MRs (*id*. at 4897-4902).

[55] See *id*. at 4945-4947.

[56] See *id*. at 4687-4690, 4754-4760, 4787-4791, 4844-4853, 4871-4875, 4911-4916, 4950-4978, and 5012-5015.

[57] See *id*. at 4690-4696, 4767-4772, and 4885-4889.

In their Consolidated Comments,[58] respondents maintain, in essence, that: (*a*) the case is not mooted by the completion of the field trials since field testing is part of the process of commercialization and will eventually lead to propagation, commercialization, and consumption of *Bt talong* as a consumer product;[59] (*b*) the validity of DAO 08-2002 was raised by respondents when they argued in their petition for Writ of *Kalikasan* that such administrative issuance is not enough to adequately protect the Constitutional right of the people to a balanced and healthful ecology;[60] and (*c*) the Court correctly took judicial notice of the scientific studies showing the negative effects of *Bt* technology and applied the precautionary principle.[61]

The Court's Ruling

The Court grants the motions for reconsideration on the ground of mootness.

As a rule, the Court may only adjudicate actual, ongoing controversies.[62] The requirement of the existence of a "case" or an "actual controversy" for the proper exercise of the power of judicial review proceeds from Section 1, Article VIII of the 1987 Constitution:

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[58] See Consolidated Comment and Opposition to Motion for Reconsideration of UP and UPLBFI and Motions for Reconsideration-in-Intervention of AGHAM Partylist dated April 12, 2016 (*id*. at 5054- 5067) and Consolidated Comment and Opposition to Motions for Reconsideration of ISAAA, EMB- DENR, *Et Al*. and Motions for Reconsideration-in-Intervention of BCP, Croplife, and PAFMI dated April 26, 2016 (*id*. at 5087-5099) both filed by respondents; and Consolidated Comment dated May 2, 2016 filed by intervenors *Pambansang Kilusan ng mga Samahang Magsasaka* (PAKISAMA), *Sibol ng Agham at Tecknolohiya* (SIBAT), Consumer Rights for Safe Food, Earth Elements, Inc., and Organic Producers & Trace Association Philippines, Inc. (*id*. at 5108-5129).

[59] See *id*. at 5057-5058.

[60] See *id*. at 5058-5060 and 5088-5089.

[61] See *id*. at 5062-5063.

[62] *Atty. Pormento v. Estrada,* 643 Phil. 735, 738 (2010).

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice **to settle actual controversies** involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

Accordingly, the Court is not empowered to decide moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it. In other words, when a case is moot, it becomes non-justiciable.[63]

An action is considered "moot" when it no longer presents a justiciable controversy because the issues involved have become academic or dead or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. There is nothing for the court to resolve as the determination thereof has been overtaken by subsequent events.[64]

Nevertheless, case law states that the Court will decide cases, otherwise moot, if: *first,* there is a grave violation of the Constitution;*second,* the exceptional character of the situation and the paramount public interest are involved; *third,* when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth,* the case is capable of repetition yet evading review.[65] Thus, jurisprudence recognizes these four instances as exceptions to the mootness principle.

In the December 8, 2015 Decision of the Court, it was held that (*a*) the present case is of exceptional character and paramount public interest is involved, and (*b*) it is likewise capable of

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[63] *Id*.

[64] *Id*. at 739.

[65] *Belgica v. Ochoa, Jr.,* 721 Phil. 416, 522 (2013).

repetition yet evading review. Hence, it was excepted from the mootness principle.[66] However, upon a closer scrutiny of the parties' arguments, the Court reconsiders its ruling and now finds merit in petitioners' assertion that the case should have been dismissed for being moot and academic, and that the aforesaid exceptions to the said rule should not have been applied.

I. On the paramount public interest exception.

Jurisprudence in this jurisdiction has set no hard-and-fast rule in determining whether a case involves paramount public interest in relation to the mootness principle. However, a survey of cases would show that, as a common guidepost for application, there should be some perceivable benefit to the public which demands the Court to proceed with the resolution of otherwise moot questions.

In *Gonzales v. Commission on Elections*,[67] an action for declaratory judgment assailing the validity of Republic Act No. (RA) 4880,[68] which prohibits the early nomination of candidates for elective offices and early election campaigns or partisan political activities became moot by reason of the holding of the 1967 elections before the case could be decided. Nonetheless, the Court treated the petition as one for prohibition and rendered judgment in view of the paramount public interest and the undeniable necessity for a ruling, the national elections [of 1969] being barely six months away."[69]

In *De Castro v. Commission on Elections,*[70] the Court proceeded to resolve the election protest subject of that case notwithstanding

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[66] See *rollo* (G.R, No. 209276), Vol. IX, p. 4570.

[67] 137 Phil. 471 (1969).

[68] Entitled "An Act to Amend Republic Act NUMBERED ONE HUNDRED AND EIGHTY, OTHERWISE KNOWN AS 'THE REVISED ELECTION CODE', BY LIMITING THE PERIOD OF ELECTION CAMPAIGN, INSERTING FOR THIS PURPOSE NEW SECTIONS THEREIN TO BE KNOWN AS SECTIONS 50-A AND 50-B AND AMENDING SECTION ONE HUNDRED EIGHTY-THREE OF THE SAME CODE" (June 17, 1967).

[69] *Gonzales v. Commission on Elections, supra* note 67, at 489-490.

[70] *De Castro v. Commission on Elections,* 335 Phil. 462 (1997).

the supervening death of one of the contestants. According to the Court, in an election contest, there is a paramount need to dispel the uncertainty that beclouds the real choice of the electorate.[71]

In *David v. Macapagal-Arroyo,*[72] the Court ruled on the constitutionality of Presidential Proclamation No. 1017, s. 2006,[73] which declared a state of National Emergency, even though the same was lifted before a decision could be rendered. The Court explained that the case was one of exceptional character and involved paramount public interest, because the people's basic rights to expression, assembly, and of the press were at issue.[74]

In *Constantino v. Sandiganbayan*[75] both of the accused were found guilty of graft and corrupt practices under Section 3 (e) of RA 3019.[76] One of the accused appealed the conviction, while the other filed a petition for *certiorari* before the Court. While the appellant died during the pendency of his appeal, the Court still ruled on the merits thereof considering the exceptional character of the appeals in relation to each other, *i.e.,* the two petitions were so intertwined that the absolution of the deceased was determinative of the absolution of the other accused.[77]

More recently, in *Funa v. Manila Economic and Cultural Office (MECO),*[78] the petitioner prayed that the Commission

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[71] See *id*. at 465-466, citing *De Mesa v. Mencias*, 124 Phil. 1187, 1192-1193 (1966).

[72] 522 Phil. 705 (2006).

[73] Entitled "PROCLAMATION DECLARING A STATE OF NATIONAL EMERGENCY" dated February 24, 2006.

[74] *David v. Macapagal-Arroyo, supra* note 72, at 752-755.

[75] 559 Phil. 622 (2007).

[76] Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT" (August 17, 1960).

[77] See *Constantino v. Sandiganbayan, supra* note 75, at 635-636.

[78] 726 Phil. 63 (2014).

on Audit (COA) be ordered to audit the MECO which is based in Taiwan, on the premise that it is a government-owned and controlled corporation.[79] The COA argued that the case is already moot and should be dismissed, since it had already directed a team of auditors to proceed to Taiwan to audit the accounts of MECO.[80] Ruling on the merits, the Court explained that the case was of paramount public interest because it involved the COA's performance of its constitutional duty and because the case concerns the legal status of MECO, *i.e.,* whether it may be considered as a government agency or not, which has a direct bearing on the country's commitment to the One China Policy of the People's Republic of China.[81]

In contrast to the foregoing cases, no perceivable benefit to the public - whether rational or practical - may be gained by resolving respondents' petition for Writ of *Kalikasan* on the merits.

To recount, these cases, which stemmed from herein respondents petition for Writ of *Kalikasan*, were mooted by the undisputed expiration of the Biosafety Permits issued by the BPI and the completion and tennination of the *Bt talong* field trials subject of the same.[82] These incidents effectively negated the necessity for the reliefs sought by respondents in their petition for Writ of *Kalikasan* as there was no longer any field test to enjoin. Hence, at the time the CA rendered its Decision dated May 17, 2013, the reliefs petitioner sought and granted by the CA were no longer capable of execution.

At this juncture, it is important to understand that the completion and termination of the field tests do not mean that herein petitioners may inevitably proceed to commercially propagate *Bt talong*[83] There are three (3) stages before

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[79] See *id*. at 76-77.

[80] See *id*. at 77-79.

[81] See *id*. at 80-83.

[82] See *id*. at 4661.

[83] *Id*. at 4660.

genetically-modified organisms (GMOs) may become commercially available under DAO 08-2002[84] and each stage is distinct, such that "[s]ubsequent stages can only proceed if the prior stage/s [is/]are completed and clearance is given to engage in the next regulatory stage."[85] Specifically, before a genetically modified organism is allowed to be propagated under DAO 08-2002: (*a*) a permit for propagation must be secured from the BPI; (*b*) it can be shown that based on the field testing conducted in the Philippines, the regulated article will not pose any significant risks to the environment; (*c*) food and/or feed safety studies show that the regulated article will not pose any significant risks to human and animal health; and (*d*) if the regulated article is a pest-protected plant, its transformation event has been duly registered with the FPA.[86]

As the matter never went beyond the field testing phase, none of the foregoing tasks related to propagation were pursued or the requirements therefor complied with. Thus, there are no guaranteed after-effects to the already concluded *Bt talong* field trials that demand an adjudication from which the public may perceivably benefit. Any future threat to the right of herein respondents or the public in general to a healthful and balanced ecology is therefore more imagined than real.

In fact, it would appear to be more beneficial to the public to stay a verdict on the safeness of *Bt talong* - or GMOs, for that matter - until an actual and justiciable case properly presents itself before the Court. In his Concurring Opinion[87] on the main, Associate Justice Marvic M.V.F. Leonen (Justice Leonen) had aptly pointed out that "the findings [resulting from the *Bt*

[84] The three (3) stages are: (1) Contained Use, where research on the regulated article is limited inside a physical containment facility for purposes of laboratory experimentation; (2) Field Testing, where the regulated articles are intentionally introduced to the environment in a highly regulated manner for experimental purposes; and (3) Propagation, where the regulated article is introduced to commerce. *Id*. at 4661-4662.

[85] *Id*. at 4662.

[86] See Section 9, Part IV of DAO 08-2002.

[87] *Rollo* (G.R. No. 209276), Vol. IX, pp. 4659-4678.

talong field trials] should be the material to provide more rigorous scientific analysis of the various claims made in relation to *Bt talong*."[88] True enough, the concluded field tests - like those in these cases - would yield data that may prove useful for future studies and analyses. If at all, resolving the petition for Writ of *Kalikasan* would unnecessarily arrest the results of further research and testing on *Bt talong*, and even GMOs in general, and hence, tend to hinder scientific advancement on the subject matter.

More significantly, it is clear that no benefit would be derived by the public in assessing the merits of field trials whose parameters are not only unique to the specific type of *Bt talong* tested, but are now, in fact, rendered obsolete by the supervening change in the regulatory framework applied to GMO field testing. To be sure, DAO 08-2002 has already been superseded by Joint Department Circular No. 1, series of 2016[89] (JDC 01-2016), issued by the Department of Science and Technology (DOST), the DA, the DENR, the Department of Health (DOH), and the Department of Interior and Local Government (DILG), which provides a substantially different regulatory framework from that under DAO 08-2002 as will be detailed below. Thus, to resolve respondents' petition for Writ of *Kalikasan* on its merits, would be tantamount to an unnecessary scholarly exercise for the Court to assess alleged violations of health and environmental rights that arose from a past test case whose bearings do not find any - if not minimal - relevance to cases operating under today's regulatory framework.

Therefore, the paramount public interest exception to the mootness rule should not have been applied.

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[88] *Id*. at 4663.

[89] Entitled "RULES AND REGULATIONS FOR THE RESEARCH AND DEVELOPMENT, HANDLING AND USE, TRANSBOUNDARY MOVEMENT, RELEASE INTO THE ENVIRONMENT, AND MANAGEMENT OF GENETICALLY-MODIFIED PLANT AND PLANT PRODUCTS DERIVED FROM THE USE OF MODERN BIOTECHNOLOGY," published in two (2) newspapers of general circulation on March 30, 2016.

II. The case is not one capable of repetition yet evading review.

Likewise, contrary to the Court's earlier ruling,[90] these cases do not fall under the "capable of repetition yet evading review" exception.

The Court notes that the petition for Writ of *Kalikasan* specifically raised issues only against the field testing of *Bt talong* under the premises of DAO 08-2002,[91] *i.e.,* that herein petitioners failed to: (*a*) fully inform the people regarding the health, environment, and other hazards involved;[92] and (*b*) conduct any valid risk assessment before conducting the field trial.[93] As further pointed out by Justice Leonen, the reliefs sought did not extend far enough to enjoin the use of the results of the field trials that have been completed. Hence, the petition's specificity prevented it from falling under the above exception to the mootness rule.[94]

More obviously, the supersession of DAO 08-2002 by JDC 01-2016 clearly prevents this case from being one capable of repetition so as to warrant review despite its mootness. To contextualize, JDC 01-2016 states that:

> Section 1. Applicability. This Joint Department Circular shall apply to the research, development, handling and use, transboundary movement, release into the environment, and management of genetically-modified plant and plant products derived from the use of modern technology, included under "regulated articles."

As earlier adverted to, with the issuance of JDC 01-2016, a new regulatory framework in the conduct of field testing now applies.

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[90] See *rollo* (G.R. No. 209276), Vol. IX, p. 4570.

[91] See *id*. at 4661-4663. See also CA *rollo*, Vol. I, pp. 20-23 and 56-65.

[92] See CA *rollo*, Vol. I, p. 55.

[93] *Id*. at 58.

[94] *Rollo* (G.R. No. 209276), Vol. IX, p. 4663.

Notably, the new framework under JDC 01-2016 is substantially different from that under DAO 08-2002. In fact, the new parameters in JDC 01-2016 pertain to provisions which prompted the Court to invalidate DAO 08-2002. In the December 8, 2015 Decision of the Court, it was observed that: (*a*) DAO 08-2002 has no mechanism to mandate compliance with international biosafety protocols;[95] (*b*) DAO 08-2002 does not comply with the transparency and public participation requirements under the NBF;[96] and (*c*) risk assessment is conducted by an informal group, called the Biosafety Advisory Team of the DA, composed of representatives from the BPI, Bureau of Animal Industry, FPA, DENR, DOH, and DOST.[97]

Under DAO 08-2002, no specific guidelines were used in the conduct of risk assessment, and the DA was allowed to consider the expert advice of, and guidelines developed by, relevant international organizations and regulatory authorities of countries with significant experience in the regulatory supervision of the regulated article.[98] However, under JDC 01-2016, the CODEX *Alimentarius* Guidelines was adopted to govern the risk assessment of activities involving the research, development, handling and use, transboundary movement, release into the environment, and management of genetically modified plant and plant products derived from the use of modern biotechnology.[99] Also, whereas DAO 08-2002 was limited to the DA's authority in regulating the importation and release into the environment of plants and plant products derived from the use of modern biotechnology,[100] under JDC 01-2016, various relevant government agencies such as the DOST, DOH, DENR,

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[95] *Id*. at 4623.

[96] See *id*. at 4621-4623.

[97] *Id*. at 4619.

[98] See Sec. 3 (A), Part I of DAO 08-2002.

[99] See Sec. 3 (B), Article II, in relation to Section 1, Article I, of the JDC 01-2016.

[100] See penultimate preambular paragraph and Section 2 (A), Part I of DAO 08-2002.

and the DILG now participate in all stages of the biosafety decision-making process, with the DOST being the central and lead agency.[101]

JDC 01-2016 also provides for a more comprehensive avenue for public participation in cases involving field trials and requires applications for permits and permits already issued to be made public by posting them online in the websites of the NCBP and the BPI.[102] The composition of the Institutional Biosafety Committee (IBC) has also been modified to include an elected local official in the locality where the field testing will be conducted as one of the community representatives.[103] Previously, under DAO 08-2002, the only requirement for the community representatives is that they shall not be affiliated with the applicant and shall be in a position to represent the interests of the communities where the field testing is to be conducted.[104]

JDC 01-2016 also prescribes additional qualifications for the members of the Scientific and Technical Review Panel (STRP), the pool of scientists that evaluates the risk assessment submitted by the applicant for field trial, commercial propagation, or direct use of regulated articles. Aside from not being an official, staff or employee of the DA or any of its attached agencies, JDC 01-2016 requires that members of the STRP: (*a*) must not be directly or indirectly employed or engaged by a company or institution with pending applications for permits under JDC 01-2016; (*b*) must possess technical expertise in food and nutrition, toxicology, ecology, crop protection, environmental science, molecular biology and biotechnology, genetics, plant breeding, or animal nutrition; and (*c*) must be well-respected in the scientific community.[105]

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[101] See Sec. 4, Article III of the JDC 01-2016.

[102] See Sec. 12 (A), Article V of the JDC 01-2016.

[103] See Sec. 6, Article III of the JDC 01-2016.

[104] See Sec. 1 (L) Part I of DAO 08-2002.

[105] See Sec. 7, Article III of the JDC 01-2016.

Below is a tabular presentation of the differences between the relevant portions of DAO 08-2002 and JDC 01-2016:

DAO 08-2002	JDC 01-2016
1. As to coverage and government participation	
WHEREAS, under TitleIV, Chapter 4, Section 9 of the Administrative Code of 1987, the Department of Agriculture, through the Bureau of Plant Industry, is responsible for the production of improved planning materials and protection of agricultural crops from pests and diseases; and x x x x	**ARTICLE I. GENERAL PROVISIONS** Section 1. **Applicability**. This Joint Department Circular shall apply to the research, development handling and use, transboundary movement release into the environment, and managment of genetically-motified plant and plant products derived from the use of modern biotechnology, included under "regulated articles."
PART I **GENERAL PROVISIONS** **x x x x** xxxx	**x x x x** **ARTICLE III. ADMINISTRATIVE FRAMEWORK**
Section 2 **Coverage** A. Scope - This Order covers the importation or release into the environment of: 1. Any plant which has been altered or produced through the use of modern biotechnology if the donor organism, host organism, or vector or vector agent belongs to any of the genera or taxa classified by BPI as meeting the definition of plant pest or is a medium for the introduction of noxious weeds; or 2. Any plant or plant product altered or produced through the use of modern biotechnology which may pose significant risks to human health and the environment based on available scientific and technical information. B. Exceptions. -This Order shall not apply to the contained use of a regulated article, which is within the regulatory supervision of NCBP.	**Section 4. Role of National Government Agencies** Consistent with the NBF and the laws granting their powers and functions, national government agencies shall have the following roles: A. [DA]. As the principal agency of the Philippine Government responsible for the promotion of agricultural and rural growth and development so as to ensure food security and to contribute to poverty alleviation, the DA shall take the lead in addressing biosafety issues related to the country's agricultural productivity and food security, x x x. B. [DOST]. As the premier science and technology body in the country, the DOST shall take the lead in ensuring that the best available science is utilized and applied in adopting biosafety policies, measures and guidelines, and in making biosafety decision, xxx. C. [DENR]. As the primary government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources, the DENR shall ensure that environmental assessments are done and impacts identified in biosafety decisions, x x x. D. [DOH]. The DOH, as the principal authority on health, shall formulate guidelines in assessing the health impacts posed by modern biotechnology and its applications, x x x. E. [DILG]. The DILG shall coordinate with the DA, DOST, DENR and DOH in overseeing the implementation of this Circular in

	relation to the activities that are to be implemented in specific LGUs, particularly in relation to the conduct of public consultations as required under the Local Government Code. xxx.
2. As to guidelines in risk assessment	
PART I **GENERAL PROVISIONS** x x x x **Section 3** **Risk Assessment** A. Principles of Risk Assessment - No regulated article shall be allowed to be imported or released into the environment without the conduct of a risk assessment performed in accordance with this Order. The following principles shall be followed when performing a risk assessment to determine whether a regulated article poses significant risks to human health and the environment: 1.The risk assessment shall be carried out in a scientifically sound and transparent manner based on available scientific and technical information. The expert advice of, and guidelines developed by, relevant international organizations and regulatory authorities of countries with significant experience in the regulatory supervision o f the regulated article shall be taken into account in the conduct of risk assessment. x x x x	**ARTICLE II. BIOSAFETY DECISIONS** **Section 3. Guidelines in Making Biosafety Decisions** The principles under the NBF shall guide concerned agencies in making biosafety decisions, including: x x x x B. Risk Assessment. Risk assessment shall be mandatory and central in making biosafety decisions, consistent with policies and standards on risk assessment issued by the NCBP; and guided by Annex III of the Cartagena Protocol on Biosafety. Pursuant to the NBF, the following principles shall be followed when performing a risk assessment to determine whether a regulated article poses significant risks to human health and the environment. 1.The risk assessment shall be carried out in a scientifically sound and transparent manner based on available scientific and technical information. The expert advice of and guidelines developed by, relevant international organizations, including intergovernmental bodies, and regulatory authorities of countries with significant experience in the regulatory supervision of the regulated article shall be taken into account. <u>In the conduct of risk assessment, CODEX Alimentarius Guidelines on the Food Safety Assessment of Foods Derived from the Recombinant-DNA Plants shall be adopted as well as other internationally accepted consensus documents.</u> xxxx (Underscoring supplied)
3. As to public participation	
PART III **APPROVAL PROCESS FOR FIELD TESTING OF REGULATED ARTICLES** xxxx	**ARTICLE V. FIELD TRIAL OF REGULATED ARTICLES** **Section 12. Public Participation for Field Trial** A. The BPI shall make public all applications and Biosafety Permits for

Section 8 **Requirements for Field Testing** xxxx G. Public Consultation. - The applicant, acting through its IBC, shall notify and invite comments on the field testing proposal from the barangays and city/municipal governments with jurisdiction over the field test sites. The IBC shall post for three (3) consecutive weeks copies of the *Public Information Sheet for Field Testing* approved by the BPI in at least three (3) conspicuous places in each of the concerned barangay and city/municipal halls. The *Public Information Sheet for Field Testing* shall, among others, invite interested parties to send their comments on the proposed field testing to BPI within a period of thirty (30) days from the date of posting. It shall be in a language understood in the community. During the comment period, any interested person may submit to BPI written comments regarding the application. The applicant shall submit proof of posting in the form of certifications from the concerned barangay captains and city/municipal mayors or an affidavit stating the dates and places of posting duly executed by the responsible officer or his duly authorized representative	Field Trial through posting on the NCBP and BPI websites, and in the offices of the DA and DOST in the province, city, or municipality where the field trial will be conducted. x x x x
4. As to membership in the Institutional Biosafety Committee	
PART I **GENERAL PROVISIONS** **Section 1** **Definition of Terms** x x x x L. "IBC" means the Institutional Biosafety Committee established by an applicant in preparation for the field testing of a regulated article and whose membership has been approved by BPI. The IBC shall be responsible for the initial evaluation of the risk assessment and risk management strategies of the applicant for field testing. It shall be composed of at least five (5) members, three (3) of whom shall be designated as "scientist-members" who shall possess scientific and technological knowledge and expertise sufficient to enable them to evaluate and monitor properly any work of the applicant relating to the field testing of a regulated article. The other members, who shall be designated as "community representatives", shall not be affiliated with the applicant apart from being members of its IBC and shall be in a position to represent the interests of the communities where the field testing is to be conducted. For the avoidance of doubt, NCBP	**ARTICLE III. ADMINISTRATIVE FRAMEWORK** **x x x x** **Section 6. Institutional Biosafety Committee** The company or institution applying for and granted permits under this Circular shall constitute an IBC prior to the contained use, confined test, or field trial of a regulated article. The membership of the IBC shall be approved by the DOST-BC for contained use or confined test, or by the DA-BC for field trial. The IBC is responsible for the conduct of the risk assessment and preparation of risk management strategies of the applicant for contained use, confined test, or field trial. It shall make sure that the environment and human health are safeguarded in the conduct of any activity involving regulated articles. The IBC shall be composed of at least five (5) members, three (3) of whom shall be designated as scientist-members and two (2) members shall be community representatives, All scientist-members must possess scientific or technological knowledge and expertise sufficient to enable them to property evaluate and monitor any work involving regulated

shall be responsible for approving the membership of the IBC for contained use of a regulated article. x x x x (Underscoring supplied)	articles conducted by the applicant. The community representative must not be affiliated with the applicant, and must be in a position to represent the interests of the communities where the activities are to be conducted.One of the communityrepresentatives shall be an elected official of the LGU.The other community representative shall be selected from the residents who are members of theCivil Society Organizations represented in the Local Poverty Reduction Action Team, pursuant to DILG Memorandum Circular No. 2015-45.For multi-location trials, community representatives of the IBC shall be designated per site, x x x. (Underscoring supplied)
5. As to the composition and qualifications of the members of the Scientific and Technical Review Panel	
PART I GENERAL PROVISIONS **Section 1 Definition of Terms** x x x x EE. "STRP" means the Scientific and Technical Reviw Panel created by BPI as an advisory body, composed of at least three (3) reputable and independent scientists who shall not be employees of the Department and who have the relevant professional background necessary to evaluate the potential risks of the proposed activity to human health and the environment based on available scientific and technical information. x x x x (Underscoring supplied)	**ARTICLE III. ADMINISTRATIVE FRAMEWORK** **x x x x** **Section 7. Scientific and Technical Review Panel (STRP)** The DA shall create a Scientific and Technical Review Panel composed of a pool of non-DA scientists with expertise in the evaluation of the potential risks of regulated articles to the environment and health, x x x x x x x The DA shall select scientists/experts in the STRP, who shall meet the following qualifications: A. Must not be an official, staff or employee of the DA or any of its attached agencies; B. Must not be directly or indirectly employed or engaged by a company or institution with pending applications for permits covered by this Circular; C. Possess technical expertise in at least one of the following fields: food and nutrition; toxicology, ecology, crop protection, environmental science, molecular biology and biotechnology, genetics, plant breeding, animal nutrition; and D. Well-respected in the scientific community as evidenced by positions held in science-based organizations, awards and recognitions, publications in local and international peer- reviewed scientific journals. x x x x (Underscoring supplied)

Based on the foregoing, it is apparent that the regulatory framework now applicable in conducting risk assessment in matters involving the research, development, handling,

movement, and release into the environment of genetically modified plant and plant products derived from the use of modern biotechnology is substantially different from that which was applied to the subject field trials. In this regard, it cannot be said that the present case is one capable of repetition yet evading review.

The essence of cases capable of repetition yet evading review was succinctly explained by the Court in *Belgica v. Ochoa, Jr.,*[106] where the constitutionality of the Executive Department's lump-sum, discretionary funds under the 2013 General Appropriations Act, known as the Priority Development Assistance Fund (PDAF), was assailed. In that case, the Court rejected the view that the issues related thereto had been rendered moot and academic by the reforms undertaken by the Executive Department and former President Benigno Simeon S. Aquino III's declaration that he had already "abolished the PDAF." Citing the historical evolution of the ubiquitous Pork Barrel System, which was the source of the PDAF, and the fact that it has *always* been incorporated in the national budget which is enacted annually, the Court ruled that it is one capable of repetition yet evading review, thus:

> Finally, the application of the fourth exception [to the rule on mootness] is called for by the **recognition that the preparation and passage of the national budget is, by constitutional imprimatur, an affair of annual occurrence.**The relevance of the issues before the Court does not cease with the passage of a "PDAF-free budget for 2014." **The evolution of the "Pork Barrel System," by its multifarious iterations throughout the course of history, lends a semblance of truth to petitioners' claim that "the same dog will just resurface wearing a different collar."** In *Sanlakas v. Executive Secretary,* the government had already backtracked on a previous course of action yet the Court used the "capable of repetition but evading review" exception in order "[t]o prevent similar questions from re-emerging." The situation similarly holds true to these cases. Indeed, the myriad of issues underlying the manner in which certain public funds are spent, if not resolved at this most opportune time, are capable of repetition and hence, must not evade judicial review.[107] (Emphases supplied)

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[106] *Supra* note 65.

[107] *Id*. at 524-525; citations omitted.

Evidently, the "frequent" and "routinary" nature of the Pork Barrel Funds and the PDAF are wanting herein. To reiterate, the issues in these cases involve factual considerations which are peculiar only to the controversy at hand since the petition for Writ of *Kalikasan* is specific to the field testing of *Bt talong* and does not involve other GMOs.

At this point, the Court discerns that there are two (2) factors to be considered before a case is deemed one capable of repetition yet evading review: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration; and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action.

Here, respondents cannot claim that the duration of the subject field tests was too short to be fully litigated. It must be emphasized that the Biosafety Permits for the subject field tests were issued on March 16, 2010 and June 28, 2010, and were valid for two (2) years. However, as aptly pointed out by Justice Leonen, respondents filed their petition for Writ of *Kalikasan* only on April 26, 2012 - just a few months before the Biosafety Permits expired and when the field testing activities were already over.[108] Obviously, therefore, the cessation of the subject field tests before the case could be resolved was due to respondents' own inaction.

Moreover, the situation respondents complain of is not susceptible to repetition. As discussed above, DAO 08-2002 has already been superseded by JDC 01-2016. Hence, future applications for field testing will be governed by JDC 01-2016 which, as illustrated, adopts a regulatory framework that is substantially different from that of DAO 08-2002.

Therefore, it was improper for the Court to resolve the merits of the case which had become moot in view of the absence of any valid exceptions to the rule on mootness, and to thereupon rule on the objections against the validity and consequently nullify DAO 08-2002 under the premises of the precautionary principle.

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[108] See *rollo* (G.R. No. 209276), Vol. IX, p. 4659.

In fact, in relation to the latter, it is observed that the Court should not have even delved into the constitutionality of DAO 08-2002 as it was merely **collaterally challenged** by respondents, based on the constitutional precepts of the people's rights to information on matters of public concern, to public participation, to a balanced and healthful ecology, and to health.[109] A cursory perusal of the petition for Writ of *Kalikasan* filed by respondents on April 26, 2012 before the Court shows that they essentially assail herein petitioners' failure to: (*a*) fully inform the people regarding the health, environment, and other hazards involved;[110] and (*b*) conduct any valid risk assessment before conducting the field trial.[111] However, while the provisions of DAO 08-2002 were averred to be inadequate to protect (*a*) the constitutional right of the people to a balanced and healthful ecology since "said regulation failed, among others, to anticipate '*the public implications caused by the importation of GMOs in the Philippines*'";[112] and (*b*) "the people from the potential harm these genetically modified plants and genetically modified organisms may cause human health and the environment, [and] thus, x x x fall short of Constitutional compliance,"[113] respondents merely prayed for its ***amendment***, as well as that of the NBF, to define or incorporate "an independent, transparent, and comprehensive scientific and socio-economic risk assessment, public information, consultation, and participation, and providing for their effective implementation, in accord with international safety standards[.]"[114] This attempt to assail the constitutionality of the public information and consultation requirements under DAO 08-2002 and the NBF constitutes a collateral attack on the said provisions of law that runs afoul of the well-settled rule that the constitutionality of a statute cannot be collaterally attacked as constitutionality issues must be pleaded

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[109] See CA *rollo*, Vol. I, pp. 44-45 and 50.

[110] *Id*. at 55.

[111] *Id*. at 58.

[112] *Id*. at 57-58.

[113] *Id*. at 56.

[114] *Id*. at 68.

directly and not collaterally.[115] Verily, the policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid, absent a clear and unmistakable showing to the contrary, in deference to the doctrine of separation of powers. This means that the measure had first been carefully studied by the executive department and found to be in accord with the Constitution before it was finally enacted and approved.[116]

All told, with respondents' petition for Writ of Kalikasan already mooted by the expiration of the Biosafety Permits and the completion of the field trials subject of these cases, and with none of the exceptions to the mootness principle properly attending, the Court grants the instant motions for reconsideration and hereby dismisses the aforesaid petition. With this pronouncement, no discussion on the substantive merits of the same should be made.

WHEREFORE, the motions for reconsideration are **GRANTED.** The Decision dated December 8, 2015 of the Court, which affirmed with modification the Decision dated May 17, 2013 and the Resolution dated September 20, 2013 of the Court of Appeals in CA-G.R. SP No. 00013, is hereby **SET ASIDE** for the reasons above-explained. A new one is **ENTERED DISMISSING** the Petition for Writ of Continuing *Mandamus* and Writ of *Kalikasan* with Prayer for the Issuance of a Temporary Environmental Protection Order (TEPO) filed by respondents Greenpeace Southeast Asia (Philippines), *Magsasaka at Siyentipiko sa Pagpapaunlad ng Agrikultura,* and others on the ground of mootness.

SO ORDERED.

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

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[115] See *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas,* 716 Phil. 132, 153 (2013).

[116] See *ABS-CBN Broadcasting Corp. v. Philippine Multi-Media System, Inc.,* 596 Phil. 283, 312 (2009), citing *Spouses Mirasol v. CA,* 403 Phil. 760, 774 (2001).

Leonen, J., see separate concurring opinion.

Carpio, J., no part, prior inhibition.

Jardeleza, J., no part.

CONCURRING OPINION

LEONEN, *J.*:

I concur with the Resolution[1] penned by my esteemed colleague Associate Justice Estela M. Perlas-Bernabe. In addition to her points, I reiterate by reference the points I raised in my Concurring Opinion,[2] which was promulgated with the original Decision[3] in this case.

I reserve opinion on whether the "exceptional character of the situation and the paramount public interest"[4] can be a ground for ruling on a case despite it becoming moot and academic. In my view, a more becoming appreciation of the judiciary's role in the entire constitutional order should always give pause to go beyond the issues crystallized by an actual case with a real, present controversy. Going beyond the parameters of a live case may be an invitation to participate in the crafting of policies

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[1] *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines), et al.* (Resolution), G.R. No. 209271, July 5, 2016 [Per *J.* Perlas-Bernabe, *En Banc*].

[2] *J.* Leonen, Concurring in Opinion in *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines), et al,* G.R. No. 209271, December 8, 2015

<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/december2015/209271_leonen.pdf>[Per *J.* Villarama, Jr., *En Banc*].

[3] *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines), et al.,* G.R. No. 209271, December 8, 2015

<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/december2015/209271_leonen.pdf> [Per *J.* Villarama, Jr., *En Banc*].

[4] *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines), et al.* (Resolution), G.R. No. 209271, July 5, 2016, p. 9 [Per *J.* Perlas-Bernabe, *En Banc*].

properly addressed to the other departments and organs of government. I am of the belief that the judiciary should take an attitude of principled restraint.

Nonetheless, I agree with the ponencia that the exception is not involved in this case.

The constitutionality of Department of Agriculture Administrative Order No. 8, Series of 2002, was properly raised. In any case, there is now a new regulatory measure, the validity of which is not in issue. Whether the repealed Administrative Order was raised need no longer be discussed.

ACCORDINGLY, I join the grant of the Motions for Reconsideration.

EN BANC

[G.R. No. 212426. July 26, 2016]

RENE A.V. SAGUISAG, WIGBERTO E. TAÑADA, FRANCISCO "DODONG" NEMENZO, JR., SR. MARY JOHN MANANZAN, PACIFICO A. AGABIN, ESTEBAN "STEVE" SALONGA, H. HARRY L. ROQUE, JR., EVALYN G. URSUA, EDRE U. OLALIA, DR. CAROL PAGADUAN-ARAULLO, DR. ROLAND SIMBULAN, and TEDDY CASIÑO, *petitioners, vs.* **EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., DEPARTMENT OF NATIONAL DEFENSE SECRETARY VOLTAIRE GAZMIN, DEPARTMENT OF FOREIGN AFFAIRS SECRETARY ALBERT DEL ROSARIO, JR., DEPARTMENT OF BUDGET AND MANAGEMENT SECRETARY FLORENCIO ABAD, and ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL EMMANUEL T. BAUTISTA,** *respondents.*

[G.R. No. 212444. July 26, 2016]

BAGONG ALYANSANG MAKABAYAN (BAYAN), REPRESENTED BY ITS SECRETARY GENERAL RENATO M. REYES, JR., BAYAN MUNA PARTY-LIST REPRESENTATIVES NERI J. COLMENARES, and CARLOS ZARATE, GABRIELA WOMEN'S PARTY-LIST REPRESENTATIVES LUZ ILAGAN AND EMERENCIANA DE JESUS, ACT TEACHERS PARTY-LIST REPRESENTATIVE ANTONIO L. TINIO, ANAKPAWIS PARTY-LIST REPRESENTATIVE FERNANDO HICAP, KABATAAN PARTY-LIST REPRESENTATIVE TERRY RIDON, MAKABAYANG KOALISYON NG MAMAMAYAN (MAKABAYAN), REPRESENTED BY SATURNINO OCAMPO, and LIZA MAZA, BIENVENIDO LUMBERA, JOEL C. LAMANGAN, RAFAEL MARIANO, SALVADOR FRANCE, ROGELIO M. SOLUTA, and CLEMENTE G. BAUTISTA, *petitioners, vs.* **DEPARTMENT OF NATIONAL DEFENSE (DND) SECRETARY VOLTAIRE GAZMIN, DEPARTMENT OF FOREIGN AFFAIRS SECRETARY ALBERT DEL ROSARIO, EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL EMMANUEL T. BAUTISTA, DEFENSE UNDERSECRETARY PIO LORENZO BATINO, AMBASSADOR LOURDES YPARRAGUIRRE, AMBASSADOR J. EDUARDO MALAYA, DEPARTMENT OF JUSTICE UNDERSECRETARY FRANCISCO BARAAN III, and DND ASSISTANT SECRETARY FOR STRATEGIC ASSESSMENTS RAYMUND JOSE QUILOP AS CHAIRPERSON AND MEMBERS, RESPECTIVELY, OF THE NEGOTIATING PANEL FOR THE PHILIPPINES ON EDCA,** *respondents.*

KILUSANG MAYO UNO, REPRESENTED BY ITS CHAIRPERSON, ELMER LABOG, CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE), REPRESENTED BY ITS NATIONAL PRESIDENT FERDINAND GAITE, NATIONAL FEDERATION OF LABOR UNIONS-KILUSANG MAYO UNO, REPRESENTED BY ITS NATIONAL PRESIDENT JOSELITO USTAREZ, NENITA GONZAGA, VIOLETA ESPIRITU, VIRGINIA FLORES, and ARMANDO TEODORO, JR., *petitioners-in-intervention,*

RENE A.Q. SAGUISAG, JR., *petitioner-in-intervention.*

SYLLABUS

1. POLITICAL LAW; STATUTES; *VERBA LEGIS* RULE; THE COURT EXPLAINS THE FUNCTION AND APPLICATION OF THE *VERBA LEGIS* RULE; CASE AT BAR. — Petitioners assert that this Court contradicted itself when it interpreted the word "allowed in" to refer to the initial entry of foreign bases, troops, and facilities, based on the fact that the plain meaning of the provision in question referred to prohibiting the return of foreign bases, troops, and facilities except under a treaty concurred in by the Senate. This argument fails to consider the function and application of the verba legis rule. Firstly, *verba legis* is a mode of construing the provisions of law as they stand. This takes into account the language of the law, which is in English, and therefore includes reference to the meaning of the words based on the actual use of the word in the language. Secondly, by interpreting "allowed in" as referring to an initial entry, the Court has simply applied the plain meaning of the words in the particular provision. Necessarily, once entry has been established by a subsisting treaty, latter instances of entry need not be embodied by a separate treaty. After all, the Constitution did not state that foreign military bases, troops, and facilities shall not subsist or exist in the Philippines. Petitioners' own interpretation and application of the *verba legis* rule will in fact result in an absurdity, which legal construction strictly abhors. x x x The Constitution cannot

be viewed solely as a list of prohibitions and limitations on governmental power, but rather as an instrument providing the process of structuring government in order that it may effectively serve the people. It is not simply a set of rules, but an entire legal framework for Philippine society.

2. ID.; ENHANCED DEFENSE COOPERATION AGREEMENT (EDCA); THE VERY NATURE OF EDCA, ITS PROVISIONS AND SUBJECT MATTER, INDUBITABLY CATEGORIZE IT AS AN EXECUTIVE AGREEMENT – A CLASS OF AGREEMENT THAT IS NOT COVERED BY THE ARTICLE XVIII, SECTION 25 RESTRICTION.— To be clear, the Court did not add an exception to Section 25 Article XVIII. The general rule is that foreign bases, troops, and facilities are not allowed in the Philippines. The exception to this is authority granted to the foreign state in the form of a treaty duly concurred in by the Philippine Senate. It is in the operation of this exception that the Court exercised its power of review. The lengthy legal analysis resulted in a proper categorization of EDCA: an executive agreement authorized by treaty. This Court undeniably considered the arguments asserting that EDCA was, in fact, a treaty and not an executive agreement, but these arguments fell flat before the stronger legal position that EDCA merely implemented the VFA and MDT. As we stated in the Decision: x x x [I]t must already be clarified that the terms and details used by an implementing agreement need not be found in the mother treaty. They must be sourced from the authority derived from the treaty, but are not necessarily expressed word-for-word in the mother treaty. Hence, the argument that the Court added an exception to the law is erroneous and potentially misleading. x x x We ruled in *Saguisag, et al*. that the EDCA is not a treaty despite the presence of these provisions. The very nature of EDCA, its provisions and subject matter, indubitably categorize it as an executive agreement — a class of agreement that is not covered by the Article XVIII Section 25 restriction — in painstaking detail. x x x Subsequently, the Decision goes to great lengths to illustrate the source of EDCA's validity, in that as an executive agreement it fell within the parameters of the VFA and MDT, and seamlessly merged with the whole web of Philippine law. We need not restate the arguments here. It suffices to state that this Court remains unconvinced that EDCA deserves treaty status under the law.

3. ID.; ID.; DIPLOMATIC EXCHANGES OF NOTES ARE NOT TREATIES BUT RATHER FORMAL COMMUNICATION TOOLS ON ROUTINE AGREEMENTS, AKIN TO PRIVATE LAW CONTRACTS, FOR THE EXECUTIVE BRANCH.— Diplomatic exchanges of notes are not treaties but rather formal communication tools on routine agreements, akin to private law contracts, for the executive branch. This cannot truly amend or change the terms of the treaty, but merely serve as private contracts between the executive branches of government. They cannot *ipso facto* amend treaty obligations between States, but may be treaty-authorized or treaty-implementing.

LEONARDO-DE CASTRO, *J.*, *dissenting opinion:*

1. POLITICAL LAW; ENHANCED DEFENSE COOPERATION AGREEMENT (EDCA); THE IMPLEMENTATION OF THE ENHANCED DEFENSE COOPERATION AGREEMENT (EDCA) WITHOUT SENATE CONCURRENCE WILL CONTRAVENE THE CLEAR AND UNEQUIVOCAL MANDATORY PROVISION OF SECTION 25, ARTICLE XVIII OF THE CONSTITUTION.— The implementation of the Enhanced Defense Cooperation Agreement (EDCA) without Senate concurrence will be in contravention of the clear and unequivocal mandatory provision of Section 25, Article XVIII of the Constitution. x x x Section 25, Article XVIII of the Constitution dictates that agreements such as the EDCA must be submitted to the Senate for its concurrence and, if Congress so requires, to the Filipino people for ratification *via* a national referendum. These constitutionally ordained processes would save from constitutional infirmity the presence of foreign military bases, troops, or facilities in the Philippines. x x x As held in *BAYAN (Bagong Alyansang Makabayan) v. Zamora*, Section 25, Article XVIII covers three different situations: the presence within the Philippines of (a) **foreign military bases**, or (b) **foreign military troops**, or (c) **foreign military facilities**, such that a treaty that involves any of these three, standing alone, falls within the coverage of the said provision. x x x The provisions of the EDCA indubitably show that it is **an international agreement** that **allows the presence in the Philippines of foreign military bases, troops, or facilities**, and thus require that the three requisites under Section 25, Article XVIII be complied with.

2. ID.; ID.; THE EDCA IS AN ENTIRELY NEW AGREEMENT AS IT CREATES NEW OBLIGATIONS ON THE PART OF THE PHILIPPINES AND CONFERS UNPRECEDENTED RIGHTS AND CONCESSIONS IN FAVOR OF THE UNITED STATES.— The EDCA is an entirely new agreement as it creates new obligations on the part of the Philippines and confers unprecedented rights and concessions in favor of the United States. With respect to the MDT, said treaty did not contain any provision regarding the presence in Philippine territory — whether permanent or temporary — of foreign military bases, troops, or facilities. x x x Thus, the presence of foreign military bases, troops, or facilities provided under the EDCA cannot be traced to the MDT. x x x If the MDT were to be implemented through the EDCA as the *ponencia* suggests, Philippines must adhere to the mandate of Section 25, Article XVIII. In relation to the VFA, the EDCA transcends in scope and substance the provisions of the said treaty. The VFA is confined to the "visit" to the Republic of the Philippines "from time to time of elements of the United States armed forces" and for that purpose the parties to the VFA saw the "desirability of defining the treatment of United States personnel visiting the Republic of the Philippines." In particular, the VFA defines the treatment of "United States personnel" temporarily in the Philippines in connection with the activities approved by the Philippine government. x x x In contrast, the EDCA specifically deals with the matters, which go beyond the contemplation of temporary visits of United States personnel under the VFA: x x x Clearly, the provisions of the EDCA cannot be justified as mere implementation of the VFA.

3. ID.; STATUTORY CONSTRUCTION; THE PLAIN, CLEAR AND UNAMBIGUOUS LANGUAGE OF THE CONSTITUTION SHOULD BE CONSTRUED AS SUCH AND SHOULD NOT BE GIVEN A CONSTRUCTION THAT CHANGES ITS MEANING.— The settled rule is that the plain, clear and unambiguous language of the Constitution should be construed as such and should not be given a construction that changes its meaning. As held in *Chavez v. Judicial and Bar Council*: The language used in the Constitution must be taken to have been deliberately chosen for a definite purpose. Every word employed in the Constitution

must be interpreted to exude its deliberate intent which must be maintained inviolate against disobedience and defiance. What the Constitution clearly says, according to its text, compels acceptance and bars modification even by the branch tasked to interpret it. With due respect, the Honorable Chief Justice Maria Lourdes P. A. Sereno's theory of "initial entry" mentioned above ventured into a construction of the provisions of Section 25, Article XVIII of the Constitution which is patently contrary to the plain language and meaning of the said constitutional provision.

BRION, *J.*, *dissenting opinion*:

1. POLITICAL LAW; ENHANCED DEFENSE COOPERATION AGREEMENT (EDCA); EDCA SHOULD BE MADE THROUGH A TREATY BECAUSE IT EMBODIES NEW ARRANGEMENTS AND NEW RESULTING OBLIGATIONS THAT ARE NOT PRESENT IN THE EXISTING TREATIES.— The EDCA, an international agreement between the Philippines and the United States, should be covered by a treaty that, under the Constitution, requires concurrence by the Senate. The agreement should be made through a treaty rather than an executive agreement because it ***embodies new arrangements and new resulting obligations that are not present in the existing treaties***. In its present form, the agreement is invalid and cannot thus be effective. I arrived at this conclusion after considering Article VII, Section 21 and Article XVIII, Section 25 of the 1987 Constitution**.** **Article VII, Section 21** renders any international agreement invalid and ineffective in the Philippines unless it has been concurred in by the Senate. **Article XVII, Section 25**, on the other hand, specifies that agreements allowing the entry of foreign military bases, troops, or facilities into the Philippines shall be in the form of a treaty and, thus, obligatorily be submitted to the Senate for concurrence. I submit these considerations and conclusions to the Court with no intent to object to the entry of foreign military bases, troops, or facilities in the Philippines if such entry would truly reflect the will of the Filipino people expressed through the Senate of the Philippines. x x x To be very clear, this Dissent relates solely to the Executive and this Court's acts of disregarding the clear terms prescribed and the process required by the Constitution. Why the Court so acted despite the clear terms of the cited constitutional provisions, only the

majority of this Court can fully explain. The undeniable reality, though, is that the *ponencia* justified its conclusions by inordinately widening the scope of the presidential foreign affairs powers and misapplying the constitutional provisions mentioned above. Whichever way the matter is viewed, the result is the same — a clear violation of the 1987 Constitution. Based on all the above considerations, this Dissent concludes that the EDCA, instead of simply implementing the terms of the 1951 MDT and the 1998 VFA, carries terms ***significantly broader in scope*** than the terms of these two earlier treaties. A more correct description of EDCA is that it goes ***beyond the scope of an implementing agreement***; it is a substantively independent agreement that adds to what the 1951 MDT and the 1998 VFA provide. **The EDCA ultimately embodies a new agreement that touches on military bases, troops, or facilities beyond the scope of the 1951 MDT and the 1998 VFA, and should be covered by a treaty pursuant to Article XVIII, Section 25 and Article VII, Section 21, both of the 1987 Constitution. Without the referral to and concurrence by the Senate as a treaty, the EDCA is a *constitutionally deficient* international agreement; hence, it cannot be valid and effective in our country.**

2. ID.; STATUTORY CONSTRUCTION; *VERBA LEGIS* RULE; *VERBA LEGIS* IS ONLY PROPER AND CALLED FOR WHEN THE STATUTE IS CLEAR AND UNEQUIVOCAL, NOT WHEN THERE ARE LATENT AMBIGUITIES OR OBSCURITY IN THE PROVISION TO BE APPLIED.— In contrast with these expressed positions, I hold the view that under the principles of constitutional construction, *verba legis* (*i.e.*, the use of ordinary meaning or literal interpretation of the language of a provision) is only proper and called for when the statute is clear and unequivocal, not when there are latent ambiguities or obscurity in the provision to be applied. x x x A plain reading of Section 25, Article XVIII reveals that, on its face, it is far from complete, thus giving rise to the present "coverage" and other directly related issues. In the context of the case before us, it does not expressly state that it should only be at the initial entry (as the *ponencia* posits) or upon every entry (as the petitioners claim). x x x Note that under these wordings a latent ambiguity exists on what the word "*allow*" in the phrase "*shall not be allowed*," covers: does it refer only

to the first entry thus permitting all subsequent entries, or is a treaty required for every entry. Also, is the "purpose" of allowing entry relevant in determining the scope of the entries allowed under a treaty? In the context of the present case, the unavoidable question is — is a treaty called for in order to allow entry? The provision, to be sure, contains no express and specific statement or standard about these details and leaves the fleshing out to interpretation and construction. The *ponencia*, with its *verba legis* approach, of course, simply states that treaties — *i.e.*, the 1951 Mutual Defense and the 1998 Visiting Forces Agreement — are in place and, from there, proceeds to conclude that all entries shall be allowed after the first entry under these treaties. In this way, the *ponencia* gave Article XVIII, Section 25 a simplistic application that misses the provision's wordings and intent.

3. ID.; EXECUTIVE DEPARTMENT; EXECUTIVE AGREEMENTS; THESE AGREEMENTS TRACE THEIR VALIDITY FROM EXISTING LAWS OR TREATIES DULY AUTHORIZED BY THE LEGISLATIVE BRANCH OF GOVERNMENT; TREATIES DISTINGUISHED FROM EXECUTIVE AGREEMENTS.— Under this close inspection and consideration of the sharing of power under Section 21, what stands out clearly is that the President can negotiate and ratify **as executive agreements** only those that he can competently execute and implement on his own, *i.e.*, ***those that have prior legislative authorization, or those that have already undergone the treaty-making process under Article VII, Section 21 of the 1987 Constitution.*** From the perspective of Section 21, treaty making is different and cannot be solely the President's as this power, by constitutional mandate, is one that he must share with the Senate. Viewed and explained in this manner, executive agreements are clearly part of the President's duty to execute the laws faithfully. These agreements trace their validity from existing laws or treaties duly authorized by the legislative branch of government; they implement laws and treaties. In contrast, treaties — as international agreements that need concurrence from the Senate— *do not originate solely from the President's duty as the executor of the country's laws, but from the shared function between the President and the Senate that the Constitution mandated under Article VII, Section 21 of the 1987 Constitution.* Between the two, a treaty exists

on a higher plane as it carries the authority of the President and the Senate. Treaties, which have the impact of statutory law in the Philippines, can amend or prevail over prior statutory enactments. Executive agreements — which exist at the level of implementing rules and regulations or administrative orders in the domestic sphere — have no such effect. They cannot contravene or amend statutory enactments and treaties. This difference in impact is based on their origins: since a treaty has the approval of both the President and the Senate, it has the same impact as a statute. In contrast, since an executive agreement springs from the President's power to execute laws, it cannot amend or violate existing treaties, and must be in accord with and made pursuant to laws and treaties.

4. ID.; ID.; INTERNATIONAL AGREEMENT; THE INTENDED EFFECT OF AN INTERNATIONAL AGREEMENT DETERMINES ITS FORM, WHETHER IT IS AN EXECUTIVE AGREEMENT OR A TREATY.— ***Accordingly, the intended effect of an international agreement determines its form. When an international agreement merely implements an existing agreement or law, it is properly in the form of an executive agreement. In contrast, when an international agreement involves the introduction of a new subject matter or the amendment of existing treaties or laws, then it should properly be in the form of a treaty.*** Still another way of looking at the matter is ***from the prism of the shared function*** that Section 21 directly implies. In other words, based on the constitutional design reflected in Section 21, action on international agreements is always a *shared function* among the three branches of government. ***Treaties*** that the President enters into should have the required Senate concurrence for its validity and effectivity. Even the President's ***executive agreements*** that are within the President's authority to enter into without Senate concurrence, effectively reflect a shared function as they implement laws passed by Congress or treaties that the Senate has previously concurred in. The ***judicial branch*** of government, on the other hand, passively participates in international agreements through the exercise of judicial power; courts have the duty to ensure that the Executive and the Legislature stay within their spheres of competence, and that the constitutional standards and limitations set by the Constitution are not violated. **Under these norms, an executive agreement**

that creates new obligations or amends existing ones should properly be classified and entered into as a treaty. When implemented as an executive agreement that does not have the benefit of the treaty-making process and its Senate concurrence, such executive agreement is invalid and ineffective, and can judicially be so declared through judicial review.

PERLAS-BERNABE, *J.*, *dissenting opinion:*

POLITICAL LAW; ENHANCED DEFENSE COOPERATION AGREEMENT (EDCA); EDCA SUBSTANTIALLY MODIFIES THE PRESENT POLICIES AND ARRANGEMENTS OF THE PHILIPPINES WITH THE UNITED STATES GOVERNMENT ON NATIONAL DEFENSE, HENCE, IT SHOULD BE TREATED AS A TREATY.— A thorough study of the provisions of the EDCA vis-à-vis the provisions of our past agreements with the US on the same subject matter ultimately impresses upon me that the EDCA should have been entered into as a treaty, and not as an executive agreement. This is because the EDCA does not merely embody detail adjustments to existing national policies that are, more or less, only temporary in nature. Quite the opposite, it substantially modifies our present policies and arrangements with the US Government on national defense. In *Commissioner of Customs v. Eastern Sea Trading*: International agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties. But international agreements embodying adjustments of detail carrying out well-established national policies and traditions and those involving arrangements of a more or less temporary nature usually take the form of executive agreements. The need for the EDCA to be entered into as a treaty stems from the mandate of Section 25, Article XVIII of the 1987 Philippine Constitution. x x x Contrary to the *ponencia's* stand, this constitutional provision does not only pertain to the conduct of "initial entry" as there is no temporal qualification which situates the allowance of foreign military bases, troops, or facilities in the Philippines. As aptly pointed out by petitioners, the constitutional requirements set forth therein are clear and unambiguous which clearly do not require further construction or interpretation. Certainly, we should not make a qualification when there is

none. Following the plain language of the law, the presence of foreign military bases, troops, or facilities in the Philippines is only constitutionally permissible if it is sanctioned by a treaty duly concurred in by Senate.

LEONEN, *J.*, *dissenting opinion*:

POLITICAL LAW; ENHANCED DEFENSE COOPERATION AGREEMENT (EDCA); EDCA SUBSTANTIALLY AMENDS AND MODIFIES THE VISITING FORCES AGREEMENT (VFA) WHICH DID NOT CONSIDER ALLOWING THE PRESENCE OF FOREIGN MILITARY BASES IN OUR COUNTRY.— I do not agree that the Enhanced Defense Cooperation Agreement (EDCA) is a binding executive agreement that escapes scrutiny under Article XVIII, Section 25 of the Constitution. It is not merely an implementation of the 1998 Visiting Forces Agreement. EDCA substantially amends and modifies the Visiting Forces Agreement. When the Visiting Forces Agreement was ratified, the Senate and the public did not consider whether their actions would later on allow the presence of foreign military bases in any part of this country. It is pure legal sophistry to say that the "Agreed Locations" in EDCA are not foreign military bases. These "Agreed Locations" are foreign military bases of the United States. To now say that it was so would be to imply that the Senate at that time was engaged in a grand deceit. Nothing in the Visiting Forces Agreement hints at permanent bases under any kind of control of a foreign power, pre-positioning of men and material to be used for internal or external operations other than training purposes, and the acceptance of the presence of "contractors," which may consist of private armed groups or "mercenaries" chosen by the United States to be stationed in our country. Our Constitution has introduced elaborate safeguards before any foreign military base — no matter how it is called — will be again allowed within our territory. Article XVIII, Section 25 requires that this undergo a conscious, deliberate, and publicly transparent process with the Senate. The same provision requires that the stationing of foreign troops in foreign bases or "Agreed Locations" must be through a treaty — not merely through an implementing executive agreement. Although the President is free to negotiate such an agreement, the basic law contemplates that the results of the negotiation should be the subject of public discussion. The presence of foreign military

bases is of such consequence that the Constitution itself also provides the possibility of an alternative mechanism for its allowance. Hence, Article XVIII, Section 25 also provides for the possibility of approval through a national referendum, should that be the preference of Congress.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices for petitioners in G.R. No. 212426.

Public Interest Law Center and *National Union of Peoples' lawyers* for petitioners in G.R. No. 212444.

Pro-Labor Legal Assistance Center for petitioners-in-intervention Kilusang Mayo Uno, et al.

Rene A.V. Saguisag for himself as petitioner-intervenor in G.R. No. 212426.

The Solicitor General for public respondents.

R E S O L U T I O N

SERENO, C*J.*:

The Motion for Reconsideration before us seeks to reverse the Decision of this Court in *Saguisag et al. v. Executive Secretary* dated 12 January 2016.[1] The petitions in *Saguisag, et al*.[2] had questioned the constitutionality of the Enhanced Defense Cooperation Agreement (EDCA) between the Republic of the Philippines and the United States of America (U.S.). There, this Court ruled that the petitions be dismissed.[3]

On 3 February 2016, petitioners in the Decision filed the instant Motion, asking for a reconsideration of the Decision in

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[1] *Rene A.V. Saguisag, et al. v. Executive Secretary Paquito N. Ochoa, Jr., et al./Bagong Alyansang Makabayan (Bayan), et al. v. Department of National Defense Secretary Voltaire Gazmin, et al.,* G.R. No. 212426 & G.R. No. 212444, 12 January 2016 [hereinafter Decision].

[2] Petition of *Saguisag, et al., rollo* (G.R. No. 212426, Vol. I), pp. 3-66; Petition of *Bayan, et al., rollo* (G.R. No. 212444, Vol. I), pp. 3-101.

[3] Decision, p. 116.

Saguisag, *et al*., questioning the ruling of the Court on both procedural and substantive grounds, *viz*.:

> WHEREFORE, premises considered, petitioners respectfully pray that the Honorable Court RECONSIDER, REVERSE, AND SET ASIDE its Decision dated January 12, 2016, and issue a new Decision GRANTING the instant consolidated petitions by declaring the Enhanced Defense Cooperation Agreement (EDCA) entered into by the respondents for the Philippine government, with the United States of America, UNCONSTITUTIONAL AND INVALID and to permanently enjoin its implementation.
>
> Other forms of relief just and equitable under the premises are likewise prayed for.

At the outset, petitioners questioned the procedural findings of the Court despite acknowledging the fact that the Court had given them standing to sue.[4] Therefore this issue is now irrelevant and academic, and deserves no reconsideration.

As for the substantive grounds, petitioners claim this Court erred when it ruled that EDCA was not a treaty.[5] In connection to this, petitioners move that EDCA must be in the form of a treaty in order to comply with the constitutional restriction under Section 25, Article XVIII of the 1987 Constitution on foreign military bases, troops, and facilities.[6] Additionally, they reiterate their arguments on the issues of telecommunications, taxation, and nuclear weapons.[7]

We deny the Motion for Reconsideration.

Petitioners do not present new arguments to buttress their claims of error on the part of this Court. They have rehashed their prior arguments and made them responsive to the structure of the Decision in *Saguisag*, yet the points being made are the same.

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[4] Motion for Reconsideration, pp. 5-11.

[5] *Id.* at 17.

[6] *Id.* at 18-75.

[7] *Id.* at 75-81.

However, certain claims made by petitioners must be addressed.

On verba legis interpretation

Petitioners assert that this Court contradicted itself when it interpreted the word "allowed in" to refer to the initial entry of foreign bases, troops, and facilities, based on the fact that the plain meaning of the provision in question referred to prohibiting the return of foreign bases, troops, and facilities except under a treaty concurred in by the Senate.[8]

This argument fails to consider the function and application of the verba legis rule.

Firstly, *verba legis* is a mode of construing the provisions of law as they stand.[9] This takes into account the language of the law, which is in English, and therefore includes reference to the meaning of the words based on the actual use of the word in the language.

Secondly, by interpreting "allowed in" as referring to an initial entry, the Court has simply applied the plain meaning of the words in the particular provision.[10] Necessarily, once entry has been established by a subsisting treaty, latter instances of entry need not be embodied by a separate treaty. After all, the Constitution did not state that foreign military bases, troops, and facilities shall not subsist or exist in the Philippines.

Petitioners' own interpretation and application of the *verba legis* rule will in fact result in an absurdity, which legal construction strictly abhors.[11] If this Court accept the essence of their argument that every instance of entry by foreign bases, troops, and facilities must be set out in detail in a new treaty,

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[8] *Id.* at 20.

[9] *Republic v. Lacap,* G.R. No. 158253, 2 March 2007, 546 Phil. 87-101.

[10] Decision, p. 35.

[11] *Green v. Bock Laundry Machine Co.,* 490 U.S. 504 (109 S.Ct. 1981, 104 L.Ed.2d 557).

then the resulting bureaucratic impossibility of negotiating a treaty for the entry of a head of State's or military officer's security detail, meetings of foreign military officials in the country, and indeed military exercises such as *Balikatan* will occupy much of, if not all of the official working time by various government agencies. This is precisely the reason why any valid mode of interpretation must take into account how the law is exercised and its goals effected.[12] *Ut res magis valeat quam pereat.*

The Constitution cannot be viewed solely as a list of prohibitions and limitations on governmental power, but rather as an instrument providing the process of structuring government in order that it may effectively serve the people.[13] It is not simply a set of rules, but an entire legal framework for Philippine society.

In this particular case, we find that EDCA did not go beyond the framework. The entry of US troops has long been authorized under a valid and subsisting treaty, which is the Visiting Forces Agreement (VFA).[14] Reading the VFA along with the longstanding Mutual Defense Treaty (MDT)[15] led this Court to the conclusion that an executive agreement such as the EDCA was well within the bounds of the obligations imposed by both treaties.

On strict construction of an exception

This Court agrees with petitioners' cited jurisprudence that exceptions are strictly construed.[16] However, their patent

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[12] *JMM Promotions & Management, Inc. v. National Labor Relations Commission,* G.R. No. 109835, 22 November 1993.

[13] See discussion of *Justice George A. Malcolm in Government of the Philippine Islands v. Springer,* G.R. No. 26979, 1 April 1927, 50 Phil. 259-348.

[14] Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines, Phil.-U.S., 10 February 1998, TIAS No. 12931 (entered into force 1 June 1999) [hereinafter VFA].

[15] Mutual Defense Treaty between the Republic of the Philippines and the United States of America, 30 August 1951, 177 UNTS 133 (entered into force 27 August 1952).

[16] Motion for Reconsideration, p. 20.

misunderstanding of the Decision and the confusion this creates behooves this Court to address this argument.

To be clear, the Court did not add an exception to Section 25 Article XVIII. The general rule is that foreign bases, troops, and facilities are not allowed in the Philippines.[17] The exception to this is authority granted to the foreign state in the form of a treaty duly concurred in by the Philippine Senate.[18]

It is in the operation of this exception that the Court exercised its power of review. The lengthy legal analysis resulted in a proper categorization of EDCA: an executive agreement authorized by treaty. This Court undeniably considered the arguments asserting that EDCA was, in fact, a treaty and not an executive agreement, but these arguments fell flat before the stronger legal position that EDCA merely implemented the VFA and MDT. As we stated in the Decision:

> x x x [I]t must already be clarified that the terms and details used by an implementing agreement need not be found in the mother treaty. They must be sourced from the authority derived from the treaty, but are not necessarily expressed word-for-word in the mother treaty.[19]

Hence, the argument that the Court added an exception to the law is erroneous and potentially misleading. The parties, both petitioners and respondents must therefore read the Decision carefully in order to fully comply with its disposition.

On EDCA as a treaty

The principal reason for the Motion for Reconsideration is evidently petitioners' disagreement with the Decision that EDCA implements the VFA and MDT. They reiterate their arguments that EDCA's provisions fall outside the allegedly limited scope of the VFA and MDT because it provides a wider arrangement than the VFA for military bases, troops, and facilities, and it allows the establishment of U.S. military bases.[20]

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[17] 1987 CONSTITUTION, Article 18, Sec. 25.

[18] *Id.*

[19] Decision, p. 55.

[20] Motion for Reconsideration, p. 30.

Specifically, petitioners cite the terms of the VFA referring to "joint exercises,"[21] such that arrangements involving the individual States-parties such as exclusive use of prepositioned materiel are not covered by the VFA. More emphatically, they state that prepositioning itself as an activity is not allowed under the VFA.[22]

Evidently, petitioners left out of their quote the portion of the Decision which cited the Senate report on the VFA. The full quote reads as follows:

> Siazon clarified that it is not the VFA by itself that determines what activities will be conducted between the armed forces of the U.S. and the Philippines. The VFA regulates and provides the legal framework for the presence, conduct and legal status of U.S. personnel while they are in the country for **visits, joint exercises and other related activities.**[23]

Quite clearly, the VFA contemplated activities beyond joint exercises, which this Court had already recognized and alluded to in *Lim v. Executive Secretary*,[24] even though the Court in that case was faced with a challenge to the Terms of Reference of a specific type of joint exercise, the *Balikatan Exercise.*

One source petitioners used to make claims on the limitation of the VFA to joint exercises is the alleged Department of Foreign Affairs (DFA) Primer on the VFA, which they claim states that:

> Furthermore, the VFA does not involve access arrangements for United States armed forces or the pre-positioning in the country of U.S. armaments and war materials. The agreement is about personnel and not equipment or supplies.[25]

Unfortunately, the uniform resource locator link cited by petitioners is inaccessible. However, even if we grant its veracity,

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[21] *Id.* at 34.

[22] *Id.* at 36.

[23] Decision, p. 66, *citing* Joint Report of the Committee on Foreign Relations and the Committee on National Defense and Security *reproduced in* SENATE OF THE PHILIPPINES, THE VISITING FORCES AGREEMENT: THE SENATE DECISION 206 (1999), at 205-206, 231.

[24] *Lim v. Executive Secretary,* 430 Phil. 555 (2002).

[25] Motion for Reconsideration, p. 35.

the text of the VFA itself belies such a claim. Article I of the VFA states that "[a]s used in this Agreement, "United States personnel" means United States military and civilian personnel temporarily in the Philippines in connection with activities approved by the Philippine Government."[26] These "activities" were, as stated in *Lim*, left to further implementing agreements. It is true that Article VII on Importation did not indicate pre-positioned materiel, since it referred to "United States Government equipment, materials, supplies, and other property imported into or acquired in the Philippines by or on behalf of the United States armed forces in connection with activities to which this agreement applies[.]"[27]

Nonetheless, neither did the text of the VFA indicate "joint exercises" as the only activity, or even as one of those activities authorized by the treaty. In fact, the Court had previously noted that

> [n]ot much help can be had therefrom [VFA], unfortunately, since the terminology employed is itself the source of the problem. The VFA permits United States personnel to engage, on an impermanent basis, in "activities," the exact meaning of which was left undefined. The expression is ambiguous, permitting a wide scope of undertakings subject only to the approval of the Philippine government. The sole encumbrance placed on its definition is couched in the negative, in that United States personnel must "abstain from any activity inconsistent with the spirit of this agreement, and in particular, from any political activity." All other activities, in other words, are fair game.[28]

Moreover, even if the DFA Primer was accurate, properly cited, and offered as evidence, it is quite clear that the DFA's opinion on the VFA is not legally binding nor conclusive.[29] It

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[26] VFA, *supra* note 14.

[27] *Id.*

[28] *Lim v. Executive Secretary, supra* note 24.

[29] "[A]n advisory opinion of an agency may be stricken down if it deviates from the provision of the statute," *Cemco Holdings, Inc. v. National Life Insurance Co. of the Philippines, Inc.,* G.R. No. 171815, 7 August 2007, 556 Phil. 198-217.

is the exclusive duty of the Court to interpret with finality what the VFA can or cannot allow according to its provisions.[30]

In addition to this, petitioners detail their objections to EDCA in a similar way to their original petition, claiming that the VFA and MDT did not allow EDCA to contain the following provisions:

1. Agreed Locations
2. Rotational presence of personnel
3. U.S. contractors
4. Activities of U.S. contractors[31]

We ruled in *Saguisag, et al.* that the EDCA is not a treaty despite the presence of these provisions. The very nature of EDCA, its provisions and subject matter, indubitably categorize it as an executive agreement — a class of agreement that is not covered by the Article XVIII Section 25 restriction — in painstaking detail.[32] To partially quote the Decision:

> Executive agreements may dispense with the requirement of Senate concurrence because of the legal mandate with which they are concluded. As culled from the afore-quoted deliberations of the Constitutional Commission, past Supreme Court Decisions, and works of noted scholars, executive agreements merely involve arrangements on the implementation of *existing* policies, rules, laws, or agreements. They are concluded (1) to adjust the details of a treaty; (2) pursuant to or upon confirmation by an act of the Legislature; or (3) in the exercise of the President's independent powers under the Constitution. The *raison d'être* of executive agreements hinges on *prior* constitutional or legislative authorizations.
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> The special nature of an executive agreement is not just a domestic variation in international agreements. International practice has accepted

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[30] "All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*" 1987 CONSTITUTION, Article VIII, Sec. 4 (2): "All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question." 1987 CONSTITUTION, Article VIII, Sec. 5 (a).

[31] Motion for Reconsideration, pp. 38-47.

[32] Decision, pp. 39-113.

the use of various forms and designations of international agreements, ranging from the traditional notion of a treaty — which connotes a formal, solemn instrument — to engagements concluded in modern, simplified forms that no longer necessitate ratification. An international agreement may take different forms: treaty, act, protocol, agreement, *concordat*, *compromis d'arbitrage,* convention, covenant, declaration, exchange of notes, statute, pact, charter, agreed minute, memorandum of agreement, *modus vivendi*, or some other form. Consequently, under international law, the distinction between a treaty and an international agreement or even an executive agreement is irrelevant for purposes of determining international rights and obligations.

However, this principle does not mean that the domestic law distinguishing *treaties, international agreements, and executive agreements* is relegated to a mere variation in form, or that the constitutional requirement of Senate concurrence is demoted to an optional constitutional directive. There remain two very important features that distinguish *treaties* from *executive agreements* and translate them into terms of art in the domestic setting.

First, **executive agreements must remain traceable to an express or implied authorization under the Constitution, statutes, or treaties.** The absence of these precedents puts the validity and effectivity of executive agreements under serious question for the main function of the Executive is to enforce the Constitution and the laws enacted by the Legislature, not to defeat or interfere in the performance of these rules. In turn, executive agreements cannot create new international obligations that are not expressly allowed or reasonably implied in the law they purport to implement.

Second, treaties are, by their very nature, considered superior to executive agreements. Treaties are products of the acts of the Executive and the Senate unlike executive agreements, which are solely executive actions. Because of legislative participation through the Senate, a treaty is regarded as being on the same level as a statute. If there is an irreconcilable conflict, a later law or treaty takes precedence over one that is prior. An executive agreement is treated differently. Executive agreements that are inconsistent with either a law or a treaty are considered ineffective. Both types of international agreement are nevertheless subject to the supremacy of the Constitution.[33] (Emphasis supplied, citations omitted)

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[33] Decision, pp. 45-47.

Subsequently, the Decision goes to great lengths to illustrate the source of EDCA's validity, in that as an executive agreement it fell within the parameters of the VFA and MDT, and seamlessly merged with the whole web of Philippine law. We need not restate the arguments here. It suffices to state that this Court remains unconvinced that EDCA deserves treaty status under the law.

On EDCA as basing agreement

Petitioners claim that the Decision did not consider the similarity of EDCA to the previous Military Bases Agreement (MBA) as grounds to declare it unconstitutional.[34]

Firstly, the Court has discussed this issue in length and there is no need to rehash the analysis leading towards the conclusion that EDCA is different from the MBA or any basing agreement for that matter.

Secondly, the new issues raised by petitioners are not weighty enough to overturn the legal distinction between EDCA and the MBA.

In disagreeing with the Court in respect of the MBA's jurisdictional provisions, petitioners cite an exchange of notes categorized as an "amendment" to the MBA, as if to say it operated as a new treaty and should be read into the MBA.[35]

This misleadingly equates an exchange of notes with an amendatory treaty. Diplomatic exchanges of notes are not treaties but rather formal communication tools on routine agreements, akin to private law contracts, for the executive branch.[36] This

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[34] Motion for Reconsideration, p. 49.

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

[36] "An 'exchange of notes' is a record of a routine agreement, that has many similarities with the private law contract. The agreement consists of the exchange of two documents, each of the parties being in the possession of the one signed by the representative of the other. Under the usual procedure, the accepting State repeats the text of the offering State to record its assent. The signatories of the letters may be government Ministers, diplomats or departmental heads. The technique of exchange of notes is frequently resorted to, either because of its speedy procedure, or, sometimes, to avoid the process of legislative approval." Available at <https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1en.xml#exchange> (last viewed 8 April 2016).

cannot truly amend or change the terms of the treaty,[37] but merely serve as private contracts between the executive branches of government. They cannot *ipso facto* amend treaty obligations between States, but may be treaty-authorized or treaty-implementing.[38]

Hence, it is correct to state that the MBA as the treaty did not give the Philippines jurisdiction over the bases because its provisions on U.S. jurisdiction were explicit. What the exchange of notes did provide was effectively a contractual waiver of the jurisdictional rights granted to the U.S. under the MBA, but did not amend the treaty itself.

Petitioners reassert that EDCA provisions on operational control, access to Agreed Locations, various rights and authorities granted to the US "ensures, establishes, and replicates what MBA had provided."[39] However, as thoroughly and individually discussed in *Saguisag*, *et al*., the significant differences taken as a whole result in a very different instrument, such that EDCA has not re-introduced the military bases so contemplated under Article XVIII Section 25 of the Constitution.[40]

On policy matters

Petitioners have littered their motion with alleged facts on U.S. practices, ineffective provisions, or even absent provisions to bolster their position that EDCA is invalid.[41] In this way, petitioners essentially ask this Court to replace the prerogative of the political branches and rescind the EDCA because it not a good deal for the Philippines. Unfortunately, the Court's only concern is the legality of EDCA and not its wisdom or folly. Their remedy clearly belongs to the executive or legislative branches of government.

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[37] *Adolfo v. Court of First Instance of Zambales,* G.R. No. L-30650, 31 July 1970.

[38] *Bayan Muna v. Romulo,* 656 Phil. 246 (2011).

[39] Motion for Reconsideration, p. 53.

[40] Decision, pp. 75-113.

[41] U.S. practice on contractors, dispute resolution, jurisdiction, taxation, nuclear weapons, and the U.S. stance on China are just some of these issues raised by petitioners at the policy level.

EPILOGUE

While this Motion for Reconsideration was pending resolution, the United Nations Permanent Court of Arbitration tribunal constituted under the Convention on the Law of the Sea (UNCLOS) in *Republic of the Philippines v. People's Republic of China* released its monumental decision on the afternoon of 12 July 2016.[42] The findings and declarations in this decision contextualizes the security requirements of the Philippines, as they indicate an alarming degree of international law violations committed against the Philippines' sovereign rights over its exclusive economic zone (EEZ).

Firstly, the tribunal found China's claimed nine-dash line, which included sovereign claims over most of the West Philippine, invalid under the UNCLOS for exceeding the limits of China's maritime zones granted under the convention.[43]

Secondly, the tribunal found that the maritime features within the West Philippine Sea/South China Sea that China had been using as basis to claim sovereign rights within the Philippines' EEZ were not entitled to independent maritime zones.[44]

Thirdly, the tribunal found that the actions of China within the EEZ of the Philippines, namely: forcing a Philippine vessel to cease-and-desist from survey operations, [45] the promulgation of a fishing moratorium in 2012,[46] the failure to exercise due diligence in preventing Chinese fishing vessels from fishing in the Philippines' EEZ without complying with Philippine

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[42] *The Republic of the Philippines v. The People's Republic of China,* Case No. 2013-19 (Perm Ct. Arb.), award available at http://www.pcacases.com/pcadocs/PH-CN%20-%2020160712%20-%20Award.pdf (last visited 22 July 2016).

[43] *Id.* at 111-112 (261-262).

[44] *Id.* at 174; 254 (626).

[45] *Id.* at 282 (708).

[46] *Id.* at 284 (712).

regulations,[47] the failure to prevent Chinese fishing vessels from harvesting endangered species,[48] the prevention of Filipino fishermen from fishing in traditional fishing grounds in Scarborough Shoal,[49] and the island-building operations in various reefs, all violate its obligations to respect the rights of the Philippines over its EEZ.[50]

Fourthly, the tribunal rejected Chinese claims of sovereignty over features within the Philippines' EEZ,[51] and found that its construction of installations and structures, and later on the creation of an artificial island, violated its international obligations.[52]

Fifthly, the tribunal found that the behaviour of Chinese law enforcement vessels breached safe navigation provisions of the UNCLOS in respect of near-collision instances within Scarborough Shoal.[53]

Finally, the tribunal found that since the arbitration was initiated in 2013, China has aggravated the dispute by building a large artificial island on a low-tide elevation located in the EEZ of the Philippines aggravated the Parties' dispute concerning the protection and preservation of the marine environment at Mischief Reef by inflicting permanent, irreparable harm to the coral reef habitat of that feature, extended the dispute concerning the protection and preservation of the marine environment by commencing large-scale island-building and construction works at Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef, aggravated the dispute concerning the status of maritime features in the Spratly

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[47] *Id.* at 296 (753).

[48] *Id.* at 397 (992).

[49] *Id.* at 318 (814).

[50] *Id.* at 397 (993).

[51] *Id.* at 403 (1006).

[52] *Id.* at 414-415 (1036-1037); 415 (1043).

[53] *Id.* at 435 (1109).

Islands and their capacity to generate entitlements to maritime zones by permanently destroying evidence of the natural condition of Mischief Reef, Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef.[54]

Taken as a whole, the arbitral tribunal has painted a harrowing picture of a major world power unlawfully imposing its might against the Philippines. There are clear indications that these violations of the Philippines' sovereign rights over its EEZ are continuing. The Philippine state is constitutionally-bound to defend its sovereignty, and must thus prepare militarily.

No less than the 1987 Constitution demands that the "State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens."[55]

No less than the 1987 Constitution states that the principal role of the military under the President as commander-in-chief shall be as protector of the people and the State to secure the sovereignty of the State and the integrity of the national territory.[56]

To recall, the Philippines and the U.S. entered into the MDT in 1951[57] with two things in mind, first, it allowed for mutual assistance in maintaining and developing their individual and collective capacities to resist an armed attack;[58] and second, it provided for their mutual self-defense in the event of an armed attack against the territory of either party.[59] The treaty was

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[54] *Id.* at 464 (1181).

[55] 1987 CONSTITUTION, Article XII, Sec. 2.

[56] 1987 CONSTITUTION, Article II, Sec. 3.

[57] Mutual Defense Treaty between the Republic of the Philippines and the United States of America, 30 Aug. 1951, 177 UNTS 133 (entered into force 27 Aug. 1952).

[58] 1951 MDT. Art. II.

[59] 1951 MDT. Arts. IV-V.

premised on their recognition that an armed attack on either of them would equally be a threat to the security of the other.[60]

The EDCA embodies this very purpose. It puts into greater effect a treaty entered into more than 50 years ago in order to safeguard the sovereignty of the Philippines, and cement the military friendship of the U.S. and Philippines that has thrived for decades through multiple presidents and multiple treaties. While it is a fact that our country is now independent, and that the 1987 Constitution requires Senate consent for foreign military bases, troops, and facilities, the EDCA as envisioned by the executive and as formulated falls within the legal regime of the MDT and the VFA.

In the context of recent developments, the President is bound to defend the EEZ of the Philippines and ensure its vast maritime wealth for the exclusive enjoyment of Filipinos. In this light, he is obligated to equip himself with all resources within his power to command. With the MDT and VFA as a blueprint and guide, EDCA strengthens the Armed Forces of the Philippines and through them, the President's ability to respond to any potential military crisis with sufficient haste and greater strength.

The Republic of Indonesia is strengthening its military presence and defences in the South China Sea.[61] Vietnam has lent its voice in support of the settlement of disputes by peaceful means[62] but still strongly asserts its sovereignty over the Paracel islands against

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[60] COLONEL PATERNO C. PADUA, *REPUBLIC OF THE PHILIPPINES UNITED STATES DEFENSE COOPERATION: OPPORTUNITIES AND CHALLENGES, A FILIPINO PERSPECTIVE* 6 (2010).

[61] "Indonesia Will Defend South China Sea Territory With F-16 Fighter Jets" available at <http://www.bloomberg.com/news/articles/2016-03-31/indonesia-to-deploy-f-16s-to-guard-its-south-china-sea-territory> (last visited 22 July 2016); See also "Indonesia looks to boost defenses around Natuna Islands in South China Sea" available at <http://www.japantimes.co.jp/news/2015/12/16/asia-pacific/politics-diplomacy-asia-pacific/indonesia-looks-boost-defenses-around-natuna-islands-south-china-sea/#.V5GJrNJ97IV> (last visited 22 July 2016).

[62] "World leaders react to South China Sea ruling" available at <http://www.philstar.com/headlines/2016/07/13/1602416/world-leaders-react-south-china-sea-ruling> (last visited 22 July 2016).

China.[63] The international community has given its voice in support of the tribunal's decision in the UNCLOS arbitration.[64]

Despite all this, China has rejected the ruling.[65] Its ships have continued to drive off Filipino fishermen from areas within the Philippines' EEZ.[66] Its military officials have promised to continue its artificial island-building in the contested areas despite the ruling against these activities.[67]

In this light, the Philippines must continue to ensure its ability to prevent any military aggression that violates its sovereign rights. Whether the threat is internal or external is a matter for the proper authorities to decide. President Rodrigo Roa Duterte has declared, in his inaugural speech, that the threats pervading society are many: corruption, crime, drugs, and the breakdown of law and order.[68] He has stated that the Republic of the

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[63] "Why is the South China Sea contentious?" available at <http://www.bbc.com/news/world-asia-pacific-13748349> (last visited 22 July 2016).

[64] "World leaders react to South China Sea ruling" available at <http://www.philstar.com/headlines/2016/07/13/1602416/world-leaders-react-south-china-sea-ruling> (last visited 22 July 2016).

[65] "Beijing rejects tribunal's ruling in South China Sea case" available at <https://www.theguardian.com/world/2016/jul/12/philippines-wins-south-china-sea-case-against-china> (last visited 22 July 2016); "China 'does not accept or recognize' tribunal's South China Sea ruling" available at <http://cnnphilippines.com/world/2016/07/12/china-reaction-tribunal-ruling.html> (last visited 22 July 2016).

[66] "Filipino fishermen still barred from Scarborough Shoal" available at <http://cnnphilippines.com/news/2016/07/15/scarborough-shoal-filipino-fishermen-chinese-coast-guard.html1> (last visited 22 July 2016).

[67] "PLAN's Wu to CNO Richardson: Beijing Won't Stop South China Sea Island Building" available at <https://news.usni.org/2016/07/18/plans-wu-cno-richardson-beijing-wont-stop-south-china-sea-island-building> (last visited 22 July 2016).

[68] Inaugural address of President Rodrigo Roa Duterte, 30 June 2016, available at <http://www.gov.ph/2016/06/30/inaugural-address-of-president-rodrigo-roa-duterte-june-30-2016/> (last visited 22 July 2016).

Philippines will honor treaties and international obligations.[69] He has also openly supported EDCA's continuation.[70]

Thus, we find no reason for EDCA to be declared unconstitutional. It fully conforms to the Philippines' legal regime through the MDT and VFA. It also fully conforms to the government's continued policy to enhance our military capability in the face of various military and humanitarian issues that may arise. This Motion for Reconsideration has not raised any additional legal arguments that warrant revisiting the Decision.

WHEREFORE, we hereby **DENY** the Motion for Reconsideration.

SO ORDERED.

Velasco, Jr., Bersamin, del Castillo, Perez, Mendoza, and Reyes, JJ., concur.

Carpio, J., reiterates his separate concurring opinion.

Leonardo-de Castro, Brion, Perlas-Bernabe, and *Leonen, JJ.,* see dissenting opinions.

Peralta, J., joins the opinion of *J. Carpio.*

Jardeleza and *Caguioa, JJ.,* no part.

DISSENTING OPINION

LEONARDO-DE CASTRO, *J.*:

I hereby reiterate my dissent. The implementation of the Enhanced Defense Cooperation Agreement (EDCA) without Senate concurrence will be in contravention of the clear and

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[69] Inaugural address of President Rodrigo Roa Duterte, 30 June 2016, available at <http://www.gov.ph/2016/06/30/inaugural-address-of-president-rodrigo-roa-duterte-june-30-2016/> (last visited 22 July 2016).

[70] "Duterte in favor of continuing EDCA" available at <http://www.philstar.com/headlines/2016/05/26/1587112/duterte-favor-continuing-edca> (last visited 22 July 2016).

unequivocal mandatory provision of Section 25, Article XVIII of the Constitution.

Senate Resolution No. 105 dated November 10, 2015, stating the strong sense of the Senate that "[t]he RP-US Treaty requires Senate concurrence in order to be valid and effective," is in accord with the aforesaid constitutional provision.

The majority opinion penned by the Honorable Chief Justice Maria Lourdes P. A. Sereno makes mention of the recent favorable ruling of the United Nations Permanent Court of Arbitration concerning the respective territorial claims of the Philippines and the People's Republic of China over portions of the West Philippine Sea. Thus, the majority stresses that the President of the Philippines need to equip himself with all resources within his power to command in order to defend our preferent rights over our exclusive economic zone. Chief Justice Sereno argues that there is no reason to declare the EDCA unconstitutional given that it "strengthens the Armed Forces of the Philippines and through them, the President's ability to respond to any potential military crisis with sufficient haste and greater strength." The above assertions are, however, irrelevant in determining the issue of the constitutionality of treating the EDCA as a binding international agreement without Senate concurrence.

The wisdom and political reasons behind the EDCA are not in issue in this case, but rather the non-observance of the mandatory processes dictated by the Constitution regarding the allowance of foreign military bases, troops, or facilities in the Philippines. Section 25, Article XVIII of the Constitution dictates that agreements such as the EDCA must be submitted to the Senate for its concurrence and, if Congress so requires, to the Filipino people for ratification *via* a national referendum. These constitutionally ordained processes would save from constitutional infirmity the presence of foreign military bases, troops, or facilities in the Philippines.

Section 25, Article XVIII of the Constitution reads:

ARTICLE XVIII
TRANSITORY PROVISIONS

SEC. 25. After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.

As held in *BAYAN (Bagong Alyansang Makabayan) v. Zamora,*[1] Section 25, Article XVIII covers three different situations: the presence within the Philippines of (a) **foreign military bases,** or (b) **foreign military troops,** or (c) f**oreign military facilities,** such that a treaty that involves any of these three, standing alone, falls within the coverage of the said provision. The deliberations of the 1986 Constitutional Commission bear out this interpretation, to wit:

> MR. MAAMBONG. I just want to address a question or two to Commissioner Bernas.
>
> This formulation speaks of three things: foreign military bases, troops or facilities. My first question is: *If the country does enter into such kind of a treaty, must it cover the three-bases, troops or facilities or could the treaty entered into cover only one or two?*
>
> FR. BERNAS. *Definitely, it can cover only one. Whether it covers only one or it covers three, the requirement will be the same.*
>
> MR. MAAMBONG. *In other words, the Philippine government can enter into a treaty covering not bases but merely troops?*
>
> FR. BERNAS. *Yes*.
>
> MR. MAAMBONG. I cannot find any reason why the, government can enter into a treaty covering only troops.

[1] 396 Phil. 623, 653 (2000).

> FR. BERNAS. Why not? Probably if we stretch our imagination a little bit more, we will find some. We just want to cover everything.[2] (Citation omitted.)

On March 14, 1947, the Philippines and the United States entered into a **Military Bases Agreement** (MBA) which granted to the United States government the right to *retain* the use of the bases listed in the Annexes of said agreement. The term of the MBA was set to expire in 1991 in accordance with the Ramos-Rusk Agreement.

Subsequently, on August 30, 1951, the Philippines and the United States entered into the **Mutual Defense Treaty** (MDT) in order to actualize their desire "to declare publicly and formally their sense of unity and their common determination to **defend themselves against external armed attack**"[3] and "further to strengthen their present efforts to **collective defense** for the preservation of peace and security pending the development of a more comprehensive system of regional security in the Pacific area."[4] It is noteworthy that the MDT provides as follows:

> Article IV. Each Party recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers **in accordance with its constitutional process.**

In 1986, in view of the impending expiration of the MBA in 1991, the members of the Constitutional Commission deliberated on the issue of the continued presence of foreign military bases in the country in this wise:

> FR. BERNAS. My question is: Is it the position of the committee that the presence of foreign military bases in the country under any circumstances is a derogation of national sovereignty?
>
> MR. AZCUNA. It is difficult to imagine a situation based on existing facts where it would not. However, in the abstract, it is possible that

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[2] *Id.* at 650-654.

[3] Mutual Defense Treaty, Preamble, paragraph 3.

[4] *Id.*, Preamble, paragraph 4.

it would not be that much of a derogation. I have in mind, Madam President, the argument that has been presented. Is that the reason why there are U.S. bases in England, in Spain and in Turkey? And it is not being claimed that their sovereignty is being derogated. Our situation is different from theirs because we did not lease or rent these bases to the U.S. The U.S. retained them from us as a colonial power.

FR. BERNAS. So, the second sentence, Madam President, has specific reference to what obtains now.

MR. AZCUNA. Yes. It is really determined by the present situation.

FR. BERNAS. Does the first sentence tolerate a situation radically different from what obtains now? In other words, if we understand sovereignty as auto-limitation, as a people's power to give up certain goods in order to obtain something which may be more valuable, would it be possible under this first sentence for the nation to negotiate some kind of a treaty agreement that would not derogate against sovereignty?

MR. AZCUNA. Yes. For example, Madam President, if it is negotiated on a basis of true sovereign equality, such as a mutual ASEAN defense agreement wherein an ASEAN force is created and this ASEAN force is a foreign military force and may have a basis in the member ASEAN countries, this kind of a situation, I think, would not derogate from sovereignty.

MR. NOLLEDO. Madam President, may I be permitted to make a comment on that beautiful question. I think there will be **no derogation of sovereignty if the existence of the military bases as stated by Commissioner Azcuna is on the basis of a treaty** which was not only ratified by the appropriate body, like the Congress, but also by the people.

I would like also to refer to the situation in Turkey where the Turkish government has control over the bases in Turkey, where the jurisdiction of Turkey is not impaired in anyway, and Turkey retains the right to terminate the treaty under circumstances determined by the host government. I think under such circumstances, the existence of the military bases may not be considered a derogation of sovereignty, Madam President.

FR. BERNAS. Let me be concrete, Madam President, in our circumstances. **Suppose they were to have this situation where our government were to negotiate a treaty with the United States, and then the two executive departments in the ordinary course**

of negotiation come to an agreement. As our Constitution is taking shape now, if this is to be a treaty at all, it will have to be submitted to our Senate for its ratification. Suppose, therefore, that what was agreed upon between the United States and the executive department of the Philippines is submitted and ratified by the Senate, then it is further submitted to the people for its ratification and subsequently, we ask the United States: "Complete the process by accepting it as a treaty through ratification by your Senate as the United States Constitution requires," would such an arrangement be in derogation of sovereignty?

MR. NOLLEDO. **Under the circumstances the Commissioner just mentioned, Madam President, on the basis of the provision of Section 1 that "sovereignty resides in the Filipino people," then we would not consider that a derogation of our sovereignty on the basis and expectation that there was a plebiscite.**[5] (Emphasis supplied.)

Section 25, Article XVIII came into effect upon the expiration of the MBA in 1991. Thereafter, foreign military bases, troops, or facilities were no longer allowed in the Philippines, unless the three requirements set forth in Section 25, Article XVIII are met.

On February 10, 1998, the Philippines and the United States entered into the Visiting Forces Agreement (VFA). The scope and purpose of the VFA can be gleaned from its Preamble, which reads in part:

Reaffirming their obligations under the **Mutual Defense Treaty** of August 30, 1951;

Noting that **from time to time** elements of the United States armed forces may **visit** the Republic of the Philippines[.] (Emphasis supplied).

Like the MBA, the VFA, which reaffirmed the parties' obligations under the MDT, was still submitted to and was concurred in by the Philippine Senate on May 27, 1999.[6]

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[5] IV RECORD OF THE CONSTITUTIONAL COMMISSION, pp. 661-662.

[6] Senate Resolution No. 18; *BAYAN (Bagong Alyansang Makabayan) v. Zamora, supra* note 1 at 654-655.

Thereafter, on April 28, 2014, the Governments of the Philippines and the United States entered into the assailed EDCA.

The EDCA

Under the EDCA, the Philippines shall provide the United States forces access and use of portions of Philippine territory called "Agreed Locations" without any obligation on its part to pay any rent or similar costs.[7] Therein, the United States may undertake the following types of activities: security cooperation exercises; joint and combined training activities; humanitarian and disaster relief activities; and such other activities that as may be agreed upon by the Parties."[8] Article III (1) of the EDCA further states in detail the activities that the United States may conduct inside the Agreed Locations:

> 1. With consideration of the views of the Parties, the Philippines hereby authorizes and agrees that United States forces, United States contractors, and vehicles, vessels, and aircrafts operated by or for United States forces may conduct the following activities with respect to Agreed Locations: **training; transit; support and related activities; refueling of aircraft; bunkering of vessels; temporary maintenance of vehicles, vessels, and aircraft; temporary accommodation of personnel; communications; prepositioning of equipment, supplies, and materiel; deploying forces and materiel; and such other activities as the Parties may agree.** (Emphasis supplied.)

The United States is granted operational control of Agreed Locations to do construction activities, make alterations or improvements of the Agreed Locations.[9] Permanent buildings constructed by the United States forces become the property of the Philippines, once constructed, but shall be used by the United States forces until no longer required.[10] The United States forces are authorized to exercise all rights and authorities within the Agreed

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[7] Enhanced Defense Cooperation Agreement, Article III(3).

[8] *Id.*, Article I(3).

[9] *Id.*, Article III(4).

[10] *Id.*, Article V(4).

Locations that are necessary for their operational control or defense, including taking appropriate measures to protect United States forces and United States contractors.[11]

The United States is further authorized to preposition and store defense equipment, supplies, and materiel ("prepositioned materiel"), including but not limited to, humanitarian assistance and disaster relief equipment, supplies and material, at Agreed Locations.[12]

Considering the presence of United States armed forces: military personnel, vehicles, vessels, and aircrafts and other defensive equipment, supplies, and materiel in the Philippines, for obvious military purposes and with the obvious intention of assigning or stationing them within the Agreed Locations, **said Agreed Locations are clearly overseas military bases of the United States with the Philippines as its host country**.

In fact, the provisions of the EDCA bear striking similarities with the provisions of the MBA:

Military Bases Agreement (March 14, 1947)	**Enhanced Defense Cooperation Agreement (April 28, 2014)**
Article III: DESCRIPTION OF RIGHTS 1. It is mutually agreed that the United States shall have the rights, power and authority within the bases which are necessary for the establishment, use, **operation and defense thereof or appropriate for the control** thereof and all the rights, power and authority within the limits of territorial waters and air space adjacent to, or in the vicinity of, the bases which are necessary to provide access to them, or appropriate for their control.	Article III: AGREED LOCATIONS 4. The Philippines hereby grants the United States, through bilateral security mechanisms, such as the MDB and SEB, **operational control** of Agreed Locations for construction activities and authority to undertake such activities on, and **make alterations and improvements** to, Agreed Locations. x x x. Article VI: SECURITY 3. United States forces are authorized to exercise **all rights and authorities** within Agreed Locations that are **necessary for their operational control or defense.** xxx.

[11] *Id.*, Article VI(3).

[12] *Id.*, Article IV(1).

Article III: DESCRIPTION OF RIGHTS	Article III: AGREED LOCATIONS
2. Such rights, power and authority shall include, *inter alia,* the right, power and authority: (a) to **construct** (including dredging and filling), operate, maintain, utilize, occupy, garrison and control the bases; (b) to **improve** and deepen the harbors, channels, entrances and anchorages, and to **construct or maintain** necessary roads and bridges affording access to the bases;	4. The Philippines hereby grants the United States, through bilateral security mechanisms, such as the MDB and SEB, **operational control** of Agreed Locations **for construction activities** and authority to undertake such activities on, and **make alterations and improvements** to, Agreed Locations. x x x .
Article III: DESCRIPTION OF RIGHTS 2. Such rights, power and authority shall include, *inter alia,* the right, power and authority: x x x **(c) to control (including the right to prohibit)** in so far as may be required for the efficient operation and safety of the bases, and within the limits of military necessity, anchorages, moorings, landings, takeoffs, movements and operation of ships and waterborne craft, aircraft and other vehicles on water, in the air or on land comprising or in the vicinity of the bases;	Article III: AGREED LOCATIONS 5. The Philippine Designated Authority and its authorized representative shall have access to the entire area of the Agreed Locations. Such access shall be provided promptly **consistent with operational safety and security requirements in accordance with agreed procedures developed by the Parties.** Article IV: EQUIPMENT, SUPPLIES, AND MATERIEL 4. United States forces and United States contractors shall have **unimpeded access** to Agreed Locations for all matters relating to the **prepositioning and storage of defense equipment, supplies, and materiel, including delivery, management, inspection, use, maintenance, and removal** of such equipment, supplies and materiel.
Article III: DESCRIPTION OF RIGHTS	Article III: AGREED LOCATIONS
2. Such rights, power and authority shall include, *inter alia*, the right, power and authority: x x x x	1. With consideration of the views of the Parties, the Philippines hereby authorizes and agrees that United States forces, United States contractors, and vehicles, vessels, and aircraft operated by and for United States forces **may**

(e) to construct, **install, maintain, and employ** on any base any type of **facilities, weapons, substance, device, vessel or vehicle** on or under the ground, in the air or on or under the water that may be requisite or appropriate, including meteorological systems, aerial and water navigation lights, radio and radar apparatus and electronic devices, of any desired power, type of emission and frequency.	**conduct the following activities with respect to Agreed Locations:** training; transit; support and related activities; **refueling of aircraft; bunkering of vessels**; temporary maintenance of vehicles, vessels, and aircraft; temporary accommodation of personnel; communications**; prepositioning of equipment, supplies, and materiel; deploying forces and materiel; and such other activities as the Parties may** agree. Article IV: EQUIPMENT, SUPPLIES, AND MATERIEL 1. The Philippines hereby authorizes the United States forces, x x x to **preposition and store defense equipment, supplies, and materiel ("prepositioned materiel")** x x x. x x x 3. **The prepositioned materiel of the United States forces shall be for the exclusive use of the United States forces**, and full title to all such equipment, supplies, and materiel remains with the United States. United States forces shall have **control over** the access to and disposition of **such prepositioned materiel** and shall have the unencumbered right to remove such prepositioned materiel at any time from the territory of the Philippines. (Emphases supplied.)

The provisions of the EDCA indubitably show that it is **an international agreement** that **allows the presence in the Philippines of foreign military bases, troops, or facilities,** and thus require that the three requisites under Section 25, Article XVIII be complied with. The EDCA must be submitted to the Senate for concurrence; otherwise, the same is rendered ineffective.

In *BAYAN v. Zamora,*[13] the Court rejected the argument that Section 25, Article XVIII does not apply to mere transient agreements such as the VFA, holding that:

> [I]t is specious to argue that Section 25, Article XVIII is inapplicable to mere transient agreements for the reason that there is no permanent placing of structure for the establishment of a military base. On this score, **the Constitution makes no distinction between "transient" and "permanent." Certainly, we find nothing in Section 25, Article XVIII that requires *foreign troops or facilities* to be stationed or placed *permanently* in the Philippines.** (Emphasis supplied.)

The VFA, which allows only the **temporary visits** of the United States forces in the Philippines as it was extensively pointed out by the respondents in the above-cited *BAYAN* case, was considered by the Court to require Senate concurrence, notwithstanding its avowed purpose of implementing the MDT. With more reason, therefore, that the practically **permanent stay** of United States bases, troops and facilities in the Philippines for the duration of the EDCA requires the same Senate concurrence.

The Court discussed in *BAYAN* that:

> Section 25, Article XVIII disallows foreign military bases, troops, or facilities in the country, unless the following conditions are sufficiently met, *viz*.: (a) it must be under a *treaty*; (b) the treaty must be *duly concurred in by the Senate* and, when so required by Congress, ratified by a majority of the votes cast by the people in a national referendum; and (c) *recognized as a treaty* by the other contracting state.
>
> There is no dispute as to the presence of the first two requisites in the case of the VFA. The concurrence handed by the Senate through Resolution No. 18 is in accordance with the provisions of the Constitution, whether under the general requirement in Section 21, Article VII, or the specific mandate mentioned in Section 25, Article XVIII, the provision in the latter article requiring ratification by a majority of the votes cast in a national referendum being unnecessary since Congress has not required it.

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[13] *Supra* note 1 at 653.

As to the matter of voting, *Section 21, Article VII* particularly requires that a treaty or international agreement, to be valid and effective, must be *concurred in by at least two-thirds of all the members of the Senate.* On the other hand, *Section 25, Article XVIII* simply provides that the treaty be *"duly concurred in by the Senate."*

Applying the foregoing constitutional provisions, a two-thirds vote of all the members of the Senate is clearly required so that the concurrence contemplated by law may be validly obtained and deemed present. While it is true that Section 25, Article XVIII requires, among other things, that the treaty — the VFA, in the instant case — be "duly concurred in by the Senate," it is very true however that said provision must be related and viewed in light of the clear mandate embodied in Section 21, Article VII, which in more specific terms, requires that the concurrence of a treaty, or international agreement, be made by a two-thirds vote of all the members of the Senate. Indeed, Section 25, Article XVIII must not be treated in isolation to Section 21, Article, VII.

As noted, the "concurrence requirement" under Section 25, Article XVIII must be construed in relation to the provisions of Section 21, Article VII. In a more particular language, the concurrence of the Senate contemplated under Section 25, Article XVIII means that at least two-thirds of all the members of the Senate favorably vote to concur with the treaty — the VFA in the instant case.[14]

The *ponencia*, however, still insists that the EDCA is an executive agreement that merely implements the MDT and the VFA such that it was well within the bounds of the obligations imposed by the said treaties. Hence, the EDCA need not comply with the requirements under Section 25, Article XVIII.

I reiterate my disagreement to this position. The EDCA goes far beyond the terms of the MDT and the VFA.

The EDCA is an entirely new agreement as it creates new obligations on the part of the Philippines and confers unprecedented rights and concessions in favor of the United States.

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[14] *Id.* at 654-655.

With respect to the MDT, said treaty did not contain any provision regarding the presence in Philippine territory — whether permanent or temporary — of foreign military bases, troops, or facilities. There is nothing in the MDT that makes any reference or cites any connection to the basing agreement which was then already expressly covered by a prior treaty, the MBA.

Thus, the presence of foreign military bases, troops, or facilities provided under the EDCA cannot be traced to the MDT.

Moreover, Article IV of the MDT states that the individual parties to the treaty "recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that **it would act to meet the common dangers in accordance with its constitutional process."**[15] Therefore, the MDT expressly recognizes the need for each party to comply with their respective constitutional processes in carrying out their obligations under the MDT.

If the MDT were to be implemented through the EDCA as the *ponencia* suggests, Philippines must adhere to the mandate of Section 25, Article XVIII.

In relation to the VFA, the EDCA transcends in scope and substance the provisions of the said treaty. The VFA is confined to the "visit" to the Republic of the Philippines "from time to time of elements of the United States armed forces" and for that purpose the parties to the VFA saw the "desirability of defining the treatment of United States personnel visiting the Republic of the Philippines."[16]

In particular, the VFA defines the treatment of "United States personnel" temporarily in the Philippines in connection with the activities approved by the Philippine government[17] as follows:

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[15] Mutual Defense Treaty, Article IV, first paragraph.

[16] Visiting Forces Agreement, Third and Fifth preambulatory clauses.

[17] *Id.*, Article I.

1) The admission of United States personnel and their departure from Philippines in connection with activities covered by the agreement, and the grant of exemption to United States personnel from passport and visa regulations upon entering and departing from the Philippines;[18]

2) The validity of the driver's license or permit issued by the United States, thus giving United States personnel the authority to operate military or official vehicles within the Philippines;[19]

3) The rights of the Philippines and the United States in matters of criminal jurisdiction over United States personnel who commit offenses within the Philippine territory and punishable under Philippine laws;[20]

4) The importation and exportation of equipment, materials, supplies and other property, by United States personnel free from Philippine duties, taxes and similar charges;[21]

5) The movement of United States aircrafts, vessels and vehicles within Philippine territory;[22] and

6) The duration and termination of the agreement.[23]

In contrast, the EDCA specifically deals with the following matters, which go beyond the contemplation of temporary visits of United States personnel under the VFA:

1) The authority of the United States forces to access facilities and areas, termed as "Agreed Locations," and the activities that may be allowed therein;[24]

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[18] *Id.*, Article III.

[19] *Id.*, Article IV.

[20] *Id.*, Article V.

[21] *Id.*, Article VII.

[22] *Id.*, Article VIII.

[23] *Id.*, Article IX.

[24] Enhanced Defense Cooperation Agreement, Article II.

2) The grant to the United States of operational control of Agreed Locations to do construction activities and make alterations or improvements thereon;[25]

3) The conditional access to the Agreed Locations of the Philippine Designated Authority and its authorized representative;[26]

4) The storage and prepositioning of defense equipment, supplies and materiel, as well as the unimpeded access granted to the United States contractors to the Agreed Locations in matters regarding the prepositioning, storage, delivery, management, inspection, use, maintenance and removal of the defense equipment, supplies, and materiel; and the prohibition that the preposition materiel shall not include nuclear weapons;[27]

5) a) The ownership of the Agreed Locations by the Philippines, b) the ownership of the equipment, materiel, supplies, relocatable structures and other moveable property imported or acquired by the United States, c) the ownership and use of the buildings, non-relocatable structures, and assemblies affixed to the land inside the Agreed Locations;[28]

6) The cooperation between the parties in taking measures to ensure protection, safety and security of United States forces, contractors and information in Philippine territory; the primary responsibility of the Philippines to secure the Agreed Locations, and the right of the United States to exercise all rights and authorities within the Agreed Locations that are necessary for their operational control or defense;[29]

7) The use of water, electricity and other public utilities;[30]

8) The use of the radio spectrum in connection with the operation of a telecommunications system by the United States;[31]

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[25] *Id.*, Article III(4).

[26] *Id.*, Article III(5).

[27] *Id.*, Article IV.

[28] *Id.*, Article V.

[29] *Id.*, Article VI.

[30] *Id.*, Article VII(1).

[31] *Id.*, Article VII(2).

9) The authority granted to the of the United States to contract for any materiel, supplies, equipment, and services (including construction) to be furnished or undertaken inside Philippine territory;[32]

10) The protection of the environment and human health and safety, and the observance of Philippine laws on environment and health, and the prohibition against the intentional release of hazardous waste by the United States and the containment of thereof in case a spill occurs;[33]

11) The need to execute implementing arrangements to address details concerning the presence of United States forces at the Agreed Locations and the functional relations between the United States forces and the AFP with respect to the Agreed Locations;[34] and

12) The resolution of disputes arising from the EDCA through consultation between the parties.[35]

Clearly, the provisions of the EDCA cannot be justified as mere implementation of the VFA.

The EDCA permits the construction of permanent buildings and the improvement of existing ones in the Agreed Locations, which are to be used indefinitely during the agreed ten (10) year period, which is renewable automatically unless terminated by either party by giving one (1) year's written notice through diplomatic channels of its intention to terminate the agreement. This further evinces the permanence of the envisaged stay of United States forces and contractors. This is a far cry from the temporary visits of United States military forces contemplated in the VFA.

The EDCA allows United States forces and United States contractors to stay in the Agreed Locations to undertake military activities within the duration of the EDCA, as above mentioned.

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[32] *Id.*, Article VIII.

[33] *Id.*, Article IX.

[34] *Id.*, Article X.

[35] *Id.*, Article XI.

The *ponencia*, however, interpreted the phrase "allowed in" in Section 25, Article XVIII as referring to "initial entry," explaining that the entry of the United States bases, troops and facilities under the EDCA is already allowed in view of the "initial entry" of United States troops under the VFA.

Said position glaringly ignores the fact that the entry of visiting **foreign military troops** must be in accordance with the limited purpose of the VFA and the character and terms by which the presence of such troops is allowed. The VFA is restricted to "temporary visits" of United States military and civilian personnel to our country. The EDCA cannot include purposes, which are alien or not germane to the purposes of the VFA. The VFA and the EDCA have distinct and separate purposes. The presence or establishment of **foreign military bases** *or* **foreign military facilities,** apart from the presence of **foreign military troops** in the country, is treated separately under Section 25, Article XVIII. In other words, the allowance of the temporary presence of United States military troops under the VFA cannot by any stretch of the imagination include permission to establish United States military *bases* or *facilities* or the indefinite maintenance of United States troops in the so-called **Agreed Locations** under the EDCA. The more onerous obligations of the Philippines and the far-reaching privileges accorded the United States under the EDCA cannot be justified as nor deemed to be mere implementing arrangements of the VFA.

The settled rule is that the plain, clear and unambiguous language of the Constitution should be construed as such and should not be given a construction that changes its meaning.[36] As held in *Chavez v. Judicial and Bar Council*[37]:

> The language used in the Constitution must be taken to have been deliberately chosen for a definite purpose. Every word employed in the Constitution must be interpreted to exude its deliberate intent which must be maintained inviolate against disobedience and defiance. What the Constitution clearly says, according to its text, compels

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[36] *Soriano III v. Lista,* 447 Phil. 566, 570 (2003).

[37] 709 Phil. 478, 487-488 (2013).

acceptance and bars modification even by the branch tasked to interpret it.

With due respect, the Honorable Chief Justice Maria Lourdes P. A. Sereno's theory of "initial entry" mentioned above ventured into a construction of the provisions of Section 25, Article XVIII of the Constitution which is patently contrary to the plain language and meaning of the said constitutional provision.

All told, the EDCA cannot be treated as a mere implementing agreement of the VFA and the MDT. As the EDCA is an entirely new international agreement that allows the presence of foreign military bases, troops and facilities in the Philippines, the three requisites under Section 25, Article XVIII of the Constitution must be strictly complied with. Unless the EDCA is submitted to the Senate for its concurrence, its implementation will run afoul of the clear constitutional mandate of Section 25, Article XVIII of the Constitution.

Accordingly, I vote to grant the motions for reconsideration.

DISSENTING OPINION

BRION, J.:

I.

Prefatory Statement & Position

I write this Dissenting Opinion to reiterate my position that the Executive Department under President Benigno Aquino III disregarded the clear commands of the Constitution and the required constitutional process when it implemented the Enhanced Defense Cooperation Agreement (*EDCA*) as an Executive Agreement. **I thus vote for the grant of the motions for reconsideration.**

The EDCA, an international agreement between the Philippines and the United States, should be covered by a treaty that, under the Constitution, requires concurrence by the Senate. The agreement should be made through a treaty rather than an executive agreement because it ***embodies new arrangements and new resulting obligations that are not present in the existing treaties.*** In its present form, the agreement is invalid and cannot thus be effective.

I arrived at this conclusion after considering Article VII, Section 21 and Article XVIII, Section 25 of the 1987 Constitution.

Article VII, Section 21 renders any international agreement invalid and ineffective in the Philippines unless it has been concurred in by the Senate. **Article XVII, Section 25,** on the other hand, specifies that agreements allowing the entry of foreign military bases, troops, or facilities into the Philippines shall be in the form of a treaty and, thus, obligatorily be submitted to the Senate for concurrence.

I submit these considerations and conclusions to the Court with no intent to object to the entry of foreign military bases, troops, or facilities in the Philippines if such entry would truly reflect the will of the Filipino people expressed through the Senate of the Philippines.

At this point in time when Philippine territorial sovereignty is being violated, we cannot simply turn our backs on foreign assistance, such as that of the EDCA, that is made available to the country. But because of the implications of the EDCA for the Filipino people (***as it may unnecessarily expose them to the dangers inherent in living in a country that serves as an implementing location of the U.S. Pivot to Asia strategy, as discussed below***), the people — even if only through the Senate — should properly be informed and should give their consent. This is what our Constitution provides in allowing foreign bases or their equivalent into the country, and this Court — with its sworn duty as guardian of the Constitution — should protect both the Constitution and its safeguards, as well as the people in their right to be informed and to be consulted.

To be very clear, this Dissent relates solely to the Executive and this Court's acts of disregarding the clear terms prescribed and the process required by the Constitution. Why the Court so acted despite the clear terms of the cited constitutional provisions, only the majority of this Court can fully explain. The undeniable reality, though, is that the *ponencia* justified its conclusions by inordinately widening the scope of the presidential foreign affairs powers and misapplying the

constitutional provisions mentioned above. Whichever way the matter is viewed, the result is the same — a clear violation of the 1987 Constitution.

I find it particularly timely to stress the constitutional violations at this point when talks of constitutional amendments again resound in the air; it would be useless to go through an amendatory exercise if we do not accord full respect to the Constitution anyway, or if our obedience to the Constitution depends on political considerations and reasons extraneous to the Constitution.

I stress, too, that as Members of the Highest Court of the land, we owe utmost fidelity to our country's fundamental law, and have the duty to ensure its proper enforcement. The President, similarly burdened with the same duty, must owe the Constitution the same fidelity. The oaths we respectively took impose this obligation upon all of us. We must thus act on the present motions for reconsideration by re-examining the challenged ruling and by giving a more focused analysis on the issues based on what the Constitution truly requires.

It is well to recognize that part of the Court's compliance with its constitutional duty is to accord due deference to the President's authority and prerogatives in foreign affairs; that we should do so, fully aware that the President's discretion (or for that matter, the discretion exercised by all officials) in a constitutional and republican government is — by constitutional design — purposely limited. This case, in particular, presents a situation where foreign affairs powers that essentially belong to the President are shared with the Senate of the Philippines.[1]

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[1] Treaty making has historically been a shared function between the President and the legislature.

Under the 1935 Constitution, ***the President has the "power, with the concurrence of a majority of all the members of the National Assembly, to make treaties. . ."*** The provision, Article VII, Section 11 paragraph 7, is part of the enumeration of the President's powers under Section 11, Article VII of the 1935 Constitution. This recognizes that treaty making is an executive function, but its exercise should be subject to the concurrence of the National Assembly. A subsequent amendment to the 1935 Constitution, which divided the country's

All these form part of my original position that the President's use of an Executive Agreement as the medium to implement the EDCA does not comply with Article XVII, Section 21 and Article XVIII, Section 25, of the 1987 Constitution. As a consequence, the Executive Agreement that was signed cannot be "valid and effective" for being contrary to the Constitution; it continues to be so unless the EDCA is submitted to and concurred in by the Senate.

This position, in my view, will not pose any danger at all to the country under the present circumstances of international tension and on-going diplomatic interactions as ***my objection solely relates to the process.*** It is within the power of this Court to suspend the effectiveness of the ruling recommended by this Dissent, to allow the Executive and the Senate time to comply with the required constitutional process. After the EDCA's submission to the Senate within the time frame recommended by this Dissent and thereafter the Senate's concurrence, the EDCA can then be fully implemented as a treaty.

A. The Present Motions for Reconsideration

The present Motions for Reconsideration ask the Court to reconsider its previous ruling in *Saguisag v. Executive Secretary* (dated January 12, 2016) that recognized the EDCA, as written and signed, to be a validly entered Executive Agreement, thereby bypassing the need for the Senate concurrence that the Constitution requires.

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legislative branch to two houses, transferred the function of treaty concurrence to the Senate, and required that two-thirds of its members assent to the treaty.

By 1973, the Philippines adopted a presidential parliamentary system of government, which merged some of the functions of the Executive and Legislative branches of government in one branch. Despite this change, concurrence was still seen as necessary in the treaty making process, as Article VIII, Section 14 required that a treaty should be first concurred in by a majority of all Members of the Batasang Pambansa before they may be considered valid and effective in the Philippines, thus:

> SEC. 14. (1) Except as otherwise provided in this Constitution, no treaty shall be valid and effective unless concurred in by a majority of all the Members of the Batasang Pambansa.

The *ponencia* dismisses these motions, noting that they failed to present arguments sufficient to justify the reversal of the Court's previous Decision. In so ruling, the *ponencia* relies on the premise that the President may enter into an executive agreement allowing the entry of foreign military bases, troops, or facilities if:

(1) it is not the instrument that allows the *initial* presence of foreign military bases, troops, or facilities;[2] *or*

(2) it merely *implements* existing laws or treaties.[3]

The EDCA, according to the *ponencia*, merely implements the country's existing treaties with the U.S., specifically the 1998 Visiting Forces Agreement *(VFA)* and the 1951 Mutual Defense Treaty *(MDT)*.[4]

With due respect, these positions present an overly simplistic interpretation of Article XVIII, Section 25 of the Constitution. A deeper consideration of this provision demonstrates the need for approaches more nuanced than those that the *ponencia* now takes.

For one, the *ponencia* should have appreciated that ***Article XVIII, Section 25 does not exist in a vacuum***. As with any constitutional provision, it must be read, interpreted, and applied in harmony with the rest of the Constitution[5] in order not to negate the

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[2] Page 5 of the *ponencia*'s Draft Resolution dated April 11, 2016.

[3] Pages 8 to 10 of the *ponencia*'s Draft Resolution dated April 11, 2016.

[4] Page 6 of the *ponencia*'s Draft Resolution dated April 11, 2016; the *ponencia* also argues in pp. 10-11 that the EDCA is not a basing agreement.

[5] It is a well-established rule in constitutional construction that not one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.

In other words, the court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative,

effectiveness of other provisions and of the key constitutional principles that underlie the Constitution. The affected underlying principles are the separation of powers and the check and balance principles.

These nuances, when applied to the present case, lead me to conclude that the EDCA should have been entered into as a treaty that requires Senate concurrence. This deficiency, as I will discuss further, is not irremediable under the terms of this Dissent.

II.

Article VII, Section 21 of the Constitution requires that agreements containing new obligations be in the form of a treaty concurred in by the Senate; this rule should apply to new obligations under Article XVIII, Section 25 on the entry of foreign military bases, troops or facilities.

A. (a) The *Ponencia* and *Verba Legis*

The *ponencia*, in dismissing the petitioners' motions for reconsideration, refuses to accord merit to the petitioners' position that a *verba legis* approach to Article XVIII, Section 25 requires that ***every entry*** of foreign military troops, bases, or facilities should be covered by a treaty.

To the *ponencia*, the *verba legis* principle only requires that an international agreement be in the form of a treaty only for the ***initial entry*** of foreign military bases, troops and facilities. This, to the *ponencia*, is the appropriate application of *verba legis,* as the petitioners' application of the *verba legis* principle would lead to absurdity.

The *ponencia* further posits that requiring a treaty for every entry of foreign military troops could lead to the bureaucratic impossibility of negotiating a treaty for every entry of a Head of State's security detail of military officers, for meeting with

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rather than one which may make the words idle and nugatory. *Francisco v. House of Representatives,* G.R. No. 160261, November 10, 2003, 415 SCRA 44, citing *Civil Liberties Union v. Executive Secretary,* 194 SCRA 317, 330-331 (1991).

foreign military officials in the country, and indeed for military exercises such as the *Balikatan*; all these would occupy much of the official working time of various government agencies.[6]

To support this interpretation, the *ponencia* also notes that Article XVIII, Section 25 of the 1987 Constitution does not prohibit foreign military bases, troops, or facilities, but merely restricts their entry to the country.[7]

(b) My View of *Verba Legis*

In contrast with these expressed positions, I hold the view that under the principles of constitutional construction, *verba legis* (*i.e.*, the use of ordinary meaning or literal interpretation of the language of a provision)[8] is only proper and called for when the statute is clear and unequivocal,[9] not when there are latent ambiguities or obscurity in the provision to be applied.

The Court (through former Chief Justice Enrique Fernando) demonstrated the application of this rule in *J.M. Tuason & Co., Inc. v. Land Tenure Administration* when it said: "We look to the language of the document itself in our search for its meaning. *We do not of course stop there, but that is where we begin."*[10] Justice Fernando then pointed out that constitutional construction may be reduced to a minimum and the provision should be given its ordinary meaning *when the "language employed is not swathed in obscurity."*[11]

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[6] Page 5 of the *ponencia*'s Draft Resolution dated April 11, 2016.

[7] *Id.*

[8] The first principle of constitutional construction is *verba legis,* that is, wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed; *Francisco v. House of Representatives, supra* note 5.

[9] It is well-settled that where the language of the law is clear and unequivocal, it must be given its literal application and applied without interpretation; *Commissioner of Internal Revenue v. Central Luzon Drug Corporation,* G.R. No. 159610, 12 June 2008, 554 SCRA 398, 409.

[10] G.R. No. L-21064, February 18, 1970, 31 SCRA 413, 422.

[11] *Id.*

A plain reading of Section 25, Article XVIII reveals that, on its face, it is far from complete, thus giving rise to the present "coverage" and other directly related issues. In the context of the case before us, it does not expressly state that it should only be at the initial entry (as the *ponencia* posits) or upon every entry (as the petitioners claim). Section 25 provides:

> SECTION 25. After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, ***foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people*** in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.

Note that under these wordings a latent ambiguity exists on what the word "*allow*" in the phrase "*shall not be allowed,*" covers: does it refer only to the first entry thus permitting all subsequent entries, or is a treaty required for every entry. Also, is the "purpose" of allowing entry relevant in determining the scope of the entries allowed under a treaty? In the context of the present case, the unavoidable question is — is a treaty called for in order to allow entry?

The provision, to be sure, contains no express and specific statement or standard about these details and leaves the fleshing out to interpretation and construction. The *ponencia*, with its *verba legis* approach, of course, simply states that treaties — *i.e.*, the 1951 Mutual Defense and the 1998 Visiting Forces Agreement — are in place and, from there, proceeds to conclude that all entries shall be allowed after the first entry under these treaties. In this way, the *ponencia* gave Article XVIII, Section 25 a simplistic application that misses the provision's wordings and intent.

What the *ponencia* has not taken into account at all, is the deeper consideration that ***Section 25 was enacted to strike a balance between preserving the country's territorial sovereignty and recognizing the need for foreign military cooperation.*** This balance was crafted in response to the country's history

and experience with foreign military bases, and its perceived threat to full independence.[12] Indeed, the country's past experiences with foreign military presence had not been free from pain, but our constitutional framers recognized that there

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[12] During the constitutional deliberation on Article XVIII, Section 25, two views were espoused on the presence of military bases in the Philippines. One view was that espoused by the anti-bases group; the other group supported the view that this should be left to the policy makers.[12]

Commissioner Adolfo Azcuna expressed the sentiment of the first group when he stated in his privilege speech on 16 September 1986 that:

> After the agreement expires in 1991, the question therefore, is: Should we extend a new treaty for these bases to stay put in 1991 in our territory? The position of the committee is that it should not, because *the presence of such bases is a derogation of Philippine sovereignty.*
>
> It is said that we should leave these matters to be decided by the executive, since the President conducts foreign relations and this is a question of foreign policy. I disagree, Madam President. *This is not simple a question of foreign policy; this is a question of national sovereignty.* And the Constitution is anything at all, it is a definition of the parameters of the sovereignty of the people.[12]

On the other hand, the second group posited that the decision to allow foreign bases into the country should be left to the policy makers. Commissioner Bengzon expressed the position of the group that:

> x x x this is neither the time nor the forum to insist on our views for we know not what lies in the future. It would be foolhardy to second-guess the events that will shape the world, our region, and our country by 1991. It would be sheer irresponsibility and a disservice of the highest calibre to our own country if we were to tie down the hands of our future governments and future generations.[12]

Despite his view that the presence of foreign military bases in the Philippines would lead to a derogation of national security, Commissioner Azcuna conceded that this would not be the case if the agreement to allow the foreign military bases would be embodied in a treaty.[12]

After a series of debates, Commissioner Romulo proposed an alternative formulation that is now the current Article XVIII, Section 25.[12] He explained that this is an explicit ban on all foreign military bases other than those of the U.S. [12] Based on the discussions, the spirit of the basing provisions of the Constitution is primarily a *balance of the preservation of the national sovereignty* and *openness to the establishment of foreign bases, troops, or facilities in the country.*[12]

could be instances when foreign military presence would be necessary and thus gave the Constitution a measure of flexibility through Section 25.

To be sure, the requirement that *every entry* of foreign military bases, troops, or facilities in the Philippines be covered by a treaty does not and cannot achieve this balance. This requirement would unduly clog up government in its foreign and military affairs, and impede (or even block the possibility of) foreign military alliances, perhaps to the point of extreme difficulty in maintaining these ties if they materialize at all. In sum, the process would simply be too paralyzing for the government, and could not have been the interpretation intended by the framers of the Constitution when they drafted Section 25.

At the same time, Article XVIII Section 25 cannot be construed as a blanket authority to allow foreign military presence in the Philippines after the government agrees to its initial entry. Interpreting Article XVIII, Section 25 in this manner would ***expand Section 25 to areas beyond its intended borders*** and thereby unduly restrict the constitutionally mandated participation of the Senate in deciding the terms and degree of foreign military presence in the country. This blanket authority would lay open the country and its sovereignty to excessive foreign intrusion without the active consent of the people.

To fully capture and apply the balance envisioned when Article XVIII, Section 25 was drafted, we must look at its interaction with key provisions of the Constitution involving the conduct of international agreements, as well as with the principles of separation of powers and check and balance that underlie our Constitution. These principles are the measures that the Constitution institutionalizes in order to ensure that a balanced and very deliberate governmental

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Article XVIII, Section 25 imposed three requirements that must be complied with for an agreement to be considered valid insofar as the Philippines is concerned. These three requirements are: (1) the agreement must be embodied in a treaty; (2) the treaty must be duly concurred in by 2/3 votes of all the members of the Senate;[12] and (3) the agreement must be recognized as a treaty by the other State.

approach is taken in protecting the country's sovereignty from foreign intrusion.

I submit, based on these premises, that the *ponencia's* conclusions disregard at least three vital and important concepts in the country's tripartite system of government under the Constitution:

first, that the President's foremost duty is to preserve and defend the Constitution;

second, that the President in the exercise of his powers cannot disregard the separation of powers and check and balance principles that underlie our system of government under the Constitution; and

third, that the totality of governmental powers involved in entering international agreements, although predominantly executive in character because the President leads the process, still involves shared functions among the three branches of government.

B. The President's role in defending and preserving the Constitution

The supremacy of the Constitution means that in the performance of his duties, the President should always be guided and kept in check by the safeguards crafted by the framers of the Constitution and ratified by the people.

Thus, while due deference and leeway should be given when the President exercises his powers as the commander in chief of the country's armed forces[13] and as the chief architect of its international affairs,[14] this deference should never be used to

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[13] Article VII, Section 18 of the 1987 Constitution provides:

> SECTION 18. The President shall be the Commander in Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion x x x.

[14] In our system of government, the President, being the head of state, is regarded as the sole organ and authority in external relations and is the country's sole representative with foreign nations. As the chief architect of foreign policy, the President acts as the country's mouthpiece with respect to international affairs. Hence, the President is vested with the authority to deal with foreign states and governments, extend or withhold recognition,

allow him to countermand what the Constitution provides, as the President is himself a creature of the Constitution and his first and foremost task is to preserve and defend it.

No less than the oath of office required of the President before he assumes office (under Article VII, Section 5 of the Constitution) requires him to *"faithfully and conscientiously fulfill my duties as President (or Vice-President or Acting President) of the Philippines, preserve and defend its Constitution, execute its laws x x x."*

Notably, the President shares this duty with all government employees and officials, including members of the judiciary. Article IX-B, Section 4 requires all public officers and employees to "*take an oath or affirmation to uphold and defend this Constitution.*"

Taken together, these oath requirements are reminders of the duty of all persons working for the government — regardless of the branch to which they belong — to actively maintain their fealty to the present Constitution. ***For members of the judiciary, this duty requires that they faithfully apply what the Constitution provides, even if they do not fully agree with these terms, with their established interpretation, and with their application to actual situations.***

C. The President's foreign affairs power in the wider operational context of our government's tripartite system

a. The foreign affairs power in its wider context

While the President is undeniably the chief architect of foreign policy and is the country's chief representative in international affairs,[15] this wide grant of power ***operates under the wider***

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maintain diplomatic relations, enter into treaties, and otherwise transact the business of foreign relations. In the realm of treaty making, the President has the sole authority to negotiate with other states; *Pimentel v. Executive Secretary,* 501 Phil. 304, 313 (2005).

[15] *Id.* See also *Bayan v. Executive Secretary,* 396 Phil. 623, 663 (2000), where we held:

context of the shared functions of the three branches of government in the conduct of international relations.

I discern this legal reality in the phrasing and placement of Section 21, Article VII of the Constitution, which is the general provision governing the entry into a treaty:

> SECTION 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

The inclusion of Section 21 under the Article on the Executive Department is significant as this Article defines the powers of the President. Section 21 signifies the ***recognition*** of the President's foreign affairs power (among them, the negotiation and ratification of international agreements) as well as the limitation of this power.

The limitation can be found in the check-and-balance measure from the Senate that Section 21 provides, which requires ***prior*** Senate concurrence in the treaties and international agreements that the President enters into, before they become valid and effective. The required Senate concurrence is a check on the Executive's treaty-making prerogative, in the same manner that the Executive's veto on laws passed by Congress is a check on the latter's legislative powers.

To be sure, not every step by the Executive in the international sphere requires prior Senate concurrence under our Constitution which itself expressly recognizes that the President, in the conduct of international affairs, may enter into executive agreements that are not subject to Senate concurrence.

Article VIII, Section 4 (2) of the Constitution separately refers to *treaties* **and** to *international or executive agreements,* thus

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By constitutional fiat and by the intrinsic nature of his office, the President, as head of State, is the sole organ and authority in the external affairs of the country. In many ways, the President is the chief architect of the nation's foreign policy; his "dominance in the field of foreign relations is (then) conceded." Wielding vast powers and influence, his conduct in the external affairs of the nation, as Jefferson describes, is "executive altogether."

expressly recognizing these two mediums of international relations. The constitutional recognition of these mediums and their distinctions are likewise expressed in jurisprudence, history, and the underlying structure of our government as discussed below. These are not idle distinctions because of their potentially deep impact on the operation of our government, in relation particularly to its three great branches that, although separate and distinct from one another, also interact in constitutionally defined areas.

In considering the two mediums that the Constitution recognizes in relation to the President's foreign affairs powers, the deeper question to contend with centers on the interface among the three great branches of government when they act and interact with one another: **who decides when to treat an international agreement as a treaty or as an executive agreement; and what are the parameters for arriving at this decision.**

The President's power over foreign relations under the Constitution generally gives him the prerogative to decide whether an international agreement should be considered a treaty or an executive agreement. He is also the chief architect of foreign policy and is the country's representative with respect to international affairs.[16] He is vested with the authority to preside over the nation's foreign relations, particularly in dealing with foreign states and governments, extending or withholding recognition, maintaining diplomatic relations, and entering into treaties.[17] In the realm of treaty making, the President has the sole authority to negotiate with other States.[18]

His authority over foreign relations, however, is not unlimited. For one, in deciding whether an international agreement shall be in the form of a treaty or an executive agreement, placing the entire discretion in the President potentially renders Section

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[16] *Pimentel v. Executive Secretary, supra* note 14, at 317-318.

[17] *Id.*

[18] *Id.*

21 a nullity or, at the very least, waters down the Constitution's concurrence requirement.

Of course, in a situation where there are *no discoverable standards* that definitively guide the President's determination, the demand for prompt action on foreign affairs matters could arguably and incontestably lead to the treatment of international agreements as executive agreements. This result is not remote given that the alternative is the sharing of power with a 24-member Senate and with the uncertainty and intractability that this sharing entails. The situation, however, would be otherwise if applicable standards are *in place* or *can be discerned*.

In the Philippines' constitutional situation, while the Constitution does not specifically direct when an international agreement should be in the form of a treaty or an executive agreement, ***standards can be discerned*** by tracing the ***authority*** through which these agreements were arrived at and made effective, and by considering the ***impact*** of these agreements on the Philippine legal system.

As I have earlier explained, Section 21, Article VII of the 1987 Constitution governs the process by which a treaty is ratified and made valid and effective in the Philippines. The treaty-making process involves a shared function between the Executive and the Senate: the President negotiates and ratifies, but the Senate must concur for the treaty to be valid and effective.

From this general perspective and the general terms of Section 21, the President's act of entering into ***executive agreements*** may be considered an ***exception to the treaty-making process:*** the President may enter into executive agreements which are international agreements that, until now, have been defined as international agreements "similar to treaties except they do not require legislative concurrence."[19] They have also been described to have "abundant precedent in history" and may either be ***concluded based on a "specific congressional authorization"***

[19] Section 2 (c) of Executive Order No. 459, Series of 1997.

or "in conformity with policies declared in acts of Congress with respect to the general subject matter."[20]

Closely examined, the exceptional character of an executive agreement in relation to a treaty, its definition, and the general description shown above, cannot but lead to the conclusion that entry into an executive agreement does not purely involve the exercise of foreign affairs powers although the entry occurs in a foreign relations environment. While the President also deals with another State in a foreign affairs setting when negotiating and entering into an executive agreement, invalidity does not result even if no Senate intervention takes place,

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[20] See *Commissioner of Customs v. Eastern Sea Trading,* G.R. No. L-14279, October 31, 1961, citing Francis B. Sayre, former U.S. High Commissioner to the Philippines, said in his work on "The Constitutionality of Trade Agreement Acts":

Agreements concluded by the President which fall short of treaties are commonly referred to as executive agreements and are no less common in our scheme of government than are the more formal instruments — treaties and conventions. They sometimes take the form of exchanges of notes and at other times that of more formal documents denominated "agreements" time or "protocols." The point where ordinary correspondence between this and other governments ends and agreements — whether denominated executive agreements or exchanges of notes or otherwise — begin, may sometimes be difficult of ready ascertainment. It would be useless to undertake to discuss here the large variety of executive agreements as such, concluded from time to time. Hundreds of executive agreements, other than those entered into under the trade agreements act, have been negotiated with foreign governments . x x x It would seem to be sufficient, in order to show that the trade agreements under the act of 1934 are ***not anomalous in character, that they are not treaties, and that they have abundant precedent in our history, to refer to certain classes of agreements heretofore entered into by the Executive without the approval of the Senate.*** They cover such subjects as the inspection of vessels, navigation dues, income tax on shipping profits, the admission of civil aircraft, customs matters, and commercial relations generally, international claims, postal matters, the registration of trademarks and copyrights, etcetera. ***Some of them were concluded not by specific congressional authorization but in conformity with policies declared in acts of Congress with respect to the general subject matter,*** such as tariff acts; while still others, particularly those with respect of the settlement of claims against foreign governments, were concluded independently of any legislation." (39 Columbia Law Review, pp. 651, 755.)

apparently because the *President exercises a power that is solely and constitutionally his.* This presidential power, based on the listing of powers under the Constitution, can only be the authority and duty to execute the laws and ensure their implementation.[21]

Under this close inspection and consideration of the sharing of power under Section 21, what stands out clearly is that the President can negotiate and ratify **as executive agreements** only those that he can competently execute and implement on his own, *i.e.*, ***those that have prior legislative authorization, or those that have already undergone the treaty-making process under Article VII, Section 21 of the 1987 Constitution.*** From the perspective of Section 21, treaty making is different and cannot be solely the President's as this power, by constitutional mandate, is one that he must share with the Senate.

Viewed and explained in this manner, executive agreements are clearly part of the President's duty to execute the laws faithfully. These agreements trace their validity from existing laws or treaties duly authorized by the legislative branch of government; they implement laws and treaties.

In contrast, treaties — as international agreements that need concurrence from the Senate[22] — *do not originate solely from the President's duty as the executor of the country's laws, but from the shared function between the President and the Senate that the Constitution mandated under Article VII, Section 21 of the 1987 Constitution.*

Between the two, a treaty exists on a higher plane as it carries the authority of the President and the Senate.[23] Treaties, which have the impact of statutory law in the Philippines, can amend or prevail over prior statutory enactments. Executive agreements

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[21] Constitution, Article VII, Sections 5 and 17.

[22] Section 2 (b) of Executive Order No. 459, Series of 1997.

[23] CONSTITUTION, Article VII, Section 21. See also *Bayan Muna v. Romulo,* 656 Phil. 246, 269-274 (2011), citing Henkin, *Foreign Affairs and the United States Constitution* 224 (2nd ed., 1996); and Borchard, Edwin, *Treaties and Executive Agreements-Reply, Yale Law Journal*, June 1945.

— which exist at the level of implementing rules and regulations or administrative orders in the domestic sphere — have no such effect.[24] They cannot contravene or amend statutory enactments and treaties.[25]

This difference in impact is based on their origins: since a treaty has the approval of both the President and the Senate, it has the same impact as a statute. In contrast, since an executive agreement springs from the President's power to execute laws, it cannot amend or violate existing treaties, and must be in accord with and made pursuant to laws and treaties.[26]

Accordingly, the intended effect of an international agreement determines its form.

When an international agreement merely implements an existing agreement or law, it is properly in the form of an executive agreement. In contrast, when an international agreement involves the introduction of a new subject matter or the amendment of existing treaties or laws, then it should properly be in the form of a treaty.[27]

Still another way of looking at the matter is ***from the prism of the shared function*** that Section 21 directly implies. In other words, based on the constitutional design reflected in Section 21, action on international agreements is always a *shared function* among the three branches of government.

Treaties that the President enters into should have the required Senate concurrence for its validity and effectivity. Even the President's ***executive agreements*** that are within the President's authority to enter into without Senate concurrence, effectively reflect a shared function as they implement laws passed by Congress or treaties that the Senate has previously concurred in. The ***judicial branch*** of government, on the other hand, passively participates

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[24] *Gonzales v. Hechanova,* 118 Phil. 1065, 1079 (1963).

[25] *Adolfo v. CFI of Zambales,* 145 Phil. 264, 266-268 (1970).

[26] *Bayan Muna v. Romulo, supra* note 23.

[27] *Id.*

in international agreements through the exercise of judicial power; courts have the duty to ensure that the Executive and the Legislature stay within their spheres of competence, and that the constitutional standards and limitations set by the Constitution are not violated.

Under these norms, an executive agreement that creates new obligations or amends existing ones should properly be classified and entered into as a treaty. When implemented as an executive agreement that does not have the benefit of the treaty-making process and its Senate concurrence, such executive agreement is invalid and ineffective, and can judicially be so declared through judicial review.

D. Article XVIII, Section 25 reinforces Article VII, Section 21.

That the entry of foreign military bases, troops, or facilities into the country is specifically covered by its own provision (*i.e.*, Section 25, Article XVIII of the Constitution) does not change the dynamics that come into play in reading, interpreting, and implementing Section 25 and Section 21. In fact, these constitutional provisions actually reinforce one another.

Article XVIII, Section 25 of the 1987 Constitution does not specifically contradict the President's authority to conduct foreign affairs; neither does it limit the Senate's check-and-balance prerogative to concur in treaties under Section 21. ***Article XVIII, Section 25, too, is not an exception to Article VII, Section 21, but must be read under the terms of this latter provision.***

Viewed in this manner, the standard for determining the form of an international agreement for the entry of foreign military bases, troops, or facilities in the Philippines should be the same standard used to determine whether ***any*** international agreement should be in the form of an executive agreement or a treaty.

To reiterate this standard in the context of Article XVIII, Section 25: when an international agreement involves new obligations or amendments to existing obligations on foreign military bases, troops or facilities in the Philippine territory, the agreement should be in the form of a treaty that requires

Senate concurrence; if, on the other hand, the agreement merely implements an existing treaty or law, then the subsequent entry of foreign military troops, bases, or facilities may be in the form of an executive agreement.

Note, at this point, that ***Congress cannot legislate the entry of foreign military troops, bases, or facilities into the country as Section 25, Article XVIII of the Constitution specifically requires that this action be made through the shared action of the President and the Senate.*** Consistent with the delineation of authority on the entry of military bases, troops or facilities, the President can only enter into an executive agreement allowing such entry to implement treaties on foreign military presence that are already in place.

The *ponencia's* insistence on confining Section 25 to the initial entry of foreign military bases, troops, or facilities contradicts and disrupts the check-and-balance harmony that Section 21 fosters. If we were to follow its argument that Section 25 is confined only to the initial entry, then subsequent ***changes or amendments*** to these agreements would no longer require a treaty, and would tilt the balance in favor of the President, contrary to the dictates of Section 21, Article VII of the 1987 Constitution.

Under the present circumstances, the affirmation of the ponencia's ruling effectively means that the President alone — by executive agreement — can determine the entry of foreign military presence, checked only by a Court already bound to the ponencia, as initial entry has been made under the general terms of the Mutual Defense Treaty and the Visiting Forces Agreements.

To carry the resulting consequence further, troops and facilities allowed via the EDCA through an Executive Agreement, would now be allowed simply because there had been earlier entries although their entries had effectively made the Philippines a forward base for American military operations. All these would be established at the sole will of one person, the President of the Philippines, abetted by this

Court, and without the benefit of the collective wisdom of the Filipino people expressed through the Senate.

It is not for me, nor for this Court, to argue about the ***wisdom of this resulting arrangement,*** but this Court must stand up and assert its duties and prerogatives when the arrangements violate the ***terms of the Constitution.***

Based on the relationship between Article VII, Section 21 and Article XVIII, Section 25 discussed in this dissenting opinion; on the principles of separation of powers and check and balance that underlie the Constitution; and on the duty of all officials to uphold and defend the Constitution, I submit that the *ponencia* and its "initial entry approach" incorrectly answers the following material issues:

(1) Does the EDCA introduce foreign military bases, troops, or facilities into the Philippines that call for the application of Article XVIII, Section 25?

(2) Do the obligations found in the EDCA impose new obligations or amend existing ones regarding the presence of military bases, troops, or facilities in the Philippines?

(3) On the basis of the responses to (1) and (2), can the EDCA be recognized as valid and effective without need for Senate concurrence?

To restate my position: since the EDCA introduces foreign military bases, troops, or facilities in the Philippines within the contemplation of Article XVIII, Section 25 of the 1987 Constitution, and since these are undertaken as obligations different from those found under currently existing treaties with the U.S., then the EDCA, as an executive agreement, is invalid and ineffective. Its terms cannot be enforced in the Philippines unless it is entered into as a treaty concurred in by the Senate.

III.

EDCA imposes new obligations that are different from those found in the MDT and the VFA.

The *ponencia*, in arguing that the EDCA has been properly entered into through an executive agreement, reiterates that it merely implements existing treaties between the Philippines and the U.S., specifically, the 1998 Visiting Forces Agreement *(VFA)* and the 1951 Mutual Defense Treaty *(MDT)*.

The *ponencia* stresses that the VFA allows the entry of U.S. military troops and the conduct of related activities, which includes the activities agreed upon under the EDCA.

A. Purpose and contents of the EDCA

The EDCA was signed on April 28, 2014, in Manila, by Philippines Defense Secretary Voltaire Gazmin and U.S. Ambassador to the Philippines Philip Goldberg, in time for the official State Visit of U.S. President Barack Obama.

The ten-year accord is the *second military agreement between the U.S. and the Philippines* (the first being the 1998 VFA) since American troops withdrew from its Philippines naval base in 1992. The U.S. withdrew because the covering Military Bases Agreement (*MBA*) had expired.

The MDT, on the other hand, is merely a mutual defense alliance and cooperation agreement that does not contain authorizing provisions for the entry of military bases, troops, or facilities into the Philippines. *There was thus no existing military bases agreement in 1992 that would have supported the continued maintenance of U.S. military bases, troops, or facilities in the Philippines;* hence, the U.S. withdrawal.

The EDCA allows the U.S. to station military troops and to undertake military operations in Philippine territory without establishing a *permanent* military base[28] and with the stipulation that the U.S. is not allowed to store or position any nuclear weapon in Philippine territory.[29]

The EDCA has two main **purposes**.

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[28] EDCA, Preamble, par. 5.

[29] *Id.*, Article IV, par. 6.

First, it is intended to provide a framework for activities for defense cooperation in accordance with the MDT and the VFA.

Second, it is an agreement for the grant to the U.S. military of the right to use identified portions of the Philippine territory referred to in the EDCA as "Agreed Locations." This right is fleshed out in the EDCA through terms that identify the privileges granted to the U.S. in bringing in troops and facilities, in constructing structures, and in conducting activities within Philippine territory.[30]

The EDCA has a term of ten years, unless both the U.S. and the Philippines formally agree to alter it.[31] The U.S. is bound to hand over any and all facilities in the "Agreed Locations" to the Philippine government upon the EDCA's termination.

In terms of **contents**, EDCA may be divided into two:

First, it reiterates the purposes of the MDT and the VFA by affirming that the U.S. and the Philippines shall continue to conduct joint activities in pursuit of defense cooperation.

Second, it contains an ***entirely new agreement*** pertaining to the Agreed Locations, the right of the U.S. military to stay in these areas, and to conduct activities that are not imbued with mutuality of interests and cannot, by any means, be reconciled with the idea of defense cooperation.

B. The EDCA as a continuation of the VFA and MDT under new and expanded dimensions

Under the **1998 VFA,** the Philippines' primary obligation is to facilitate the entry and departure of U.S. personnel in relation to "covered activities." *It merely defines* ***the status and treatment of U.S. personnel visiting the Philippines*** *"from time to time" in pursuit of cooperation to promote "common security interests.*"

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[30] *Id.*, Article III.

[31] *Id.*, Article XII (4).

Essentially, the 1998 VFA is a treaty governing the sojourn of U.S. forces in this country for joint exercises.[32]

Interestingly, the 1998 VFA does not itself *expressly* specify what activities would allow the entry of U.S. troops. The parties left this aspect open, and recognized that the activities that shall require the entry of U.S. troops are subject to future agreements and approval by the Philippine Government.

Note, however, that *the* **VFA does not authorize U.S. personnel to permanently stay in the Philippines, nor does it allow any activity related to the establishment and operation of bases.**

Interestingly, **these very same activities that the VFA did not allow, became the centerpiece of the EDCA** which facilitates a more permanent presence of U.S. military troops and facilities in "Agreed Locations" in the Philippines, to the extent that ***these "Agreed Locations"*** *(as discussed below)* ***fit the description of modern military bases.***

Agreed Locations are portions of the Philippine territory whose use is granted to the U.S.[33] Under the EDCA, U.S. personnel can:

(i) ***preposition and store*** defense equipment, supplies, and materiel in Agreed Locations;

(ii) have ***unimpeded access to*** Agreed Locations on all matters relating to the prepositioning and storage of defense equipment, supplies, and materiel; and

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[32] *Lim v. Executive Secretary,* G.R. No. 151445, April 11, 2002. In this manner, visiting U.S. forces may sojourn in Philippine territory for purposes other than military. As conceived, the joint exercises may include training on new techniques of patrol and surveillance to protect the nation's marine resources, sea search-and-rescue operations to assist vessels in distress, disaster relief operations, civic action projects such as the building of school houses, medical and humanitarian missions, and the like.

[33] EDCA, Article II (4).

(iii) exercise all ***rights and authorities*** within the Agreed Locations that are ***necessary for their operational control or defense.***

In the same manner, ***U.S. contractors*** (entities not within the coverage of either the 1951 MDT or the 1998 VFA) are also allowed unimpeded access to the Agreed Locations in matters relating to the preposition and storage of defense equipment, supplies, and materiel.

Within the Agreed Locations, the U.S. may additionally ***conduct trainings*** for its troops, transit, support, and related activities.[34] The EDCA also allows the U.S. to use the Agreed Locations to ***refuel aircraft, bunker vessels,*** and temporarily ***maintain vehicles, vessels, and aircraft.***[35]

The EDCA so provides with ***no qualification as to the purpose*** these vessels, vehicles, and aircraft may have when entering Philippine jurisdiction. It also permits the ***temporary accommodation of personnel,***[36] again without any qualification as to the purpose of their visit.

The U.S. forces may also engage in ***communications activities*** that include the use of ***its own radio spectrum,***[37] similarly without any limitation as to the purpose by which such communications shall be carried out.

Further, within the Agreed Locations, the U.S. can also ***preposition defense equipment, supplies, and materiel*** under the ***exclusive use and control of U.S. forces.***[38] Thus, the ***right to deploy weapons*** can be undertaken even if it is ***not in the pursuit of joint activities for common security interests.***

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[34] EDCA, Art. III, Sec. 1.

[35] *Id.*

[36] *Id.*

[37] EDCA, Art. VII, Sec. 2.

[38] EDCA, Art. IV, Secs. 1 & 3.

Note, at this point, that the Senators, during the ratification of the 1998 VFA, observed that it ***only covers temporary visits of U.S. troops and personnel in the country.*** These Senators gave their consent to the 1998 VFA based on the knowledge that U.S. Forces' ***stay in the country may last only up to three weeks to six months***[39] ***per batch.***

This temporary stay of U.S. Forces in the Philippines under the VFA means that this agreement does not cover, nor does it give its approval to, a more permanent stay of U.S. Forces and their equipment in the Philippines; this coverage and approval came only under the EDCA and the Agreed Locations it provides. Note in this regard that *if the EDCA had not envisioned the stay of U.S. Forces and equipment in the Agreed Locations for a period longer than that envisioned in the VFA,* it would not have added obligations regarding the ***storage*** of their equipment and materiel.

All these show that the EDCA embodies ***arrangements of a more permanent nature*** than the arrangements under the VFA; there was ***a marked qualitative and quantitative change in the Philippines-U.S. military arrangements from the VFA to the EDCA.*** The EDCA therefore cannot merely be an agreement implementing the 1998 VFA.

More aptly described, the EDCA may be a continuation of the 1998 VFA, but the ***continuity is under new and expanded dimensions.*** These added dimensions reinforce the view that the EDCA effectively allows the establishment of a military base, albeit in a modern form, together with all the rights and activities that the use and operation of a military base requires.

Notably, the 1998 VFA had also been recognized as an implementation of the 1951 MDT, yet the Government deemed it necessary to have it embodied in a treaty concurred in by the Senate.

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[39] The senators argued the precise length of time but agreed that it would not exceed six months. (See Senate of the Philippines, Resolution on Second Reading, P.S. Res. No. 443 — Visiting Forces Agreement, May 17, 1999, Records and Archives Service, Vol. 133, pp. 23-25.)

Early in the deliberations of the Senate's concurrence to the 1998 VFA, the senator-sponsors characterized it merely as a subsidiary or implementing agreement to the 1951 MDT.[40] Nevertheless, Senator Tatad, one of the VFA's co-sponsors, ***recognized that Article XVIII, Section 25 of the Constitution prohibits the 1998 VFA from being executed as a mere executive agreement.***[41]

The senators therefore agreed during their deliberations that an agreement implementing the 1951 MDT requires a treaty and Senate concurrence.[42] This was because the agreement, ***despite its affirmation of and consistency with the 1951 MDT, allowed the entry of U.S. troops in the Philippines,*** the situation covered by Article XVIII, Section 25.

This same reasoning should also apply when the U.S. transitioned from the VFA to the EDCA. In fact, ***there is greater reason now*** to require a treaty since the EDCA allows a ***more permanent presence*** of U.S. troops and military equipment in the Philippines, equivalent in fact to the ***establishment of modern military bases*** that had not been contemplated at all under the earlier treaties. This enhancement, while *generally consistent* with the intents of the 1951 MDT and the 1998 VFA, creates ***new arrangements and new obligations*** that bring EDCA fully

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[40] Sponsorship speeches of Senator Tatad and Senator Biazon, Senate deliberations on P.S. Res. No. 443 — Visiting Forces Agreement (*Senate deliberations*), May 3, 1999, pp. 8 and 44: The VFA gives "substance [to the MDT] by providing the *mechanism to regulate* the circumstances and conditions under which the U.S. forces may enter" the country.

[41] Senator Tatad . x x x Mr. President, distinguished colleagues, the Visiting Forces Agreement does not create a new policy or a new relationship. It simply seeks to implement and reinforce what already exists.

For that purpose, **an executive agreement might have sufficed, were there no constitutional constraints. But the Constitution requires the Senate to concur in all international agreements.** So the Senate must concur in the Visiting Forces Agreement, even if the U.S. Constitution does not require the U.S. Senate to give its advice and consent. (*Senate deliberations,* May 25, 1999, A.M., p. 17.)

[42] Senate Resolution No. 1414.

within the coverage of Article XVIII, Section 25 of the Constitution.

Note that the 1951 MDT merely embodied a ***defense agreement,*** focused as it is on defenses against armed external attacks.[43] ***It made no provision for bases, troops, or facilities.*** The entry of U.S. military bases and troops had been embodied in different, separate agreements, specifically, through the Military Bases Agreement (*MBA*) which expired in 1992, and through the current 1998 VFA.

With the lapse of the 1947 MBA, the MDT, on its own, does not have any provision allowing the entry of US military bases or facilities in the Philippines. The 1987 Constitution precisely foresaw the expiration of the 1947 MBA, and required that any subsequent extension of the presence of U.S. military bases, troops or facilities in the Philippines should be the subject of another treaty that would require Senate concurrence.[44]

Given the EDCA's introduction of U.S. military facilities that fall within the definition of "bases" (as discussed below)

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[43] The 1951 MDT provides that both nations would support one another if either the Philippines or the U.S. would be attacked by an external party. It states that each party shall either, separately or jointly, through mutual aid, acquire, develop and maintain their capacity to resist armed attack. It provides for a mode of consultations to determine the 1951 MDT's appropriate implementation measures and when either of the parties determines that their territorial integrity, political independence or national security is threatened by armed attack in the Pacific. An attack on either party will be acted upon in accordance with their constitutional processes and any armed attack on either party will be brought to the attention of the United Nations for immediate action.

The accord defines the meaning of an armed attack as including armed attacks by a hostile power on a metropolitan area of either party, on the island territories under their jurisdiction in the Pacific, or on their armed forces, public vessels or aircrafts in the Pacific. The U.S. government guaranteed to defend the security of the Philippines against external aggression but not necessarily against internal subversion. The treaty expressly stipulates that the treaty terms are indefinite and would last until one or both parties terminate the agreement by a one year advance notice.

[44] See Article XVIII, Section 25 of the 1987 Constitution.

and the lack of any existing treaty allowing the entry of facilities of this type, the EDCA arguably now stands as an agreement taking the place of the 1947 MBA and should thus undergo the treaty-concurrence process that the 1987 Constitution requires. It cannot merely derive its validity and effectiveness from the 1951 MDT and 1998 VFA as an implementing instrument of these earlier agreements.

IV.
EDCA allows the entry of U.S. bases and facilities in the Philippines.

Neither can I agree with the *ponencia*'s continued denial of the EDCA's character as a basing agreement. A reading of the EDCA will reveal that it provides for arrangements equivalent to the establishment in this country of a foreign military base, based on the concept of a base under the 1947 Military Bases Agreement *(MBA),* under Philippine laws, or in the modern equivalent of a base under current U.S. military strategies and practices.

On this point and with due respect, the *ponencia* is plainly in error.

A. Obligations under the EDCA are similar to the obligations under the 1947 MBA.

The obligations under the EDCA are notably ***similar and even equivalent to the obligations under the 1947 R.P.-U.S. Military Bases Agreement (MBA)*** which expired in 1992.

They pursue the ***same purpose*** of identifying portions of the Philippine territory over which the U.S. is granted specific rights for its military activities, undertaken within the "bases" under the MBA and within the "Agreed Locations" in the case of the EDCA. Thus, only the name of the situs of operations varies.

These rights may be categorized into four:

(i) the right to construct structures and other facilities for the proper functioning of the bases or the Agreed Locations;

(ii) the right to perform activities for the defense or security of the bases or Agreed Locations;

(iii) the right to the prepositioning of defense equipment, supplies, and materiel; and

(iv) other related rights such as the use of public utilities and public services.

For clarity, I present below a side by side comparison of the relevant provisions of the EDCA and the 1947 MBA.

EDCA	1947 MBA
Article III, Section 1 With the consideration of the views of the Parties, the Philippines hereby authorizes and agrees that United States forces, United States contractors, and vehicles, vessels, and aircraft operated by or for United States forces may conduct the following activities with respect to Agreed Locations: training, transit, support and related activities, refueling of aircraft; bunkering of vessels; temporary maintenance of vehicles, vessels, and aircraft; temporary accommodation of personnel; communications; prepositioning of equipment, supplies, and materiel; deploying forces and materiel, and such other activities as the Parties may agree. **Article VI, Section 3** United States forces are authorized to exercise all rights and authorities within the Agreed Locations that are necessary for their operational control or defense, including undertaking appropriate measures to protect United States forces and United States contractors. The United States should coordinate such measures with appropriate authorities of the Philippines	**Article III, par. 1** It is mutually agreed that the United States shall have the rights, power and authority within the bases which are necessary for the establishment, use, operation and defense thereof or appropriate for the control thereof and all the rights, power and authority within the limits of territorial waters and air space adjacent to, or in the vicinity of, the bases which are necessary to provide access to them, or appropriate for their control.
Article III, Section 4 The Philippines hereby grants to the United States, through bilateral security mechanisms, such as the MDB and SEB, operational control of Agreed	**Article III, par. 2 (a) and (b)** x x x 2. Such rights, power and authority shall include, inter alia, the right, power and

Locations for construction activities and authority to undertake activities on, and make alterations and improvements to, Agreed Locations. x x x	authority: (a) to construct (including dredging and filling), operate, maintain, utilize, occupy, garrison, and control the bases; (b) to improve and deepen the harbors, channels, entrances and anchorages, and to construct or maintain necessary roads and bridges affording access to the bases; x x x x
Article VII, Section 1. The Philippines hereby grants to United States forces and United States contractors the use of water, electricity, and other public utilities on terms and conditions, including rates of charges, no less favorable than those available to the AFP or the Government of the Philippines. x x x **Article VII, Section 2** The Parties recognize that it may be necessary for United States forces to use the radio spectrum. The Philippines authorizes the United States to operate its own telecommunications systems [as telecommunication is defined in the 1992 Constitution and Convention of the International Telecommunication Union ("ITU")]. This shall include the right to utilize such means and services required to ensure the full ability to operate telecommunications systems and the right to use all necessary radio spectrum allocated for this purpose.x x x	**Article III, par. 2 (d)** x x x x the right to acquire, as may be agreed between the two Governments, such rights of way, and to construct thereon, as may be required for military purposes, wire and radio communications facilities, including submarine and subterranean cables, pipe lines and spur tracks from railroads to bases, and the right, as may be agreed upon between the two Governments, to construct the necessary facilities; x x x x.
Article IV, Section 1 The Philippines hereby authorizes United States forces, through bilateral mechanisms, such as the MDB and SEB, to preposition and store defense equipment, supplies and materiel ("prepositioned materiel"), including, but not limited to, humanitarian assistance and disaster relief equipment, supplies, and materiel, at Agreed Locations. x x x	**Article III, par. (2) (e)** x x x x to construct, install, maintain, and employ on any base any type of facilities, weapons, substance, device, vessel or vehicle on or under the ground, in the air or on or under the water that may be requisite or appropriate, including meteorological systems, aerial and water navigation

Article IV, Section 3 The prepositioned materiel of the United States shall be for the exclusive use of United States forces, and full title to all such equipment, supplies, and materiel remains with the United States. United States forces shall have control over the access and disposition of such prepositioned materiel and shall have the unencumbered right to remove such prepositioned materiel at any time from the territory of the Philippines. **Article IV, Section 4** United States forces and United States contractors shall have unimpeded access to Agreed Locations for all matters relating to the prepositioning and storage of defense equipment, supplies, and materiel including delivery, management, inspection, use, maintenance, and removal of such equipment, supplies, and materiel.	lights, radio and radar apparatus and electronic devices, of any desired power, type of emission and frequency.
Article III, Section 2 When requested, th e Designated Authority of the Philippines shall assist in facilitating transit or temporary access by United States forces to public land and facilities (including roads, ports, an airfield) including those owned or controlled by local governments, and to other land and facilities (including roads, ports, and airfields).	**Article VII** It is mutually agreed that the United States may employ and use for United States military forces any and all public utilities, other services and facilities, airfields, ports, harbors, roads, highways, railroads, bridges, viaducts, canals, lakes, rivers, and streams in the Philippines under conditions no less favorable than those that may be applicable from time to time to the military forces of the Philippines.

Presented in this manner, only those who *refuse to see* cannot discern the undeniable similarities and parallelisms between the expired 1947 MBA and the EDCA in terms of the rights conferred on the U.S. and its military forces.

Since the EDCA effectively allows the U.S. to "re-introduce" and "re-establish" military bases in the Philippines, albeit in a ***modernized form*** and ***on a piece-meal basis,*** its implementation

should comply with the requirements of Article XVIII, Section 25 of the Constitution. It can only be recognized as valid and effective if the Senate concurs.

B. The EDCA allows the entry of military bases in the Philippines, whether in the traditional or in the modernized concepts of a military base.

Independently of the concept of military bases under the 1947 MBA, the provisions of the EDCA more than sufficiently show that it seeks to allow in this country the military elements that Article XVIII, Section 25 intends to regulate.

There exists no rigid definition of a military base. However, it is a term used in the field of military operations and thus has a generally accepted connotation.

The ***U.S. Department of Defense Dictionary of Military and Associated Terms*** defines a base as "an area or locality containing installations which provides logistics or other support;" home airfield; or home carrier.[45]

We formulated our own definition of a base under ***Presidential Decree No. 1227*** which states that a military base is "any military, air, naval, coast guard reservation, base, fort, camp, arsenal, yard, station, or installation in the Philippines."[46] A military base connotes the presence, in a relatively permanent degree, of troops and facilities in a particular area.[47]

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[45] U.S. Department of Defense, Joint Publication 1-02, Department of Defense Dictionary of Military and Associated Terms, p. 21 (2015) at <http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf>.

[46] Section 2, Presidential Decree No. 1227.

[47] IV RECORDS, CONSTITUTIONAL COMMISSION 86 (September 18, 1986):

> Fr. Bernas: By the term 'bases,' were we thinking of permanent bases?
>
> Mr. Maambong: Yes.

Both definitions are consistent with the use that EDCA allows for the U.S. and its forces.[48] For greater emphasis, *the EDCA allows U.S. military personnel* ***to enter and remain in Philippine territory.*** It grants the U.S. the ***right to construct structures and assemblies.***[49] It also allows the U.S. to ***preposition defense equipment, supplies and materiel.***[50] The U.S. personnel may also use the Agreed Locations ***to refuel aircraft and bunker vessels.***[51]

Thus, the EDCA's Agreed Locations are areas where the U.S. can perform ***military activities in structures built by U.S. personnel.*** The extent of the U.S.' right to use the Agreed Locations is broad enough to include even the ***stockpiling of weapons*** and *the* ***sheltering and repair of vessels under the exclusive control of U.S. personnel.***

Under these terms, what the EDCA clearly allows are military activities undertaken in fixed or pre-determined locations or military bases as this term is defined above. If the Agreed Locations do not at all exactly fit the description of the base established under the terms of the 1947 MBA, they are nevertheless ***forward military bases of the U.S.*** *— the equivalent of a military base in the immediate post-World War II world, re-created in, and answering to the military demands of, the 21st century.* That the EDCA allows these arrangements for an initial period of ten (10) years, *to continue automatically unless terminated,* is a concrete indicator that it pertains to the presence on Philippine soil of foreign military bases, troops, and facilities on a more or less permanent basis.

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[48] Enhanced Defense Cooperation Agreement (hereinafter referred to as EDCA), Art. III Sec. 1. These activities are: "*training, transit, support and related activities, refueling of aircraft, bunkering of vessels, temporary maintenance of vehicles, vessels, and aircraft; temporary accommodation of personnel; communications; prepositioning of equipment, supplies, and materiel; deploying forces and materiel and such other activities as the Parties may agree*."

[49] EDCA, Article V, Sec. 2.

[50] EDCA, Art. IV, Sec. 1.

[51] *Id.*

Our understanding of the provision's coverage should also be adjusted to take into account contemporary developments such as the **U.S.'s Pivot to Asia** strategy[52] which calls for U.S. presence in Asia in terms of the forward deployment of U.S. military forces. The EDCA fulfills this U.S. strategy as its Agreed Locations are the forward deployment sites where U.S. military forces are to be deployed, ready with manpower, arms, and resources for battle. In this sense, the EDCA does not merely involve training or temporary sojourns, but more or less permanent sites that the U.S. can use as needed ***for its own military purposes.***

Even under the U.S. redefinitions of a military base, the EDCA would still involve the entry of military bases in the Philippines. It should be noted that the obligations under the EDCA correspond to the contemporary reclassification of a military

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[52] During the latter part of the first term of the Obama Administration, the U.S. announced a shift in its global strategy in favor of a military and diplomatic "pivot," or "rebalance" toward Asia. The strategy involved a shift of the U.S.'s diplomatic, economic, and defense resources to Asia, made urgent by "the rise of Chinese regional power and influence, and China's apparent inclination to exercise its burgeoning military power in territorial disputes with its neighbors." These disputes affected sea lanes that are vital to the U.S. and its allies; hence, the U.S. was particularly concerned with their peaceful resolution. John Hemmings., Understanding the U.S. Pivot: Past, Present, and Future. 34(6) *Royal United Services Institute Newsbrief* (November 2014), accessible from John Hemmings' webpage at (November 26, 2014). [https://hemmingsjohn.wordpress.com/2014/11/27/understanding-the-us-pivot-past-present-and-future/ (last accessed on December 8, 2015)].

The key to the new strategy in the military-political area is "presence: forward deployment of U.S. military forces; a significant tempo of regional diplomatic activity (including helping Asian countries resolve disputes that they can't resolve themselves); and promoting an agenda of political reform where it is appropriate." This meant, among others, the strengthening of U.S.' military alliance with Asian countries, including the Philippines. Richard C. Bush III. "No rebalance necessary: The essential continuity of U.S. policy in the Asia-Pacific" *Brookings Institution* (March 18, 2015) available at http://www.brookings.edu/blogs/order-from-chaos/posts/2015/03/18-value-of-continuity-us-policy-in-asia-pacific (last accessed on December 8, 2015).

base, *i.e.*, the Main Operating Base *(MOB)*,[53] Forward Operating Site *(FOS)*,[54] and Cooperative Security Location *(CSL)*,[55] all footnoted below.

Essentially, the reconfiguration of what constitutes a U.S. base corresponds to the U.S.'s strategic objective of providing multiple avenues of access for contingency operations. Through access agreements (such as the EDCA), the U.S. maintains overseas military presence without the added costs and complications of establishing permanent bases. This is the U.S. "presence" that the *Pivot to Asia* speaks of. **With the Philippines as an implementing location of this "pivot" strategy, the country and its people would necessarily be exposed to all the dangers to which the U.S. would be exposed, even to the threats and dangers extraneous to Philippine interests. All these should be made known and clarified with the Filipino people in the manner the Constitution commands.**

V.

Effectivity of the EDCA in the Philippines

Based on all the above considerations, this Dissent concludes that the EDCA, instead of simply implementing the terms of

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[53] Main operating bases, with permanently stationed combat forces and robust infrastructure, will be characterized by command and control structures, family support facilities, and strengthened force protection measures. Examples include Ramstein Air Base (Germany), Kadena Air Base (Okinawa, Japan), and Camp Humphreys (Korea).

[54] Forward operating site will be an expandable "warm facilities" maintained with a limited U.S. military support presence and possibly prepositioned equipment. FOSs will support rotational rather than permanently stationed forces and be a focus for bilateral and regional training. Examples include the Sembawang port facility in Singapore and Soto Cano Air Base in Honduras.

[55] Cooperative security locations will be facilities with little or no permanent U.S. presence. Instead they will be maintained with periodic service, contractor, or host-nation support. CSLs will provide contingency access and be a focal point for security cooperation activities. A current example of a CSL is in Dakar, Senegal, where the U.S. Air Force has negotiated contingency landing, logistics, and fuel contracting arrangements, and which served as a staging area for the 2003 peace support operation in Liberia.

the 1951 MDT and the 1998 VFA, carries terms ***significantly broader in scope*** than the terms of these two earlier treaties. A more correct description of EDCA is that it goes ***beyond the scope of an implementing agreement;*** it is a substantively independent agreement that adds to what the 1951 MDT and the 1998 VFA provide.

The EDCA ultimately embodies a new agreement that touches on military bases, troops, or facilities beyond the scope of the 1951 MDT and the 1998 VFA, and should be covered by a treaty pursuant to Article XVIII, Section 25 and Article VII, Section 21, both of the 1987 Constitution.

Without the referral to and concurrence by the Senate as a treaty, the EDCA is a *constitutionally deficient* international agreement; hence, it cannot be valid and effective in our country.

To remedy the **constitutional deficiency,** the best recourse available to the Court under the present circumstances of territorial conflict, regional tension, and actual intrusion into Philippine territory, is to reconsider its Decision of January 12, 2016:

- by declaring that the EDCA is constitutionally deficient as an Executive Agreement; it cannot be valid and effective in its present form;
- by suspending *pro hac* vice the operations of its rules on the finality of its rulings;
- by giving the President the opportunity to refer the EDCA as a treaty to the Senate for its consideration and concurrence, within ninety (90) days from the service of the Court's ruling on reconsideration; and
- by recognizing that the EDCA, once referred to and concurred in by the Senate, complies with the requirements of Article VII, Section 21 and Article XVIII, Section 25 of the Constitution.

If no referral is made to the Senate within 90 days from receipt, the conclusion that the President committed grave abuse of discretion by entering into an executive agreement instead of a treaty, and by certifying to the completeness of the Philippine internal process, shall be final and effective.

DISSENTING OPINION

PERLAS-BERNABE, *J.*:

I maintain my dissent. The *certiorari* petitions[1] attributing grave abuse of discretion against herein respondents, acting for and on behalf of the Government of the Republic of the Philippines (RP or Philippines), for entering into the Enhanced Defense Cooperation Agreement (EDCA) with the Government of the United States of America (US) as an executive agreement are meritorious. The motions for reconsideration,[2] which mainly argue that the EDCA significantly amends, modifies, or expands the provisions of existing military treaties, and introduces new concepts, obligations, and arrangements therein,[3] and that it is a basing agreement which requires constitutional legislative approval for its effectivity,[4] should therefore be granted.

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[1] *Rollo* (G.R. No. 212426) Vol. I, pp. 3-66; and *rollo* (G.R. No. 212444), Vol. I, pp. 3-101.

[2] See motions for reconsideration of the following: *(a)* petitioners Rene A.V. Saguisag, *et al*. (Saguisag, *et al.*) in G.R. No. 212426 dated February 3, 2016; *(b)* petitioners Bagong Alyansang Makabayan, *et al*. (BAYAN, *et al.*) dated February 3, 2016; and *(c)* petitioners-in-intervention Kilusang Mayo Uno, *et al.* (Mayo Uno, *et al*.) dated February 4, 2016.

[3] See motions for reconsideration of BAYAN, *et al.* in G.R. No. 212444 dated February 3, 2016, pp. 28-41; and Saguisag, *et al.* in G.R. No. 212426 dated February 3, 2016, pp. 9-25.

[4] See motions for reconsideration of Saguisag, *et al.* in G.R. No. 212426 dated February 3, 2016, pp. 25-30; and BAYAN, *et al.* in G.R. No. 212444 dated February 3, 2016, pp. 49-52.

I.

A thorough study of the provisions of the EDCA vis-à-vis the provisions of our past agreements with the US on the same subject matter ultimately impresses upon me that the EDCA should have been entered into as a treaty, and not as an executive agreement. This is because the EDCA does not merely embody detail adjustments to existing national policies that are, more or less, only temporary in nature. Quite the opposite, it substantially modifies our present policies and arrangements with the US Government on national defense. In *Commissioner of Customs v. Eastern Sea Trading:*[5]

> International agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties. But international agreements embodying adjustments of detail carrying out well-established national policies and traditions and those involving arrangements of a more or less temporary nature usually take the form of executive agreements.[6]

The need for the EDCA to be entered into as a treaty stems from the mandate of Section 25, Article XVIII of the 1987 Philippine Constitution which provides:

> Section 25. After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, **foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate** and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting state. (Emphasis and underscoring supplied)

Contrary to the *ponencia*'s stand, this constitutional provision does not only pertain to the conduct of "initial entry" as there is no temporal qualification which situates the allowance of

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[5] 113 Phil. 333 (1961).

[6] *Id.* at 338, citations omitted.

foreign military bases, troops, or facilities in the Philippines.[7] As aptly pointed out by petitioners, the constitutional requirements set forth therein are clear and unambiguous which clearly do not require further construction or interpretation.[8] Certainly, we should not make a qualification when there is none. Following the plain language of the law, the presence of foreign military bases, troops, or facilities in the Philippines is only constitutionally permissible if it is sanctioned by a treaty duly concurred in by Senate.[9]

For context, the Agreement between the RP and the US (Parties) concerning Military Bases contained in this constitutional provision pertains to the Military Bases Agreement of 1947[10] (MBA), whereby the US was accorded the following rights: *(a)* power, authority, and control over military establishments;[11] *(b)* use, operation, and defense of its bases, as well as the areas adjacent thereto in order to access the same;[12] *(c)* use of certain land, coastal areas, and the air for military maneuvers, staging areas, and other military exercises, free of charge;[13] and *(d)* entry of US base personnel, their families, and other technical personnel of other nationalities into the Philippines.[14] The Parties agreed that the MBA would be effective

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[7] See *ponencia*, p. 37.

[8] See motion for reconsideration of BAYAN, *et al*. in G.R. No. 212444 dated February 3, 2015, pp. 18-27.

[9] The requisite concurrence of Senate is relatedly provided for in Section 21, Article VII of the 1987 Constitution:

> Section 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

[10] Signed by the Philippines and the US on March 14, 1947 and concurred in by the Philippine Senate on March 26, 1947.

[11] See Article III, MBA.

[12] See *id.*

[13] See Article VI, MBA.

[14] See Article XI, MBA.

for a period of ninety-nine (99) years,[15] or until the year 2046. Throughout the years, a number of piecemeal amendments were made thereto, particularly: *(a)* the shortening of its term to a total of forty-one (41) years, or until 1991, pursuant to the Ramos-Rusk Agreement;[16] *(b)* the return of 17 US military bases to the Philippines, in accordance with the Bohlen-Serrano Memorandum of Agreement; [17] *(c)* the recognition of Philippine sovereignty over the Clark and Subic Bases through the Romulo-Murphy Exchange of Notes of 1979;[18] and *(d)* the placing of the concept of operational use of military bases by the US Government within the context of Philippine sovereignty, including the need for prior consultation with the Philippine Government on the former's use of the bases, pursuant to the Romualdez-Armacost Agreement of 1983.[19] Apparently, these amendments were reflective of the Philippines' intention to gradually restrict US control over the bases. The growing recalcitrance on US control was the catalyst for the adoption of Section 25, Article XVIII of the 1987 Philippine Constitution which, as above-cited, stringently demands, as a first requisite, a treaty duly concurred in by Senate, if we were to allow once more the presence of foreign military bases, troops, or facilities in the country.

II.

With the expiration of the MBA, no treaty subsists which would legitimize the presence of foreign military bases, troops, or facilities in the Philippines, at least, to the extent provided for in the EDCA. The closest subsisting legal anchorage for US military presence in the Philippines would be the Mutual

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[15] See Article XXIX, MBA.

[16] See *Foreign Service Institute, Agreements on United States Military Facilities in Philippine Military Bases* 1947-1985, (Pacifico A. Castro revised ed. 1985), p. xiii. See also *ponencia*, p. 10.

[17] *Id.* at xii. See also *ponencia*, pp. 10-11.

[18] *Id.* at xiii. See also *ponencia*, p. 11.

[19] *Id.* at xiii-xiv. See also *ponencia*, p. 11.

Defense Treaty Between the Republic of the Philippines and the United States of America (the Mutual Defense Treaty or the MDT), signed on August 30, 1951, and the Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines (Visiting Forces Agreement or the VFA), signed on February 10, 1998.[20] However, the obligations of the RP Government to the US Government under the MDT and VFA are clearly limited in scope as compared to the EDCA. As will be later elaborated upon, the EDCA institutionalizes the functional equivalent of military bases in the Philippines through its introduction of the concept of "Agreed Locations." Due to sheer variance of purpose, context, and parameters, this arrangement cannot find its legal bearings from the MDT or the VFA.

For its part, the MDT only embodies the Parties' general commitment to "maintain and develop their individual and collective capacity to resist [an] armed attack."[21] Under the MDT, the Parties "[d]eclare publicly and formally their sense of unity and determination to defend themselves against [an] **external armed attack,**" and recognize their desire "to strengthen their present efforts to collective defense for the preservation of peace and security pending the development of a more comprehensive system of regional security in the Pacific area."[22] Notably, the MDT was aligned with the situation at that time: it was a collaborative response of the RP and US Governments to the burgeoning threats brought about by the period of communist expansion in Asia following World War II and the Korean War.[23] Thus, as pointed out by my

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[20] See *Bagong Alyansang Makabayan (BAYAN) v. Zamora,* 396 Phil. 623, 637-645 (2000), where the VFA was quoted in full text.

[21] See Dissenting Opinion on the main of Justice Leonen, p. 20, citing Article III (should be Article II), MDT.

[22] See third and fourth preambular paragraphs, MDT; emphasis and underscoring supplied.

[23] See Vaugh, Bruce (2007) *"US Strategic Defense Relationships in the Asia-Pacific Region."* Congressional Research Service, pp. 22-24. <https://www.fas.org/sgp/crs/row/RL33821.pdf> (visited June 2, 2016).

esteemed colleague, Associate Justice Marvic M.V.F. Leonen (Justice Leonen), the MDT's main aim is to provide support against state enemies effectively and efficiently.[24] In this regard, no way should the MDT be construed as a blanket license to legitimize subsequent agreements that further military objectives beyond this purpose. The MDT was in effect (and still remains in effect[25]) at the time the 1987 Constitution was adopted. Hence, it would be rather absurd for Section 25, Article XVIII of the 1987 Philippine Constitution to require a treaty duly concurred in by Senate anew if the presence of foreign military bases, troops, or facilities was already validated by the MDT.

This finding is more forceful in the case of the VFA. The VFA merely provides a mechanism for regulating the circumstances and conditions under which US forces may visit the Philippines for **bilateral military exercises.** In simple terms, these exercises pertain to **joint training.** As signified in the Terms of Reference of the "Balikatan 02-1," "[t]he Exercise is a mutual counter-terrorism advising, assisting[,] and training Exercise"[26] and that it "shall involve the conduct of mutual military assisting, advising[,] and training of [Republic of the Philippines (RP)] and US Forces with the primary objective of enhancing operational capabilities of both forces to combat terrorism."[27] In this respect, the VFA governs the entry and exit of US personnel in the country[28] and establishes the manner of disposing criminal cases against any of its members, who commits an offense in the Philippines.[29] The VFA also establishes a procedure

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[24] See Dissenting Opinion, p. 22.

[25] See Primer Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines <http://web.archive.org/web/2007092704626/http://www.dfa.gov.ph/vfa/content/Primer.htm> (visited June 2, 2016).

[26] See paragraph I (6), Draft Terms of Reference of "Balikatan 02-1" (TOR), cited in *Lim v. Executive Secretary,* 430 Phil. 555, 566 (2002).

[27] See paragraph II (1) (a) of the TOR; *id.* at 566-567.

[28] Article III, VFA.

[29] Article V, VFA.

for resolving differences that may arise between the two sides with regard to the provisions of the agreement.[30]

III.

Although the EDCA states that it seeks to deepen defense cooperation between the Parties, and maintain and develop individual and collective capacity to resist armed attacks in furtherance of Article II of the MDT, and within the context of the VFA,[31] it provides material obligations and activities not covered by the said treaties and, thus, partake of the nature of a treaty itself. As above-intimated, the principal modification ushered in by the EDCA which thus demand that it be entered into as a treaty revolve around what it terms "Agreed Locations." As defined in the EDCA:

Article II
DEFINITIONS

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4. "Agreed Locations" means facilities and areas that are provided by the Government of the Philippines through the [Armed Forces of the Philippines] and that United States forces, United States contractors, and others as mutually agreed, shall have the right to access and use pursuant to this Agreement. Such Agreed Locations may be listed in an annex to be appended in this Agreement, and **may be further described in implementing arrangements.** (Emphases and underscoring supplied)

While the EDCA mentions in one of its preambular paragraphs that the "Parties share an understanding for the [US] not to establish a permanent military presence or base in the territory

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[30] See Primer Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines <http://web.archive.org/web/2007092704626/http://www.dfa.gov.ph/vfa/content/Primer.htm> (visited June 2, 2016). See also Motion for reconsideration of Saguisag, *et al.,* pp. 18-19.

[31] Article I (1), EDCA.

in the Philippines,"[32] a conscientious examination of its provisions governing the rights to access and use granted to US forces and contractors, including their vehicles, vessels, and aircrafts, shows that an "Agreed Location" under the auspices of the EDCA is, in reality, **the functional equivalent of a military base.** The concept of a "military base" was instructively discussed by my respected colleague Associate Justice Arturo D. Brion (Justice Brion) in his own dissent on the main:

> There exists no rigid definition of a military base. However, it is a term used in the field of military operations and thus has a *generally accepted connotation*. The U.S. Department of Defense *(DoD)* Dictionary of Military and Associated terms defines a base as "***an area or locality containing installations which provide logistic or other support"; home airfield; or home carrier.***
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> Under our laws, we find the definition of a military base in Presidential Decree No. 1227 [Section 2] which states that a military base is "any military, air, naval, coast guard reservation, base, fort, camp, arsenal, yard, station, or installation in the Philippines. **A military base connotes the presence, in a relatively permanent degree, of troops and facilities in a particular area.**[33] (Emphases and underscoring supplied)

No matter how the agreement attempts to mask it, the "Agreed Locations" under the EDCA fit the bill of a military base as above-attributed. At its core, "Agreed Locations" constitute areas of Philippine territory provided for by the RP to the US for the use of the latter's forces and contractors in their various military endeavors. In particular, the EDCA authorizes US forces and contractors, including their vehicles, vessels, and aircrafts, to conduct **any** of the following military activities: "**training, transit, support and related activities, refueling of aircraft, bunkering of vessels, temporary maintenance of vehicles, vessels, and aircraft; temporary accommodation of personnel; communications; prepositioning of equipment, supplies, and**

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[32] See 5th preambular paragraph, EDCA.

[33] See Dissenting Opinion, p. 47.

materiel; deploying forces and materiel; and such other activities as the Parties may agree."[34] Noticeably, the enumeration does not mention that an activity must be interrelated to another. Thus, for instance, prepositioning of equipment, supplies, and materiel may be independently conducted by US forces even if there is no training exercise with Philippine troops involved. US forces may also deploy forces or its already prepositioned equipment from within our territory, regardless of our interest in said activity.

Central to the pursuit of these activities is the grant to the US Government of **operational control**. Under the EDCA, "operational control" has been defined as "[t]he authority to perform those functions of command over subordinate forces involving organizing and employing commands and forces, assigning tasks, designating objectives, and giving authoritative direction necessary to accomplish the mission."[35] The Philippines, however, was not completely removed of any role: unfortunately, it was only relegated to the role of consultant. The EDCA provides that "[US] forces shall consult on issues regarding construction, alterations, and improvements based on the Parties' shared intent that the technical requirements and construction standards of any such projects undertaken by or on behalf of [US] forces should be consistent with the requirements and standards of both Parties."[36] There is a gaping hole though in the EDCA anent the binding force of any consultation conducted, much more, the consequence of any failure to seek prior consultation with the Philippine Government.

Further, while the EDCA provides that the Philippines shall retain ownership and title to the "Agreed Locations,"[37] the same effectively translates to the Philippines holding only a nominal title to said locations, as the concept of "operational control"

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[34] Article III (1), EDCA.

[35] Justice Leonen's Opinion, p. 42, citing United States Department of Defense Dictionary of Military and Associated Terms.

[36] Article III (4), EDCA.

[37] Article V (I), EDCA.

allows the US to ultimately exercise beneficial ownership over the same. These privileges over the "Agreed Locations" also do not come with a fee since "the Parties agree that the Philippines shall make the Agreed Locations available to the [US] forces without rental or similar costs," save for the necessary operational expenses which, of course, should be shouldered by the US Government.[38] In this relation, it must be highlighted that the EDCA shall subsist for a period of **at least (10) years,** which is, in fact, even subject to automatic renewal unless terminated in advance (one year prior notice) by a party.[39] Thus, the arrangement established is undeniably, one of a "relatively permanent degree."

Finally, it is telling to note that "[i]mplementing arrangements may address additional details concerning the presence of [US] forces at Agreed Locations and the functional relations between [US] forces and the [Armed Forces of the Philippines] with respect to Agreed Locations."[40] To this, one of the petitioners astutely questions: "[i]f the EDCA is the alleged implementing agreement of the VFA [or the MDT], then why does [it] also need implementing arrangements to carry out its provisions?"[41]

To reify the point that the "Agreed Locations" under the EDCA is the functional equivalent of a military base, reproduced below is a tabular comparison[42] provided by one of the petitioners juxtaposing the provisions of the MBA and the EDCA. The resemblance between the two is unmistakable, if not uncanny:

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[38] See Article III (3), EDCA.

[39] See Article XII (4), EDCA.

[40] Article X (3), EDCA.

[41] See motion for reconsideration of Saguisag, *et al.* in G.R. No. 212426 dated February 3, 2016, p. 17.

[42] See *id.* at 26-29. See also provisions in the 1947 MBA and EDCA.

1. Both the MBA and EDCA	**allow similar activities.**
MBA	**EDCA**
Article III: Description of Rights x x x x	Article III Agreed Locations x x x x
2. Such rights, power and authority shall include, *inter alia,* the right, power and authority:	4. The Philippines hereby grants to the United States, x x x operational control of Agreed Locations for construction activities and authority to undertake such
a) to construct (including dredging and filling), operate, maintain, utilize, occupy, garrison and control the bases;	activities on, and make alterations and improvements to, Agreed Locations. x x x . x x x x 6. United States forces shall be responsible on the basis of proportionate use for construction, development, operation, and maintenance costs at Agreed Locations. x x x x.
	Article III Agreed Locations
e) to construct, install, maintain, and employ on any base any type of facilities, weapons, substance, device, vessel or vehicle on or under the ground, in the air or on or under the water that may be requisite or appropriate .x x x	1. x x x [T]he Philippines hereby authorizes and agrees that United States forces, United States contractors, and vehicles, vessels, and aircraft operated by or for the United States forces may conduct the following activities with respect to Agreed Locations: training; transit; support and related activities; refueling of aircraft; bunkering of vessels; temporary maintenance of vehicles, vessels, and aircrafts; temporary accommodation of personnel; communications; prepositioning of equipment, supplies, and materiel; deploying forces and materiel; x x x.
	Article IV Equipment, Supplies, and Materiel 1. The Philippines hereby authorizes United States forces, through bilateral security mechanism, such as the MDB and SEB, to preposition and store defense

	equipment, supplies, and materiel ("prepositioned materiel"), x x x.

2. Terms of ownership: under both the MBA and EDCA that the US retains the same species of ownership over its facilities.

MBA	EDCA
Article XVII: Removal of Improvements [Article VII: Ownership and Dispositions of Buildings, Structures, and Other Property of the 1988 Memorandum of Agreement between the United States of America and the Philippines supplementing and Amending the Agreement of March 14, 1947] 1. It is mutually agreed that the United States shall have the right to remove or dispose of any or all removable improvements, equipment, or facilities located at or on any base and paid for with funds of the United States,x x x x. 2. Non-removable buildings and structures within the bases, including essential utility systems x x x are the property of the Government of the Philippines, and shall be so registered. x x x The United States, shall, however, have the right of full use, in accordance with this Agreement, of such non-removable buildings and structures within the United States Facilities at the bases, x x x x.	Article V Ownership x x x 3. United States forces and United States contractors shall retain title to all equipment, materiel, supplies, relocatable structures, and other moveable property that have been imported into or acquired within the territory of the Philippines by or on behalf of the United States forces. x x x x 4. All buildings, non-relocatable structures, and assemblies affixed to the land in the Agreed Locations, including ones altered or improved by United States forces, remain the property of the Philippines. Permanent buildings constructed by United States forces become the property of the Philippines, once constructed, but shall be used by United States forces until no longer required by United States forces.

3. Comparing the MBA with EDCA in terms of control of the bases vis-à-vis the "Agreed Locations."

MBA	EDCA
Article III: Description of Rights 1. It is mutually agreed that the United States shall have the **rights, power and authority within the bases which are necessary for the establishment, use, operation and defense thereof or appropriate for the control thereof** and all the rights, power and authority within the territorial waters and air space adjacent to, or in the vicinity of, the bases which are necessary to	Article III Agreed Locations 4. The Philippines hereby grants to the United States, through bilateral security mechanisms, such as the MDB and SEB, operational control of Agreed Locations for construction activities and authority to undertake such activities on, and make alterations and improvements to, Agreed Locations. x x x x (Emphasis supplied)

provide access to them, or appropriate for their control. (Emphasis supplied)	Article VI Security 3. United States forces are **authorized to exercise all rights and authorities within Agreed Locations that are necessary for their operational control or defense,** including taking appropriate measures to protect United States forces and United States contractors. x x x (Emphasis supplied)

IV.

In any case, it should be highlighted that in *Bagong Alyansang Makabayan (BAYAN) v. Zamora,*[43] the Court ruled that the phrase "foreign military bases, troops, or facilities" under Section 25, Article XVIII of the 1987 Philippine Constitution should be treated as separate and independent subjects, and **thus, any of the three standing alone places it under the provision's coverage.** Therefore, even if it is assumed that the "Agreed Locations" cannot be classified as a military base in view of the ten (10)-year term[44] of the EDCA which would supposedly strip it of the character of permanency, its concept of "Agreed Locations" and the allowable activities therein correspond to the definition of **facilities** in accordance with the US Department of Defense's (DoD) report to the US Congress regarding the renewed US Global Position, entitled "Strengthening U.S. Global Defense Posture."[45] Specifically, the DoD defined the US global posture in the context of a cross-

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[43] *Supra* note 20, at 653 (2000).

[44] Article XII (4), EDCA.

[45] The said report defined "**facilities**" in three (3) categories:

1. A Main Operating Base (MOB) is an enduring strategic asset established in friendly territory with permanently stationed combat forces, command and control structures, and family support facilities. MOBs serve as the anchor points for throughput, training, engagement, and US commitment to NATO. MOBs have: robust infrastructure; strategic access; established Command and Control; Forward Operating Sites

section of five elements, *i.e.*, relationships, activities, facilities, legal arrangements, and global sourcing and surge. "**Facilities" were referred to as the place where its forces live, train, and operate, including the prepositioned equipment and materiel that permits the deployment and sustainment of forces;**[46] **while "Activities" were defined in the context of security cooperation activities to achieve proficiency in joint and combined operations**.[47] Both elements parallel the "Agreed Locations" and the allowable activities in the EDCA, which altogether puts it within the ambit of Section 25, Article XVIII of the 1987 Philippine Constitution.

Conclusion

The provisions on "Agreed Locations" in the EDCA coalesce into a novel and distinct arrangement neither contained nor

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and Cooperative Security Location support capability; and enduring family support facilities. These are already in existence.

2. A Forward Operating Site (FOS) is an expandable host-nation "warm site" with a limited U.S. military support presence and possibly prepositioned equipment. It can host rotational forces and be a focus for bilateral and regional training. These sites will be tailored to meet anticipated requirements and can be used for an extended time period. Backup support by a MOB may be required.

3. A Cooperative Security Location (CSL) is a host-nation facility with little or no permanent U.S. presence. CSLs will require periodic service, contractor and/or host nation support. CSLs provide contingency access and are a focal point for security cooperation activities. They may contain propositioned equipment. CSLs are: rapidly scalable and located for tactical use, expandable to become a FOS, forward and expeditionary. They will have no family support system.

(See <http://www.globalsecurity.org/military/facility/intro.htm> [last visited June 2, 2016]. See also Strengthening U.S. Global Defense Posture, Report to Congress, September 2004, p. 10. <http://www.dmzhawaii.org/wp-content/uploads/2008/12/global_posture.pdf.> [last visited May 31, 2016]). See also dissenting opinion of Justice Brion, pp. 48-49.

[46] See Strengthening U.S. Global Defense Posture, Report to Congress, September 2004, p. 8. <http://www.dmzhawaii.org/wp-content/uploads/2008/12/global_posture.pdf.> (last visited May 31, 2016).

[47] See *id.* at 7-8.

contemplated in previous treaties between the Philippine and US Governments. It is untrue that the EDCA merely implements the MDT and/or the VFA because these latter treaties are far limited in scope compared to the former. Under the MDT the RP is obligated to cooperate with the US Government through collective efforts to resist an external armed attack; on the other hand, the VFA is but a regulation of the entry, exit, and dispute settlement terms which govern joint training activities conducted by RP and US forces. On the contrary, the EDCA legitimizes the effective installation of foreign military bases (or at least their functional equivalent), troops, or facilities in the Philippines. Thus, as the EDCA alters our existing policies and arrangements on national defense, it should have been entered into by the respondents as a treaty and not an executive agreement in order to comply with Section 25, Article XVIII of the 1987 Constitution. Failing in which, grave abuse of discretion was committed.

For these reasons, I maintain my dissent and vote to **GRANT** the motions of reconsideration.

DISSENTING OPINION

LEONEN, *J.*:

I reiterate my Dissent Opinion,[1] which was promulgated with the initial Decision[2] on this case. In so doing, I am honored to join Associate Justices Teresita J. Leonardo-de Castro, Arturo D. Brion, and Estela M. Perlas-Bernabe. I briefly recall the points that I previously made.

I do not agree that the Enhanced Defense Cooperation Agreement (EDCA) is a binding executive agreement that escapes

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[1] *J.* Leonen, Dissenting Opinion in *Rene A.V. Saguisag, et al. v. Executive Secretary Paquito N. Ochoa, et al.*, G.R. No. 212426, January 12, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/212426_leonen.pdf> [Per *C.J.* Sereno, *En Banc*].

[2] *Rene A.V. Saguisag, et al. v. Executive Secretary Paquito N. Ochoa, et al.*, G.R. No. 212426, January 12, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/212426.pdf> [Per *C.J.* Sereno, *En Banc*].

scrutiny under Article XVIII, Section 25[3] of the Constitution. It is not merely an implementation of the 1998 Visiting Forces Agreement.

EDCA substantially amends and modifies the Visiting Forces Agreement. When the Visiting Forces Agreement was ratified, the Senate and the public did not consider whether their actions would later on allow the presence of foreign military bases in any part of this country. It is pure legal sophistry to say that the "Agreed Locations" in EDCA are not foreign military bases. These "Agreed Locations" are foreign military bases of the United States.

To now say that it was so would be to imply that the Senate at that time was engaged in a grand deceit. Nothing in the Visiting Forces Agreement hints at permanent bases under any kind of control of a foreign power, pre-positioning of men and material to be used for internal or external operations other than training purposes, and the acceptance of the presence of "contractors," which may consist of private armed groups or "mercenaries" chosen by the United States to be stationed in our country.

Our Constitution has introduced elaborate safeguards before any foreign military base — no matter how it is called — will be again allowed within our territory. Article XVIII, Section 25 requires that this undergo a conscious, deliberate, and publicly transparent process with the Senate. The same provision requires that the stationing of foreign troops in foreign bases or "Agreed Locations" must be through a treaty — not merely through an implementing executive agreement. Although the President is free to negotiate such an agreement, the basic law contemplates that the results of the negotiation should be the subject of public discussion.

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[3] CONST., Art. XVIII, Sec. 25 provides:

SECTION 25. After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.

The presence of foreign military bases is of such consequence that the Constitution itself also provides the possibility of an alternative mechanism for its allowance. Hence, Article XVIII, Section 25 also provides for the possibility of approval through a national referendum, should that be the preference of Congress.

EDCA was negotiated in the strictest confidentiality, and its contents were made known to the public only when it was signed by the Secretary of National Defense and ratified by the President. It does not take much to see how obviously it deviates from the constitutional mandate.

The presence of foreign military bases in our country, especially that of the United States, has grave repercussions on our independence and on our governance. If there is any historical lesson that we must learn from the 1947 Military Bases Agreement, it is that our national interest can easily be co-opted and made subservient to the interests of the United States. Rather than an independent and sovereign state, our country can easily be reduced to a Base Nation: a platform from which to project the military strength of the United States for its own defense.

I am fully aware of the political dynamics occasioned by the intrusions of another foreign interest in the West Philippine Sea. However, the recent arbitral award issued by the international arbitral panel created under the auspices of the United Nations Law of the Sea has elevated our stature in the field of international law. It provides material for our diplomacy on the basis of respect for the rule of law.

We cannot afford to weaken our position by showing the world that we cannot even follow the clear and legible provisions of our own Constitution.

Neither can we be driven by what we conceive as the necessities of national security or foreign policy. That is not our mandate. It is not our place to predict what the Senate will do or doubt that it will not be able to appreciate the same complexities and concerns on national security and foreign policy, which have animated some of our discussions. Certainly, there can be more creative solutions that augur better with our sense of independence,

sovereignty, and dignity than abject surrender to this planet's superpowers.

With the majority's position on the nature of the EDCA, we effectively rendered the Senate constitutionally impotent. We have smuggled foreign military bases into our country. We have succumbed to views that assume our vulnerability and our surrender to the hegemonic expediency of the United States.

This is not what the Constitution requires. Our basic law imagines more for us as a People.

ACCORDINGLY, I vote to **PARTIALLY GRANT** the Petitions and to **DECLARE** the Enhanced Defense Cooperation Agreement between the Republic of the Philippines and the United States of America as a formal and official memorial of the result of the negotiations concerning the allowance of United States military bases, troops, or facilities in the Philippines, which is NOT EFFECTIVE until it complies with the requisites of Article XVII, Section 25 of the 1987 Philippine Constitution, namely: (1) that the agreement must be in the form of a treaty; (2) that the treaty must be duly concurred in by the Philippine Senate and, when so required by Congress; ratified by a majority of votes cast by the People in a national referendum; and (3) that the agreement is either (a) recognized as a treaty, or (b) accepted or acknowledged as a treaty by the United STates before it becomes valid, binding, and effective.

EN BANC

[G.R. No. 217999, July 26, 2016]

TERESITA P. DE GUZMAN, in her capacity as former General Manager; BERNADETTE B. VELASQUEZ, in her capacity as Finance Manager; ATTY. RODOLFO T. TABANGIN, ATTY. ANTONIO A. ESPIRITU, ATTY. MOISES P. CATING, in their capacities as

former members of the Baguio Water District (BWD) Board of Directors; and SONIA A. DAOAS and ENGR. FELINO D. LAGMAN, in their capacities as incumbent members of the Board of Directors, *petitioners, vs.* **COMMISSION ON AUDIT, CENTRAL OFFICE, represented by its Chairperson MICHAEL G. AGUINALDO, Commissioner JUANITO G. ESPINO, JR., Commissioner HEIDI MENDOZA, and NILDA B. PLARAS, Director IV, Commission Secretary,** *respondents.*

SYLLABUS

POLITICAL LAW; STATUTES; IT IS BASIC IN STATUTORY CONSTRUCTION THAT WHEN FACED WITH APPARENT IRRECONCILABLE INCONSISTENCIES BETWEEN TWO LAWS, THE FIRST STEP IS TO ATTEMPT TO HARMONIZE THE SEEMINGLY INCONSISTENT LAWS; CASE AT BAR.— It is a basic principle in statutory construction that when faced with apparently irreconcilable inconsistencies between two laws, the first step is to attempt to harmonize the seemingly inconsistent laws. In other words, courts must first exhaust all efforts to harmonize seemingly conflicting laws and only resort to choosing which law to apply when harmonization is impossible. In the present case, petitioners posit that AO 103 and PD 198 are conflicting and so maintain that PD 198, a law, must prevail over AO 103, a mere executive issuance. This Court, however, need not choose between PD 198 and AO 103 as there is no irreconcilable conflict between them. x x x The conflict lies between AO 103 and MC 004-02, which prescribed a per diem of ₱8,400 for each director every meeting, not exceeding four (4) meetings in a month—way beyond the ₱20,000 cap provided under AO 103. Thus, the question is begged: can the President overrule MC 004-02 by issuing AO 103? The answer is a resounding yes. x x x The President's power of control was explained in *Province of Negros Occidental v. Commissioners, Commission on Audit* as "the power to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the President over that of the subordinate officer." As the LWUA is a government-owned and controlled corporation, it is subject to the control of the President and its rulings and issuances can be modified and set aside by the President. MC 004-02

was, thus, effectively abrogated when President Arroyo limited the monthly per diems to ₱20,000 in AO 103. Necessarily, directors of GOCCs can no longer receive per diems in excess of ₱20,000 in a month after AO 103 took effect.

APPEARANCES OF COUNSEL

The Solicitor General for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before the Court is a Petition for Certiorari under Rule 64 of the Rules of Court, assailing the September 25, 2012 Decision[1] and February 27, 2015 Resolution of the Commission on Audit (COA).

The Facts

Petitioners Atty. Rodolfo T. Tabangin (Tabangin), Atty. Antonio A. Espiritu (Espiritu), Atty. Moises P. Cating (Cating), Sonia A. Daoas (Daoas) and Engr. Felino D. Lagman (Lagman) were members of the board of the Baguio Water District (BWD). For the month of September 2004, they received per diems amounting to ₱33,600 each.

Following a, routine audit of the BWD, the COA-Cordillera Administrative Region (COA-CAR) issued Audit Observation Memorandum No. 04-003 pointing out that petitioners' per diems exceeded the limit prescribed under Sec. 3 (c) (ii) of Administrative Order No. (AO) 103, entitled: *Directing The Continued Adoption of Austerity Measures in The Government*. AO 103 was issued on August 31, 2004 by then President Gloria Macapagal-Arroyo and limits the per diems of the members of the governing board of government-owned and controlled corporations to ₱20,000.

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[1] *Rollo*, pp. 39-43. Penned by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza.

Thereafter, COA-CAR issued Notice of Disallowance No. 06-026 disapproving the per diems of the BWD directors in excess of the ₱20,000 prescribed by AO 103, or a total aggregate amount of ₱68,000, for the month of September 2004.[2] Under the Notice of Disallowance, petitioners De Guzman and Velasquez were liable as the approving officers for the per diems, while petitioners Lagman, Espiritu, Tabangin, Daoas and Cating were liable as payees thereof.

Petitioners appealed the Notice of Disallowance claiming that the per diems they received were approved by the Local Water Utilities Administration (LWUA) through Memorandum Circular No. (MC) 004-02 issued on May 21, 2002. MC 004-02 prescribed per diems of ₱8,400.00 for each director every meeting, not exceeding four (4) meetings in a month.[3] For the petitioners, the LWUA was authorized to lay down the per diems of the BWD directors pursuant to Presidential Decree No. (PD) 198 or the *Provincial Water Utilities Act of 1973*, as amended by Republic Act No. (RA) 9286.

COA-CAR, however, sustained the Notice of Disallowance in its Decision No. 2009-012[4] and disposed of the petitioners' appeal as follows:

> Foregoing premises considered, herein appeal by the BWD is denied and the disallowance sustained.

In the presently assailed September 25, 2012 Decision, the COA-Commission Proper similarly affirmed the Notice of Disallowance and sustained the Regional Office's decision, ruling in this wise:

> WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit and the COA-CAR Decision No. 2009-012 dated September 14, 2009 is AFFIRMED.

Hence, the present petition.

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

[3] *Id*. at 9.

[4] *Id*. at 26-29.

The Issues

As asserted by petitioners, the issues in the present case are two-fold. *First*, did the COA commit grievous error in relying on AO 103 instead of PD 198? And *second*, should petitioners refund the alleged excess per diems they received in the total amount of ₱68,000?[5]

The Court's Ruling

The petition is unmeritorious.

PD 198 and AO 103 are not irreconcilable; MC No. 004-02 is overruled

It is a basic principle in statutory construction that when faced with apparently irreconcilable inconsistencies between two laws, the first step is to attempt to harmonize the seemingly inconsistent laws.[6] In other words, courts must first exhaust all efforts to harmonize seemingly conflicting laws and only resort to choosing which law to apply when harmonization is impossible.[7]

In the present case, petitioners posit that AO 103 and PD 198 are conflicting and so maintain that PD 198, a law, must prevail over AO 103, a mere executive issuance. This Court, however, need not choose between PD 198 and AO 103 as there is no irreconcilable conflict between them.

Section 13 of PD 198, as amended by RA 9286, provides:

> Sec. 13. Compensation. – Each director shall receive per diem to be determined by the Board, for each meeting of the Board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total per diem of four meetings in any given month.
>
> **Any per diem in excess of One hundred fifty pesos (₱150.00) shall be subject to the approval of the Administration.** In addition thereto,

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[5] *Id*. at 8.

[6] *Office of the Solicitor General v. Court of Appeals*, G.R. No. 199027, June 9, 2014, 725 SCRA 469.

[7] *Dreamwork Construction, Inc. v. Janiola*, G.R. No. 184861, June 30, 2009, 591 SCRA 466, 474-475.

each director shall receive allowances and benefits as the Board may prescribe subject to the approval of the Administration. (emphasis supplied)

Meanwhile, Section 3(c) of AO 103 states:

SEC. 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from the Salary Standardization Law or not, are hereby directed to:

x x x x x x x x x

(c) For other non-full-time officials and employees, including members of their governing boards, committees, and commissions: (i) suspend the grant of new or additional benefits, such as but not limited to per diems, honoraria, housing and miscellaneous allowances, or car plans; and (ii) **in the case of those receiving per diems, honoraria and other fringe benefits in excess of Twenty Thousand Pesos (₱20,000.00) per month, reduce the combined total of said per diems, honoraria and benefits to a maximum of Twenty Thousand Pesos (₱20,000.00) per month**. (emphasis supplied)

Plainly stated, PD 198 allows the BWD to prescribe per diems greater than ₱150 per member for each meeting, subject to the approval of the LWUA, while AO 103 prescribes a limit on the total amount of per diems a director can receive in a month. There is clearly no conflict between PD 198 and AO 103, as AO 103 does not negate the power of the LWUA to approve applications for per diems greater than ₱150.

The conflict lies between AO 103 and MC 004-02, which prescribed a per diem of ₱8,400 for each director every meeting, not exceeding four (4) meetings in a month—way beyond the ₱20,000 cap provided under AO 103. Thus, the question is begged: can the President overrule MC 004-02 by issuing AO 103? The answer is a resounding yes.

Section 17, Article VII of the 1987 Constitution provides:

Section 17. The President shall have **control** of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed. (emphasis supplied)

The President's power of control was explained in *Province of Negros Occidental v. Commissioners, Commission on Audit*[8] as "the power to alter or modify or set aside what a subordinate officer

[8] G.R. No. 182574, September 28, 2010, 631 SCRA 431, 441-442.

had done in the performance of his duties and to substitute the judgment of the President over that of the subordinate officer."

As the LWUA is a government-owned and controlled corporation,[9] it is subject to the control of the President and its rulings and issuances can be modified and set aside by the President.[10] MC 004-02 was, thus, effectively abrogated when President Arroyo limited the monthly per diems to ₱20,000 in AO 103. Necessarily, directors of GOCCs can no longer receive per diems in excess of ₱20,000 in a month after AO 103 took effect.

Petitioners were properly ordered to reimburse the excess of the allowed amount of pier diems

With that said, petitioners argue that they received the excessive per diems in good faith and, following this Court's rulings in *Blaquera v. Alcala*[11] and *De Jesus v. Commission on Audit*,[12] they should not be made to reimburse the subject amounts.

The COA refutes petitioners' claim of good faith,[13] asserting that AO 103 was published in Malaya Newspaper on September 3, 2004 and petitioners admitted receiving a copy of the same on September 16, 2004. Yet, petitioners still accepted the fourth check for the fourth board meeting in the amount of ₱8,400 each. For the COA, this negates petitioners' defense of good faith.[14]

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[9] *Espinas v. Commission on Audit*, G.R. No. 198271, April 1, 2014, 720 SCRA 302. (The Local Water Utilities Administration [LWUA] is a government-owned and controlled corporation [GOCC] created pursuant to Presidential Decree No. [PD] 198, as amended, otherwise known as the 'Provincial Water Utilities Act of 1973); *National Marketing Corporation v. Arca*, No. L-25743, September 30, 1969, 29 SCRA 648 (controlled by the government, such as the NAMARCO, partake of the nature of government bureaus or offices, which are administratively supervised by the Administrator of the Office of Economic Coordination, "whose compensation and rank shall be that of a head of an Executive Department" and who "shall be responsible to the President of the Philippines under whose control his functions ... shall be exercised.").

[10] *Id*.

[11] G.R. No. 109406, September 11, 1998, 295 SCRA 366.

[12] G.R. No. 149154, June 10, 2003, 403 SCRA 666.

[13] *Rollo*, pp. 77-85.

[14] *Id*. at 83.

Preliminarily, it bears pointing out that Section 7 of AO 103 requires the publication of the administrative order in two (2) newspapers of general circulation for its effectivity, viz:

> SEC. 7. This Administrative Order shall take effect immediately upon its publication in two (2) newspapers of general circulation.

Clearly, the effectivity of AO 103 does not hinge upon the receipt of a copy thereof by the affected offices. Whether or not the LWUA actually received a copy of the AO is of no moment. AO 103 is unequivocal that it "shall take effect IMMEDIATELY upon its publication in two (2) newspapers of general circulation." Thus, AO 103 became effective upon its publication on September 3, 2004. This means that **AO 103 was already effective when the third and fourth checks were issued on September 15 and 16, 2004**. As correctly pointed out by the COA, petitioners' claim of good faith is, therefore, unfounded.

Further, the cases cited by petitioners in support of their position are inapplicable. Consider:

In *Blaquera*, the disallowed amounts were released **prior** to the issuance of AO 29 which regulated the release of the incentive awards. Meanwhile, in the instant case, AO 103 was issued **after** the effectivity of PD 198 and MC 004-02. Thus, the more recent *Casal v. Commission on Audit*[15] is more apt where the Court stressed that:

> First, while the incentive benefits in *Blaquera* were for CY 1992 and **paid prior to the issuance of A.O. 29 on January 19, 1993**, the incentive awards subject of the instant petition were released in December of 1993. When, therefore, the heads of departments and agencies in *Blaquera* erroneously authorized the incentive benefits to the employee, **they did not then have the benefit of the categorical pronouncement of the President in A.O. 29** x x x. (emphasis supplied)

Plainly, in the case at bar, the payment of the per diems was uncalled for inasmuch as AO 103 was issued after and superseded MC 004-02.

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[15] G.R. No. 149633, November 30, 2006, 509 SCRA 138, 148.

In like manner, our ruling in *De Jesus* relied upon by petitioners finds no application in the present case. The main issue in *De Jesus* was whether in the prohibition under PD 198 that "[n]o director shall receive other compensation for services to the district," the term "compensation" also includes "Representation and Transportation Allowance, bonuses and other benefits disallowed therein." In clarifying, the Court held that petitioners cannot be made accountable given the previously unclarified ambiguity in the decree. We held:

> At the time petitioners received the additional allowances and bonuses, the Court had not yet decided *Baybay Water District*. **Petitioners had no knowledge that such payment was without legal basis.** Thus, being in good faith, petitioners need not refund the allowances and bonuses they received but disallowed by the COA.[16] (emphasis supplied)

Such is not the case here where AO 103 **categorically** and **clearly** ordered the discontinuance of per diems in excess of ₱20,000. There is no room for interpretation and so petitioners' failure to adhere to AO 103 is unwarranted and cannot be countenanced. Petitioners BWD directors each received ₱33,600 for the month of September 2004. Petitioners must, therefore, reimburse the amount they received in excess of the allowed ₱20,000, that is, ₱13,600 each or the aggregate amount of ₱68,000.

WHEREFORE, the instant petition is **DISMISSED**. Decision No. 2012-150 dated September 25, 2012 and the Resolution dated February 27, 2015 of the Commission on Audit, Commission Proper, are hereby **AFFIRMED**.

SO ORDERED.

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

Leonen, J., no part.

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[16] *Supra* note 12, at 677.

FIRST DIVISION

[A.C. No. 7072. July 27, 2016]

VIRGILIO D. MAGAWAY and CESARIO M. MAGAWAY, *complainants, vs.* **ATTY. MARIANO A. AVECILLA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER COMMISSIONED TO BE A NOTARY PUBLIC IS MANDATED TO DISCHARGE HIS DUTIES WITH FAITHFUL OBSERVANCE AND UTMOST RESPECT FOR THE LEGAL SOLEMNITY OF AN OATH IN AN ACKNOWLEDGMENT OR JURAT.— The function of a notary public is, among others, to guard against any illegal or immoral arrangements in the execution of public documents. In this case, the respondent's affixing of his notarial seal on the documents and his signature on the notarial acknowledgments transformed the deeds of sale from private into public documents, and rendered them admissible in court without further proof of their authenticity because the certificate of acknowledgment constituted them the *prima facie* evidence of their execution. In doing so, he proclaimed to the world that all the parties executing the same had personally appeared before him; that they were all personally known to him; that they were the same persons who had executed the instruments; that he had inquired into the voluntariness of execution of the instrument; and that they had acknowledged personally before him that they had voluntarily and freely executed the same. As a lawyer commissioned to be a notary public, the respondent was mandated to discharge his sacred duties with faithful observance and utmost respect for the legal solemnity of an oath in an acknowledgment or *jurat.* Indeed, such responsibility was incumbent upon him by virtue of his solemn Lawyer's Oath to do no falsehood or consent to the doing of any, and by virtue of his undertaking, pursuant to the Code of Professional Responsibility, not to engage in unlawful, dishonest, immoral or deceitful conduct and to uphold at all times the integrity and dignity of the legal profession.

2. ID.; ID.; ID.; NOTARIES PUBLIC MUST OBSERVE WITH UTMOST CARE THE BASIC REQUIREMENTS IN THE PERFORMANCE OF THEIR DUTIES; PENALTY FOR VIOLATION; CASE AT BAR.— Time and again, the Court has reminded notaries public of the importance attached to the act of notarization. We must stress yet again that notarization is not an empty, or perfunctory, or meaningless act, for it is invested with substantial public interest. Courts and other public offices, and the public at large could rely upon the recitals of the acknowledgment executed by the notary public. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined. In *Lanuzo v. Bongon* and *Linco v. Lacebal*, we have ruled that the notarial commission of a notary public who fails to faithfully discharge his duties as such should be revoked, and he should be further disqualified from being commissioned as such for a period of two years. The notary public in such situation may further be suspended from the practice of law for one year. In this case, the same penalties should be imposed on the respondent. Indeed, his acts manifested breach of the vow he took under his Lawyer's Oath to do no falsehood, and to delay no man for money or with malice.

D E C I S I O N

BERSAMIN, *J.*:

The complainants hereby seek the disbarment of the respondent for his violation of the Lawyer's Oath, the duties of attorneys under Section 20, Rule 138 of the *Rules of Court,* the rules on notarial practice, and the *Code of Professional Responsibility.*

They aver in their affidavit-complaint dated January 2006 the following:[1]

That the OCT P-2419 with a total land area of 10.5 hectares has been mortgaged (Sale with the right to repurchase) by the late Gavino Magaoay to the late Elena Gongon in the amount of Three Thousand

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

Nine hundred (₱3,900.00) pesos on July 10, 1959 and the late Gavino Magaoay was not able to redeemed (sic) the land because he died on December 3, 1963 prior to the date of redemption;

That we have the right of ownership by virtue of right of her[e]ditary succession from the original patent holder, [the] late Gavino Magaway who is the registered owner of OCT P[-]2419 which was fraudulently reconstituted and fraudulently sold by virtue of the falsified deed of sale fictitiously executed by [the] late Elena Gongon, falsified request for issuance of separate titles fictitiously executed by the late Gavino Magaoay and falsified affidavit of non-tenancy fictitiously executed by the late Elena Gongon;

That OCT P-2419 whom Gavino Magaoay is the registered owner and the mortgagor was never consolidated in the name of Elena Gongon, the mortgagee;

That it was Attorney Mariano A. Avecilla who duly prepared, notarized and manipulated the Falsified Deed of Sale executed by Elena Gongon dated December 7, 1993 with her fictitious Residence Certificate Nr.927294 which was issued on February 7, 1995 at Roxas, Isabela and Affidavit of non-tenancy which was fictitiously executed by the late Elena Gongon in favor of Angelito Ramiscal Sr., et al. where Transfer Certificate Titles: T-238312, T-238313, T-238314 and T-238315 were derived therein and all tainted with irregularities;

That in consideration of the amount of Thirty Thousand (Php.30,000.00) pesos whom Attorney Mariano A. Avecilla and his wife Loreta had accepted from Angelito Ramiscal Sr. as a package deal in the preparation of the Falsified Deed of Sale dated December 7, 1993 and other above mentioned documents that are instrumental in the anomalous transfer of land Title in favor of the Ramiscals' (transcript of stenographic notes, RTC Branch 23, Roxas, Isabela dated June 11, 2003);

That Elena Gongon could not have thumb marked the Deed of Sale and affidavit of non-tenancy dated December 7, 1993 which was notarized by Atty. Mariano A. Avecilla because Elena Gongon had already died on May 11, 1966 and already dead for twenty seven (27) years at the date of the instruments;

That Gavino Magaoay could not have signed the request for issuance of separate titles dated April 3, 1995 and Public Land Survey Plan PSD 02-053024 dated March 1, 1995 in favor of the Ramiscals because

he was unschooled and he died on December 3, 1963 so that he was already dead for thirty (30) years at the date of the instruments which was also used in the falsification and unlawful transfer of the aforementioned Transfer Certificate Titles which was manipulated by Attorney Avecilla and his wife Loreta in favor of the Ramiscals;

That Attorney Mariano A. Avecilla of Roxas, Isabela has committed serious damages to us, because we are deprived of our rights for hereditary succession over the property in question due his unprofessional, illegal, anomalous conduct and incompetence in the practice of law particularly by circum[v]enting the laws in dealing with registered land through the preparation, notarization and signing deed of sale where the parties were already dead for long time ago (sic);

That due to the unlawful manipulations of Attorney Mariano A. Avecilla, land titles tainted with irregularities were issued in favor of Angelito Ramiscal Sr., et al., thus he should be prohibited to practice Law because he is incompetent and a liability in the justice system of the Republic of the Philippines that are contributory to the loosing (sic) trust and confidence by the people among some (*sic*) undesirable lawyers and in the administration of Justice in this country.[2]

It appears that the notarization of the documents (specifically, the deed of sale by attorney-in-fact by Eleanor Gongon Flores represented by her attorney-in-fact Efren Vera Cruz, Sr. on August 5, 1992 in favor of Angelito Ramiscal, Sr.; the deed of sale executed by Elena Gongon on December 7, 1993 in favor of Angelito Ramiscal, Sr.; and the affidavit of non-tenancy executed by Elena Gongon on December 7, 1993) had led to the filing of two criminal cases and a civil action. The first criminal case, for *estafa through falsification of a public document,* was filed by the complainants against Angelito Ramiscal, Sr. and the respondent in the Office of the Provincial Prosecutor of Isabela, but the case was ultimately dismissed on July 15, 1998. The second criminal case, also for *falsification of a public document,* was initiated by Eleanor Gongon Flores against the Ramiscals, the respondent, and the latter's wife, Loreta Avecilla. The case was also dismissed on October 5, 2000. The civil action seeking the declaration of nullity of fraudulently

[2] *Id.*

reconstituted original certificate of title and all the transfer certificates of title derived therefrom, and declaration of nullity of instruments registered affecting them was brought on July 28, 1997 by the complainants as the heirs of the late Gavino Magaoay against the Ramiscals (namely, Angelito, Sr. and his children Arlene, Ervin and Angelito, Jr.) and the respondent in the Regional Trial Court (RTC) in Roxas, Isabela (Civil Case No. 23-551-97), which ultimately dismissed the complaint through a decision rendered on June 14, 2004.[3] On appeal, however, the Court of Appeals, through its decision promulgated on August 29, 2008,[4] reversed the dismissal of the case by the RTC.

After the Court referred this administrative complaint to the Integrated Bar of the Philippines (IBP) for investigation and recommendation, the IBP Board of Governors called the parties for mandatory conferences on July 30, 2007 and September 10, 2007.

In due time, IBP Investigating Commissioner Manuel M. Maramba rendered his report and recommendation dated October 24, 2008,[5] whereby he found in favor of the complainants after giving more weight and credence to their assertions than to the denial and explanation of the respondent; and he recommended the respondent's suspension from the practice of law for one year, and the indefinite revocation of the respondent's notarial commission.

In its Resolution No. XVIII-2009-21 dated February 19, 2009,[6] the IBP Board of Governors adopted and approved the report and recommendation with modification of the recommended penalty to suspension from the practice of law for one year and disqualification from being commissioned as notary public for two years.

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[3] *Id.* at 83-99; penned by Judge Bernabe B. Mendoza.

[4] *Id.* at 267-281; 383-397; penned by Associate Justice Sesinando E. Villon with Associate Justice (now Presiding Justice) Andres B. Reyes, Jr. and Associate Justice Jose Catral Mendoza (now a member of this Court), concurring.

[5] *Id.* at 300-306.

[6] *Id.* at 299.

The respondent sought reconsideration of the resolution,[7] but the IBP Board of Governors rejected his motion.[8]

In the comment he submitted to the Court,[9] the respondent contended that his notarization of the three documents had not prejudiced anyone considering that the late Gavino Magaway, the predecessor in interest of the complainants, did not repurchase the property by April 30, 1960, as stipulated between the late Gavino Magaway, as vendor a retro, and Eleanor Gongon Flores, as the vendee a retro; that the complainants, assuming them to be the true legal heirs of the late Gavino Magaway, who had died without issue, had nothing more to inherit; that the sale of the property had been first made on August 5, 1992 by Efren Vera Cruz, Sr. as the attorney-in-fact of Eleanor Gongon Flores; that on the same date, Vera Cruz, Sr. had sold the portion of the property with an area of 8.479 hectares to Angelito Ramiscal, Sr. and his family for ₱400,000.00; that on December 7, 1993, a woman in her mid-30's, claiming herself to be an employee of the Office of the Registry of Deeds of Isabela, had accompanied an elderly woman to the respondent's law office to request him to notarize the ready-made deed of sale the elderly woman had brought with her; that he had notarized the document out of pity and kindness for the elderly woman, who had affixed her thumbprint on the document; and that the elderly woman turned out to be an impostor.

Ruling of the Court

The findings and recommendations of the IBP Board of Governors, being supported by the records, are adopted.

The function of a notary public is, among others, to guard against any illegal or immoral arrangements in the execution of public documents.[10] In this case, the respondent's affixing

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[7] *Id.* at 307-338.

[8] *Id.* at 411.

[9] *Id.* at 430-437.

[10] *Villarin v. Sabate, Jr.,* A.C. No. 3324, February 9, 2000, 325 SCRA 123, 127; citing *Valles v. Arzaga-Quijano,* A.M. No. P-99-1338, November 18, 1999, 318 SCRA 411, 414.

of his notarial seal on the documents and his signature on the notarial acknowledgments transformed the deeds of sale from private into public documents,[11] and rendered them admissible in court without further proof of their authenticity because the certificate of acknowledgment constituted them the *prima facie* evidence of their execution.[12] In doing so, he proclaimed to the world that all the parties executing the same had personally appeared before him; that they were all personally known to him; that they were the same persons who had executed the instruments; that he had inquired into the voluntariness of execution of the instrument; and that they had acknowledged personally before him that they had voluntarily and freely executed the same.[13]

As a lawyer commissioned to be a notary public, the respondent was mandated to discharge his sacred duties with faithful observance and utmost respect for the legal solemnity of an oath in an acknowledgment or *jurat*.[14] Indeed, such responsibility was incumbent upon him by virtue of his solemn Lawyer's Oath to do no falsehood or consent to the doing of any, and by virtue of his undertaking, pursuant to the Code of Professional Responsibility, not to engage in unlawful, dishonest, immoral or deceitful conduct and to uphold at all times the integrity and dignity of the legal profession.[15] His failure to ascertain the identity of the person executing the same constituted gross negligence in the performance of his duties as a notary public.[16] As such, it is now unavoidable for him to accept the commensurate consequences of his indiscretion.[17]

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[11] Section 19(b), Rule 132 of the *Rules of Court.*

[12] Section 30, Rule 132 of the *Rules of Court*; *Nadayag v. Grageda,* A.C. No. 3232, September 27, 1994, 237 SCRA 202, 206.

[13] Section 1, Public Act No. 2103 (*An Act Providing for the Acknowledgment and Authentication of Instruments and Documents Within the Philippine Islands*).

[14] *Maligsa v. Cabanting,* A.C. No. 4539, May 14, 1997, 272 SCRA 408, 414.

[15] *Flores v. Chua,* A.C. No. 4500, April 30, 1999, 306 SCRA 465, 484-485.

[16] *Dela Cruz v. Zabala,* A.C. No. 6294, November 17, 2004, 442 SCRA 407, 413.

[17] *Id.*

The respondent's rather convenient assertion that an impostor had appeared before him and affixed her thumbprint on the ready-made deed of sale and affidavit of non-tenancy does not sway the Court. He should have demanded that such person first prove her identity before acting on the documents she had brought for his notarization. The objective of the requirement, which was to enable him as the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the deed of sale and affidavit of non-tenancy were the party's free act and deed,[18] was not to be served as casually as he did. By not ensuring that the person then appearing before him as the executor of the documents was really Elena Gongon, not the impostor, he clearly did not exercise the precautions and observe the protocols that would have easily insulated the performance of his notarial duties from forgery and falsification.

By his neglect, the respondent undermined the confidence of the public on the worth of notarized documents. He thus breached Canon I of the *Code of Professional Responsibility,* by which he as an attorney commissioned to serve as a notary public was required to uphold the Constitution, obey the laws of the land, and promote respect for the law and legal processes.[19]

The respondent's argument that no person had been prejudiced by the execution of the documents was undeserving of consideration. There was no denying that the notarization of the deed of sale and affidavit of non-tenancy adversely affected the rights of the complainants and Eleanor Gongon Flores on their existing interest in the property involved in such instruments.

Time and again, the Court has reminded notaries public of the importance attached to the act of notarization. We must stress yet again that notarization is not an empty, or perfunctory, or meaningless act, for it is invested with substantial public interest. Courts and other public offices, and the public at large could rely upon the recitals of the acknowledgment executed by the notary public.[20]

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[18] *Vda. de Rosales v. Ramos,* A.C. No. 5645, July 2, 2002, 383 SCRA 498, 505.

[19] *Aquino v. Manese,* A.C. No. 4958, April 3, 2003, 400 SCRA 458, 463.

[20] *Supra* note 18, at 499.

For this reason, notaries public must observe with utmost care the requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.[21]

In *Lanuzo v. Bongon*[22] and *Linco v. Lacebal,*[23] we have ruled that the notarial commission of a notary public who fails to faithfully discharge his duties as such should be revoked, and he should be further disqualified from being commissioned as such for a period of two years. The notary public in such situation may further be suspended from the practice of law for one year. In this case, the same penalties should be imposed on the respondent. Indeed, his acts manifested breach of the vow he took under his Lawyer's Oath to do no falsehood, and to delay no man for money or with malice.

WHEREFORE, the Court **REVOKES** the notarial commission of respondent **ATTY. MARIANO A. AVECILLA** effective immediately; **DISQUALIFIES** him from reappointment as Notary Public for a period of two years effective immediately; **SUSPENDS** him from the practice of law for a period of one year effective immediately with the **WARNING** that the repetition of the same or similar acts shall be dealt with more severely; and **DIRECTS** him to report the date of receipt of this decision in order to determine when his suspension shall take effect.

Let copies of this decision be furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts throughout the country. Let a copy of this decision be attached to the personal records of **ATTY. MARIANO A. AVECILLA.**

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

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[21] *Linco v. Lacebal,* A.C. No. 7241, October 17, 2011, 659 SCRA 130, 135.

[22] A.C. No. 6737, September 23, 2008, 566 SCRA 214, 218.

[23] *Supra* note 21.

SECOND DIVISION

[A.C. No. 10631. July 27, 2016]

ERNESTO B. BALBURIAS, *complainant, vs.* **ATTY. AMOR MIA J. FRANCISCO,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; RESPONDENT-LAWYER ADMONISHED TO BE MORE CAREFUL IN DEALING WITH LITIGANTS IN THE FUTURE.— The Court's impression is that the case before us is a result of a misunderstanding between Balburias and Atty. Francisco. The incident happened two years prior to the filing of this case but it was aggravated by Balburias's dissatisfaction with the progress of the labor case. x x x. Atty. Francisco could have avoided the incident if she at least tried to talk to Balburias's counsel on the matter of amicable settlement of the criminal case instead of talking to Balburias himself. Balburias misinterpreted the approach as an attempt to "buy her opponents." We rule that Balburias failed to satisfactorily show that Atty. Francisco acted in bad faith. Delos Santos's affidavit showed that Atty. Francisco immediately corrected herself when she realized that she might have offended Balburias by saying that she was referring to the amount of the complaint. We gathered the same impression from the affidavits of Aquino and Atty. Villanueva. Nevertheless, we deem it proper to admonish Atty. Francisco to be more careful in dealing with other litigants to avoid a repetition of a similar incident in the future.

APPEARANCES OF COUNSEL

Clarrissa A. Castro for complainant.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This case stemmed from a complaint, docketed as CBD Case No. 11-2930, filed by Ernesto B. Balburias (Balburias) against Atty. Amor Mia J. Francisco (Atty. Francisco) before the Integrated Bar of the Philippines (IBP). The IBP Board of Governors dismissed the complaint and denied Balburias's motion for reconsideration, prompting Balburias to file the present petition for review before this Court.

The Antecedent Facts

Balburias alleged in his complaint that he filed a criminal case against his former employee, Rosalyn A. Azogue (Azogue), before the Regional Trial Court of Quezon City for stealing his company's funds. Azogue, in turn, filed a labor case against him. Azogue was represented by Atty. Francisco in the labor case.

Balburias alleged that in one of the hearings of the labor case, Atty. Francisco approached him and contemptuously and boastfully told him *"kaya ka naming bayaran"* in front of a lot of people. Balburias alleged that he was shocked by Atty. Francisco's unprofessional behavior and he asked her, *"kaya mo akong bayaran?"* to which she replied *"kaya kitang bayaran sa halaga ng complaint mo."* Balburias claimed that he was embarrassed by Atty. Francisco's treatment and he told her, *"kahit isang pera lang ang halaga ng buhay ko, hindi ako magpapabayad sa iyo."* The incident prompted him to file the complaint against Atty. Francisco.

In her Comment, Atty. Francisco alleged that Balburias must be referring to the incident that happened after their mediation conference. During that period, Atty. Francisco was accompanied by Atty. Arnold D. Naval (Atty. Naval). Atty. Naval approached Balburias and his counsel, Atty. Antonio Abad (Atty. Abad) to open talks for a possible settlement. Atty. Naval asked Balburias,

"puwede ho ba nating ayusin ito?" Balburias answered *"kaya nyo bang bayaran ang nawala sa akin?"* and Atty. Naval replied, *"kaya naming bayaran."* Atty. Francisco thought that Balburias was referring to the possible settlement and she was surprised to hear him say in a high tone, *"kaya nyo bang bayaran* x x x *kaya n'yo bang bayaran* x x x *ang nawala sa akin? Di nyo mababayaran ng kahit anong halaga ang nawala sa akin! Saksi ang Diyos."* When Atty. Naval realized that Balburias might have misinterpreted him, he tried to pacify him, saying *"kaya naming bayaran ang halaga ng nasa complaint n'yo."* Atty. Francisco stated that after that, they had a long cordial discussion at the hallway and later, at the cafeteria of the Bookman Building to straighten up the misunderstanding. Atty. Francisco insisted that she had no intention to embarrass Balburias. She expressed surprise at the filing of the case almost two years after the incident occurred.

Balburias, in his Reply, insisted that Atty. Francisco twisted what really happened at the time of the incident. He alleged that Atty. Francisco's words conveyed that she could buy her opponents, or at least corrupt them. He further alleged that Atty. Naval was trying to protect his wife by making it appear that he was the one who talked to him.

The Report and Recommendation of the Investigating Commissioner

After the mandatory conference and hearing, Commissioner Felimon C. Abelita III (Commissioner Abelita) found that there was no sufficient evidence to prove that Atty. Francisco violated the Code of Professional Responsibility. According to Commissioner Abelita, Balburias viewed Atty. Francisco's words as threat and arrogance while Atty. Francisco viewed them as an effort to reach an amicable settlement. Commissioner Abelita noted that Balburias did not explain why he filed the case two years after the incident. He also noted that the parties even proceeded to the cafeteria after the incident. In addition, one of the witnesses for Balburias testified that the parties were not quarreling during the incident. The sworn statement of Atty. Pastor Villanueva (Atty. Villanueva) also stated that Atty. Francisco's words "*kaya ka naming bayaran*" were immediately

followed by "*sa halaga ng complaint mo*," thus obviously referring to the money subject of the complaint. Commissioner Abelita recommended the dismissal of the complaint.

In its Resolution No. XX-2013-227[1] dated 20 March 2013, the IBP Board of Governors adopted and approved Commissioner Abelita's Report and Recommendation and dismissed the case filed by Balburias.

Balburias filed a motion for reconsideration. In its Resolution No. XXI-2014-223 dated 2 May 2014,[2] the IBP Board of Governors denied the motion for reconsideration and affirmed its Resolution No. XX-2013-227.

Balburias filed the present petition for review before the Court.

The Issue

Whether the IBP Board of Governors committed a reversible error in adopting the Report and Recommendation of Commissioner Abelita and in dismissing the complaint against Atty. Francisco.

The Ruling of this Court

The Court notes that Atty. Francisco did not personally appear during the mandatory conference/hearing and was only represented by Atty. Naval. The report did not state the reason for Atty. Francisco's absence. A reading of the transcript showed that she had to undergo a procedure but no medical certificate was submitted. In any case, Atty. Naval stated that Atty. Francisco would only confirm what was taken up during the mandatory conference/hearing. The Court can rule based on the pleadings filed, the transcript of the case, and the Report and Recommendation of the Investigating Commissioner.

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[1] *Rollo*, p. 199.

[2] *Id*. at 261.

The established fact from the records is that Atty. Francisco, not Atty. Naval, approached Balburias after a hearing in the labor case and told him, *"kaya ka naming bayaran,"* which she later followed with *"kaya kitang bayaran sa halaga ng complaint mo."* The affidavits of the witnesses, Ana Maria Aquino (Aquino)[3] and Analyn M. Delos Santos (Delos Santos),[4] stated that Atty. Francisco added the second statement after Balburias was offended. However, the affidavit of Atty. Villanueva[5] stated that Atty. Francisco's first statement was immediately followed by the second statement. Balburias stated that Atty. Francisco uttered the statements arrogantly while Atty. Naval, who said he was present when it happened, stated that they were uttered firmly but not arrogantly.[6] It was also established that Atty. Francisco was referring to the criminal case and not to the labor case.

In his petition, Balburias denied that there was a conference or discussion at the cafeteria after the incident.[7] However, during his testimony, Balburias stated:

COMM. LIMPINGCO;

Baka puwede nating pag-usapan ito?

MR. BALBURIAS:

Hindi ho at saka nakita nyo po natutuwa ako sa tao talaga eh, ang salita ng tao talagang nilalagay ng ano yan e. Ang problema iba ang sinasabi mo dyan sa Affidavit mo sa sinasabi mo ngayon. Sabi mo kaya mong bayaran, ang sabi sa akin ni Atty. Amor, "kaya ka naming bayaran," sabay ganon ako nagalit nong nagalit ako, ito hindi m[a]n tanggapin eh hanggang nagalit ako ang sabi nga, "kaya ka naming bayaran sa halaga ng Complaint mo," yon ang pinakamaganda na sinabi yon nagkaliwanagan tayo,

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[3] *Id*. at 7-8.

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

[5] *Id*. at 11-12.

[6] *Id*. at 162; TSN, 2 June 2011, p. 28.

[7] *Id*. at 245.

nagkakwentuhan tayo pero yong dagdagan mo ulit ng hindi tama wag naman.[8]

Obviously, they were able to talk after the incident. The Court's impression is that the case before us is a result of a misunderstanding between Balburias and Atty. Francisco. The incident happened two years prior to the filing of this case but it was aggravated by Balburias's dissatisfaction with the progress of the labor case. Balburias testified:

> COMM. LIMPINGCO:
>
> Hindi kung hal[i]mbawa nandyan si Atty. Francisco at mag-ano sa inyo nae-explain sa inyo.
>
> MR. BALBURIAS:
>
> Hindi naman ho sya ang sumagot nyan si Atty. Naval ho.
>
> COMM. LIMPINGCO:
>
> Hindi ho nagtatanong ho, hindi ho ako nakikipag-debate sa inyo. Tinatanong ko po kung halimbawa po andito si Atty. Francisco at ee[k]splika sa inyo na hindi lang kay[o] nagkakaintindihan ano hong ano nyo sa ganong sitwasyon, hindi nyo hong makukuhang....
>
> MR. BALBURIAS:
>
> Alam ko ho ang sinasabi nyo matagal ko na hong pinatawad yan pero kailangan din ho nyang dapat harapin yan. Pinagdasal ko na ho yan eh. Ako'y ... ng kaaway pero parang ako ang laging inaaway, matanda na ho ako magsi-62 years old na ho ako pero parang hindi ho respetuhin dahil abogado ho siya, kahit abogado pa ho siya, una titingnan mo kung matanda yong tao.
>
> COMM. LIMPINGCO:
>
> Pero yon ho ang sinabi sa inyo wala na hong dagdag o di kaya'y minura, sinigawan.

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[8] *Id*. at 165-166; TSN, 2 June 2011, pp. 31-32.

MR. BALBURIAS:

> Hindi man nya ako kayang murahin, hindi naman pwedeng mangyari yon. Pero yon sabihan mo akong kaya ka naming bayaran, ako talagang mahirap ako pero hindi ako nagpapabayad kahit kanino. Parang ang sakit naman para sa akin non. Sino sya para magsalita ng ganon sa akin.[9]

Atty. Francisco could have avoided the incident if she at least tried to talk to Balburias's counsel on the matter of amicable settlement of the criminal case instead of talking to Balburias himself. Balburias misinterpreted the approach as an attempt to "buy her opponents." We rule that Balburias failed to satisfactorily show that Atty. Francisco acted in bad faith. Delos Santos's affidavit showed that Atty. Francisco immediately corrected herself when she realized that she might have offended Balburias by saying that she was referring to the amount of the complaint. We gathered the same impression from the affidavits of Aquino and Atty. Villanueva. Nevertheless, we deem it proper to admonish Atty. Francisco to be more careful in dealing with other litigants to avoid a repetition of a similar incident in the future.

WHEREFORE, we **DENY** the petition. We **DISMISS** the complaint filed by Ernesto B. Balburias against Atty. Amor Mia J. Francisco. We **ADMONISH** Atty. Francisco to be more circumspect in her actions and to be more courteous in dealing with litigants in the future.

SO ORDERED.

Brion, del Castillo, Mendoza, and *Leonen, JJ.,* concur.

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[9] *Id*. at 181-183; TSN, 2 June 2011, pp. 47-49.

SECOND DIVISION

[A.M. No. MTJ-16-1869. July 27, 2016]

MARIE CHRISTINE D. BANCIL, ***c****omplainant, vs,* **HONORABLE RONALDO B. REYES, Presiding Judge of Metropolitan Trial Court of San Juan City, Branch 58,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; ALL LOWER COURTS SHOULD DECIDE AND RESOLVE CASES OR MATTERS WITHIN THREE MONTHS FROM THE DATE OF SUBMISSION.— The Constitution expressly provides that all lower courts should decide or resolve cases or matters within three months from the date of submission. Accordingly, Section 5, Canon 6 of the New Code of Judicial Conduct provides: Sec. 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly, and **with reasonable promptness**. x x x Accordingly, this Court has laid down certain guidelines to ensure the compliance with this mandate. More particularly, Supreme Court Administrative Circular No. 13-87 provides: 3. **Judges shall observe scrupulously the periods prescribed by Article VIII, Section 15 of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts**. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so; x x x Supreme Court Administrative Circular No. 1-88 further state: 6.1 All Presiding Judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts.

2. REMEDIAL LAW; DISCIPLINE OF JUDGES; UNDUE DELAY IN THE DISPOSITION OF CASES AND MOTIONS; THE DELAY OF A JUDGE OF A LOWER COURT IN RESOLVING MOTIONS AND INCIDENTS WITHIN THE REGLEMENTARY PERIOD AS

PRESCRIBED BY THE CONSTITUTION IS NOT EXCUSABLE AND CONSTITUTES GROSS INEFFICIENCY.— Time and again, we have stressed the importance of reasonable promptness in relation to the administration of justice as justice delayed is justice denied. Undue delay in the disposition of cases and motions erodes the faith and confidence of the people in the judiciary and unnecessarily blemishes its stature. This is more so the case with trial judges who serve as the frontline officials of the judiciary expected to act all times with efficiency and probity. x x x This being said, the Court, in view of the voluminous case load of some trial court judges, generally allows for a reasonable extension of time to decide cases and the pending incidents thereof. The judge merely has to request for such extension if he, for good reasons, is unable to comply with the prescribed three-month period. We have also been consistent in holding that the delay of a judge of a lower court in resolving motions and incidents within the reglementary period as prescribed by the Constitution is not excusable and constitutes gross inefficiency. In this case, Judge Reyes failed to act, within the prescribed period, on the case and the motions filed by both Bancil and Krieger. Necessarily, an administrative sanction is in order.

3. ID.; ID.; ID.; IMPOSABLE PENALTY.— Under Section 9, Rule 140 of the Revised Rules of Court, undue delay in rendering a decision or order is considered a less serious offense which is punishable by: 1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or 2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In imposing the proper penalty, we note that Judge Reyes readily admitted the fact of delay with a prayer for understanding and a fervent plea of good faith. He further stated that this incident will serve as a wake-up call for him to be always fully alert in rendering decisions or orders on time. Based on his candid admissions, we find that a penalty of fine is proper.

D E C I S I ON

CARPIO, *J.*:

The Case

Before the Court is an administrative complaint filed by Marie Christine D. Bancil (Bancil) against Judge Ronaldo B. Reyes (Judge Reyes), Presiding Judge of Metropolitan Trial Court of San Juan City, Branch 58, for Gross Inefficiency and Undue Delay in Rendering a Decision/Order.

The Facts

This administrative complaint stems from Criminal Case No. 86928, entitled "*People of the Philippines v. Edward Randolph Krieger*" which was pending before Judge Reyes in Branch 58, Metropolitan Trial Court, San Juan City. Bancil was the private complainant in the said criminal case for violation of Article 97 of Republic Act (RA) No. 7394 or the Consumer Act of the Philippines.

Pursuant to the Resolution dated 22 August 2012[1] finding probable cause against Edward Randolph Krieger (Krieger), the Information[2] for violation of Article 97 of the Consumer Act of the Philippines was filed against Krieger.

On 29 August 2012, Krieger filed an Omnibus Motion for (1) judicial determination of probable cause and (2) suspension of proceedings.[3] On 19 September 2012, Krieger filed a Motion to Defer Proceedings in view of his intention to file a Petition for Review before the Department of Justice.[4] On 24 September 2012, Bancil filed her Comment on the Omnibus Motion.[5] Bancil no longer filed an objection to the Motion to Defer Proceedings

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[1] *Rollo*, pp. 7-17.

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

[3] *Id*. at 20-28.

[4] *Id*. at 55-57.

[5] *Id*. at 45-52.

as she considered the suspension of the arraignment for a period of not exceeding 60 days within the rights of Krieger as accused under Section 11, Rule 116 of the Revised Rules of Criminal Procedure.

On 7 February 2013, or almost five months from the filing of Krieger's Motion to Defer Proceedings, Bancil filed a Motion to Set Case for Trial with Entry of Appearance.[6] This was not acted upon by Judge Reyes. Given the inaction of Judge Reyes, on 25 October 2013, Bancil filed a motion to set the case for arraignment.[7]

Despite the two motions filed by Bancil, Judge Reyes failed to act on the case. Even the Omnibus Motion filed by Krieger remained not acted upon by Judge Reyes.

Bancil filed an administrative complaint dated 30 June 2014 against Judge Reyes for Gross Inefficiency and Undue Delay in Rendering a Decision/Order. Bancil argued that Judge Reyes failed to comply with Section 15(1), Article VIII of the Constitution, which provides that all cases or matters filed must be decided or resolved by the lower courts within three months from the date of submission. Moreover, Bancil alleged that Judge Reyes violated Section 6,[8] Rule 112 of the Revised Rules of Criminal Procedure as Judge Reyes failed to choose among the three options given to a judge upon the filing of an Information – (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) if he or she finds probable cause, issue a warrant of arrest; and (3) in case of doubt as to the existence of probable cause, order the prosecutor to present additional evidence within five days from notice, the issue to be resolved by the court within 30 days from the filing of the Information.[9] Further, Bancil alleged that there was a violation

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[6] *Id*. at 58-60.

[7] *Id*. at 61-63.

[8] Now renumbered as Section 5, Rule 112 of the Revised Rules of Criminal Procedure.

[9] See *In Re: Mino v. Judge Navarro*, 558 Phil. 7 (2007).

of Canon 6 of the New Code of Judicial Conduct[10] which provides that judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness. Based on the foregoing, Bancil argued that Judge Reyes clearly violated the fundamental law of acting on a case within the mandated period which was evident of his gross ignorance/inefficiency.

On 10 October 2014, Judge Reyes filed his Comment to the administrative complaint, explaining that the delay was due to plain oversight and not through inefficiency.[11] He attributed the delay to the big number of cases regularly coming in, including small claims cases which are required to be acted upon within 24 hours, and the conduct of Judicial Dispute Resolution, which is mandated in almost all cases.

The Recommendation of the OCA

The Office of the Court Administrator (OCA), upon evaluation of the administrative complaint, found that Judge Reyes indeed failed to act on the motions within the reglementary period provided in the Constitution. The OCA rejected the justifications for delay advanced by Judge Reyes finding that he did not have a voluminous case load which would have truly incapacitated him to resolve the pending incidents within the prescribed period. The OCA held:

> Thus, the failure to decide cases and other matters within the reglementary period of ninety (90) days, as fixed by the Constitution and the law, warrants the imposition of administrative sanction against the erring judge.
>
> In view of the foregoing, this Office finds that respondent Judge failed to act on the subject motions within the reglementary period. It bears reiterating that respondent Judge himself admitted such delay. To our mind, the justifications advanced by him, such as the volume of cases pending and the number of cases for JDR, cannot even be considered an excuse to absolve him from administrative liability.[12]

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[10] A.M. No. 03-05-01-SC, 1 June 2004.

[11] *Id*. at 65-67.

[12] *Id*. at 70. Citations omitted.

Even assuming *arguendo* that Judge Reyes had a good reason for not being able to comply with the three-month period, no request for an extension of time was ever filed by Judge Reyes. Also, the OCA noted that in addition to the delay in resolving the motions, Judge Reyes failed to arraign Krieger after the Information was filed. Under the Speedy Trial Act, the arraignment of the accused should be done within 30 days from the filing of the Information.[13]

Finding Judge Reyes guilty of undue delay in resolving pending motions, the OCA recommended a fine of Five Thousand Pesos (₱5,000) and a warning that a repetition of the same act shall be dealt with more severely.[14]

The Ruling of the Court

The Court agrees with the findings of the OCA, subject to modification as to the penalty.

The Constitution expressly provides that all lower courts should decide or resolve cases or matters within three months from the date of submission.[15] Accordingly, Section 5, Canon 6 of the New Code of Judicial Conduct[16] provides:

> Sec. 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly, and **with reasonable promptness**. (Emphasis supplied)

Accordingly, this Court has laid down certain guidelines to ensure the compliance with this mandate. More particularly, Supreme Court Administrative Circular No. 13-87[17] provides:

> 3. **Judges shall observe scrupulously the periods prescribed by Article VIII, Section 15 of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts**.

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[13] See Section 7, RA 8493, 12 February 1998.

[14] *Id*. at 72.

[15] Section 15, Article VIII, Constitution.

[16] A.M. No. 03-05-01-SC, 1 June 2004.

[17] Dated 1 July 1987.

Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so;

x x x x (Emphasis supplied)

Supreme Court Administrative Circular No. 1-88[18] further states:

6.1 All Presiding Judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts.

Time and again, we have stressed the importance of reasonable promptness in relation to the administration of justice as justice delayed is justice denied. Undue delay in the disposition of cases and motions erodes the faith and confidence of the people in the judiciary and unnecessarily blemishes its stature.[19] This is more so the case with trial judges who serve as the frontline officials of the judiciary expected to act all times with efficiency and probity.[20] We have held:

As a frontline official of the Judiciary, a trial judge should at all times act with efficiency and probity. He is duty-bound not only to be faithful to the law, but also to maintain professional competence. The pursuit of excellence ought always to be his guiding principle. Such dedication is the least that he can do to sustain the trust and confidence that the public have reposed in him and the institution he represents.

The Court cannot overstress its policy on prompt disposition or resolution of cases. Delay in the disposition of cases is a major culprit in the erosion of public faith and confidence in the judicial system, as judges have the sworn duty to administer justice without undue delay. Thus, judges have been constantly reminded to strictly adhere to the rule on the speedy disposition of cases and observe the periods prescribed by the Constitution for deciding cases, which is three months from the filing of the last pleading, brief or memorandum for lower courts. To further impress upon judges such mandate, the Court has

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[18] Dated 28 January 1988.

[19] *Magtibay v. Judge Indar*, 695 Phil. 617 (2012).

[20] *Angelia v. Judge Grageda*, 656 Phil. 570 (2011).

issued guidelines (Administrative Circular No. 3-99 dated January 15, 1999) that would insure the speedy disposition of cases and has therein reminded judges to scrupulously observe the periods prescribed in the Constitution.[21]

This being said, the Court, in view of the voluminous case load of some trial court judges, generally allows for a reasonable extension of time to decide cases and the pending incidents thereof. The judge merely has to request for such extension if he, for good reasons, is unable to comply with the prescribed three-month period.[22]

We have also been consistent in holding that the delay of a judge of a lower court in resolving motions and incidents within the reglementary period as prescribed by the Constitution is not excusable and constitutes gross inefficiency.[23] In this case, Judge Reyes failed to act, within the prescribed period, on the case and the motions filed by both Bancil and Krieger. Necessarily, an administrative sanction is in order.

Under Section 9, Rule 140 of the Revised Rules of Court, undue delay in rendering a decision or order is considered a less serious offense which is punishable by:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[24]

In imposing the proper penalty, we note that Judge Reyes readily admitted the fact of delay with a prayer for understanding

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[21] *Re: Failure of Former Judge Antonio A. Carbonell to Decide Cases Submitted for Decision and to Resolve Pending Motions in the Regional Trial Court, Branch 27, San Fernando, La Unio*n, 713 Phil. 594, 597-598 (2013). Citations omitted.

[22] *Office of the Court Administrator v. Judge Reyes*, 566 Phil. 325 (2008); *Office of the Court Administrator v. Judge Javellana*, 481 Phil. 315, 327 (2004).

[23] *Angelia v. Judge Grageda*, *supra* note 20, citing *Prosecutor Visbal v. Judge Buban*, 443 Phil. 705, 708 (2003).

[24] Section, Rule 140, Revised Rules of Court.

and a fervent plea of good faith.[25] He further stated that this `incident will serve as a wake-up call for him to be always fully alert in rendering decisions or orders on time. Based on his candid admissions, we find that a penalty of fine is proper.

WHEREFORE, we find Judge Ronaldo B. Reyes, Presiding Judge of Metropolitan Trial Court of San Juan City, Branch 58, **GUILTY** of Undue Delay in Rendering an Order and impose on him a **FINE** of Ten Thousand Pesos (₱10,000). He is **STERNLY WARNED** that a repetition of the same or similar act in the future shall merit a more severe sanction.

SO ORDERED.

Brion, del Castillo, Mendoza, and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 172682. July 27, 2016]

SULPICIO LINES, INC., *petitioner, vs.* **NAPOLEON SESANTE, NOW SUBSTITUTED BY MARIBEL ATILANO, KRISTEN MARIE, CHRISTIAN IONE, KENNETH KERRN AND KARISNA KATE, ALL SURNAMED SESANTE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; PARTIES; DEATH OF PARTY; SUBSTITUTION BY HEIRS; BREACH OF CONTRACT OF CARRIAGE GIVES GROUND FOR AN ACTION FOR DAMAGES WHICH SURVIVES THE DEATH OF THE LITIGANT.— Section 16, Rule 3 of the *Rules of Court* lays down the proper procedure in the event of the death of a litigant. x x x Substitution by the heirs is not a matter of jurisdiction, but a requirement of due process. It protects

[25] *Rollo*, pp. 65-67.

the right of due process belonging to any party, that in the event of death the deceased litigant continues to be protected and properly represented in the suit through the duly appointed legal representative of his estate. The application of the rule on substitution depends on whether or not the action survives the death of the litigant. Section 1, Rule 87 of the *Rules of Court* enumerates the following actions that survive the death of a party, namely: (1) recovery of real or personal property, or an interest from the estate; (2) enforcement of liens on the estate; and (3) recovery of damages for an injury to person or property. On the one hand, Section 5, Rule 86 of the *Rules of Court* lists the actions abated by death as including: (1) claims for funeral expenses and those for the last sickness of the decedent; (2) judgments for money; and (3) all claims for money against the deceased, arising from contract, express or implied. A contract of carriage generates a relation attended with public duty, neglect or malfeasance of the carrier's employees and gives ground for an action for damages. Sesante's claim against the petitioner involved his personal injury caused by the breach of the contract of carriage. Pursuant to the aforecited rules, the complaint survived his death, and could be continued by his heirs following the rule on substitution.

2. CIVIL LAW; TRANSPORTATION; COMMON CARRIERS; THE LIABILITY OF COMMON CARRIERS IS DEMANDED BY THE DUTY OF EXTRAORDINARY DILIGENCE REQUIRED OF COMMON CARRIERS IN SAFELY CARRYING THEIR PASSENGERS.— Article 1759 of the *Civil Code* does not establish a presumption of negligence because it explicitly makes the common carrier liable in the event of death or injury to passengers due to the negligence or fault of the common carrier's employees. x x x The liability of common carriers under Article 1759 is demanded by the duty of extraordinary diligence required of common carriers in safely carrying their passengers. On the other hand, Article 1756 of the *Civil Code* lays down the presumption of negligence against the common carrier in the event of death or injury of its passenger. x x x Clearly, the trial court is not required to make an express finding of the common carrier's fault or negligence. Even the mere proof of injury relieves the passengers from establishing the fault or negligence of the carrier or its employees. The presumption of negligence applies so long as

there is evidence showing that: (*a*) a contract exists between the passenger and the common carrier; and (*b*) the injury or death took place during the existence of such contract. In such event, the burden shifts to the common carrier to prove its observance of extraordinary diligence, and that an unforeseen event or *force majeure* had caused the injury.

3. ID.; ID.; ID.; A COMMON CARRIER TO BE ABSOLVED FROM LIABILITY IN CASE OF *FORCE MAJEURE*, IT IS NOT ENOUGH THAT THE ACCIDENT WAS CAUSED BY A FORTUITOUS EVENT, THE COMMON CARRIER MUST PROVE THAT IT DID NOT CONTRIBUTE TO THE OCCURRENCE OF THE INCIDENT DUE TO ITS OWN OR ITS EMPLOYEES' NEGLIGENCE.— A common carrier may be relieved of any liability arising from a fortuitous event pursuant to Article 1174 of the *Civil Code*. But while it may free a common carrier from liability, the provision still requires exclusion of human agency from the cause of injury or loss. Else stated, for a common carrier to be absolved from liability in case of *force majeure*, it is not enough that the accident was caused by a fortuitous event. The common carrier must still prove that it did not contribute to the occurrence of the incident due to its own or its employees' negligence. x x x Even assuming the seaworthiness of the M/V Princess of the Orient, the petitioner could not escape liability considering that, as borne out by the aforequoted findings of the BMI, the immediate and proximate cause of the sinking of the vessel had been the gross negligence of its captain in maneuvering the vessel.

4. ID.; ID.; ID.; AS A RULE, THE COMMON CARRIER IS ALWAYS RESPONSIBLE FOR THE PASSENGER'S BAGGAGE DURING THE VOYAGE.— We agree with the petitioner that moral damages may be recovered in an action upon breach of contract of carriage only when: (*a*) death of a passenger results, or (*b*) it is proved that the carrier was guilty of fraud and bad faith, even if death does not result. However, moral damages may be awarded if the contractual breach is found to be wanton and deliberately injurious, or if the one responsible acted fraudulently or with malice or bad faith. x x x The rule that the common carrier is always responsible for the passenger's baggage during the voyage needs to be emphasized. Article 1754 of the *Civil Code* does not exempt the common carrier from liability in case of loss, but only highlights the

degree of care required of it depending on who has the custody of the belongings. Hence, the law requires the common carrier to observe the same diligence as the hotel keepers in case the baggage remains with the passenger; otherwise, extraordinary diligence must be exercised. Furthermore, the liability of the common carrier attaches even if the loss or damage to the belongings resulted from the acts of the common carrier's employees, the only exception being where such loss or damages is due to *force majeure*. In *YHT Realty Corporation v. Court of Appeals*, we declared the actual delivery of the goods to the innkeepers or their employees as unnecessary before liability could attach to the hotelkeepers in the event of loss of personal belongings of their guests considering that the personal effects were inside the hotel or inn because the hotelkeeper shall remain accountable. Accordingly, actual notification was not necessary to render the petitioner as the common carrier liable for the lost personal belongings of Sesante. By allowing him to board the vessel with his belongings without any protest, the petitioner became sufficiently notified of such belongings. So long as the belongings were brought inside the premises of the vessel, the petitioner was thereby effectively notified and consequently duty-bound to observe the required diligence in ensuring the safety of the belongings during the voyage. Applying Article 2000 of the *Civil Code,* the petitioner assumed the liability for loss of the belongings caused by the negligence of its officers or crew. In view of our finding that the negligence of the officers and crew of the petitioner was the immediate and proximate cause of the sinking of the M/V Princess of the Orient, its liability for Sesante's lost personal belongings was beyond question.

5. ID.; DAMAGES; MORAL DAMAGES MAY BE RECOVERED IN AN ACTION UPON BREACH OF CONTRACT OF CARRIAGE; REQUIREMENTS; CASE AT BAR.— While there is no hard-and-fast rule in determining what is a fair and reasonable amount of moral damages, the discretion to make the determination is lodged in the trial court with the limitation that the amount should not be palpably and scandalously excessive. The trial court then bears in mind that moral damages are not intended to impose a penalty on the wrongdoer, or to enrich the plaintiff at the expense of the defendant. The amount of the moral damages must always reasonably approximate the extent of injury and be proportional to the wrong committed.

x x x While the anguish, anxiety, pain and stress experienced by Sesante during and after the sinking cannot be quantified, the moral damages to be awarded should at least approximate the reparation of all the consequences of the petitioner's negligence. With moral damages being meant to enable the injured party to obtain the means, diversions or amusements in order to alleviate his moral and physical sufferings, the Court is called upon to ensure that proper recompense be allowed to him, through his heirs. For this purpose, the amount of ₱1,000,000.00, as granted by the RTC and affirmed by the CA, is maintained.

6. ID.; ID.; TEMPERATE DAMAGES MAY BE RECOVERED WHEN SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT THE AMOUNT CANNOT, FROM THE NATURE OF THE CASE, BE PROVEN WITH CERTAINTY.— Temperate damages may be recovered when some pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty. Article 2224 of the *Civil Code* expressly authorizes the courts to award temperate damages despite the lack of certain proof of actual damages. Indubitably, Sesante suffered some pecuniary loss from the sinking of the vessel, but the value of the loss could not be established with certainty. The CA, which can try facts and appreciate evidence, pegged the value of the lost belongings as itemized in the police report at ₱120,000.00. The valuation approximated the costs of the lost belongings. In that context, the valuation of ₱120,000.00 is correct, but to be regarded as temperate damages.

7. ID.; ID.; EXEMPLARY DAMAGES CANNOT BE RECOVERED AS A MATTER OF RIGHT, AND IT IS LEFT TO THE COURT TO DECIDE WHETHER OR NOT TO AWARD THEM.— In contracts and quasi-contracts, the Court has the discretion to award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. Indeed, exemplary damages cannot be recovered as a matter of right, and it is left to the court to decide whether or not to award them. In consideration of these legal premises for the exercise of the judicial discretion to grant or deny exemplary damages in contracts and quasi-contracts against a defendant who acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner, the Court hereby awards exemplary damages to Sesante. First of all, exemplary damages did not have to be

specifically pleaded or proved, because the courts had the discretion to award them for as long as the evidence so warranted. x x x And, secondly, exemplary damages are designed by our civil law to "permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior."

APPEARANCES OF COUNSEL

Arthur D. Lim Law Office for petitioner.
Alexander L. Bansil for respondents.

D E C I S I O N

BERSAMIN, *J.*:

Moral damages are meant to enable the injured party to obtain the means, diversions or amusements in order to alleviate the moral suffering. Exemplary damages are designed to permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior.

The Case

This appeal seeks to undo and reverse the adverse decision promulgated on June 27, 2005,[1] whereby the Court of Appeals (CA) affirmed with modification the judgment of the Regional Trial Court (RTC), Branch 91, in Quezon City holding the petitioner liable to pay temperate and moral damages due to breach of contract of carriage.[2]

Antecedents

On September 18, 1998, at around 12:55 p.m., the M/V Princess of the Orient, a passenger vessel owned and operated by the petitioner, sank near Fortune Island in Batangas. Of the

[1] *Rollo*, pp. 49-59, penned by CA Associate Justice Roberto A. Barrios (retired/deceased), with Associate Justice Amelita G. Tolentino (retired) and Associate Justice Vicente S. Veloso (retired) concurring.

[2] *Id.* at 64-76.

388 recorded passengers, 150 were lost.[3] Napoleon Sesante, then a member of the Philippine National Police (PNP) and a lawyer, was one of the passengers who survived the sinking. He sued the petitioner for breach of contract and damages.[4]

Sesante alleged in his complaint that the M/V Princess of the Orient left the Port of Manila while Metro Manila was experiencing stormy weather; that at around 11:00 p.m., he had noticed the vessel listing starboard, so he had gone to the uppermost deck where he witnessed the strong winds and big waves pounding the vessel; that at the same time, he had seen how the passengers had been panicking, crying for help and frantically scrambling for life jackets in the absence of the vessel's officers and crew; that sensing danger, he had called a certain Vency Ceballos through his cellphone to request him to inform the proper authorities of the situation; that thereafter, big waves had rocked the vessel, tossing him to the floor where he was pinned by a long steel bar; that he had freed himself only after another wave had hit the vessel;[5] that he had managed to stay afloat after the vessel had sunk, and had been carried by the waves to the coastline of Cavite and Batangas until he had been rescued; that he had suffered tremendous hunger, thirst, pain, fear, shock, serious anxiety and mental anguish; that he had sustained injuries,[6] and had lost money, jewelry, important documents, police uniforms and the .45 caliber pistol issued to him by the PNP; and that because it had committed bad faith in allowing the vessel to sail despite the storm signal, the petitioner should pay him actual and moral damages of ₱500,000.00 and ₱1,000,000.00, respectively.[7]

In its defense, the petitioner insisted on the seaworthiness of the M/V Princess of the Orient due to its having been cleared to sail from the Port of Manila by the proper authorities; that the

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[3] *Id.* at 49.

[4] Records, pp. 1-5.

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

[6] *Id.*

[7] *Rollo*, pp. 51, 68.

sinking had been due to *force majeure*; that it had not been negligent; and that its officers and crew had also not been negligent because they had made preparations to abandon the vessel because they had launched life rafts and had provided the passengers assistance in that regard.[8]

Decision of the RTC

On October 12, 2001, the RTC rendered its judgment in favor of the respondent,[9] holding as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiff Napoleon Sesante and against defendant Sulpicio Lines, Inc., ordering said defendant to pay plaintiff:

1. Temperate damages in the amount of ₱400,000.00;

2. Moral damages in the amount of One Million Pesos (₱1,000,000.00);

3. Costs of suit.

SO ORDERED.[10]

The RTC observed that the petitioner, being negligent, was liable to Sesante pursuant to Articles 1739 and 1759 of the *Civil Code;* that the petitioner had not established its due diligence in the selection and supervision of the vessel crew; that the ship officers had failed to inspect the stowage of cargoes despite being aware of the storm signal; that the officers and crew of the vessel had not immediately sent a distress signal to the Philippine Coast Guard; that the ship captain had not called for then "abandon ship" protocol; and that based on the report of the Board of Marine Inquiry (BMI), the erroneous maneuvering of the vessel by the captain during the extreme weather condition had been the immediate and proximate cause of the sinking.

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[8] *Id.* at 65.

[9] *Id.* at 76.

[10] *Id.*

The petitioner sought reconsideration, but the RTC only partly granted its motion by reducing the temperate damages from ₱500,000.00 to ₱300,000.00.[11]

Dissatisfied, the petitioner appealed.[12] It was pending the appeal in the CA when Sesante passed away. He was substituted by his heirs.[13]

Judgment of the CA

On June 27, 2005, the CA promulgated its assailed decision. It lowered the temperate damages to P120,000.00, which approximated the cost of Sesante's lost personal belongings; and held that despite the seaworthiness of the vessel, the petitioner remained civilly liable because its officers and crew had been negligent in performing their duties.[14]

Still aggrieved, Sulpicio Lines moved for reconsideration, but the CA denied the motion.[15]

Hence, this appeal.

Issues

The petitioner attributes the following errors to the CA, to wit:

I

THE ASSAILED DECISION ERRED IN SUSTAINING THE AWARD OF MORAL DAMAGES, AS THE INSTANT CASE IS FOR ALLEGED PERSONAL INJURIES PREDICATED ON BREACH OF CONTRACT OF CARRIAGE, AND THERE BEING NO PROOF OF BAD FAITH ON THE PART OF SULPICIO

II

THE ASSAILED DECISION ERRED IN SUSTAINING THE AMOUNT OF MORAL DAMAGES AWARDED, THE SAME

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[11] *Id.* at 77-80.

[12] RTC records, pp. 292-293.

[13] CA *rollo*, p. 229.

[14] *Id.* at 54-58.

[15] *Id.* at 77-80.

BEING UNREASONABLE, EXCESSIVE AND UNCONSCIONABLE, AND TRANSLATES TO UNJUST ENRICHMENT AGAINST SULPICIO

III

THE ASSAILED DECISION ERRED IN SUSTAINING THE AWARD OF TEMPERATE DAMAGES AS THE SAME CANNOT SUBSTITUTE FOR A FAILED CLAIM FOR ACTUAL DAMAGES, THERE BEING NO COMPETENT PROOF TO WARRANT SAID AWARD

IV

THE AWARD OF TEMPERATE DAMAGES IS UNTENABLE AS THE REQUISITE NOTICE UNDER THE LAW WAS NOT GIVEN TO SULPICIO IN ORDER TO HOLD IT LIABLE FOR THE ALLEGED LOSS OF SESANTE'S PERSONAL BELONGINGS

V

THE ASSAILED DECISION ERRED IN SUBSTITUTING THE HEIRS OF RESPONDENT SESANTE IN THE INSTANT CASE, THE SAME BEING A PERSONAL ACTION WHICH DOES NOT SURVIVE

VI

THE ASSAILED DECISION ERRED IN APPLYING ARTICLE 1759 OF THE NEW CIVIL CODE AGAINST SULPICIO SANS A CLEAR-CUT FINDING OF SULPICIO'S BAD FAITH IN THE INCIDENT[16]

In other words, to be resolved are the following, namely: (*1*) Is the complaint for breach of contract and damages a personal action that does not survive the death of the plaintiff?; (*2*) Is the petitioner liable for damages under Article 1759 of the *Civil Code*?; and (*3*) Is there sufficient basis for awarding moral and temperate damages?

Ruling of the Court

The appeal lacks merit.

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[16] *Id.* at 15.

I
An action for breach of contract of carriage survives the death of the plaintiff

The petitioner urges that Sesante's complaint for damages was purely personal and cannot be transferred to his heirs upon his death. Hence, the complaint should be dismissed because the death of the plaintiff abates a personal action.

The petitioner's urging is unwarranted.

Section 16, Rule 3 of the *Rules of Court* lays down the proper procedure in the event of the death of a litigant, *viz*.:

> Section 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 his 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.
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> xxx xxx xxx

Substitution by the heirs is not a matter of jurisdiction, but a requirement of due process.[17] It protects the right of due process belonging to any party, that in the event of death the deceased litigant continues to be protected and properly represented in the suit through the duly appointed legal representative of his estate.[18]

The application of the rule on substitution depends on whether or not the action survives the death of the litigant. Section 1,

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[17] *Sarsaba v. Vda. de Te,* G.R. No. 175910, July 30, 2009, 594 SCRA 410, 429.

[18] *Id.;* see also *Sumaljag v. Diosdidit,* G.R. No. 149787, June 18, 2008, 555 SCRA 53, 59-60.

Rule 87 of the *Rules of Court* enumerates the following actions that survive the death of a party, namely: (1) recovery of real or personal property, or an interest from the estate; (2) enforcement of liens on the estate; and (3) recovery of damages for an injury to person or property. On the one hand, Section 5, Rule 86 of the *Rules of Court* lists the actions abated by death as including: (1) claims for funeral expenses and those for the last sickness of the decedent; (2) judgments for money; and (3) all claims for money against the deceased, arising from contract, express or implied.

A contract of carriage generates a relation attended with public duty, neglect or malfeasance of the carrier's employees and gives ground for an action for damages.[19] Sesante's claim against the petitioner involved his personal injury caused by the breach of the contract of carriage. Pursuant to the aforecited rules, the complaint survived his death, and could be continued by his heirs following the rule on substitution.

II
The petitioner is liable for breach of contract of carriage

The petitioner submits that an action for damages based on breach of contract of carriage under Article 1759 of the *Civil Code* should be read in conjunction with Article 2201 of the same code; that although Article 1759 only provides for a presumption of negligence, it does not envision automatic liability; and that it was not guilty of bad faith considering that the sinking of M/V Princess of the Orient had been due to a fortuitous event, an exempting circumstance under Article 1174 of the *Civil Code.*

The submission has no substance.

Article 1759 of the *Civil Code* does not establish a presumption of negligence because it explicitly makes the common carrier

[19] Tolentino, *Civil Code of the Philippines,* Book V (1992), p. 314, citing *Pan American World Airways v. Intermediate Appellate Court,* 153 SCRA 521 and *Sabena Belgian World Airlines v. Court of Appeals,* 171 SCRA 620.

liable in the event of death or injury to passengers due to the negligence or fault of the common carrier's employees. It reads:

> Article 1759. **Common carriers are liable for the death or injuries to passengers through the negligence or willful acts of the former's employees,** although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers.
>
> This liability of the common carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employees.

The liability of common carriers under Article 1759 is demanded by the duty of extraordinary diligence required of common carriers in safely carrying their passengers.[20]

On the other hand, Article 1756 of the *Civil Code* lays down the presumption of negligence against the common carrier in the event of death or injury of its passenger, *viz*.:

> Article 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in Articles 1733 and 1755.

Clearly, the trial court is not required to make an express finding of the common carrier's fault or negligence.[21] Even the mere proof of injury relieves the passengers from establishing the fault or negligence of the carrier or its employees.[22] The presumption of negligence applies so long as there is evidence showing that: (*a*) a contract exists between the passenger and the common carrier; and (*b*) the injury or death took place during

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[20] Article 1755. A common carrier is bound to carry the passengers safely as far as human care and diligence of very cautious persons, with a due regard for all the circumstances.

[21] *Diaz v. Court of Appeals,* G.R. No. 149749, July 25, 2006, 496 SCRA 468, 472.

[22] *Light Rail Transit Authority v. Navidad,* G.R. No. 145804, February 6, 2003, 397 SCRA 75, 81.

the existence of such contract.[23] In such event, the burden shifts to the common carrier to prove its observance of extraordinary diligence, and that an unforeseen event or *force majeure* had caused the injury.[24]

Sesante sustained injuries due to the buffeting by the waves and consequent sinking of M/V Princess of the Orient where he was a passenger. To exculpate itself from liability, the common carrier vouched for the seaworthiness of M/V Princess of the Orient, and referred to the BMI report to the effect that the severe weather condition — a *force majeure* — had brought about the sinking of the vessel.

The petitioner was directly liable to Sesante and his heirs.

A common carrier may be relieved of any liability arising from a fortuitous event pursuant to Article 1174[25] of the *Civil Code.* But while it may free a common carrier from liability, the provision still requires exclusion of human agency from the cause of injury or loss.[26] Else stated, for a common carrier to be absolved from liability in case of *force majeure,* it is not enough that the accident was caused by a fortuitous event. The common carrier must still prove that it did not contribute to the occurrence of the incident due to its own or its employees' negligence.[27] We explained in *Schmitz Transport*

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[23] Aquino and Hernando, *Essentials of Transportation and Public Utilities Law,* 2011, pp. 63-64.

[24] *Light Rail Transit Authority v. Navidad, supra*.

[25] Article 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which, could not be foreseen, or which, though foreseen, were inevitable.

[26] *Perla Compania De Seguros, Inc. v. Sarangaya III,* G.R. No. 147746, October 25, 2005, 474 SCRA 191, 200; *Yobido v. Court of Appeals,* G.R. No. 113003, October 17, 1997, 281 SCRA 1, 9.

[27] *Bachelor Express, Inc. v. Court of Appeals,* G.R. No. 85691, July 31, 1990, 188 SCRA 216, 222-223.

& Brokerage Corporation v. Transport Venture, Inc.,[28] as follows:

In order to be considered a fortuitous event, however, (1) the cause of the unforeseen and unexpected occurrence, or the failure of the debtor to comply with his obligation, must be independent of human will; (2) it must be impossible to foresee the event which constitute the *caso fortuito,* or if it can be foreseen it must be impossible to avoid; (3) the occurrence must be such as to render it impossible for the debtor to fulfill his obligation in any manner; and (4) the obligor must be free from any participation in the aggravation of the injury resulting to the creditor.

> [T]he principle embodied in the act of God doctrine strictly requires that **the act must be occasioned solely by the violence of nature. Human intervention is to be excluded from creating or entering into the cause of the mischief. When the effect is found to be in part the result of the participation of man, whether due to his active intervention or neglect or failure to act, the whole occurrence is then humanized and removed from the rules applicable to the acts of God.**[29] (bold underscoring supplied for emphasis)

The petitioner has attributed the sinking of the vessel to the storm notwithstanding its position on the seaworthiness of M/V Princess of the Orient. Yet, the findings of the BMI directly contradicted the petitioner's attribution, as follows:

> ***7. <u>The Immediate and the Proximate Cause of the Sinking</u>***
>
> The Captain's erroneous maneuvers of the *M/V Princess of the Orient* minutes before she sunk [*sic*] had caused the accident. It should be noted that during the first two hours when the ship left North Harbor, she was navigating smoothly towards Limbones Point. During the same period, the ship was only subjected to the normal weather stress prevailing at the time. She was then inside Manila Bar. The waves were observed to be relatively small to endanger the safety of the ship. It was only when the *M/V Princess of the Orient* had cleared

[28] G.R. No. 150255, April 22, 2005, 456 SCRA 557.

[29] *Id.* at 566.

Limbones Pt. while navigating towards the direction of the Fortune Island when this agonizing misfortune struck the ship.

Initially, a list of three degrees was observed. The listing of the ship to her portside had continuously increased. It was at this point that the captain had misjudged the situation. While the ship continuously listed to her portside and was battered by big waves, strong southwesterly winds, prudent judgement [*sic*] would dictate that the Captain should have considerably reduced the ship's speed. He could have immediately ordered the Chief Engineer to slacken down the speed. Meanwhile, the *winds and waves continuously hit the ship* on her starboard side. The waves were at least seven to eight meters in height and the wind velocity was a[t] 25 knots. The *M/V Princess of the Orient* being a close-type ship (seven decks, wide and high superstructure) was vulnerable and exposed to the howling winds and ravaging seas. Because of the excessive movement, the solid and liquid cargo below the decks must have shifted its weight to port, which could have contributed to the tilted position of the ship.

Minutes later, the Captain finally ordered to reduce the speed of the ship to 14 knots. At the same time, he ordered to put ballast water to the starboard-heeling tank to arrest the continuous listing of the ship. This was an exercise in futility because the ship was already listing between 15 to 20 degrees to her portside. The ship had almost reached the maximum angle of her loll. At this stage, she was about to lose her stability.

Despite this critical situation, the Captain executed several starboard maneuvers. Steering the course of the *Princess* to starboard had greatly added to her tilting. In the open seas, with a fast speed of 14 knots, advance maneuvers such as this would tend to bring the body of the ship in the opposite side. In navigational terms, this movement is described as the centripetal force. This force is produced by the water acting on the side of the ship away from the center of the turn. The force is considered to act at the center of lateral resistance which, in this case, is the centroid of the underwater area of the ship's side away from the center of the turn. In the case of the *Princess*, when the Captain maneuvered her to starboard, her body shifted its weight to port. Being already inclined to an angle of 15 degrees, coupled with the instantaneous movement of the ship, the cargoes below deck could have completely shifted its position and weight towards portside. By this time, the

ship being ravaged simultaneously by ravaging waves and howling winds on her starboard side, finally lost her grip.[30]

Even assuming the seaworthiness of the M/V Princess of the Orient, the petitioner could not escape liability considering that, as borne out by the aforequoted findings of the BMI, the immediate and proximate cause of the sinking of the vessel had been the gross negligence of its captain in maneuvering the vessel.

The Court also notes that Metro Manila was experiencing Storm Signal No. 1 during the time of the sinking.[31] The BMI observed that a vessel like the M/V Princess of the Orient, which had a volume of 13.734 gross tons, should have been capable of withstanding a Storm Signal No. 1 considering that the responding fishing boats of less than 500 gross tons had been able to weather through the same waves and winds to go to the succor of the sinking vessel and had actually rescued several of the latter's distressed passengers.[32]

III
The award of moral damages and temperate damages is proper

The petitioner argues that moral damages could be meted against a common carrier only in the following instances, to wit: (1) in the situations enumerated by Article 2201 of the *Civil Code;* (2) in cases of the death of a passenger; or (3) where there was bad faith on the part of the common carrier. It contends that none of these instances obtained herein; hence, the award should be deleted.

We agree with the petitioner that moral damages may be recovered in an action upon breach of contract of carriage only when: (*a*) death of a passenger results, or (*b*) it is proved that the carrier was guilty of fraud and bad faith, even if death does

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[30] RTC Records, p. 172.

[31] *Id.* at 161.

[32] *Id.* at p. 163.

not result.[33] However, moral damages may be awarded if the contractual breach is found to be wanton and deliberately injurious, or if the one responsible acted fraudulently or with malice or bad faith.[34]

The CA enumerated the negligent acts committed by the officers and crew of M/V Princess of the Orient, *viz*.:

> x x x. [W]hile this Court yields to the findings of the said investigation report, yet it should be observed that what was complied with by Sulpicio Lines were only the basic and minimal safety standards which would qualify the vessel as seaworthy. In the same report however it also revealed that the immediate and proximate cause of the sinking of the M/V Princess of the Orient was brought by the following: erroneous maneuvering command of Captain Esrum Mahilum and due to the weather condition prevailing at the time of the tragedy. There is no doubt that under the circumstances the crew of the vessel were negligent in manning it. In fact this was clearly established by the investigation of the Board of Marine Inquiry where it was found that:
>
> > The Chief Mate, when interviewed under oath, had attested that he was not able to make stability calculation of the ship vis-à-vis her cargo. He did not even know the metacentric height (GM) of the ship whether it be positive or negative.
> >
> > As cargo officer of the ship, he failed to prepare a detailed report of the ship's cargo stowage plan.
> >
> > He likewise failed to conduct the soundings (measurement) of the ballast tanks before the ship departed from port. He readily presumed that the ship was full of ballast since the ship was fully ballasted when she left Cebu for Manila on 16 September 1998 and had never discharge[d] its contents since that time.
> >
> > Being the officer-in-charge for emergency situation (sic) like this, he failed to execute and supervise the actual abandonship

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[33] *Sulpicio Lines, Inc. v. Curso,* G.R. No. 157009, March 17, 2010, 615 SCRA 575, 585; *Trans-Asia Shipping Lines, Inc. v. Court of Appeals,* G.R. No. 118126, March 4, 1996, 254 SCRA 260, 273-274.

[34] *Air France v. Gillego,* G.R. No. 165266, December 15, 2010, 638 SCRA 472, 486.

(sic) procedure. There was no announcement at the public address system of abandonship (sic), no orderly distribution of life jackets and no orderly launching of life rafts. The witnesses have confirmed this finding on their sworn statements.

There was miscalculation in judgment on the part of the Captain when he erroneously navigated the ship at her last crucial moment. x x x

To aggravate his case, the Captain, having full command and responsibility of the M/V Princess of the Orient, had failed to ensure the proper execution of the actual abandoning of the ship.

The deck and engine officers (Second Mate, Third Mate, Chief Engineers, Second Engineer, Third Engineer and Fourth Engineer), being in charge of their respective abandonship (sic) post, failed to supervise the crew and passengers in the proper execution of abandonship (sic) procedure.

The Radio Officer (spark) failed to send the SOS message in the internationally accepted communication network (VHF Channel 16). Instead, he used the Single Side Band (SSB) radio in informing the company about the emergency situation. x x x[35]

The aforestated negligent acts of the officers and crew of M/V Princess of the Orient could not be ignored in view of the extraordinary duty of the common carrier to ensure the safety of the passengers. The totality of the negligence by the officers and crew of M/V Princess of the Orient, coupled with the seeming indifference of the petitioner to render assistance to Sesante,[36] warranted the award of moral damages.

While there is no hard-and-fast rule in determining what is a fair and reasonable amount of moral damages, the discretion to make the determination is lodged in the trial court with the limitation that the amount should not be palpably and scandalously excessive. The trial court then bears in mind that moral damages are not intended to impose a penalty on the

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[35] *Rollo*, pp. 56-57.

[36] Testimony of Napoleon Sesante dated April 28, 1999, p. 46.

wrongdoer, or to enrich the plaintiff at the expense of the defendant.[37] The amount of the moral damages must always reasonably approximate the extent of injury and be proportional to the wrong committed.[38]

The Court recognizes the mental anguish, agony and pain suffered by Sesante who fought to survive in the midst of the raging waves of the sea while facing the immediate prospect of losing his life. His claim for moral and economic vindication is a bitter remnant of that most infamous tragedy that left hundreds of families broken in its wake. The anguish and moral sufferings he sustained after surviving the tragedy would always include the memory of facing the prospect of his death from drowning, or dehydration, or being preyed upon by sharks. Based on the established circumstances, his survival could only have been a miracle wrought by God's grace, by which he was guided in his desperate swim for the safety of the shore. But even with the glory of survival, he still had to grapple with not just the memory of having come face to face with almost certain death, but also with having to answer to the instinctive guilt for the rest of his days of being chosen to live among the many who perished in the tragedy.[39]

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[37] *Yuchengco v. The Manila Chronicle Publishing Corporation,* G.R. No. 184315, November 28, 2011, 661 SCRA 392, 404; *Cebu Country Club, Inc. v. Elizagaque,* G.R. No. 160273, January 18, 2008, 542 SCRA 65, 75.

[38] *Go v. Cordero,* G.R. No. 164703 and G.R. No. 164747, May 4, 2010, 620 SCRA 1, 31; *Cheng v. Donini,* G.R. No. 167017, June 22, 2009, 590 SCRA 406, 421.

[39] Justice Caguioa has contributed during the deliberations that most victims like Sesante relive the events for years through nightmares and flashbacks that later develop into sleeping disorders and serious psychological issues that scar them for life; that many of them feel guilt and resentment for being alive, unable to express their feelings on what they could have done to save others, while others manifest acute stress marked by agitation and panic attacks. He cites the 1997 study on the **prolonged traumatic impact of a disaster** conducted by Clinical Associate Professor Viola Mecke of the Department of Psychiatry and Behavioral Sciences of the Stanford University School of Medicine, which found that "man-induced" disasters were considered more harmful in their psychological effects than "natural" disasters because the knowledge that the disaster could have been avoided

While the anguish, anxiety, pain and stress experienced by Sesante during and after the sinking cannot be quantified, the moral damages to be awarded should at least approximate the reparation of all the consequences of the petitioner's negligence. With moral damages being meant to enable the injured party to obtain the means, diversions or amusements in order to alleviate his moral and physical sufferings,[40] the Court is called upon to ensure that proper recompense be allowed to him, through his heirs. For this purpose, the amount of ₱1,000,000.00, as granted by the RTC and affirmed by the CA, is maintained.

The petitioner contends that its liability for the loss of Sesante's personal belongings should conform with Article 1754, in relation to Articles 1998, 2000 to 2003 of the *Civil Code,* which provide:

> Article 1754. The provisions of Articles 1733 to 1753 shall apply to the passenger's baggage which is not in his personal custody or in that of his employees. As to other baggage, the rules in Articles 1998 and 2000 to 2003 concerning the responsibility of hotel-keepers shall be applicable.
>
> xxx xxx xxx
>
> Article 1998. The deposit of effects made by travellers in hotels or inns shall also be regarded as necessary. The keepers of hotels or inns shall be responsible for them as depositaries, provided that notice was given to them, or to their employees, of the effects brought by the guests and that, on the part of the latter, they take the precautions which said hotel-keepers or their substitutes advised relative to the care and vigilance of their effects.
>
> xxx xxx xxx
>
> Article 2000. The responsibility referred to in the two preceding articles shall include the loss of, or injury to the personal property

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seemed to release a rage and anger that were not observable in those affected by natural disasters. The study opined that the victims' experiences heightened distrust and suspicion of others and their motives; and that their unresolved grief would bring about personality changes that involved guilt, rage, demoralization and a diminished *elan vital.*

[40] *Lorzano v. Tabayag, Jr.,* G.R. No. 189647, February 6, 2012, 665 SCRA 38, 48.

of the guests caused by the servants or employees of the keepers of hotels or inns as well as by strangers; but not that which may proceed from any *force majeure*. The fact that travellers are constrained to rely on the vigilance of the keeper of the hotel or inn shall be considered in determining the degree of care required of him.

Article 2001. The act of a thief or robber, who has entered the hotel is not deemed *force majeure,* unless it is done with the use of arms or through an irresistible force.

Article 2002. The hotel-keeper is not liable for compensation if the loss is due to the acts of the guest, his family, servants or visitors, or if the loss arises from the character of the things brought into the hotel.

Article 2003. The hotel-keeper cannot free himself from responsibility by posting notices to the effect that he is not liable for the articles brought by the guest. Any stipulation to the contrary between the hotel-keeper and the guest whereby the responsibility of the former as set forth in Articles 1998 to 2001 is suppressed or diminished shall be void.

The petitioner denies liability because Sesante's belongings had remained in his custody all throughout the voyage until the sinking, and he had not notified the petitioner or its employees about such belongings. Hence, absent such notice, liability did not attach to the petitioner.

Is notification required before the common carrier becomes liable for lost belongings that remained in the custody of the passenger?

We answer in the negative.

The rule that the common carrier is always responsible for the passenger's baggage during the voyage needs to be emphasized. Article 1754 of the *Civil Code* does not exempt the common carrier from liability in case of loss, but only highlights the degree of care required of it depending on who has the custody of the belongings. Hence, the law requires the common carrier to observe the same diligence as the hotel keepers in case the baggage remains with the passenger; otherwise, extraordinary diligence must be exercised.[41] Furthermore, the liability of the common carrier attaches

[41] Tolentino, *Civil Code of the Philippines,* Vol. V (1992), p. 311.

even if the loss or damage to the belongings resulted from the acts of the common carrier's employees, the only exception being where such loss or damages is due to *force majeure*.[42]

In *YHT Realty Corporation v. Court of Appeals,*[43] we declared the actual delivery of the goods to the innkeepers or their employees as unnecessary before liability could attach to the hotelkeepers in the event of loss of personal belongings of their guests considering that the personal effects were inside the hotel or inn because the hotelkeeper shall remain accountable.[44] Accordingly, actual notification was not necessary to render the petitioner as the common carrier liable for the lost personal belongings of Sesante. By allowing him to board the vessel with his belongings without any protest, the petitioner became sufficiently notified of such belongings. So long as the belongings were brought inside the premises of the vessel, the petitioner was thereby effectively notified and consequently duty-bound to observe the required diligence in ensuring the safety of the belongings during the voyage. Applying Article 2000 of the *Civil Code*, the petitioner assumed the liability for loss of the belongings caused by the negligence of its officers or crew. In view of our finding that the negligence of the officers and crew of the petitioner was the immediate and proximate cause of the sinking of the M/V Princess of the Orient, its liability for Sesante's lost personal belongings was beyond question.

The petitioner claims that temperate damages were erroneously awarded because Sesante had not proved pecuniary loss; and that the CA merely relied on his self-serving testimony.

The award of temperate damages was proper.

Temperate damages may be recovered when some pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty.[45] Article

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[42] Article 2000, *Civil Code.*

[43] G.R. No. 126780, February 17, 2005, 451 SCRA 638, 658.

[44] *Supra*, citing *De Los Santos v. Tan Khey,* 58 O.G. No. 45-53, p. 7693.

[45] *Philippine Hawk Corporation v. Lee,* G.R. No. 166869, February 16,

2224[46] of the *Civil Code* expressly authorizes the courts to award temperate damages despite the lack of certain proof of actual damages.[47]

Indubitably, Sesante suffered some pecuniary loss from the sinking of the vessel, but the value of the loss could not be established with certainty. The CA, which can try facts and appreciate evidence, pegged the value of the lost belongings as itemized in the police report at ₱120,000.00. The valuation approximated the costs of the lost belongings. In that context, the valuation of ₱120,000.00 is correct, but to be regarded as temperate damages.

In fine, the petitioner, as a common carrier, was required to observe extraordinary diligence in ensuring the safety of its passengers and their personal belongings. It being found herein short of the required diligence rendered it liable for the resulting injuries and damages sustained by Sesante as one of its passengers.

Should the petitioner be further held liable for exemplary damages?

In contracts and quasi-contracts, the Court has the discretion to award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[48] Indeed, exemplary damages cannot be recovered as a matter of right, and it is left to the court to decide whether or not to award them.[49] In consideration of these legal premises for the exercise

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2010, 612 SCRA 576, 594; *Canada v. All Commodities Marketing Corporation,* G.R. No. 146141, October 17, 2008, 569 SCRA 321, 329.

[46] Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.

[47] *Philtranco Service Enterprises, Inc. v. Paras,* G.R. No. 161909, April 25, 2012, 671 SCRA 24, 43.

[48] Article 2232, *Civil Code*.

[49] Article 2233, *Civil Code*.

of the judicial discretion to grant or deny exemplary damages in contracts and quasi-contracts against a defendant who acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner, the Court hereby awards exemplary damages to Sesante.

First of all, exemplary damages did not have to be specifically pleaded or proved, because the courts had the discretion to award them for as long as the evidence so warranted. In *Marchan v. Mendoza,*[50] the Court has relevantly discoursed:

x x x. It is argued that this Court is without jurisdiction to adjudicate this exemplary damages since there was no allegation nor prayer, nor proof, nor counterclaim of error for the same by the appellees. It is to be observed however, that in the complaint, plaintiffs "prayed for such other and further relief as this Court may deem just and equitable." Now, since the body of the complaint sought to recover damages against the defendant-carrier wherein plaintiffs prayed for indemnification for the damages they suffered as a result of the negligence of said Silverio Marchan who is appellant's employee; and since exemplary damages is intimately connected with general damages, plaintiffs may not be expected to single out by express term the kind of damages they are trying to recover against the defendant's carrier. Suffice it to state that when plaintiffs prayed in their complaint for such other relief and remedies that may be availed of under the premises, in effect, therefore, the court is called upon to exercise and use its discretion whether the imposition of punitive or exemplary damages even though not expressly prayed or pleaded in the plaintiffs' complaint."

x x x It further appears that the amount of exemplary damages need not be proved, because its determination depends upon the amount of compensatory damages that may be awarded to the claimant. If the amount of exemplary damages need not be proved, it need not also be alleged, and the reason is obvious because it is merely incidental or dependent upon what the court may award as compensatory damages. Unless and until this premise is determined and established, what may be claimed as exemplary

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[50] No. L-24471, August 30, 1968, 24 SCRA 888, 895-897; see also *New World Developers and Management, Inc. v. AMA,* G.R. No. 187930, February 23, 2015.

damages would amount to a mere surmise or speculation. It follows as a necessary consequence that the amount of exemplary damages need not be pleaded in the complaint because the same cannot be predetermined. One can merely ask that it be determined by the court if in the use of its discretion the same is warranted by the evidence, and this is just what appellee has done. (Bold underscoring supplied for emphasis)

And, secondly, exemplary damages are designed by our civil law to "permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior."[51] The nature and purpose for this kind of damages have been well-stated in *People v. Dalisay,*[52] to wit:

Also known as 'punitive' or 'vindictive' damages, **exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.** These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant — associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud — that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. **In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.** (Bold underscoring supplied for emphasis)

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[51] *Trans-Asia Shipping Lines, Inc. v. Court of Appeals,* G.R. No. 118126, March 4, 1996, 254 SCRA 260, 271.

[52] G.R. No. 188106, November 25, 2009, 605 SCRA 807, 819-820, citing *People v. Catubig,* G.R. No. 137842, August 23, 2001, 363 SCRA 621, 634-635.

The BMI found that the "erroneous maneuvers" during the ill-fated voyage by the captain of the petitioner's vessel had caused the sinking. After the vessel had cleared Limbones Point while navigating towards the direction of Fortune Island, the captain already noticed the listing of the vessel by three degrees to the portside of the vessel, but, according to the BMI, he did not exercise prudence as required by the situation in which his vessel was suffering the battering on the starboard side by big waves of seven to eight meters high and strong southwesterly winds of 25 knots. The BMI pointed out that he should have considerably reduced the speed of the vessel based on his experience about the vessel — a close-type ship of seven decks, and of a wide and high superstructure — being vulnerable if exposed to strong winds and high waves. He ought to have also known that maintaining a high speed under such circumstances would have shifted the solid and liquid cargo of the vessel to port, worsening the tilted position of the vessel. It was only after a few minutes thereafter that he finally ordered the speed to go down to 14 knots, and to put ballast water to the starboard-heeling tank to arrest the continuous listing at portside. By then, his moves became an exercise in futility because, according to the BMI, the vessel was already listing to her portside between 15 to 20 degrees, which was almost the maximum angle of the vessel's loll. It then became inevitable for the vessel to lose her stability.

The BMI concluded that the captain had executed several starboard maneuvers despite the critical situation of the vessel, and that the maneuvers had greatly added to the tilting of the vessel. It observed:

x x x **In the open seas, with a fast speed of 14 knots, advance maneuvers such as this would tend to bring the body of the ship in the opposite side. In navigational terms, this movement is described as the centripetal force. This force is produced by the water acting on the side of the ship away from the center of the turn. The force is considered to act at the center of lateral resistance which, in this case, is the centroid of the underwater area of the ship's side away from the center of the turn. In**

the case of the *Princess*, when the Captain maneuvered her to starboard, her body shifted its weight to port. Being already inclined to an angle of 15 degrees, coupled with the instantaneous movement of the ship, the cargoes below deck could have completely shifted its position and weight towards portside. By this time, the ship being ravaged simultaneously by ravaging waves and howling winds on her starboard side, finally lost her grip.[53]

Clearly, the petitioner and its agents on the scene acted wantonly and recklessly. *Wanton* and *reckless* are virtually synonymous in meaning as respects liability for conduct towards others.[54] *Wanton* means characterized by extreme recklessness and utter disregard for the rights of others; or marked by or manifesting arrogant recklessness of justice or of rights or feelings of others.[55] Conduct is *reckless* when it is an extreme departure from ordinary care, in a situation in which a high degree of danger is apparent. It must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simple inattention.[56]

The actuations of the petitioner and its agents during the incident attending the unfortunate sinking of the M/V Princess of the Orient were far below the standard of care and circumspection that the law on common carriers demanded. Accordingly, we hereby fix the sum of ₱1,000,000.00 in order to serve fully the objective of exemplarity among those engaged in the business of transporting passengers and cargo

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[53] *Supra* note 30.

[54] 44A Words and Phrases, 473-474; citing *Commonwealth v. Welansky,* 55 N.E. 2d 902, 910, 316 Mass. 383 (1944).

[55] *Id.*; citing *Griffin v. State,* 171 A.2d 717, 720, 225 Md. 422 (1961); *Harkrider v. Cox,* 321 S.W. 2d 226, 228, 230 Ark. 155 (1959).

[56] 36A Works and Phrases, 322; citing *Schick v. Ferolito*, 767 A. 2d 962, 167 N.J.7 (2001).

by sea. The amount would not be excessive, but proper. As the Court put it in *Pereña v. Zarate*:[57]

> Anent the ₱1,000,000.00 allowed as exemplary damages, we should not reduce the amount if only to render effective the desired example for the public good. As a common carrier, the Pereñas needed to be vigorously reminded to observe their duty to exercise extraordinary diligence to prevent a similarly senseless accident from happening again. Only by an award of exemplary damages in that amount would suffice to instill in them and others similarly situated like them the ever-present need for greater and constant vigilance in the conduct of a business imbued with public interest.[58]
> (Bold underscoring supplied for emphasis)

WHEREFORE, the Court **AFFIRMS** the decision promulgated on June 27, 2005 with the **MODIFICATIONS** that: (*a*) the amount of moral damages is fixed at ₱1,000,000.00; (*b*) the amount of ₱1,000,000.00 is granted as exemplary damages; and (*c*) the sum of ₱120,000.00 is allowed as temperate damages, all to be paid to the heirs of the late Napoleon Sesante. In addition, all the amounts hereby awarded shall earn interest of 6% *per annum* from the finality of this decision until fully paid. Costs of suit to be paid by the petitioner.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

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[57] *Pereña v. Zarate,* G.R. No. 157917, August 29, 2012, 679 SCRA 208.

[58] *Id.* at 236.

THIRD DIVISION

[G.R. No. 181335. July 27, 2016]

MARIO SALUTA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; IT IS NOT THE FUNCTION OF THE SUPREME COURT TO RE-EXAMINE THE EVIDENCE SUBMITTED BY THE PARTIES.— To begin with, it must be stressed that "a petition for review on *certiorari* under Rule 45 of the Rules of Court shall raise only questions of law." The Court is not a trier of facts, and it is not the function of the Court to re-examine the evidence submitted by the parties. Since the CA and the trial court unanimously found that Saluta is guilty as charged, it consequently falls down on Saluta to come forward with a good reason or cause to have the Court depart from the age-old rule of according conclusiveness to the findings of the trial courts, which the CA affirmed. But that convincing demonstration was not done by Saluta, thus, his guilt was sufficiently proven by the prosecution.

2. ID.; EVIDENCE; WHEN CIRCUMSTANTIAL EVIDENCE CONSIDERED SUFFICIENT TO CONVICT AN OFFENDER; CASE AT BAR.— Under Section 4, Rule 133 of the Rules of Court, circumstantial evidence would be sufficient to convict the offender if: (i) there is more than one circumstance; (ii) the facts from which the inference is derived are proven; and (iii) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. Thus, "[c]onviction based on circumstantial evidence may result if sufficient circumstances, proven and taken together, create an unbroken chain leading to the reasonable conclusion that the accused, to the exclusion of all others, was the author of the crime." Applying these parameters, the Court is convinced that the circumstantial evidence relied upon by the lower courts sufficiently support Saluta's conviction. x x x The combination of the circumstances attendant in this case was duly proven

and forms an unbroken chain leading to the infallible conclusion that Saluta shot PO1 Pinion using the latter's firearm. His bare denial and unsubstantiated assertion and claim that PO1 Pinion committed suicide do not meet the legal standards to prevail over the strength of the prosecution's circumstantial evidence against him. x x x In sum, the totality of the circumstantial evidence presented in this case supports the conclusion that Saluta ended the life of PO1 Pinion and not the latter taking away his own life. Indeed, when there is no eyewitness to a crime, resort to circumstantial evidence is inevitable.

3. CRIMINAL LAW; REVISED PENAL CODE; HOMICIDE; THE ELEMENTS NECESSARY TO SUSTAIN A CONVICTION WERE POSITIVELY ESTABLISHED IN CASE AT BAR.— The elements necessary to sustain a conviction for homicide were positively established by the prosecution, to wit: (1) PO1 Pinion was killed; (2) Saluta killed him without any justifying circumstance; (3) Saluta had the intention to kill, which is presumed; and (4) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.

4. ID.; ID.; ID.; CIVIL LIABILITY; AWARD OF DAMAGES; PROPER IN CASE AT BAR.— While the CA correctly imposed the amount of civil indemnity and moral damages, the award of temperate damages to the heirs of PO1 Pinion, however, should be increased to ₱50,000.00. This award is mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of homicide as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount cannot be proved. Lastly, interest at the rate of six percent (6%) *per annum* shall be imposed on all damages awarded reckoned from the date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Gladis L. Naduma for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

REYES, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[2] dated November 29, 2006 and Resolution[3] dated December 11, 2007 of the Court of Appeals (CA) in CA-G.R. CR No. 26663. The CA affirmed with modification the Judgment[4] dated November 20, 2001 of the Regional Trial Court (RTC) of Cagayan de Oro City, Misamis Oriental, Branch 21, in Criminal Case No. 97-1502, finding Mario G. Saluta (Saluta) guilty of the crime of Homicide.

The Facts

Based on the prosecution's evidence, it was established that on October 19, 1997, at 7:00 p.m., the victim, Police Officer 1 Tom Pinion (PO1 Pinion), Armando Abella (Abella) and Saluta, together with their team mates celebrated their victory in the basketball tournament at the house of Alex Catulong located at Barangay 25, Licoan, Julio Pacana Street, Cagayan de Oro City.[5]

During the party, PO1 Pinion, a police officer, took the bullets from the chamber of his .38 calibre service revolver and showed it to his friends. Afterwards, he reloaded the bullets to his gun, and placed the gun back on the holster tucked on his waist.[6]

By midnight, Saluta, Abella and PO1 Pinion went out to buy beer on credit at Bolatino Store but they were refused.

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

[2] Penned by Associate Justice Teresita Dy-Liacco Flores, with Associate Justices Rodrigo F. Lim, Jr. and Mario V. Lopez concurring; *id.* at 77-96.

[3] *Id.* at 106-107.

[4] Issued by Judge Arcadio D. Fabria; *id.* at 31-43.

[5] *Id.* at 80.

[6] *Id.*

According to the defense, PO1 Pinion suggested proceeding to Pilapil Store which was 30 meters away from the place of their party. When they arrived at Pilapil Store, it was already closed so they knocked on the door and said that they will buy Red Horse, but no one answered. They waited for the store to open so Saluta and PO1 Pinion sat on the bench while Abella stood beside the door of the store.[7]

According to Saluta, since the store did not open, he stood up and decided to leave but after two to three steps, he heard a gunshot. He stopped and saw PO1 Pinion falling down. He asked PO1 Pinion, "What happened, what is your problem?" "*Part, yawa! Wala ka kabalo*" ("Partner, damn it! I did not know."), then he held the latter in his hands. He saw Abella pacing back and forth so he asked him where he was going. Abella then replied that he will go to PO1 Pinion's parents to tell them that their son committed suicide.[8]

Meanwhile, after hearing the gunfire, their friends Alfon Piador and Loloy Hernandez came to the scene and saw PO1 Pinion wounded on his right head and lying on the ground. They immediately carried PO1 Pinion to one of their friend's owner-type jeepney and brought him to the hospital. Unfortunately, PO1 Pinion was pronounced dead on arrival. The prosecution claimed that when Saluta saw PO1 Pinion's parents in the hospital, he begged for forgiveness.[9]

Subsequently, PO3 Jaime Blanco investigated the incident and invited Saluta for interrogation, while another police officer also asked Abella to go with them for the same purpose.[10] At the police station, Saluta and Abella stated that PO1 Pinion committed suicide.[11]

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[7] *Id.* at 80-81.

[8] *Id.* at 81.

[9] *Id.* at 81-82.

[10] *Id.* at 82.

[11] *Id.*

For his part, Abella said that he was already walking 6 to 7 m ahead of Saluta and PO1 Pinion, who were 2 to 3 m apart from each other, when he heard a gunshot. He looked back and saw PO1 Pinion with both hands on his face, bloodied and lying prostate on the ground.[12]

Saluta, on the other hand, denied the charges against him and maintained that PO1 Pinion committed suicide. He said that while they were lifting PO1 Pinion, he saw the latter's service firearm so he picked it up and placed it on the holster then carried it, and later gave it to PO1 Pinion's younger sister.[13]

In the autopsy conducted on the cadaver of PO1 Pinion, the Medico-legal Officer noted that PO1 Pinion's cause of death was hemorrhage, severe, secondary to gunshot wound of the head.[14]

On October 20, 1997, a paraffin test was conducted on the hands of PO1 Pinion, Saluta and Abella. The result of the paraffin test on the hands of PO1 Pinion showed negative results for the presence of nitrates, while the test conducted on Saluta and Abella yielded positive results for gunpowder burns.[15]

Meanwhile, the Ballistic Report confirmed that the slug lodged on PO1 Pinion's head and the empty bullet shell recovered was fired from the .38 caliber pistol owned by PO1 Pinion. It was also established that PO1 Pinion was left-handed.[16]

Ruling of the RTC

After trial, the RTC rendered Judgment[17] on November 20, 2001 convicting Saluta of the felony charged and sentenced him to suffer imprisonment of six (6) years and one (1) day of

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[12] *Id.* at 81.

[13] *Id.*

[14] *Id.* at 82-83.

[15] *Id.* at 83-84.

[16] *Id.* at 84-85.

[17] *Id.* at 31-43.

prision mayor to fourteen (14) years and eight (8) months of *reclusion temporal* as maximum and to pay the heirs of PO1 Pinion ₱150,000.00. The RTC, however, acquitted Abella upon finding no sufficient evidence against the latter. The *fallo* of the judgment reads:

> WHEREFORE, the Court hereby finds [Saluta] guilty beyond reasonable doubt of the crime charged and appreciating in his favor the mitigating circumstance of voluntary surrender as he had been in the custody of the Police before the case was filed, and applying the Indeterminate Sentence Law hereby imposes upon him the penalty of six (6) years [and one] (1) day of prision mayor to fourteen (14) years [and] eight (8) months o[f] Reclusion Temporal as maximum[,] and to indemnify the heirs of [PO1 Pinion] the sum of ₱150,000[.00] and to pay the costs.
>
> Exhibits "G" (Firearm) to "G-4" are hereby ordered forfeited in favor of the Government.
>
> [Saluta] shall however be credited in the service of his sentence with 4/5 of his time during which he has undergone preventive imprisonment, there being no proof that he has voluntarily agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners.
>
> There being no sufficient evidence against [ABELLA], he is hereby ACQUITTED.
>
> SO ORDERED.[18]

Ruling of the CA

On appeal, the CA affirmed the conviction of Saluta with modification as to the penalty and awards imposed, *viz*.:

> **WHEREFORE**, the instant appeal is **DISMISSED** for lack of merit and the Decision dated 20 December 2001 of the [RTC] is **AFFIRMED WITH MODIFICATION**. It shall now read as follows:
>
> > WHEREFORE, the Court hereby finds [SALUTA] guilty beyond reasonable doubt of the crime charged and appreciating in his favor the mitigating circumstance of voluntary surrender

[18] *Id.* at 43.

as he has been in the custody of the Police before the case was filed, and applying the Indeterminate Sentence Law hereby imposes upon him the penalty of six (6) years and one (1) day of prision mayor to fourteen (14) years and eight (8) months of Reclusion Temporal as maximum and to indemnify the heirs of [PO1 Pinion] the amount of ₱50,000.00 as civil indemnity *ex-delicto*, ₱50,000.00 as moral damages and ₱25,000.00 as temperate damages. Costs against [Saluta].

Exhibit "G" (Firearm) to "G-4" are hereby ordered forfeited in favor of the government.

[Saluta] shall however be credited in the service of his sentence with 4/5 of his time during which he has undergone preventive imprisonment, there being no proof that he has voluntarily agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

There being no sufficient evidence against [ABELLA], he is hereby ACQUITTED.

SO ORDERED.[19]

Issue Presented

WHETHER THE GUILT OF SALUTA FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT BY CIRCUMSTANTIAL EVIDENCE.

Ruling of the Court

The Court affirms the conviction of Saluta.

To begin with, it must be stressed that "a petition for review on *certiorari* under Rule 45 of the Rules of Court shall raise only questions of law."[20] The Court is not a trier of facts, and it is not the function of the Court to re-examine the evidence submitted by the parties.[21] Since the CA and the trial court unanimously found that Saluta is guilty as charged, it

[19] *Id.* at 95-96.

[20] *Natividad v. Mariano, et al.,* 710 Phil. 57, 68 (2013).

[21] *Metropolitan Bank & Trust Co. v. Sps. Miranda,* 655 Phil. 265, 271 (2011).

consequently falls down on Saluta to come forward with a good reason or cause to have the Court depart from the age-old rule of according conclusiveness to the findings of the trial courts, which the CA affirmed. But that convincing demonstration was not done by Saluta, thus, his guilt was sufficiently proven by the prosecution.

Based on the records and the evidence adduced by both parties, it is indisputable that no direct evidence points to Saluta as the one who killed PO1 Pinion. Consequently, the courts below were forced to rely on circumstantial evidence to support its conclusion of guilt. Under Section 4, Rule 133 of the Rules of Court, circumstantial evidence would be sufficient to convict the offender if: (i) there is more than one circumstance; (ii) the facts from which the inference is derived are proven; and (iii) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt.[22] Thus, "[c]onviction based on circumstantial evidence may result if sufficient circumstances, proven and taken together, create an unbroken chain leading to the reasonable conclusion that the accused, to the exclusion of all others, was the author of the crime."[23]

Applying these parameters, the Court is convinced that the circumstantial evidence relied upon by the lower courts sufficiently support Saluta's conviction. As found by the trial court, the following circumstantial evidence established by the prosecution was sufficient to convict Saluta of the crime charged:

1. There were only three of them present at the place of the incident[;]
2. [Saluta], upon seeing the parents of [PO1 Pinion] begged for forgiveness;
3. The paraffin test shows that Saluta is positive of nitrates or gunpowder on both hands, indicative of his firing the lethal weapon holding the handle with both hands;

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[22] *Espineli v. People,* G.R. No. 179535, June 9, 2014, 725 SCRA 365, 375.

[23] *Almojuela v. People,* 734 Phil. 636, 646 (2014).

4. [PO1 Pinion] is negative of nitrates or gunpowder burns. Hence, he has not fired the firearm;

5. The findings of Medico-legal Officer Tammy Uy, to wit:

"**GUNSHOT WOUND, ENTRANCE**: 0.9x1 cms.; ovoid; with contusion collar and with charred edges:"

These findings indicate that the wound of entrance is not the result of contact fire or fired at close range, otherwise the area of wound would have powder burns[; and]

6. As earlier stated, it is highly improbable for [PO1 Pinion] to be using his right hand in shooting himself for human nature and common sense dictate that a person committing suicide resorts to the most convenient and feasible means.[24]

Similarly, the CA also summarized the facts on the following unbroken chain of circumstances to justify Saluta's conviction:

First, We observe that the incident took place when [PO1 Pinion] had two companions and while in the streets. As indicated, a suicidal death ordinarily takes place in a close room or if in open space, in isolated or uninhabited place.

Second, the gunshot wound sustained was on [PO1 Pinion's] head where death will develop almost instantaneously. If suicidal, [PO1 Pinion] would have been found or seen with the grip of the firearm (cadaveric spasm) firmly held in the palm of the wounding hand. But as testified by [Abella], a defense witness, after hearing the shot he turned around and saw [PO1 Pinion] with both hands on his bloodied face. The nature of the wound sustained, which could produce an instantaneous death and the shocking effect of the injury producing a sudden loss of consciousness, would have precluded [PO1 Pinion], after shooting himself, from dropping first the wounding gun and then place his hands on his bloodied face. This testimony of [Abella] is one of the critical clues that the death of [PO1 Pinion] could not have been suicide but homicide.

Third, the examination of [PO1 Pinion's] hands did not show the presence of gunpowder. Instead, it was on [Saluta's] hand that specks of gunpowder nitrates were found.

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[24] *Rollo*, p. 24.

Lastly, the records do not show that [PO1 Pinion] had a personal history that reveal social, economic, business or marital problem which [PO1 Pinion] cannot solve.

Taking into consideration the place and circumstances of the incident, [PO1 Pinion] could not have thought of committing suicide in the streets and where the two others, [Saluta] and [Abella], were present. Even then, [Saluta], who was said to be walking with [PO1 Pinion] side-by-side, could have amply narrated in court the precedent acts of [PO1 Pinion] just before he shot himself. But [Saluta] and [Abella] did not do this, seeming a strategy to talk less for less mistakes.[25]

Taken together, the above-enumerated circumstances form a solid unbroken chain of events which ties Saluta to the crime beyond moral certainty leading to the reasonable conclusion that he is the perpetrator of the crime.

In attempting to escape liability, Saluta posits that: (1) the body of PO1 Pinion was found negative for nitrate simply because the Diphenylamine paraffin tests upon PO1 Pinion was conducted after the latter's body was already washed;[26] (2) the presence of the nitrate powder in his hands does not conclusively prove that he shot PO1 Pinion considering that Abella was also found positive for nitrate powder;[27] and (3) it was not improbable for PO1 Pinion, a left-handed, to commit suicide using his right hand since he had undergone several years of training as a police officer; hence, it is possible that he already learned, if not mastered, firing his gun with the use of his right hand.[28]

Contrary to Saluta's arguments, the Forensic Chemist testified that gunpowder nitrates found on the superficial portions of the skin may be washed away but not traces of gunpowder nitrates embedded under the skin. Hence, the fact that the cadaver was already cleaned, could not have removed the gunpowder nitrates

[25] *Id.* at 90-91.

[26] *Id.* at 19.

[27] *Id.* at 20.

[28] *Id.* at 22.

that was embedded under the skin.[29] Although the positive finding of gunpowder residue does not conclusively show that Saluta indeed fired a gun, the finding serves to corroborate the other pieces of evidence presented by the prosecution.

Moreso, the result of the paraffin test eliminates the theory of suicide since there is no evidence of smudging and tattooing on the wound of PO1 Pinion which is an indication that the wound was not a contact wound and that the gun was fired at a distance.

The Court also sustains the finding of the lower courts that there was no sufficient evidence against Abella to warrant neither his conviction nor the conclusion that there exists a conspiracy between him and Saluta. Saluta's implication to a crime does not necessarily result in Abella's incrimination as well.

Clearly, Saluta cannot isolate and single out the circumstances in this case to justify his innocence. The combination of the circumstances attendant in this case was duly proven and forms an unbroken chain leading to the infallible conclusion that Saluta shot PO1 Pinion using the latter's firearm. His bare denial and unsubstantiated assertion and claim that PO1 Pinion committed suicide do not meet the legal standards to prevail over the strength of the prosecution's circumstantial evidence against him.

Furthermore, the elements necessary to sustain a conviction for homicide were positively established by the prosecution, to wit: (1) PO1 Pinion was killed; (2) Saluta killed him without any justifying circumstance; (3) Saluta had the intention to kill, which is presumed; and (4) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.[30]

In sum, the totality of the circumstantial evidence presented in this case supports the conclusion that Saluta ended the life of PO1 Pinion and not the latter taking away his own life. Indeed, when

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[29] *Id.* at 93.

[30] *Villanueva, et al. v. Caparas,* 702 Phil. 609, 616 (2013).

there is no eyewitness to a crime, resort to circumstantial evidence is inevitable.[31]

With regard to the penalty and awards imposed, the Court affirms the finding of the CA that the mitigating circumstance of voluntary surrender should be appreciated in favor of Saluta as it was clear that he willingly gave himself up to the authorities.

While the CA correctly imposed the amount of civil indemnity and moral damages, the award of temperate damages to the heirs of PO1 Pinion, however, should be increased to ₱50,000.00. This award is mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of homicide as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount cannot be proved.[32] Lastly, interest at the rate of six percent (6%) *per annum* shall be imposed on all damages awarded reckoned from the date of finality of this Decision until fully paid.[33]

WHEREFORE, the petition is **DENIED**. The Decision dated November 29, 2006 and the Resolution dated December 11, 2007 of the Court of Appeals in CA-G.R. CR No. 26663 are **AFFIRMED** with **MODIFICATION** that petitioner Mario Saluta is ordered to pay the heirs of PO1 Tom Pinion ₱50,000.00 as temperate damages, as well as interest on all the damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

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

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[31] *Trinidad v. People,* 687 Phil. 455, 456 (2012).

[32] *People of the Philippines v. Ireneo Jugueta,* G.R. No. 202124, April 5, 2016.

[33] *People v. Cabungan,* 702 Phil. 177, 190 (2013).

SECOND DIVISION

[G.R. No. 191442. July 27, 2016]

THE MUNICIPALITY OF ALFONSO LISTA, IFUGAO, represented by CHARLES L. CATTILING, in his capacity as Municipal Mayor and ESTRELLA S. ALIGUYON, in her capacity as Municipal Treasurer, *petitioner, vs.* **THE COURT OF APPEALS, SPECIAL FORMER SIXTH DIVISION and SN ABOITIZ POWER-MAGAT, INC.,** *respondents.*

SYLLABUS

REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON CERTIORARI; THE AVAILABILITY OF AN APPEAL PRECLUDES IMMEDIATE RESORT TO *CERTIORARI*.— Under Rule 45 of the Rules of Court, the proper remedy to reverse a judgment, final order, or resolution of the CA is to file a petition for review on *certiorari,* not a petition for *certiorari* under Rule 65. *Certiorari* is an extraordinary *remedy of last resort*; it is only available **when there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.** The availability of an appeal ***precludes*** immediate resort to *certiorari*, even if the ascribed error was lack or excess of jurisdiction or grave abuse of discretion. The municipality did not even bother to explain this glaring defect in its petition.

APPEARANCES OF COUNSEL

Hipolito Salatan for petitioner.
Puno and Puno for respondents.

R E S O L U T I O N

BRION, *J.*:

We resolve the municipality of Alfonso Lista, Ifugao's (*the municipality*) petition for *certiorari* challenging the Court of

Appeals' (*CA*) decision[1] and resolution[2] in **CA-G.R. SP No. 107926.** The CA granted SN Aboitiz Power-Magat, Inc.'s (*SNAPM*) petition for *certiorari* of the Regional Trial Court's (*RTC*) refusal to issue a temporary restraining order during the pendency of **Special Civil Action Case No. 17-09**.[3]

ANTECEDENTS

SNAPM is a corporation engaged in the financing and acquisition of hydropower generating facilities privatized by the Power Sector Assets and Liabilities Management Corporation (*PSALM*).

On December 31, 2006, SNAPM entered into an agreement with PSALM to acquire the Magat Power Plant located along the boundary of Alfonso Lista, Ifugao, and Ramon, Isabela.

SNAPM registered its power plant operation as a pioneer enterprise with the Board of Investments (*BOI*). BOI approved the application on July 12, 2007.

The Local Government Code[4] exempts BOI-registered pioneer enterprises from the payment of local business taxes *(LBTs)* **for a period of 6 years from the date of registration.** SNAPM however, overlooked this exemption and paid its LBTs for the year 2007.

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[1] Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Jose L. Sabio, Jr. and Vicente S.E. Veloso. *Rollo*, pp. 22-35.

[2] Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Andres B. Reyes, Jr. and Vicente S.E. Veloso. *Id.* at 12-17.

[3] RTC, Alfonso Lista, Ifugao, Branch 15, through Acting Presiding Judge Efren M. Cacatian.

[4] Republic Act No. 7160, The LOCAL GOVERNMENT CODE:
Sec. 133. *Common Limitations on the Taxing Powers of Local Government Units.* — Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays **shall not extend to the levy of the following**:
xxx xxx xxx
(g) Taxes on business enterprises **certified by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years,** respectively from the date of registration; x x x

On January 20, 2009, SNAPM realized its mistake and notified the officials of Alfonso Lista, Ifugao, of its exemption from paying LBTs until July 11, 2013.

However, the mayor of Alfonso Lista refused to recognize the exemption. He threatened to withhold the issuance of a mayor's Permit should SNAPM refuse to pay its LBTs.

On January 29, 2009, SNAPM paid its LBTs for the first quarter of 2009 *under protest*. In return, the mayor of Alfonso Lista issued a temporary mayor's permit effective only until March 15, 2009.

On February 16, 2009, SNAPM presented the Municipality with a letter from the BOI that confirmed its exemption from paying LBTs for a period of six (6) years from July 12, 2007. Nevertheless, the municipality refused to recognize SNAPM's exemption.

On March 4, 2009, SNAPM filed an administrative claim with the Municipal Treasurer for a tax refund or tax credit of its paid LBTs.

On March 6, 2009, SNAPM also filed a complaint for injunction (with an application for a Temporary Restraining Order [TRO] and/or a writ of preliminary injunction) before the RTC against the municipality, its Mayor, and its Municipal Treasurer. SNAPM sought to restrain: the collection of LBTs, the mayor's refusal to issue a mayor's permit, the closure of the power plant, and any other acts that would prevent it from operating its Alfonso Lista power plant. The complaint was docketed as **Special Civil Action Case No. 17-09.**

SNAPM's temporary mayor's permit expired on March 15, 2009.

On March 18, 2009, the RTC denied SNAPM's application for a TRO.[5] The RTC ruled that at that early stage of the proceedings, SNAPM's entitlement to a tax exemption under the Local Government Code was still "cloudy" and "vague." It

[5] *Rollo*, p. 18.

pointed out that SNAPM could avail of a tax credit or refund later on if its complaint is found meritorious.

SNAPM filed a petition for *certiorari* before the CA questioning the RTC's March 18, 2009 order. Its petition was docketed as **CA-G.R. SP No. 107926.**

On June 9, 2009, the CA issued a temporary restraining order prohibiting the municipality from: (1) assessing and collecting local business taxes from SNAPM; (2) refusing to issue a Mayor's permit; and (3) distraining or levying on SNAPM's properties, closing the power plant, or committing any other acts that would obstruct SNAPM's operation of the power plant.[6]

On August 7, 2009, the CA granted the petition for *certiorari* and set aside the RTC's order denying SNAPM's TRO application.[7] It also made its July 9, 2009 TRO permanent, subject to the RTC's final determination of **Special Civil Action Case No. 17-09.**

The CA reasoned that the RTC gravely abused its discretion because SNAPM's entitlement to an injunctive writ is clear; Section 133 of the Local Government Code evidently limits the municipality's power to impose LBTs on BOI-registered enterprises.

The municipality moved for reconsideration, arguing: (1) that no supervening events took place between June 5, 2009 and August 7, 2009, that warranted the permanent extension of the TRO; and (2) that SNAPM's one million-peso bond was insufficient considering it expected to assess SNAPM with an annual 84 million pesos in LBTs.

On January 20, 2010, the CA clarified that it did not extend the TRO indefinitely.[8] By making its June 5, 2009 TRO "*permanent subject to the final determination of the case,*" it

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[6] *Id.* at 46.

[7] *Id.* at 22.

[8] *Id.* at 12.

merely issued a writ of injunction for the duration of the case. It concluded that justice and equity would be better served if the status quo was preserved until the RTC resolved the merits of the case.[9]

It also brushed aside the municipality's claim as to the sufficiency of the injunction bond for the latter's failure to justify its exorbitant assessment of 84 million pesos.

On March 16, 2010, the municipality filed the present petition for *certiorari*.

The Municipality's Petition

The municipality claims that the CA acted with grave abuse of discretion and that there is no appeal or any other speedy and adequate remedy in the ordinary course of law.[10]

Citing Rule 58 of the Rules of Court, it maintains that a TRO issued by the CA has a life span of 60 days and cannot exist indefinitely. It reiterated that no supervening events took place between June 5, 2009 and August 7, 2009, that justified the indefinite extension of the TRO. Lastly, it insists that SNAPM's entitlement to a tax exemption from the local government was "cloudy" and "vague."

SNAPM's Comment

SNAPM counters that the CA, by reversing and setting aside the RTC's March 18, 2009 order denying its application for a TRO **and/or writ of preliminary injunction,** effectively granted its prayer for a preliminary injunction.[11] Hence, the "temporary" restraining order was made "permanent." It was not, as the municipality suggested, extended.

SNAPM also argues that supervening events are not necessary to justify the CA's act of making the TRO "permanent." The CA already explained that as a pioneer enterprise registered

[9] *Id.* at 16.

[10] *Id.* at 5.

[11] *Id.* at 71.

with the BOI, SNAPM has a clear and unmistakable right to be exempt from paying LBTs under the Local Government Code.

Lastly, SNAPM faults the municipality for resorting to *certiorari* when an appeal was available under Rule 45.

On January 12, 2011, we required the municipality to file a reply to SNAPM's comment.[12] However, the municipality failed to comply due to changes in its administration from the 2013 elections.

On September 25, 2014, the new Municipal Mayor, Glenn D. Prudenciano, asked for a non-extendible period of thirty days to file its reply due to their lack of a Municipal Legal Officer.[13]

We granted the motion on March 23, 2015. However, the newly appointed municipal legal officer merely asked for another extension instead of filing a reply.[14] The municipality has yet to file its reply.

Considering the municipality's repeated noncompliance with our orders, we consider the municipality's right to file a reply effectively waived. We thus proceed to rule on the merits of the case.

OUR RULING

We DISMISS the petition for lack of merit.

First, as the respondent pointed out, the municipality could have appealed the CA's verdict. Under Rule 45 of the Rules of Court,[15] the proper remedy to reverse a judgment, final order,

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[12] *Id.* at 92.

[13] *Id.* at 147.

[14] *Id.* at 152.

[15] SECTION 1. *Filing of petition with the Supreme Court.* — A party desiring to appeal by *certiorari* **from a judgment or final order or resolution of the Court of Appeals,** the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified **petition for review on *certiorari*.** The petition shall raise only questions of law which must be distinctly set forth.

or resolution of the CA is to file a petition for review on *certiorari*, not a petition for *certiorari* under Rule 65.

Certiorari is an extraordinary *remedy of last resort;* it is only available **when there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.** The availability of an appeal ***precludes*** immediate resort to *certiorari*, even if the ascribed error was lack or excess of jurisdiction or grave abuse of discretion.[16] The municipality did not even bother to explain this glaring defect in its petition.

Second, this petition stemmed from the CA's grant of a writ of preliminary injunction against the municipality from assessing and levying LBTs on SNAPM pending the RTC's final determination of SNAPM's entitlement to a tax exemption. The petition has been rendered moot by the expiration of SNAPM's alleged six-year exemption from LBTs; the municipality acquired a clear and unmistakable right to collect LBTs from SNAPM on July 12, 2013.

At this point, determining the propriety of the CA's injunctive writ would be a useless academic exercise. All that remains is for the RTC to make a final determination of SNAPM's entitlement to an exemption from LBTs for the years 2007 to 2013.

WHEREFORE, we **DISMISS** the petition for lack of merit.

SO ORDERED.

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

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[16] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC,* G.R. No. 155306, August 28, 2013, 704 SCRA 24, 35.

FIRST DIVISION

[G.R. No. 192477. July 27, 2016]

MOMARCO IMPORT COMPANY, INC., *petitioner, vs.* **FELICIDAD VILLAMENA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; WHEN VOLUNTARY APPEARANCE IN COURT MAY BE CONSIDERED EQUIVALENT TO SERVICE OF SUMMONS; CASE AT BAR.— The filing of the formal entry of appearance on May 5, 1998 indicated that it already became aware of the complaint filed against it on September 23, 1997. Such act of counsel, because it was not for the purpose of objecting to the jurisdiction of the trial court, constituted the petitioner's voluntary appearance in the action, which was the equivalent of the service of summons. Jurisdiction over the person of the petitioner as the defendant became thereby vested in the RTC, and cured any defect in the service of summons.

2. ID.; EFFECT OF FAILURE TO PLEAD; DECLARATION OF DEFAULT NOT *MOTU PROPRIO*; REQUIREMENTS TO BE COMPLIED WITH BEFORE THE DEFENDING PARTY CAN BE DECLARED IN DEFAULT.— Under Section 3, Rule 9 of the *Rules of Court,* the three requirements to be complied with by the claiming party before the defending party can be declared in default are: (1) that the claiming party must file a motion praying that the court declare the defending party in default; (2) the defending party must be notified of the motion to declare it in default; (3) the claiming party must prove that the defending party failed to answer the complaint within the period provided by the rule. It is plain, therefore, that the default of the defending party cannot be declared *motu proprio*.

3. ID.; ID.; ID.; DEFAULT ORDER UPHELD DUE TO PETITIONER'S FAILURE TO MOVE FOR THE LIFTING OF THE DECLARATION OF DEFAULT AFTER NOTICE AND BEFORE THE DEFAULT JUDGMENT; CASE AT

BAR.— The petitioner's logical remedy was to have moved for the lifting of the declaration of its default but despite notice it did not do the same before the RTC rendered the default judgment on August 23, 1999. Its motion for that purpose should have been under the oath of one who had knowledge of the facts, and should show that it had a meritorious defense, and that its failure to file the answer had been due to fraud, accident, mistake or excusable negligence. Its urgent purpose to move in the RTC is to avert the rendition of the default judgment. Instead, it was content to insist in its comment/opposition vis-à-vis the motion to declare it in default that: (1) it had already filed its answer; (2) the order of default was generally frowned upon by the courts; (3) technicalities should not be resorted to; and (4) it had a meritorious defense. It is notable that it tendered no substantiation of what was its meritorious defense, and did not specify the circumstances of fraud, accident, mistake, or excusable negligence that prevented the filing of the answer before the order of default issued — the crucial elements in asking the court to consider vacating its own order. x x x We uphold the default. While the courts should avoid orders of default, and should be, as a rule, liberal in setting aside orders of default, they could not ignore the abuse of procedural rules by litigants like the petitioner, who only had themselves to blame.

APPEARANCES OF COUNSEL

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

Public Attorney's Office for respondent.

D E C I S I O N

BERSAMIN, *J.*:

A default judgment is frowned upon because of the policy of the law to hear every litigated case on the merits. But the default judgment will not be vacated unless the defendant satisfactorily explains the failure to file the answer, and shows that it has a meritorious defense.

The Case

Under challenge by the petitioner is the affirmance on January 14, 2010 by the Court of Appeals (CA)[1] of the trial court's default judgment rendered against it on August 23, 1999 in Civil Case No. C-18066 by the Regional Trial Court (RTC), Branch 126, in Caloocan City.[2] The defendant hereby prays that the default judgment be undone, and that the case be remanded to the RTC for further proceedings, including the reception of its evidence.[3]

Antecedents

Civil Case No. C-18066 is an action the respondent initiated against the petitioner for the nullification of a deed of absolute sale involving registered real property and its improvements situated in Caloocan City as well as of the transfer certificate of title issued in favor of the latter by virtue of said deed of absolute sale on the ground of falsification.

The following factual and procedural antecedents are summarized by the CA in its assailed decision, to wit:

> On September 23, 1997, plaintiff filed against defendant a complaint for "Nullification of Deed of Sale and of the Title Issued" pursuant thereto alleging that she is the owner of a parcel of land with improvements located in Caloocan City and covered by Transfer Certificate of Title No. 204755. A letter from defendant corporation dated June 12, 1997, informed plaintiff that TCT No. 204755 over aforesaid property had been cancelled and TCT No. C-319464 was issued in lieu thereof in favor of defendant corporation on the strength of a purported Special Power of Attorney executed by Dominador Villamena, her late husband, appointing her, plaintiff Felicidad Villamena, as his attorney-in-fact and a deed of absolute sale purportedly executed by her in favor of defendant corporation on

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[1] *Rollo*, pp. 20-24, penned by Associate Justice Arcangelita Romilla-Lontok (retired), with Associate Justice Andres B. Reyes, Jr. (now Presiding Justice) and Associate Justice Priscilla J. Baltazar-Padilla concurring.

[2] CA *rollo*, pp. 10-12; penned by Judge Luisito C. Sardillo.

[3] *Rollo*, p. 16.

May 21, 1997, the same date as the Special Power of Attorney. The Special Power of Attorney dated May 21, 1997 is a forgery. Her husband Dominador died on June 22, 1991. The deed of sale in favor of defendant corporation was falsified. What plaintiff executed in favor of Mamarco was a deed of real estate mortgage to secure a loan of ₱100,000.00 and not a deed of transfer/conveyance.

xxx xxx xxx

On August 19, 1998, plaintiff filed a motion to declare defendant corporation in default for failure of aforesaid defendant to file its answer as of said date despite the filing of an Entry of Appearance by its counsel dated May 4, 1998.

On September 10, 1998 defendant corporation filed its Answer with Counterclaim which denied the allegations in the complaint; alleged that plaintiff and her daughter Lolita accompanied by a real estate agent approached the President of Momarco for a loan of ₱100,000.00; offered their house and lot as collateral; and presented a Special Power of Attorney from her husband. She was granted said loan. Aforesaid loan was not repaid. Interests accumulated and were added to the principal. Plaintiff offered to execute a deed of sale over the property on account of her inability to pay. Plaintiff presented to defendant corporation a deed of sale and her husband's Special of Power Attorney already signed and notarized.[4]

Under the order dated October 15, 1998, the petitioner was declared in default, and its answer was ordered stricken from the records. Thereafter, the RTC allowed the respondent to present her evidence *ex parte*.

On August 23, 1999, the RTC rendered the default judgment nullifying the assailed deed of absolute sale and the transfer certificate of title issued pursuant thereto; and ordering the Register of Deeds of Caloocan City to cancel the petitioner's Transfer Certificate of Title No. C-319464, and to reinstate the respondent's Transfer Certificate of Title No. 204755.[5] It concluded that the act of the petitioner's counsel of formally entering an appearance in the case had mooted the issue of

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

[5] CA *rollo*, p. 12.

defective service of summons; and that the respondent had duly established by preponderance of evidence that the purported special power of attorney was a forgery.[6]

The petitioner appealed the default judgment to the CA, arguing that the RTC had gravely erred in nullifying the questioned deed of absolute sale and in declaring it in default.

On January 14, 2010, the CA promulgated the assailed decision affirming the default judgment upon finding that the RTC did not commit any error in declaring the petitioner in default and in rendering judgment in favor of the respondent who had successfully established her claim of forgery by preponderance of evidence.[7]

On May 31, 2010, the CA denied the petitioner's motion for reconsideration.[8]

Hence, this appeal by the petitioner.

Issue

The petitioner raises the lone issue of whether or not the CA gravely erred in upholding the default judgment of the RTC; in ordering its answer stricken off the records; in allowing the respondent to adduce her evidence *ex parte*; and in rendering the default judgment based on such evidence.[9]

Ruling of the Court

The appeal lacks merit.

The petitioner claims denial of its right to due process, insisting that the service of summons and copy of the complaint was defective, as, in fact, there was no sheriff's return filed; that

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[6] *Supra* note 2.

[7] *Supra* note 1.

[8] *Rollo*, pp. 26-29; penned by Presiding Justice Reyes, Jr., with the concurrence of Associate Justice Baltazar-Padilla and Associate Justice Jane Aurora C. Lantion.

[9] *Id.* at 13.

the service of the alias summons on January 20, 1998 was also defective; and that, accordingly, its reglementary period to file the answer did not start to run.

The claim of the petitioner is unfounded. The filing of the formal entry of appearance on May 5, 1998 indicated that it already became aware of the complaint filed against it on September 23, 1997. Such act of counsel, because it was not for the purpose of objecting to the jurisdiction of the trial court, constituted the petitioner's voluntary appearance in the action, which was the equivalent of the service of summons.[10] Jurisdiction over the person of the petitioner as the defendant became thereby vested in the RTC, and cured any defect in the service of summons.[11]

Under Section 3,[12] Rule 9 of the *Rules of Court,* the three requirements to be complied with by the claiming party before the defending party can be declared in default are: (1) that the claiming party must file a motion praying that the court declare the defending party in default; (2) the defending party must be notified of the motion to declare it in default; (3) the claiming party must prove that the defending party failed to answer the complaint within the period provided by the rule.[13] It is plain,

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[10] Rule 14, Section 20 of the *Rules of Court* provides:

Section 20. *Voluntary appearance.* — The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

[11] *Cezar v. Ricafort-Bautista,* G.R. No. 136415, October 31, 2006, 506 SCRA 322, 334.

[12] Section 3. *Default; declaration of.* — If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

[13] *Delos Santos v. Carpio,* G.R. No. 153696, September 11, 2006, 501 SCRA 390, 398-399.

therefore, that the default of the defending party cannot be declared *motu proprio*.[14]

Although the respondent filed her motion to declare the petitioner in default with notice to the petitioner only on August 19, 1998, all the requisites for properly declaring the latter in default then existed. On October 15, 1998, therefore, the RTC appropriately directed the answer filed to be stricken from the records and declared the petitioner in default. It also received *ex parte* the respondent's evidence, pursuant to the relevant rule.[15]

The petitioner's logical remedy was to have moved for the lifting of the declaration of its default but despite notice it did not do the same before the RTC rendered the default judgment on August 23, 1999. Its motion for that purpose should have been under the oath of one who had knowledge of the facts, and should show that it had a meritorious defense,[16] and that its failure to file the answer had been due to fraud, accident, mistake or excusable negligence. Its urgent purpose to move in the RTC is to avert the rendition of the default judgment. Instead, it was content to insist in its comment/opposition vis-à-vis the motion to declare it in default that: (1) it had already filed its answer; (2) the order of default was generally frowned upon by the courts; (3) technicalities should not be resorted to; and (4) it had a meritorious defense. It is notable that it tendered no substantiation of what was its meritorious defense, and did not specify the circumstances of fraud, accident, mistake, or excusable negligence that prevented the filing of the answer before the order of default issued — the crucial elements in asking the court to consider vacating its own order.

The policy of the law has been to have every litigated case tried on the merits. As a consequence, the courts have generally looked upon a default judgment with disfavor because it is in

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[14] *Trajano v. Cruz,* No. L-47070, December 29, 1977, 80 SCRA 712, 715.

[15] Section 3, Rule 9, Rules of Court.

[16] *Montinola, Jr. v. Republic Planters Bank,* No. 66183, May 4, 1988, 161 SCRA 45, 52.

violation of the right of a defending party to be heard. As the Court has said in *Coombs v. Santos:*[17]

> A default judgment does not pretend to be based upon the merits of the controversy. Its existence is justified on the ground that it is the one final expedient to induce defendant to join issue upon the allegations tendered by the plaintiff, and to do so without unnecessary delay. A judgment by default may amount to a positive and considerable injustice to the defendant; and the possibility of such serious consequences necessitates a careful examination of the grounds upon which the defendant asks that it be set aside.

In implementation of the policy against defaults, the courts have admitted answers filed beyond the reglementary periods but before the declaration of default.[18]

Considering that the petitioner was not yet declared in default when it filed the answer on September 10, 1998, should not its answer have been admitted?

The petitioner raised this query in its motion for reconsideration in the CA, pointing out that the RTC could no longer declare it in default and order its answer stricken from the records after it had filed its answer before such declaration of default. However, the CA, in denying the motion for reconsideration, negated the query, stating as follows:

> Unfortunately, we find the foregoing arguments insufficient to reverse our earlier ruling. These points do little to detract from the fact that Defendant-Appellant filed its Answer only after a period of more than four months from when it entered its voluntary appearance in the case *a quo*, and only after almost a month from when Plaintiff-Appellee moved to have it declared in default.
>
> Verily, Defendant-Appellant's temerity for delay is also betrayed (sic) by the fact that it had waited for a judgment to be rendered by the court *a quo* before it challenged the order declaring it in default. If it truly believed that it had a "meritorious defense[,] which if properly

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[17] 24 Phil. 446, 449-450 (1913).

[18] *Cathay Pacific Airways, Ltd. v. Romillo, Jr.,* No. 64276, March 4, 1986, 141 SCRA 451, 455.

ventilated could have yielded a different conclusion [by the trial court]," then it could very well have moved to set aside the Order of Default immediately after notice thereof or anytime before judgment. Under the circumstances, that would have been the most expeditious remedy. Inauspiciously, Defendant-Appellant instead elected to wager on a favorable judgment. Defeated, Defendant-Appellant would now have us set aside the Order of Default on Appeal and remand the case for further proceedings. These we cannot do.

While we are aware that we are vested with some discretion to condone Defendant-Appellant's procedural errors, we do not find that doing so will serve the best interests of justice. To remand this case to the court *a quo* on the invocation that we must be liberal in setting aside orders of default, would be to reward Defendant-Appellant with more delay. It bears stating that the Rules of Procedure are liberally construed not to suit the convenience of a party, but "in order to promote their objective of securing a **just, speedy and inexpensive disposition of every action and proceeding.**" To this end, it has been rightly written:

> Procedural rules are not to be disregarded as mere technicalities that may be ignored at will to suit the convenience of a party. x x x.
>
> It cannot be overemphasized that procedural rules have their own wholesome rationale in the orderly administration of justice. Justice has to be administered according to the rules in order to obviate arbitrariness, caprice and whimsicality.[19]

We concur with the CA's justification. The RTC and the CA acted in accordance with the *Rules of Court* and the pertinent jurisprudence. The petitioner was insincere in assailing the default judgment, and its insincerity became manifest from its failure to move for the lifting of the order of default prior to the rendition of the default judgment. The CA rightly observed that the petitioner had apparently forsaken its "expeditious remedy" of moving soonest for the lifting of the order of default in favor of "wager[ing]" on obtaining a favorable judgment. The petitioner would not do so unless it intended to unduly cause delay to the detriment and prejudice of the respondent.

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[19] *Supra* note 8, at 27-29.

The sincerity of the petitioner's actions cannot be presumed. Hence, it behooves it to allege the suitable explanation for the failure or the delay to file the answer through a motion to lift the order of default before the default judgment is rendered. This duty to explain is called for by the philosophy underlying the doctrine of default in civil procedure, which Justice Narvasa eruditely discoursed on in *Gochangco v. CFI Negros Occidental*,[20] to wit:

> The underlying philosophy of the doctrine of default is that the defendant's failure to answer the complaint despite receiving copy thereof together with summons, is attributable to one of two causes: either (a) to his realization that he has no defenses to the plaintiff's cause and hence resolves not to oppose the complaint, or, (b) having good defenses to the suit, to fraud, accident, mistake or excusable negligence which prevented him from seasonably filing an answer setting forth those defenses. It does make sense for a defendant without defenses, and who accepts the correctness of the *specific relief* prayed for in the complaint, to forego the filing of the answer or any sort of intervention in the action at all. For even if he did intervene, the result would be the same: since he would be unable to establish any good defense, having none in fact, judgment would inevitably go against him. And this would be an acceptable result, if not being in his power to alter or prevent it, provided that the judgment did not go beyond or differ from the *specific relief* stated in the complaint. It would moreover spare him from the embarrassment of openly appearing to defend the indefensible. **On the other hand, if he did have good defenses, it would be unnatural for him not to set them up properly and timely, and if he did not in fact set them up, it must be presumed that some insuperable cause prevented him from doing so: fraud, accident, mistake, excusable negligence. In this event, the law will grant him relief; and the law is in truth quite liberal in the reliefs made available to him: a motion to set aside the order of default prior to judgment, a motion for new trial to set aside the default judgment; an appeal from the judgment by default even if no motion to set aside the order of default or motion for new trial**

[20] No. L-49396, January 15, 1988, 157 SCRA 40.

had been previously presented; a special civil action for *certiorari* impugning the court's jurisdiction.[21]

It is true that the RTC had the discretion to permit the filing of the answer even beyond the reglementary period, or to refuse to set aside the default order where it finds no justification for the delay in the filing of the answer.[22] Conformably with the judicious exercise of such discretion, the RTC could then have admitted the belated answer of the petitioner and lifted the order of default instead of striking the answer from the records. However, the RTC opted not to condone the inordinate delay taken by the petitioner, and went on to render the default judgment on August 23, 1999. Such actions were fully within its discretion.[23] We uphold the default. While the courts should avoid orders of default, and should be, as a rule, liberal in setting aside orders of default,[24] they could not ignore the abuse of procedural rules by litigants like the petitioner, who only had themselves to blame.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision of the Court of Appeals promulgated on January 14, 2010; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

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[21] *Id.* at 54-55 (bold underscoring added for emphasis).

[22] *Malipod v. Tan,* No. L-27730, January 21, 1974, 55 SCRA 202, 213.

[23] *Cathay Pacific Airways, Ltd. v. Romillo, Jr.*, *supra* note 18.

[24] *Acance v. Court of Appeals,* G.R. No. 159699, March 16, 2005, 453 SCRA 548, 563; *Montinola, Jr. v. Republic Planters Bank,* No. 66183, May 4, 1988, 161 SCRA 45, 54.

THIRD DIVISION

[G.R. No. 199180. July 27, 2016]

THELMA RODRIGUEZ, joined by her husband, *petitioners, vs.* **SPOUSES JAIME SIOSON AND ARMI SIOSON, *et al.,*** *respondents.*

SYLLABUS

CIVIL LAW; CONTRACTS; SALES; CONTRACT TO SELL; THE REAL CHARACTER OF THE CONTRACT IS NOT THE TITLE GIVEN, BUT THE INTENTION OF THE PARTIES.— The rule on double sale, as provided in Article 1544 of the Civil Code, does not apply to a case where there was a sale to one party of the land itself while the other contract was a mere promise to sell the land or at most an actual assignment of the right to repurchase the same land. x x x "The real character of the contract is not the title given, but the intention of the parties." In this case, there exist two deeds of absolute sale. Though identically worded, the first contract was undated, not notarized, signed only by Neri, and was presented in Civil Case No. 7394 for Injunction, while the second deed was dated April 10, 1997, notarized on September 5, 1997, signed by both Neri and Thelma, and was presented in Civil Case No. 7664 for Declaration of Nullity of Deed of Sale and Title. x x x Despite the denomination of their agreement as one of sale, the circumstances tend to show that Neri agreed to sell the subject property to Thelma on the condition that title and ownership would pass or be transferred upon the full payment of the purchase price. This is the very nature of a contract to sell, which is a "bilateral contract whereby the prospective seller, while expressly reserving the ownership of the property despite delivery thereof to the prospective buyer, binds himself to sell the property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, *i.e.*, the full payment of the purchase price." As stated by the Court, the agreement to execute a deed of sale upon full payment of the purchase price "shows that the vendors reserved title to the subject property until full payment of the purchase price." x x x Moreover, the alleged delivery of the property, even if true, is irrelevant considering

that in a contract to sell, ownership is retained by the registered owner in spite of the partial payment of the purchase price and delivery of possession of the property. Accordingly, the CA did not commit any reversible error in concluding that "the contract between Thelma and Neri was a mere contract to sell, the transfer of ownership over Lot 398-A being conditioned on Thelma's full payment of the purchase price. Having failed to pay the purchase price in full, Thelma cannot claim ownership over Lot 398-A and Neri is not legally proscribed from alienating the same lot to other buyers."

APPEARANCES OF COUNSEL

Jorge Roito N. Hirang, Jr., for petitioners.
Bernaldo Directo & Po Law Offices for respondents.

D E C I S I O N

REYES, *J.*:

Before the Court is a petition for review[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated May 26, 2011 and Resolution[3] dated October 21, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 94867, which nullified the Joint Decision[4] dated August 13, 2009 of the Regional Trial Court (RTC) of Bataan, Branch 3.

The Facts

This petition is the aftermath of a series of sales transactions entered into by Neri delos Reyes (Neri) over a portion of a property formerly identified as Lot 398, with an area of 22,398 square meters, covered by Transfer Certificate of Title (TCT) No. T-86275 and

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[1] *Rollo*, pp. 8-36.

[2] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Vicente S.E. Veloso and Angelita A. Gacutan concurring; *id.* at 38-80.

[3] *Id.* at 82-83.

[4] Rendered by Judge Remegio M. Escalada, Jr.; *id.* at 84-100.

registered in the name of "*Neri delos Reyes, married to Violeta Lacuata.*"[5]

Sometime in 1997, the Municipality of Orani, Bataan (Municipality) purchased from Neri an area of about 1.7 hectare of Lot 398, to be used for the extension of the Municipality's public market. Among other things, it was agreed that upon full payment of the purchase price, Neri will surrender the mother title to the Municipality for subdivision of the property on the condition that Neri will equitably share in the expense thereof.[6]

Lot 398 was subsequently subdivided into 5 lots: Lot 398-A, Lot 398-B, Lot 398-C, Lot 398-D, and Lot 398-E. Lots 398-C and 398-D pertain to the portions that were sold to the Municipality, while Lot 398-E is a road lot. Consequently, only Lots 398-A and 398-B were left as the remaining portions over which Neri retained absolute title. TCT Nos. T-209894 and T-209895 were then respectively issued over Lots 398-A and 398-B and were both registered in the name of "*Neri delos Reyes, married to Violeta Lacuata.*" The owner's duplicate copies of TCT Nos. T-209894 and T-209895, however, were retained by the Municipality pending Neri's payment of his share in the expenses incurred for the subdivision of Lot 398. These were placed under the custody of the Municipal Treasurer, where they continue to remain.[7]

Neri, however, alleged that then Municipal Mayor Mario Zuñiga suggested that he sell Lot 398-A to his aunt, petitioner Thelma Rodriguez (Thelma). The Municipality would then expropriate the same from Thelma. Neri agreed to the suggestion.[8]

After agreeing to the amount of ₱1,243,000.00 as the selling price, Thelma, on March 20, 1997, issued a check for said amount payable to Neri. When it fell due, no sufficient funds were

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[5] *Id.* at 40.

[6] *Id.* at 90.

[7] *Id.* at 90-91.

[8] *Id.*

available to cover the check. Consequently, it was agreed that Thelma would pay the purchase price in installments from March 20, 1997 to September 4, 1997. Thelma, however, was only able to pay ₱442,293.50.[9]

On November 12, 2001, Thelma caused the annotation of an adverse claim on TCT No. T-209894.[10] At about the same time, Thelma saw an announcement that a new Orani Common Terminal would be built on Lot 398-A. As she has not yet entered into any agreement regarding the utilization of said lot, Thelma filed a *Complaint for Injunction* docketed as **Civil Case No. 7394** against then incumbent mayor Efren Pascual, Jr. (Mayor Pascual), and the Municipality under claim of ownership. To support her claim, Thelma incorporated in her complaint a copy of an **undated and unnotarized** deed of absolute sale allegedly executed by Neri in her favor.[11]

In their joint verified answer, Mayor Pascual and the Municipality acknowledged that Thelma became the owner of Lot 398-A by way of purchase from Neri.[12]

In 2002, Neri executed an affidavit claiming that the owner's copies of TCT No. T-209894 (covering Lot 398-A) and TCT No. T-209895 (covering Lot 398-B) were lost, which was annotated on the original copy of TCT No. T-209894 on May 8, 2002.[13] Two days after, or on May 10, 2002, Neri caused the cancellation of Thelma's adverse claim.[14] Neri also caused the reconstitution of new owner's copies of TCT Nos. T-209894 and T-209895.[15] Thereafter, new copies of TCT Nos. T-209894 and T-209895 were issued, and Neri then sold Lot 398-A to

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[9] *Id.* at 91-92.

[10] *Id.* at 92.

[11] *Id.* at 85.

[12] *Id.*

[13] *Id.* at 92.

[14] *Id.*

[15] *Id.* at 92-93.

Spouses Jaime and Armi Sioson, Spouses Joan and Joseph Camacho, and Agnes Samonte (respondents) — in a deed of sale dated November 27, 2002. A special power of attorney was executed by Violeta delos Reyes (Violeta) in favor of Neri for the purpose. Consequently, TCT No. T-209894 was cancelled, and TCT No. T-226775 was thus issued in the respondents' names.[16]

Upon the issuance of TCT No. T-226775, the respondents declared Lot 398-A for tax purposes and paid them accordingly. They sought to take actual possession thereof by filling it; however, after they filled said lot with about 40 truckloads of soil/fillings, Thelma sent two armed blue guards who entered the premises and set up a tent therein. The respondents brought the matter to the attention of barangay authorities who referred them to the municipal mayor. As the municipal mayor did not take any action, the respondents filed a forcible entry case against Thelma before the Municipal Circuit Trial Court of Orani-Samal, Bataan, docketed as Civil Case No. 843. The said ejectment case is still pending.[17]

After Thelma learned of the second sale of Lot 398-A, she filed against the respondents a complaint for the Declaration of Nullity of the Second Sale and TCT No. T-226775 on February 11, 2003, docketed as **Civil Case No. 7664.** In support of her claim, Thelma once again presented a deed of absolute sale executed by Neri in her favor. This time, the deed of sale she presented was **duly signed by her and Neri, witnessed, notarized and dated April 10, 1997**.[18]

The respondents countered that they are innocent purchasers for value having bought Lot 398-A at the time when Thelma's adverse claim was already cancelled. While they admit Thelma's possession of the subject property, they, however, qualify that

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[16] *Id.* at 93.

[17] *Id.* at 94.

[18] *Id.* at 43-44.

possession is being contested in a separate action for forcible entry.[19]

The respondents also filed a verified *answer-in-intervention* in Civil Case No. 7394 (injunction case) contending that they are the present registered owners of Lot 398-A, and as such, Thelma is not entitled to any relief.[20]

Ruling of the RTC

The RTC jointly heard Civil Case No. 7394 and Civil Case No. 7664 and after trial, rendered judgment in favor of Thelma. The dispositive portion of the Joint Decision[21] dated August 13, 2009 reads:

WHEREFORE, judgment is hereby rendered declaring that:

> 1) [Thelma] is entitled to the relief of permanent injunction prayed for in Civil Case No. 7394 against the respondents. Insofar as defendants [Mayor Pascual] and the [Municipality] are concerned, not only did they acknowledge expressly the ownership of [Thelma] of Lot 398-A, they have disowned the commission of any act in derogation of [Thelma's] right of ownership of the lot and did not contest anymore the action of [Thelma] in said case;
>
> 2) Insofar as Civil Case No. 7664 is concerned, the second deed of sale entered into by [Neri] with the [respondents] is hereby declared null and void, and [TCT] No. T-226775 of the Registry of Deeds of Bataan which was issued by defendant Register of Deeds pursuant to said second deed of sale is likewise declared null and void, and accordingly, the Register of Deeds for the Province of Bataan is ordered to cancel said certificate of title and to reinstate [TCT] No. T-209894 in the name of [Neri], married to [Violeta];
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> 3) The new owner's copy of [TCT] No. T-209894 is hereby declared null and void as the original owner's copy is not lost

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[19] *Id.* at 86-87.

[20] *Id.* at 86.

[21] *Id.* at 84-100.

but actually exists and is presently in the custody of the Municipal Treasurer of Orani, Bataan. In consequence, defendant Register of Deeds of Bataan is directed to cancel said new owner's copy of [TCT] No. T-209894; and

4) [The respondents] are hereby ordered to jointly and severally pay to [Thelma] attorney's fees in the amount of Twenty[-]Five Thousand Pesos (₱25,000.00).

All counterclaims of [the respondents] are denied for lack of basis in fact and in law.

No pronouncement as to costs.

SO ORDERED.[22]

The RTC concluded that by Neri's admission that he sold the subject lot to Thelma for a consideration of ₱1,243,000.00, and his acknowledgement receipt of ₱442,293.50 as partial payment from the latter, the transaction between Thelma and Neri should be regarded as an executed contract of sale. Hence, Lot 398-A was subjected to a double sale when Neri sold the same property to the respondents.[23] The RTC further ruled that the contract of sale between Neri and the respondents is null and void because it was transacted and executed at the time when Neri was no longer the owner of Lot 398-A. It was legally inexistent for lack of object certain. Thereupon, the fact that the respondents were able to register their acquisition first is of no moment. Registration does not legitimize a void contract and thus, TCT No. T-226775 should be cancelled.[24]

The respondents moved for reconsideration but it was denied by the RTC per Order[25] dated January 13, 2010. Hence, they elevated their case to the CA.

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[22] *Id.* at 100.

[23] *Id.* at 95.

[24] *Id.* at 98.

[25] Records, Civil Case No. 7394, pp. 264-266.

Ruling of the CA

On May 26, 2011, the CA promulgated the assailed Decision,[26] with the following dispositive portion:

> **WHEREFORE,** the instant Appeal is **GRANTED**. The Joint Decision dated August 13, 2009 and the Order dated January 13, 2010 of the [RTC] of Bataan are hereby declared **NULL** and **VOID** insofar as it (1) granted permanent injunction in favor of [Thelma] in Civil Case No. 7394 against [the respondents]; (2) declared null and void the deed of sale between [Neri] and [the respondents] in Civil Case No. 7664; (3) declared null and void the [TCT] No. T-226775; (4) ordered the cancellation of [TCT] No. T-226775 and reinstatement of [TCT] No. T-209894 in the name of [Neri], married to [Violeta]; and (5) ordered the payment of attorney's fees.
>
> **Consequently**, the following are hereby declared **VALID**: (1) the Deed of Sale between [Neri] and [the respondents]; and (2) the [TCT] No. T-226775 in the names of [the respondents].
>
> This Decision is without prejudice to any right which [Thelma] may have against [Neri] for the refund of the amount of **Four Hundred Forty-Two Thousand Two Hundred Ninety-Three and 50/100 Pesos (₱442,293.50).**
>
> The Complaints in Civil Cases Nos. 7394 and 7664 are hereby **DISMISSED**.
>
> **SO ORDERED.**[27] (Emphasis in the original)

Contrary to the findings of the RTC, the CA found that **the contract between Neri and Thelma was a mere contract to sell** and not a contract of sale; hence, there was no double sale of Lot 398-A. According to the CA, the question of whether or not the respondents are buyers in good faith is unavailing since the concept of a "buyer in good faith" finds relevance only in cases of double sale. The CA further stated that even if it is assumed that the contract between Neri and Thelma was an absolute contract of sale, the same is nonetheless void for lack of consent of Neri's wife, Violeta, insofar as the object of the transaction is a conjugal property.

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[26] *Rollo*, pp. 38-80.

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

Thelma moved for reconsideration of the CA decision, which was denied for lack of merit in Resolution[28] dated October 21, 2011.

Hence this petition.

Thelma argues that there was double sale and the CA erred in reversing the RTC decision: (1) by interpreting the sale between Thelma and Neri as a mere contract to sell; (2) by declaring the deed of sale in favor of Thelma as null and void due to lack of Violeta's consent or conformity; and (3) by declaring the respondents as buyers in good faith despite prior registration of Thelma's notice of adverse claim in TCT No. T-209894, and her actual possession of the subject property.[29]

Ruling of the Court

The resolution of this case basically rests on the determination of whether the transaction between Neri and Thelma is a contract of sale or a contract to sell. The rule on double sale, as provided in Article 1544 of the Civil Code,[30] does not apply to a case where there was a sale to one party of the land itself while the other contract was a mere promise to sell the land or at most an actual assignment of the right to repurchase the same land.[31]

Both the RTC and the CA concur in the finding that Neri agreed to sell Lot 398-A to Thelma for an agreed price of ₱1,243,000.00. The RTC, however, concluded that by Neri's

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[28] *Id.* at 82-83.

[29] *Id.* at 24.

[30] Art. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

[31] *San Lorenzo Development Corporation v. Court of Appeals,* 490 Phil. 7, 27 (2005).

admission that he sold the subject lot to Thelma for a consideration of ₱1,243,000.00, and that he acknowledged receipt of ₱442,293.50 as partial payment from the latter, the transaction between Thelma and Neri should be regarded as an executed contract of sale, and not a merely executory one. The RTC likewise took into consideration Thelma's alleged possession of the property and Neri's failure to rescind the contract as indicative of the nature of their agreement as one of sale.[32]

On the other hand, the CA ruled that "the contract between Thelma and Neri was a mere contract to sell, the transfer of ownership over Lot 398-A being conditioned on Thelma's full payment of the purchase price."[33] As regards the existence of the two contracts of sale, the CA concluded that Thelma admitted on trial that the first deed of sale was only meant to be an acknowledgment receipt for the down payment she made on the subject lot, and the second deed of sale was allegedly executed after Thelma pays in full the purchase price of the lot.

A review of this case shows that the CA ruled in accord with existing jurisprudence.

"The real character of the contract is not the title given, but the intention of the parties."[34] In this case, there exist two deeds of absolute sale. Though identically worded, the first contract was undated, not notarized, signed only by Neri, and was presented in Civil Case No. 7394 for Injunction,[35] while the second deed was dated April 10, 1997, notarized on September 5, 1997, signed by both Neri and Thelma, and was presented in Civil Case No. 7664 for Declaration of Nullity of Deed of Sale and Title.[36]

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[32] *Rollo*, p. 95.

[33] *Id.* at 77.

[34] *Spouses Orden, et al. v. Spouses Aurea, et al.,* 584 Phil. 634, 650 (2008).

[35] Records, Civil Case No. 7394, p. 6.

[36] Records, Civil Case No. 7664, p. 6.

In determining the nature of the agreement between Thelma and Neri, the CA took note of these two documents, and, coupled with Thelma's own admissions, correctly found that it was a mere contract to sell. According to the CA:

> During trial, Thelma explained the apparent disparity between the two (2) "deeds of absolute sale" by testifying that the undated and unnotarized deed of sale served only as a "receipt" which was signed by Neri when the latter received the downpayment for the lot. The dated and notarized deed of sale, on the other hand, was signed by both Thelma and Neri upon Thelma's alleged full payment of the purchase price:
>
> xxx xxx xxx
>
> *Second, the execution of the "deed of absolute sale" dated August 10, 1997 and the transfer and delivery of the title to Thelma's name covering Lot No. 398-A were conditioned upon full payment of the purchase price.*
>
> Thelma testified that the "deed of absolute sale" dated August 10, 1997 and which was attached to Thelma's complaint in Civil Case No. 7664 was signed by her, Neri and their witnesses only upon full payment of the purchase price. Thelma further testified that she and Neri agreed to place the amount of the purchase price on the deed of absolute sale only at the time when Thelma had fully paid the same: x x x[37] (Italics ours and emphasis deleted)

Despite the denomination of their agreement as one of sale, the circumstances tend to show that Neri agreed to sell the subject property to Thelma on the condition that title and ownership would pass or be transferred upon the full payment of the purchase price. This is the very nature of a contract to sell, which is a "bilateral contract whereby the prospective seller, while expressly reserving the ownership of the property despite delivery thereof to the prospective buyer, binds himself to sell the property exclusively to the prospective buyer upon fulfillment of the condition agreed upon, *i.e.*, the full payment of the purchase price."[38] As stated by

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[37] *Rollo*, pp. 50-51.

[38] *Ace Foods, Inc. v. Micro Pacific Technologies Co., Ltd.,* 723 Phil. 742, 751 (2013).

the Court, the agreement to execute a deed of sale upon full payment of the purchase price "shows that the vendors reserved title to the subject property until full payment of the purchase price."[39]

It was likewise established that Thelma was not able to pay the full purchase price, and that she was only able to pay ₱442,293.50 of the agreed selling price of ₱1,243,000.00. The RTC, in fact, made the following findings: (1) the consideration for Lot 398-A was ₱1,243,000.00; (2) Thelma issued a check on March 20, 1997 for said amount, payable to Neri; (3) the agreement was that the check would only be held by Neri for safekeeping as it was yet unsure if there was ample funds to cover the check; (4) the check was not covered by sufficient funds when presented for payment, so Thelma subsequently paid Neri in installments starting from March 20, 1997 to September 4, 1997; and (5) Neri acknowledged receipt from Thelma the total amount of ₱442,293.50.[40]

To bolster her claim, Thelma insists that she now holds title over the subject property after Neri allegedly delivered the subject lot to her right after the execution of the sale.[41] There is, however, nothing on record to support this claim aside from her bare assertions. There was no testimony or any proof on her part showing when and how she took possession of the property. At best, what is extant from the records is that Thelma paid taxes on the property for the years 2000 and 2001, which was three years after the alleged sale. "But tax declarations, by themselves, are not conclusive evidence of ownership of real property."[42] Aside from this, the tax receipts showed that the property was still declared in the name of Neri.[43]

Moreover, the alleged delivery of the property, even if true, is irrelevant considering that in a contract to sell, ownership is retained by the registered owner in spite of the partial payment of the purchase price and delivery of possession of the property. Thus, in *Roque*

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[39] *Diego v. Diego, et al.,* 704 Phil. 373, 384 (2013), citing *Reyes v. Tuparan,* 665 Phil. 425, 442 (2011).

[40] *Rollo*, pp. 91-92.

[41] *Id.* at 26.

[42] *Palali v. Awisan,* 626 Phil. 357, 373 (2010).

[43] Records, Civil Case No. 7644, pp. 8-11.

v. Aguado,[44] the Court ruled that since the petitioners have not paid the final installment of the purchase price, the condition which would have triggered the parties' obligation to enter into and thereby perfect a contract of sale cannot be deemed to have been fulfilled; consequently, they "**cannot validly claim ownership over the subject portion even if they had made an initial payment and even took possession of the same.**"[45]

Accordingly, the CA did not commit any reversible error in concluding that "the contract between Thelma and Neri was a mere contract to sell, the transfer of ownership over Lot 398-A being conditioned on Thelma's full payment of the purchase price. Having failed to pay the purchase price in full, Thelma cannot claim ownership over Lot 398-A and Neri is not legally proscribed from alienating the same lot to other buyers."[46]

Finally, while the CA correctly ruled that the agreement was a contract to sell, the Court, however, does not share its position that the subject property is a conjugal property, and as such, the absence of Violeta's consent should be held as among the factors which could have adversely affected the validity of the purported contract of sale between Neri and Thelma. This is due to the following reasons: ***first***, the subject property, Lot 398-A, is registered in the name of "*Neri delos Reyes, married to Violeta Lacuata,*" and so was its mother lot, Lot 398. In *Metropolitan Bank and Trust Company v. Tan,*[47] it was held that such form of registration is determinative of the property's nature as paraphernal. That the only import of the title is that Neri is the owner of the subject property, it being registered in his name alone, and that he is married to Violeta; and ***second***, the record is bereft of proof that said property was acquired during Neri and Violeta's marriage — such that, the presumption under Article 116 of the Family Code that properties acquired during the marriage are presumed to be conjugal cannot apply.

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[44] G.R. No. 193787, April 7, 2014, 720 SCRA 780.

[45] *Id.* at 792.

[46] *Rollo*, p. 77.

[47] 538 Phil. 873 (2006).

WHEREFORE, the petition is **DENIED** for lack of merit. Accordingly, the Decision dated May 26, 2011 and Resolution dated October 21, 2011 of the Court of Appeals in CA-G.R. CV No. 94867 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 204494. July 27, 2016]

JO-ANN DIAZ-SALGADO and husband DR. GERARD C. SALGADO, *petitioners, vs.* **LUIS G. ANSON,** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; MARRIAGE; A VALID MARRIAGE LICENSE IS A REQUISITE OF MARRIAGE UNDER THE CIVIL CODE, AND THE ABSENCE THEREOF, SAVE FOR MARRIAGES OF EXCEPTIONAL CHARACTER, RENDERS THE MARRIAGE VOID *AB INITIO*; MARRIAGES OF EXCEPTIONAL CHARACTER, ENUMERATED.— Since the marriage between Luis and Severina was solemnized prior to the effectivity of the Family Code, the applicable law to determine its validity is the Civil Code, the law in effect at the time of its celebration on December 28, 1966. A valid marriage license is a requisite of marriage under Article 53 of the Civil Code, and the absence thereof, save for marriages of exceptional character, renders the marriage void *ab initio* pursuant to Article 80(3). x x x "Under the Civil Code, marriages of exceptional character are covered by Chapter 2, Title III, comprising Articles 72 to 79. To wit, these marriages are: (1) marriages in *articulo mortis* or at the point of death during peace or war, (2) marriages in remote places, (3) consular marriages, (4) ratification of marital cohabitation, (5) religious

ratification of a civil marriage, (6) Mohammedan or pagan marriages, and (7) mixed marriages."

2. ID.; ID.; ID.; THE EXEMPTION OF PARTIES FROM COMPLYING WITH THE REQUIRED MARRIAGE LICENSE UNDER ART. 77 OF THE CIVIL CODE, EXPLAINED; CASE AT BAR.— The provision [Article 77 of the Civil Code] pertains to a religious ceremony performed with the purpose of ratifying a marriage which was solemnized civilly. In the eyes of the law, the marriage already exists; the subsequent ceremony is undertaken merely to conform to religious practices. Thus, the parties are exempted from complying with the required issuance of marriage license insofar as the subsequent religious ceremony is concerned. For this exemption to be applicable, it is *sine qua non* that: (1) the parties to the religious ceremony **must already be married to each other in accordance with law (civil marriage);** and (2) **the ratifying ceremony is purely religious in nature.** Applied to the present case however, it is clear that Luis and Severina were not married to each other prior to the civil ceremony officiated on December 28, 1966 — the only date of marriage appearing on the records. x x x Being that the ceremony held on December 28, 1966 was the only marriage ceremony between the parties and this was not solemnized pursuant to any ratifying religious rite, practice or regulation but a civil one officiated by the mayor, this marriage does not fall under the purview of Article 77 of the Civil Code. It is evident that the twin requirements of the provision, which are: *prior civil marriage between the parties* and *a ratifying religious ceremony*, were not complied with. There is no prior ceremony to ratify. Thus, this marriage is not of an exceptional character and a marriage license is required for Luis and Severina's marriage to be valid.

3. ID.; ID.; ID.; PROPERTY RELATIONS; WHEN A MAN AND A WOMAN LIVED TOGETHER AS HUSBAND AND WIFE, BUT THEIR MARRIAGE IS VOID FROM THE BEGINNING, THEIR PROPERTY REGIME SHALL BE GOVERNED BY THE RULES ON CO-OWNERSHIP.— As there is no showing that Luis and Severina were incapacitated to marry each other at the time of their cohabitation and considering that their marriage is void from the beginning for lack of a valid marriage license, Article 144 of the Civil Code, in relation to Article 147 of the Family Code, are the pertinent

provisions of law governing their property relations. Article 147 of the Family Code "applies to union of parties who are legally capacitated and not barred by any impediment to contract marriage, but whose marriage is nonetheless void for other reasons, like absence of a marriage license." "Under this property regime, property acquired by both spouses through their *work* and *industry* **shall be governed by the rules on *equal* co-ownership.** Any property acquired during the union is *prima facie* presumed to have been obtained through their joint efforts. A party who did not participate in the acquisition of the property shall still be considered as having contributed thereto jointly if said party's 'efforts consisted in the care and maintenance of the family household.'" Accordingly, the provisions on co-ownership under the Civil Code shall apply in the partition of the properties co-owned by Luis and Severina. It is stated under Article 1079 of the Civil Code that "partition, in general, is the separation, division and assignment of a thing held in common among those to whom it may belong. The thing itself may be divided, or its value." As to how partition may be validly done, Article 496 of the Civil Code is precise that "partition may be made **by agreement between the parties** or by judicial proceedings x x x ." The law does not impose a judicial approval for the agreement to be valid. Hence, even without the same, the partition was validly done by Luis and Severina through the execution of the Partition Agreement.

APPEARANCES OF COUNSEL

Valenton Gramata Loseriaga Law Offices for petitioners.
Francisco Paredes & Morales Law Offices for respondent.

D E C I S I O N

REYES, *J.*:

Before the Court is the petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2]

[1] *Rollo*, pp. 11-72.

[2] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Elihu A. Ybañez and Florito S. Macalino concurring; CA *rollo*, pp. 569-597.

dated August 6, 2012 and the Resolution[3] dated November 26, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 92989. The CA affirmed the Decision[4] dated July 23, 2007 of the Regional Trial Court (RTC) of Pasig City, Branch 155, in Civil Case No. 69611.

The Facts

On September 5, 2003, Luis Anson (Luis) filed a Complaint[5] docketed as Civil Case No. 69611 against Jo-Ann Diaz-Salgado (Jo-Ann) and Gerard Salgado (Gerard) (Spouses Salgado) along with Maria Luisa Anson-Maya (Maria Luisa) and Gaston Maya (Spouses Maya), seeking the annulment of the three Unilateral Deeds of Sale[6] dated January 23, 2002 and the Deed of Extra-Judicial Settlement of Estate of the Deceased Severina De Asis dated October 25, 2002.[7]

Luis alleged in his complaint that he is the surviving spouse of the late Severina de Asis-Anson (Severina). They were married in a civil ceremony on December 28, 1966. Prior to the celebration of their marriage, Severina gave birth to their daughter, Maria Luisa on December 30, 1965 while Jo-Ann is Severina's daughter from a previous relationship.[8]

During his marital union with Severina, they acquired several real properties located in San Juan, Metro Manila, covered by the following Transfer Certificate of Title/s (TCT/s):

1. TCT No. 20618/T-104 (now TCT No. 11105-R),
2. TCT No. 60069/T-301 (now TCT No. 11106-R),
3. TCT No. 5109/T-26 (now TCT No. 11107),
4. TCT No. 8478-R/T-43 (now TCT No. 11076-R),

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[3] *Id.* at 698-699.

[4] Rendered by Judge Luis R. Tongco; records, Volume IV, pp. 142-152.

[5] Records, Vol. I, pp. 3-14.

[6] *Id.* at 16, 18 and 20.

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

[8] *Id.* at 4.

5. TCT No. 44637/T-224-II (now TCT No. 11078-R), and
6. TCT No. 8003/T-41 (now TCT No. 11077-R).[9]

According to Luis, because there was no marriage settlement between him and Severina, the above-listed properties pertain to their conjugal partnership. But without his knowledge and consent, Severina executed three separate Unilateral Deeds of Sale on January 23, 2002 transferring the properties covered by TCT Nos. 20618, 60069 and 5109 in favor of Jo-Ann, who secured new certificates of title over the said properties.[10] When Severina died on September 21, 2002,[11] Maria Luisa executed a Deed of Extra-Judicial Settlement of Estate of Deceased Severina de Asis on October 25, 2002, adjudicating herself as Severina's sole heir. She secured new TCTs over the properties covered by TCT Nos. 8478-R, 44637 and 8003.[12]

Luis claimed that because of the preceding acts, he was divested of his lawful share in the conjugal properties and of his inheritance as a compulsory heir of Severina.[13]

In Jo-Ann's Answer with Compulsory Counterclaim,[14] which the trial court considered as the Answer of her husband, Gerard,[15] Jo-Ann countered that she was unaware of any marriage contracted by her mother with Luis. She knew however that Luis and Severina had a *common-law relationship* which they both acknowledged and formally terminated through a Partition Agreement[16] executed in November 1980. This was implemented through another Partition Agreement[17] executed in April 1981.

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[9] *Id.* at 5-8.

[10] *Id.* at 9.

[11] *Id.* at 272.

[12] *Id.* at 10.

[13] *Id.* at 11.

[14] *Id.* at 38-47.

[15] *See* RTC Order dated May 3, 2004; *id.* at 88.

[16] *Id.* at 112-114.

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

Thus, Luis had already received the properties apportioned to him by virtue of the said agreement while the properties subject of the Unilateral Deeds of Sale were acquired exclusively by Severina. The TCTs covering Severina's properties were under Severina's name only and she was described therein as single without reference to any husband.[18]

Meanwhile, the Spouses Maya corroborated the Spouses Salgado's stance in their Answer,[19] stating that Maria Luisa is also not aware that Luis and Severina were married. She is cognizant of the fact that Luis and Severina lived together as common-law husband and wife — a relationship which was terminated upon execution of a Partition Agreement. In the Partition Agreement, Luis and Severina were described as single and they acknowledged that they were living together as common-law spouses. They also mutually agreed to the partition of the properties they owned in common. Hence, Luis already received his share in the properties[20] and is estopped from denying the same.[21] After the termination of their cohabitation in 1980, Luis went to United States of America (USA), married one Teresita Anson and had a son with her; while Maria Luisa was left under the guardianship and custody of Severina.[22] It was after the death of Severina that Maria Luisa executed a Deed of Extra-Judicial Settlement of the Estate of the Deceased Severina de Asis on October 25, 2002. The Spouses Maya were also able to obtain a Certificate of No Record of Marriage[23] (between Luis and Severina) from the Office the Civil Registrar General of the National Statistics Office.[24]

Trial ensued thereafter. After Luis gave his testimony and presented documentary evidence which included a certified true

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[18] *Id.* at 40-41.
[19] *Id.* at 100-111.
[20] *Id.* at 102.
[21] *Id.* at 107.
[22] *Id.* at 103.
[23] *Id.* at 201.
[24] *Id.* at 104.

copy of his marriage contract with Severina,[25] the Spouses Salgado and Spouses Maya filed their respective Demurrers to Evidence.[26] The Spouses Salgado disputed the validity of Luis and Severina's marriage on the ground of lack of marriage license as borne out by the marriage contract. They further claimed that Luis himself disclosed on cross-examination that he did not procure a marriage license prior to the alleged marriage.[27] Luis had also admitted the existence, due execution and authenticity of the Partition Agreement.[28] The logical conclusion therefore is that the properties disposed in favor of Jo-Ann were owned by Severina as her own, separate and exclusive properties, which she had all the right to dispose of, without the conformity of Luis.[29]

On February 16, 2006, the trial court denied both demurrers, explaining that the sufficiency of evidence presented by Luis is evidentiary in nature and may only be controverted by evidence to the contrary.[30] The Spouses Salgado and Spouses Maya filed their separate motions for reconsideration,[31] which the trial court denied.[32] Consequently, both the Spouses Salgado and Spouses Maya filed their respective petitions for *certiorari* with the CA.[33] Meanwhile, the Spouses Salgado were deemed to have waived their presentation of evidence when they failed to attend the scheduled hearings before the trial court.[34]

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[25] *Id.* at 146-152.

[26] Records, Vol. II, pp. 20-38, 55-83.

[27] *Id.* at 23.

[28] *Id.* at 31.

[29] *Id.* at 34.

[30] *Id.* at 356.

[31] *Id.* at 357-369, 371-392.

[32] *Id.* at 433.

[33] Records, Vol. III, pp. 1-32, 169-220.

[34] See RTC Order dated April 23, 2007; records, Vol. IV, p. 44.

Resolving the petition for *certiorari* on the demurrer to evidence filed by the Spouses Salgado, the CA Second Division directed the trial court "to properly resolve with deliberate dispatch the demurrer to evidence in accordance with Section 3, Rule 16 of the 1997 Rules of Civil Procedure by stating clearly and distinctly the reason therefor on the basis of [the Spouses Salgado's] proffered evidence[,]"[35] whereas the CA Ninth Division dismissed the petition of the Spouses Maya and ordered the trial court to decide the case with deliberate dispatch.[36]

In an Order[37] dated July 16, 2007, the RTC, in compliance with the order of the CA to resolve the demurrer to evidence in more specific terms, denied the twin demurrers to evidence for lack of merit and held that the totality of evidence presented by Luis has sufficiently established his right to obtain the reliefs prayed for in his complaint.

Ruling of the RTC

On July 23, 2007, the RTC rendered its Decision[38] in favor of Luis, holding that the marriage between Luis and Severina was valid. It noted that the marriage contract, being a public document, enjoys the presumption of regularity in its execution and is conclusive as to the fact of marriage.[39] The trial court also based its ruling in *Geronimo v. CA*[40] where the validity of marriage was upheld despite the absence of the marriage license number on the marriage contract.[41] The trial court thus declared that the properties covered by the Unilateral Deeds of Sale were considered conjugal which cannot be disposed of by Severina without the consent of her husband, Luis.[42]

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[35] See CA Decision dated April 30, 2007; *id.* at 53.

[36] See CA Decision dated May 16, 2007; *id.* at 64.

[37] Issued by Judge Luis R. Tongco; *id.* at 140-141.

[38] *Id.* at 142-152.

[39] *Id.* at 150.

[40] G.R. No. 105540, July 5, 1993, 224 SCRA 494.

[41] Records, Vol. IV, p. 150.

[42] *Id.* at 151-152.

The dispositive portion of the decision reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of [Luis] and against [the Spouses Salgado] ordering as follows:
>
> 1. ANNULMENT, VOIDING, SETTING ASIDE and DECLARING OF NO FORCE AND EFFECT of the three (3) Unilateral Deeds of Sale, all dated January 23, 2002 executed by [Severina] in favor of [Jo-Ann];
>
> 2. ANNULMENT, VOIDING, SETTING ASIDE and DECLARING OF NO FORCE AND EFFECT of the three (3) [TCT] Nos. 11107-R, 11105-R and 11106-R covering the subject properties, all issued in the name of [Jo-Ann] by the Registry of Deeds for San Juan, Metro Manila;
>
> 3. RESTITUTION of all properties covered by TCT Nos. 11107-R, 11105-R and 11106-R (formerly TCT Nos. 5109, 20618 and 60069, respectively) to the conjugal community of properties between [Luis] and [Severina].
>
> No pronouncement as to costs.
>
> SO ORDERED.[43]

On November 17, 2008, the RTC rendered another Decision[44] which ordered the "ANNULMENT, VOIDING, SETTING ASIDE and DECLARING OF NO FORCE AND EFFECT the Deed of Extra-Judicial Settlement of Estate of the Deceased Severina De Asis executed by [Maria Luisa] dated October 25, 2002 x x x."[45] The RTC also ordered the cancellation of new TCTs issued by virtue of the said Deeds.[46]

The Spouses Salgado and the Spouses Maya filed their respective motions for reconsideration on September 11, 2007[47]

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[43] *Id.* at 152.

[44] *Id.* at 313-325.

[45] *Id.* at 325.

[46] *Id.*

[47] *Id.* at 167-188.

and August 28, 2007,[48] respectively, which the RTC denied in the Omnibus Order[49] dated October 30, 2007 for lack of merit. This prompted the Spouses Salgado and Spouses Maya to file their separate notices of appeal before the CA on December 13, 2007[50] and April 24, 2009,[51] respectively.

Ruling of the CA

The Spouses Maya and Luis thereafter entered into a Compromise Agreement[52] which was approved by the CA in its Decision[53] dated October 26, 2011. This resulted in the termination of the Spouses Maya's appeal.[54]

On August 6, 2012, the CA rendered a Decision,[55] dismissing the appeal of the Spouses Salgado. The *fallo* reads as follows:

> ***WHEREFORE***, the appeal interposed by [the Spouses Salgado] is ***DISMISSED***. The Decision dated July 23, 2007 of the [RTC] of Pasig is ***AFFIRMED IN TOTO.***
>
> ***SO ORDERED.***[56]

The CA sustained the ruling of the RTC for the simple reason that the Spouses Salgado did not present and formally offer any testimonial and documentary evidence to controvert the evidence presented by Luis.[57] The CA further explained that "the best evidence to establish the absence of a marriage license is a certification from the Local Civil Registrar that the parties

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[48] *Id.* at 154-164.

[49] *Id.* at 216-217.

[50] *Id.* at 228-229.

[51] *Id.* at 360-361.

[52] CA *rollo*, pp. 517-522.

[53] *Id.* at 524-533.

[54] See CA Decision dated August 6, 2012; *id.* at 583.

[55] *Id.* at 569-597.

[56] *Id.* at 596.

[57] *Id.* at 585.

to the Marriage Contract did not secure a marriage license or at the very least a certification from the said office that despite diligent search, no record of application for or a marriage license was issued on or before December 28, 1966 in favor of Luis and Severina. Again, Spouses Salgado failed to prove the same by their failure to secure the said certification and present evidence during the trial."[58]

The Spouses Salgado and Spouses Maya filed a motion for reconsideration[59] which the CA denied through its Resolution[60] dated November 26, 2012.

The Spouses Salgado elevated the matter before the Court raising the core issue of whether the CA committed reversible error in affirming the RTC decision which declared the marriage between Luis and Severina valid and the subject lands as conjugal properties.

Ruling of the Court

The Spouses Salgado argue that the marriage between Luis and Severina is null and void for want of marriage license based on the Marriage Contract[61] presented by Luis which has adequately established its absence.[62]

Luis, in his Comment,[63] opposes the filing of the present petition on the ground that it raises a question of fact, which cannot be raised in a petition for review on *certiorari*. He also countered that the Spouses Salgado did not present any evidence to support their theory.[64] If the existence of the marriage license is in issue, it is incumbent upon the Spouses Salgado to show the lack of marriage license by clear and convincing evidence.[65]

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[58] *Id.* at 592-593.
[59] *Id.* at 607-650.
[60] *Id.* at 698-699.
[61] *Rollo*, p. 159.
[62] *Id.* at 36.
[63] *Id.* at 596-603.
[64] *Id.* at 598.
[65] *Id.* at 600.

Before proceeding to the substantive issues brought in this petition, the Court shall first tackle the procedural issue raised by Luis which pertains to the propriety of the filing of this petition for review on *certiorari*.

Contrary to Luis' contention, the present petition raises a question of law, mainly, whether the absence of a marriage license may be proven on the basis of a marriage contract which states that no marriage license was exhibited to the solemnizing officer on account of the marriage being of an exceptional character.

In any event, while the jurisdiction of the Court in cases brought before it from the appellate court is, as a general rule, limited to reviewing errors of law, there are exceptions[66] recognized by the Court, such as when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[67]

Since the marriage between Luis and Severina was solemnized prior to the effectivity of the Family Code, the applicable law

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[66] (1) When the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 213 (2005), citing *The Insular Life Assurance Company, Ltd. v. CA*, G.R. No. 126850, April 28, 2004, 401 SCRA 79, 86.

[67] *Superlines Transportation Co., Inc. v. Philippine National Construction Company*, 548 Phil. 354, 362 (2007).

to determine its validity is the Civil Code, the law in effect at the time of its celebration[68] on December 28, 1966.

A valid marriage license is a requisite of marriage under Article 53[69] of the Civil Code, and the absence thereof, save for marriages of exceptional character,[70] renders the marriage void *ab initio* pursuant to Article 80(3). It sets forth:

> Art. 80. The following marriages shall be void from the beginning:
>
> xxx xxx xxx
>
> **(3) Those solemnized without a marriage license, save marriages of exceptional character;**
>
> xxx xxx xxx. (Emphasis ours)

"Under the Civil Code, marriages of exceptional character are covered by Chapter 2, Title III, comprising Articles 72 to 79. To wit, these marriages are: (1) marriages in *articulo mortis* or at the point of death during peace or war, (2) marriages in remote places, (3) consular marriages, (4) ratification of marital cohabitation, (5) religious ratification of a civil marriage, (6) Mohammedan or pagan marriages, and (7) mixed marriages."[71] To reiterate, in any of the aforementioned marriages of exceptional character, the requirement of a valid marriage license is dispensed with.

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[68] *Niñal v. Bayadog,* 394 Phil. 661, 667 (2000).

[69] Art. 53. No marriage shall be solemnized unless all these requisites are complied with:

(1) Legal capacity of the contracting parties;

(2) Their consent, freely given;

(3) Authority of the person performing the marriage; and

(4) A marriage license, except in a marriage of exceptional character.

[70] Art. 58. Save marriages of an exceptional character authorized in Chapter 2 of this Title, but not those under Article 75, no marriage shall be solemnized without a license first being issued by the local civil registrar of the municipality where either contracting party habitually resides.

[71] *Republic of the Philippines v. Dayot*, 573 Phil. 553, 569 (2008).

The marriage is not of an exceptional character

A cursory examination of the marriage contract of Luis and Severina reveals that no marriage license number was indicated therein. It also appears therein that no marriage license was exhibited to the solemnizing officer with Article 77 of Republic Act No. 386 (Civil Code) being cited as the reason therefor. The pertinent portion of the marriage contract is quoted as follows:

> [A]nd I further certify that Marriage License No. x x x issued at x x x on x x x, 19 x x x in favor of, said parties, was exhibited to me or no marriage license was exhibited to me, this marriage being of an exceptional character performed under Art. **77** of Rep. Act 386; x x x.[72]

The reference to Article 77 of the Civil Code in the marriage contract is not dismissible. Being a public document, the marriage contract is not only a *prima facie* proof of marriage, but is also a *prima facie* evidence of the facts stated therein. This is pursuant to Section 44, Rule 130 of the 1997 Rules of Court, which reads:

> Sec. 44. *Entries in official records*. — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

Consequently, the entries made in Luis and Severina's marriage contract are *prima facie* proof that at the time of their marriage, no marriage license was exhibited to the solemnizing officer for the reason that their marriage is of an exceptional character under Article 77 of the Civil Code.

Article 77 of the Civil Code provides:

> Art. 77. In case two persons married in accordance with law desire to ratify their union in conformity with the regulations, rites, or practices of any church, sect, or religion, it shall no longer be necessary to

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[72] *Rollo*, p. 159.

comply with the requirements of Chapter 1 of this Title and any ratification made shall merely be considered as a purely religious ceremony.

The foregoing provision pertains to a religious ceremony performed with the purpose of ratifying a marriage which was solemnized civilly. In the eyes of the law, the marriage already exists; the subsequent ceremony is undertaken merely to conform to religious practices. Thus, the parties are exempted from complying with the required issuance of marriage license insofar as the subsequent religious ceremony is concerned. For this exemption to be applicable, it is *sine qua non* that: (1) the parties to the religious ceremony **must already be married to each other in accordance with law (civil marriage);** and (2) **the ratifying ceremony is purely religious in nature.**

Applied to the present case however, it is clear that Luis and Severina were not married to each other prior to the civil ceremony officiated on December 28, 1966 — the only date of marriage appearing on the records. This was also consistently affirmed by Luis in open court:

Atty. Francisco:

Q- You testified that you have a Marriage Contract marked as Exhibit A certifying that you were married to the late [Severina].
A- Yes, sir.

Q- Do you recall when this marriage took place?
A- As far as I can recall **it was sometime two (2) days before my daughter get (sic) one (1) year old. That was 1966 December something like 28,** because she was born December 30, the death of Jose Rizal. I can remember 1965. **So, before she turned one (1) year old two (2) days before we got married here in San Juan.**

Q- So, when was she born if you can recall?
A- Maria Luisa was born on December 30, 1965.

Q- If it is two (2) days before, it should be 1966?
A- Yes, sir.

Q- If you can recall who solemnized the marriage?
A- It was the late Mayor Ebona of San Juan.[73]

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[Atty. Valenton:] x x x You alleged during your direct examination that you were married to [Severina]?
A: Yes sir.

Q: When do you say you marr[ied] her?
A: Two (2) days before our daughter turned one year old, so that is December 28, 1966.[74] (Emphasis ours)

Being that the ceremony held on December 28, 1966 was the only marriage ceremony between the parties and this was not solemnized pursuant to any ratifying religious rite, practice or regulation but a civil one officiated by the mayor, this marriage does not fall under the purview of Article 77 of the Civil Code. It is evident that the twin requirements of the provision, which are: *prior civil marriage between the parties* and *a ratifying religious ceremony,* were not complied with. There is no prior ceremony to ratify. Thus, this marriage is not of an exceptional character and a marriage license is required for Luis and Severina's marriage to be valid.

Absence of marriage license

The next issue to be resolved is: who has the burden of proving the existence or non-existence of the marriage license?

Since there was an unequivocal declaration on the marriage contract itself that no marriage license was exhibited to the solemnizing officer at the time of marriage owing to Article 77 of the Civil Code, when in truth, the said exception does not obtain in their case, it is the burden of Luis to prove that they secured the required marriage license.

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[73] TSN, June 6, 2005, pp. 15-16.

[74] TSN, June 7, 2005, p. 30.

However, instead of proving that a marriage license was indeed issued to them at the time of their marriage, Luis relied mainly on the presumption of validity of marriage. This presumption does not hold water *vis-à-vis* a *prima facie* evidence (marriage contract), which on its face has established that no marriage license was presented to the solemnizing officer. If there was a marriage license issued to Luis and Severina, its absence on the marriage contract was not explained at all. Neither the original nor a copy of the marriage license was presented. No other witness also testified to prove its existence, whereas Luis is not the best witness to testify regarding its issuance. He admitted that he did not apply for one, and is uncertain about the documents they purportedly submitted in the Municipal Hall. As he revealed in his testimony:

ATTY. VALENTON:

Q- How did you prepare for the alleged wedding that took place between you and [Severina]?

ATTY. FRANCISCO: May I know the materiality, Your Honor?

ATTY. VALENTON: We are exploring as to whether there was really a wedding that took place, Your Honor.

COURT: Answer.

What preparations were done?

A- **There was no preparation because we were just visitors of the Mayor during that time and the Mayor is a close friend of ours. So, when he knew that we are traveling, we are going to Thailand with the invitation of a friend to work with him in Thailand, he told us you better get married first before you travel because your daughter will be illegitimate.**[75]

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[75] TSN, June 14, 2005, pp. 15-16.

ATTY. VALENTON:

Q- Do you remember having applied for a marriage license?
A- We did not.

Q- So, you are telling us that there is no marriage license?
A- No.

CLARIFICATORY QUESTIONS
BY THE COURT TO THE WITNESS

[Q-] There was no marriage license?
A- Well, when you get married you have to get a marriage license.

COURT:

Not necessarily.

A- But, I don't know whether there was an application for the license because it was at the house of the Mayor.

COURT:

But in this particular case before you went to the house of the Mayor for the solemnization of your marriage, did you apply for a marriage license?
A- No.[76]

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RE-DIRECT EXAMINATION OF [LUIS]:

Q- **Mr. Anson, a while ago during your cross-examination you were asked by counsel as well as a question was raised by the Honorable Court whether or not you applied for a marriage license when you got married on December 28, 1966 allegedly with [Severina]. Can you tell the Court what you meant by that?**

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[76] *Id.* at 17-18.

COURT:

By what?

ATTY. FRANCISCO:

When he was asked, Your Honor, by the Honorable Court.

COURT:

Whether he applied?

ATTY. FRANCISCO:

Whether he applied for a marriage license prior to the solemnization of the marriage, you answered no.

WITNESS:

I did not apply for such, all what I know is to sign something affidavit or application before we went to the house of the Mayor to get marry (*sic*) but that was about — I cannot recall if that past (sic) a week or 2 days or 3 days ago.

ATTY. FRANCISCO:

Q- You mentioned, we signed an affidavit or application, when you used we, whom are you referring to?
A- [Severina].

Q- And, yourself?
A- Yes.

Q- **In your recollection, where did you file those affidavits with [Severina] before the solemnization of the marriage?**
A- It was in the Municipal Hall. I do not know whether that was the Registrar, Office of the [M]ayor or Office of the Chief of Police. I cannot recall. It is inside the Munisipyo of San Juan.

Q- Who made you sign that Affidavit?
A- The Chief of Police whom we get (sic) to be (sic) witness for our marriage. They let us signed (sic) an application or affidavit. I cannot recall what it is.[77] (Emphasis ours)

In upholding the supposed validity of the marriage, the RTC and the CA failed to consider the glaring statements in the marriage contract that no marriage license was exhibited to the solemnizing officer and that the marriage is of an exceptional character under Article 77 of the Civil Code, the latter statement being fallacious. Both the RTC and CA upheld the fact of marriage based on the marriage contract but simply glossed over the part stating that the marriage is of an exceptional character. It is inevitable to deduce that this is not a case of mere non-recording of the marriage license number on the marriage contract, as was in *Geronimo*.[78]

The factual antecedents in *Geronimo* are not on all fours with the case under review, hence, inapplicable. In *Geronimo*, despite the absence of the marriage license number on the marriage contract presented by therein petitioner (brother of the deceased), there was no statement therein that the marriage is of an exceptional character. Various witnesses also testified that the deceased and her husband were indeed married. More importantly, the husband of the deceased was able to produce a copy of the marriage contract on file with the National Archives and Records Section where the marriage license number appears.

"[T]o be considered void on the ground of absence of a marriage license, **the law requires that the absence of such marriage license must be apparent on the marriage contract,** or at the very least, supported by a certification from the local civil registrar that no such marriage license was issued to the parties."[79] Considering that the absence of the marriage license

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[77] *Id.* at 46-48.

[78] *Supra* note 40, at 500.

[79] *Alcantara v. Alcantara*, 558 Phil. 192, 203-204 (2007). (Emphasis ours)

is apparent on the marriage contract itself, with a false statement therein that the marriage is of an exceptional character, and no proof to the contrary was presented, there is no other plausible conclusion other than that the marriage between Luis and Severina was celebrated without a valid marriage license and is thus, void *ab initio*.

In *Republic of the Philippines v. Dayot*,[80] the Court similarly declared that a marriage solemnized without a marriage license based on a fabricated claim of exceptional character, is void. In lieu of a marriage license, therein parties to the marriage executed a false affidavit of marital cohabitation. In declaring the marriage void, the Court rejected the notion that all the formal and essential requisites of marriage were complied with. The Court held that to permit a false affidavit to take the place of a marriage license is to allow an abject circumvention of the law. It was further explained:

> We cannot accept the insistence of the Republic that the falsity of the statements in the parties' affidavit will not affect the validity of marriage, since all the essential and formal requisites were complied with. The argument deserves scant merit. Patently, it cannot be denied that the marriage between Jose and Felisa was celebrated without the formal requisite of a marriage license. Neither did Jose and Felisa meet the explicit legal requirement in Article 76, that they should have lived together as husband and wife for at least five years, so as to be excepted from the requirement of a marriage license.
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> xxx xxx xxx
>
> Similarly, we are not impressed by the ratiocination of the Republic that as a marriage under a license is not invalidated by the fact that the license was wrongfully obtained, so must a marriage not be invalidated by a fabricated statement that the parties have cohabited for at least five years as required by law. The contrast is flagrant. The former is with reference to an irregularity of the marriage license, and not to the absence of one. Here, there is no marriage license at all. Furthermore, the falsity of the allegation in the sworn affidavit relating to the period of Jose and Felisa's cohabitation, which would

[80] 573 Phil. 553 (2008).

have qualified their marriage as an exception to the requirement for a marriage license, cannot be a mere irregularity, for it refers to a quintessential fact that the law precisely required to be deposed and attested to by the parties under oath. If the essential matter in the sworn affidavit is a lie, then it is but a mere scrap of paper, without force and effect. Hence, it is as if there was no affidavit at all.[81]

The Court cannot turn a blind eye to the statements made in the marriage contract because these refer to the absence of a formal requisite of marriage. "The parties should not be afforded any excuse to not comply with every single requirement and later use the same missing element as a pre-conceived escape ground to nullify their marriage. There should be no exemption from securing a marriage license unless the circumstances clearly fall within the ambit of the exception."[82] "The requirement and issuance of marriage license is the State's demonstration of its involvement and participation in every marriage, in the maintenance of which the general public is interested. This interest proceeds from the constitutional mandate that the State recognizes the sanctity of family life and of affording protection to the family as a basic 'autonomous social institution.'"[83]

Partition Agreement is Valid

Relative to the properties they amassed during the period of their cohabitation, Luis and Severina executed a notarized Partition Agreement[84] in November 1980, which divided their properties between them without court intervention. Luis sought to annul such agreement on the ground that "the separation of property is not effected by the mere execution of the contract or agreement of the parties, but by the decree of the court approving the same. It, therefore, becomes effective only upon judicial approval, without which it is void."[85]

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[81] *Id.* at 573-575.

[82] *Niñal v. Bayadog*, *supra* note 68, at 670.

[83] *Id.* at 667-668.

[84] Records, Vol. I, pp. 112-114.

[85] See Consolidated Appellee's Brief; *id.* at 519.

The Court does not subscribe to Luis' posture.

In *Valdes v. RTC, Branch 102, Quezon City*,[86] the Court held that "[i]n a *void marriage*, regardless of the cause thereof, the property relations of the parties during the period of cohabitation is governed by the provisions of Article 147 or Article 148, such as the case may be, of the Family Code. Article 147 is a remake of Article 144 of the Civil Code x x x ."[87] It provides:

Art. 147. When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts *inter vivos* of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation.[88] (Emphasis ours)

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[86] 328 Phil. 1289 (1996).

[87] *Id.* at 1295. (Italics in the original)

[88] *Id.* at 1295-1296.

As there is no showing that Luis and Severina were incapacitated to marry each other at the time of their cohabitation and considering that their marriage is void from the beginning for lack of a valid marriage license, Article 144 of the Civil Code,[89] in relation to Article 147 of the Family Code, are the pertinent provisions of law governing their property relations. Article 147 of the Family Code "applies to union of parties who are legally capacitated and not barred by any impediment to contract marriage, but whose marriage is nonetheless void for other reasons, like absence of a marriage license."[90] "Under this property regime, property acquired by both spouses through their *work* and *industry* **shall be governed by the rules on *equal* co-ownership.** Any property acquired during the union is *prima facie* presumed to have been obtained through their joint efforts. A party who did not participate in the acquisition of the property shall still be considered as having contributed thereto jointly if said party's 'efforts consisted in the care and maintenance of the family household.'"[91]

Accordingly, the provisions on co-ownership under the Civil Code shall apply in the partition of the properties co-owned by Luis and Severina. It is stated under Article 1079 of the Civil Code that "partition, in general, is the separation, division and assignment of a thing held in common among those to whom it may belong. The thing itself may be divided, or its value." As to how partition may be validly done, Article 496 of the Civil Code is precise that "partition may be made **by agreement between the parties** or by judicial proceedings x x x." The law does not impose a judicial approval for the agreement to be valid. Hence, even without the same, the partition was validly done by Luis and Severina through the execution of the Partition Agreement.

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[89] Art. 144. When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership.

[90] *Nicdao Cariño v. Yee Cariño*, 403 Phil. 861, 872 (2001).

[91] *Valdez v. RTC, Branch 102, Quezon City, supra* note 86, at 1297. (Emphasis ours and italics in the original)

Moreover, Luis admitted the existence, due execution and authenticity of the Partition Agreement.[92] It also remains uncontroverted that he already received his share as stipulated in the Partition Agreement. As such, the Court finds no reason to have the said agreement declared null and void or annulled, in the absence of any circumstance which renders such contract invalid or at least, voidable.

All things considered, the Court holds that although a certification of no record of marriage license or certification of "due search and inability to find" a record or entry issued by the local civil registrar is adequate to prove the non-issuance of the license,[93] such certification is not the *only* proof that could validate the absence of a marriage license.

In this case, the categorical statement on Luis and Severina's marriage contract that no marriage license was exhibited to the solemnizing officer, coupled with a contrived averment therein that the marriage is of an exceptional character under Article 77 of the Civil Code, are circumstances which cannot be disregarded. Incidentally, it may be well to note that Luis' failure to assert his marriage to Severina during the latter's lifetime is suspect. Luis left for the USA in 1981, and until Severina's death in 2002, he never saw, much less reconciled with her.[94] All those years, he never presented himself to be the husband of Severina. Not even their daughter, Maria Luisa, knew of the marriage. During trial, he never presented any other witness to the marriage. He contends that his marriage to Severina was valid and subsisting, yet he knowingly contracted a subsequent marriage abroad. Verily, Luis failed to prove the validity of their marriage based on the evidence he himself had presented.

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[92] TSN, June 17, 2005, pp. 30, 36.

[93] *Abbas v. Abbas*, 702 Phil. 578, 593 (2013); *Nicdao Cariño v. Yee Cariño*, *supra* note 90, at 869; *Republic v. Court of Appeals*, G.R. No. 103047, September 2, 1994, 236 SCRA 257, 262.

[94] *Rollo*, p. 502.

"The solemnization of a marriage without prior license is a clear violation of the law and would lead or could be used, at least, for the perpetration of fraud against innocent and unwary parties, which was one of the evils that the law sought to prevent by making a prior license a prerequisite for a valid marriage. The protection of marriage as a sacred institution requires not not the defense of a true and genuine union but the exposure of an invalid one as well."[95]

WHEREFORE, ther petition is **GRANTED**. The Decision dated August 6, 2012 and the Resolution dated November 26, 2012 of the Court of Appeals in CA-G.R. CV No. 92989 are hereby **REVERSED** and **SET ASIDE.** The Complaint filed in Civil Case No. 69611 is **DISMISSED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 204873. July 27, 2016]

ESTHER PASCUAL, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ESTAFA; ELEMENTS, ESTABLISHED; CASE AT BAR.— The State was able to satisfactorily establish the elements of estafa, to wit: "(1) that the accused defrauded another by abuse of

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[95] *Republic of the Philippines v. Dayot, supra* note 80, at 574.

confidence or by means of deceit, and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person." Here, Pascual defrauded Tiongco by pretending that she had "connections" or "contacts" within the BIR to whom she could allegedly directly pay the capital gains tax at a reduced amount and also with whose help and assistance the transfer certificate of title to the property purchased could be expedited. In fact, in their first meeting, Pascual impressed upon Tiongco that she is a person of some power and influence because she was an employee of the Las Piñas City Assessor's Office and thus had "connections" or "contacts" within the BIR and the City Registry of Deeds.

2. ID.; ID.; FALSIFICATION OF PUBLIC DOCUMENT; ELEMENTS.— [T]he State was also able to establish the following elements of the crime of Falsification of Public Document: "(1) that the offender is a public officer, employee, or notary public; (2) that he takes advantage of his official position; (3) that he falsifies a document by causing it to appear that persons have participated in any act or proceeding; (4) [and] that such person or persons did not in fact so participate in the proceeding."

3. ID.; ID.; ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENT; BEING A COMPLEX CRIME, THE PENALTY FOR THE MORE SERIOUS CRIME SHALL BE IMPOSED IN ITS MAXIMUM PERIOD.— The crime committed was estafa through falsification of public document. Being a complex crime, the penalty for the more serious crime shall be imposed in its maximum period. Falsification under Article 171 of the RPC has a corresponding penalty of *prision mayor* and a fine not to exceed ₱5,000.00. On the other hand, "[t]the amount of damages is the basis of the penalty for estafa." Specifically, Article 315 of the RPC provides the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of fraud is over [₱12,000.00] but does not exceed [₱22,000.00]; and if [the amount defrauded exceeds ₱22,000.00], the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional [₱10,000.00], but the total penalty which may be imposed shall not exceed twenty years x x x [and] shall be termed *prision mayor* or *reclusion temporal*, as the case may be. In this case, the amount defrauded was ₱130,000.00.

As such, the prescribed penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period shall be imposed in its maximum period which has a range of six (6) years, eight (8) months and twenty one (21) days to eight (8) years, adding one (1) year for each additional ₱10,000.00. Thus, the maximum term of the imposable penalty is from sixteen (16) years, eight (8) months and twenty one (21) days to eighteen (18) years of *reclusion temporal*. Thus, as compared to the crime of falsification under Article 171 which carries a penalty of *prision mayor*, the offense of estafa is the more serious crime. Applying the Indeterminate Sentence Law, the penalty next lower in degree to that prescribed for the crime of estafa is *prision correccional* in its minimum and medium periods which ranges from six (6) months and one (1) day to four (4) years and two (2) months. In fine, the proper indeterminate penalty to be imposed should be four (4) years and two (2) months of *prision correccional*, as minimum to eighteen (18) years of *reclusion temporal*, as maximum.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to reverse and set aside the April 13, 2012 Decision[1] and the October 18, 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 32138, which affirmed the July 25, 2008 Decision[3] of the Regional Trial Court (RTC)

[1] CA *rollo,* pp. 107-115; penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Vicente S.E. Veloso and Myra V. Garcia-Fernandez.

[2] *Id*. at 145-146.

[3] Records, pp. 822-828; penned by Presiding Judge Lorna Navarro-Domingo.

of Las Piñas City, Branch 201, in Criminal Case No. 04-1039, finding petitioner Esther Pascual (Pascual) guilty beyond reasonable doubt of the complex crime of Estafa through Falsification of Public Document.

Proceedings before the Regional Trial Court

Pascual and Remegio Montero (Montero) were indicted for the crime of Estafa through Falsification of Public Document for colluding and making it appear that they had facilitated the payment of the capital gains tax of private complainant Ernesto Y. Wee to the Bureau of Internal Revenue (BIR) when, in truth and in fact, they converted and misappropriated the money for their own personal benefit. The charge against these two stemmed from the following Information filed by the Office of the Ombudsman:

> That on or about June 26, 2003 in Las Piñas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused ESTHER PASCUAL a low ranking public officer, being an employee of the City Assessor's Office, Las Piñas City, while in the performance of her official function, committing the offense in relation to her office, and taking advantage of her official position, conspiring and confederating with one REMEGIO MONTERO, a private citizen and helping each other, did then and there willfully, unlawfully and feloniously defraud one ERNESTO Y. WEE thru LEONOR A. TIONGCO in the following manner, to wit: the said accused received from said ERNESTO Y. WEE thru LEONOR A. TIONGCO the amount of ₱130,000.00 for the purpose of paying the Capital Gains Tax on a real estate property which complainant bought in Las Piñas City, with the Bureau of Internal Revenue (BIR), forge and falsify or cause to be forged and falsified BIR Official Receipt No. 2145148, in the amount of ₱102,810.00 as payment of Capital Gains Tax of said ERNESTO Y. WEE by making it appear that they paid said amount of ₱102,810.00 with the BIR, when in truth and in fact, accused fully well knew that there was no payment made with the BIR and did then and there willfully, unlawfully and criminally take, convert and misappropriate for their own personal use and benefit the aforesaid amount of ₱130,000.00, Philippine Currency, to the damage and prejudice of said ERNESTO Y. WEE in the aforesaid sum.

CONTRARY TO LAW.[4]

Montero was arraigned on April 11, 2005, but was later acquitted of the crime charged for insufficiency of evidence in a Decision rendered on March 31, 2008. On the other hand, Pascual was arraigned on January 10, 2007; she entered a negative plea to the crime charged.

During the trial, the State presented the following witnesses: private complainant Ernesto Y. Wee (Wee), Leonor A. Tiongco (Tiongco), Wee's secretary, and Ma. Nimfa Peñalosa De Villa (De Villa), the Assistant Revenue District Officer of the BIR at Las Piñas City. Their collective testimonies tended to establish these facts:

Sometime in 2003, Wee and his wife Susana Wee purchased a real property in Las Piñas City. Since Wee was based in Bacolod City, he directed his secretary, Tiongco, to go to Manila to process the transfer of title to the said property and to pay the capital gains tax thereon. On June 27, 2003, Tiongco informed Wee that she had paid the capital gains tax through Pascual, an employee at the City Assessor's Office of Las Piñas City, who was referred to her by Montero, a part-time businessman from Bacolod City and an acquaintance of Wee.

According to Tiongco, Montero told her to prepare ₱130,000.00 as payment for the capital gains tax. Thereafter, she met Pascual and Montero at SM Megamall, along EDSA. Pascual personally offered to facilitate the payment through her alleged "connections" or "contacts" at the BIR office. Tiongco asked if she could meet Pascual's "connection" or "contact" at the BIR, but Pascual replied in the negative. Upon Pascual's and Montero's insistence, Tiongco issued a check for the said amount, in Montero's name, and Montero encashed the check at the Robinson's Savings Bank, Ortigas Branch. Montero then gave the money back to Tiongco for "safekeeping." After this, Tiongco, Pascual, and Montero went to the BIR office located inside the Metropolis Mall in Las Piñas City. When

[4] *Id*. at 1.

they got there, Pascual then asked for the money so she could "facilitate payment of the taxes." At first, Tiongco was apprehensive about giving the money to Pascual, so she asked Pascual if she could meet the person, *i.e.*, Pascual's alleged "contact" or "connection" inside the BIR office. But Pascual replied that "the person would not face me at the time," and added that she was just accommodating her (Tiongco), and that if Tiongco wanted to pay less tax, then she had better trust her and just give her the money. Because Pascual was insisting on getting possession of the money, saying that she even had to go on leave from work for two days just to accommodate her (Tiongco); and because Montero also told her (Tiongco) that she (Tiongco) might as well make use of the opportunity to conclude the business for that day since that was her purpose in being there after all, Tiongco gave the ₱130,000.00 to Pascual and made her sign a voucher dated June 26, 2003.

Pascual and a lady companion then went inside the BIR office with the money, and after some time Pascual came out with a photocopy of BIR Receipt No. 2145148. Pascual told Tiongco that the original of this BIR receipt was left inside her "contact" at the BIR. Pascual then hastened to assure Tiongco that the certificate of title to Wees' property would be issued in three months' time. But the three months came and went, and despite repeated demands, Pascual still did not deliver on her promise. Worse, the Wee spouses discovered that the photocopy of BIR Receipt No. 2145148 was fake.

The other State witness, Las Piñas City Assistant Revenue District Officer De Villa, testified that her office did not have BIR Receipt No. 2145148 in its possession, nor did her office ever issue one such receipt to Pascual. She affirmed that the photocopy of the receipt in question is in fact a fake BIR receipt.

Pascual waived her right to present countervailing evidence in her defense.

Ruling of the Regional Trial Court

On July 25, 2008, the RTC of Las Piñas City, Branch 201, rendered judgment finding Pascual guilty beyond reasonable

doubt of the crime of Estafa through Falsification of Public Document. The dispositive part of the RTC's Decision reads:

> WHEREFORE, premises considered, the Court hereby finds the accused Esther Pascual GUILTY beyond reasonable [doubt] of the complex crime of Estafa [through] Falsification of a Public Document and pursuant to the provisions of Article 315 and Article 171 of the Revised Penal Code, she is sentenced to suffer the penalty of Prision Mayor. Applying the Indeterminate Sentence Law, the accused is sentenced to a prison term of Three (3) years of Prision [C]orrec[c]ional to Eight (8) years of Prision Mayor and a fine of ₱5,000.00.
>
> By way of civil liability, the accused is ordered to pay the offended party the sum of ₱130,000.00 representing the sum given by private complainant duly received by the accused and the sum of ₱20,000.00 as attorney's fees.
>
> SO ORDERED.[5]

Pascual filed a Motion for Reconsideration but same was denied by the RTC; hence Pascual elevated her case to the CA.

Ruling of the Court of Appeals

Before the CA, Pascual argued that she was convicted of an offense that was different from that alleged in the Information; that although she was accused of Estafa through Falsification of Public Document, she was however convicted by the RTC under Article 171 (Falsification by public officer, employee, or ecclesiastical minister) in relation to Article 315 (Estafa) of the Revised Penal Code (RPC). Pascual insisted that no evidence had been adduced tending to prove that she falsified BIR Receipt No. 2155148.

But her arguments failed to impress the CA, which after review of the appealed case, disposed as follows:

> WHEREFORE, premises considered, the instant appeal is hereby DISMISSED for lack of merit. Accordingly, the assailed Decision of the Regional Trial Court (RTC), Branch 201, Las Piñas City

[5] *Id*. at 827-828.

convicting the accused of the complex crime of *estafa* through Falsification of Public Document is AFFIRMED.

SO ORDERED.[6]

In reaching the foregoing conclusion, the CA ruled that Estafa through Falsification of Public Document is not a singular offense but a complex crime where two different offenses are tried as one because one offense was committed as a necessary means to commit the other, or because a single act constitutes two or more grave or less grave felonies.

The CA rejected Pascual's contention that the State failed to prove that she falsified the BIR receipt in question. On the contrary, the CA found that the State was able to satisfactorily establish clear and convincing evidence that Pascual was responsible for falsifying such receipt.

Hence, this Petition.

Issues

Pascual raises the following issues in this Petition:

I.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE JUDGMENT OF CONVICTION BY GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S VERSION.

II.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT DESPITE THE FACT THAT THE EVIDENCE ON RECORD FAILED TO SUPPORT A CONVICTION.[7]

Pascual now argues that the CA erred in upholding the judgment of the RTC and in giving full weight and credence to the State's account of the indictment against her.

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[6] CA *rollo,* pp. 114-115.

[7] *Rollo*, p. 16.

Anent the alleged estafa, Pascual contends that she did not in any way beguile or mislead Tiongco into believing that she was connected with the BIR, as indeed the only representation she allegedly made was that she knew someone inside that office.

As to the alleged falsification, Pascual contends that she did not take advantage of her official position at the BIR at all because it was not her duty to make or prepare the BIR receipt in question.

Our Ruling

We deny the Petition. Both the RTC and the CA correctly found Pascual guilty beyond reasonable doubt of the crime of Estafa through Falsification of Public Document.

The State was able to satisfactorily establish the elements of estafa, to wit: "(1) that the accused defrauded another by abuse of confidence or by means of deceit, and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person."[8] Here, Pascual defrauded Tiongco by pretending that she had "connections" or "contacts" within the BIR to whom she could allegedly directly pay the capital gains tax at a reduced amount and also with whose help and assistance the transfer certificate of title to the property purchased could be expedited. In fact, in their first meeting, Pascual impressed upon Tiongco that she is a person of some power and influence because she was an employee of the Las Piñas City Assessor's Office and thus had "connections" or "contacts" within the BIR and the City Registry of Deeds.

Moreover, the State was also able to establish the following elements of the crime of Falsification of Public Document: "(1) that the offender is a public officer, employee, or notary public; (2) that he takes advantage of his official position; (3) that he falsifies a document by causing it to appear that persons have participated in any act or proceeding; (4) [and] that such person or persons did not in fact so participate in the proceeding."[9]

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[8] *People v. Remullo,* 432 Phil. 643, 655 (2002).

[9] *Goma v. Court of Appeals*, 596 Phil. 1, 10 (2009).

We adopt the following findings of facts of the CA as these findings are borne out by the records:

It was established that the accused won over Tiongco by appearing to have expertly facilitated transfers of title in the past while accelerating the payment of taxes along the way. To this end, she assured Tiongco that she knew people from the BIR to whom they could directly pay the capital gains tax for less. When Tiongco appeared apprehensive, she would sound urgent (she was allegedly absent from work for two days to accommodate Tiongco) and, at one point, incensed (she told Tiongco that she was wasting her time for not having the cash). To allay Tiongco's fears, the accused consistently appeared resolute in her purpose especially when it was time for her to pay the capital gains tax. In this instance, she 'transacted' inside the BIR in plain view of Tiongco and thereafter presented her with a photocopy of the BIR receipt that later turned out to be forged.

The deceit by which the charade was accomplished is unmistakable. Deceit as used in this instance is defined as any act or devise intended to deceive; a specie of concealment or distortion of the truth for the purpose of misleading. Concomitantly, for it to prosper, the following elements must concur: (a) that an accused defrauded another by abuse of confidence, or by means of deceit; and (b) that damage and prejudice capable of pecuniary estimation is caused the offended party or third person.

In the present instance, the accused made certain that Tiongco would fall prey to her artifice by presenting herself as someone with extensive connections in the BIR and the Registry of Deeds being herself an employee of the Assessor's Office whose function is the appraisal and assessment of real properties essentially for taxation purposes. She did not relent until Tiongco prepared the amount of ₱130,000.00 supposedly necessary for the payment of taxes. The accused guaranteed that the money will go as intended because she has done it many times before and her transactions turned out well. This, of course, was pure farce because the title of the property was not transferred to the private respondent's spouse as intended, while the capital gains tax remained unpaid. More importantly, it was discovered later that the BIR receipt furnished by the accused was a falsified document per testimony of the assistant district revenue officer of BIR-Las Piñas. This constitutes as the other half of the offense.

Falsification of public document carries with it the following elements: (a) That the offender is a public officer, employee, or notary public; (b) That he takes advantage of his official position; and (c) That he falsifies a document by causing it to appear that persons have participated in any act or proceeding.

Naturally, the accused attempted to deny having forged or falsified the BIR receipt, alleging that there was no direct evidence presented that would link her to the charge of falsification.

Indeed, there was no one from the prosecution that witnessed the accused in the act of falsifying or forging the BIR receipt. However, while direct evidence is scarce, the circumstances surrounding the events that led to her indictment speak of no one but the accused as the perpetrator of the offense. For instance, she did not contradict Tiongco's testimony that after she received the money intended for the payment of the capital gains tax, she and her lady companion went inside the BIR office supposedly to pay the capital gains tax. Neither did she deny Tiongco's testimony that she later came out of the BIR office with the forged BIR receipt which she furnished to Tiognco. Quite revealingly, the accused also remained mum about the testimony of the assistant revenue district officer, Ma. Nimfa Peñalosa De Villa, who disclosed that the document under discussion was unauthentic because it did not come from the BIR.

Clear as they are, the circumstances mentioned earlier are indubitable manifestations that the person responsible for the falsity is the accused herself given that she was the one who supposedly made the transaction inside the BIR, and that she had it in her possession before she passed it off as an official transaction receipt from the BIR. Conviction is not always arrived at by relying on direct evidence alone. Sometimes, the testimonies of witnesses, when credible and trustworthy, are sufficient to bring out a conviction and must be given full faith and credence when no reason to falsely testify is shown.

In the case at bench, Tiongco's testimony is neither erratic nor marred by inconsistency, glaring or otherwise. She was straightforward and narrated the events without missing the focal points. Her testimony, along with that of the assistant revenue district officer, is more than sufficient to espouse the conclusion that the accused personally forged the receipt and deceived Tiongco therewith.[10]

We now turn to the proper imposable penalty.

[10] *Rollo*, pp. 30-32.

The crime committed was estafa through falsification of public document. Being a complex crime, the penalty for the more serious crime shall be imposed in its maximum period. Falsification under Article 171 of the RPC has a corresponding penalty of *prision mayor* and a fine not to exceed ₱5,000.00. On the other hand, "[t]the amount of damages is the basis of the penalty for estafa."[11] Specifically, Article 315 of the RPC provides the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of fraud is over [₱12,000.00] but does not exceed [₱22,000.00]; and if [the amount defrauded exceeds ₱22,000.00], the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional [₱10,000.00], but the total penalty which may be imposed shall not exceed twenty years x x x [and] shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

In this case, the amount defrauded was ₱130,000.00. As such, the prescribed penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period shall be imposed in its maximum period which has a range of six (6) years, eight (8) months and twenty one (21) days to eight (8) years, adding one (1) year for each additional ₱10,000.00. Thus, the maximum term of the imposable penalty is from sixteen (16) years, eight (8) months and twenty one (21) days to eighteen (18) years of *reclusion temporal*. Thus, as compared to the crime of falsification under Article 171 which carries a penalty of *prision mayor*, the offense of estafa is the more serious crime.

Applying the Indeterminate Sentence Law, the penalty next lower in degree to that prescribed for the crime of estafa is *prision correccional* in its minimum and medium periods which ranges from six (6) months and one (1) day to four (4) years and two (2) months.

In fine, the proper indeterminate penalty to be imposed should be four (4) years and two (2) months of *prision correccional*, as minimum to eighteen (18) years of *reclusion temporal*, as maximum.

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[11] *Obando v. People*, 638 Phil. 296, 315 (2010).

WHEREFORE, this Petition is **DENIED**. The Decision of the Court of Appeals dated April 13, 2012 in CA-G.R. CR No. 32138, is **AFFIRMED, subject to the MODIFICATION** that petitioner Esther Pascual is sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eighteen (18) years of *reclusion temporal*, as maximum. All damages awarded shall earn interest at the rate of 6% *per annum,* reckoned from finality of this Decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 204899. July 27, 2016]

HEIRS OF BABAI GUIAMBANGAN, namely, KALIPA B. GUIAMBANGAN, SAYA GUIAMBANGAN DARUS, NENENG P. GUIAMBANGAN, AND EDGAR P. GUIAMBANGAN,[1] *petitioners, vs.* **MUNICIPALITY OF KALAMANSIG, SULTAN KUDARAT, represented by its MAYOR ROLANDO P. GARCIA, MEMBERS of its SANGGUNIANG BAYAN, and its MUNICIPAL TREASURER,**[2] *respondents*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* FAILURE TO IMPLEAD THE TRIAL COURT AS REQUIRED BY SECTION 5, RULE 65 OF THE 1997 RULES IS NOT FATAL TO THE CASE.— The CA dismissed petitioners' *Certiorari* Petition on three grounds: first,

[1] See *rollo*, pp. 13, 89, 506.

[2] *Id*. at 14.

for failure to implead the trial court as required by Section 5, Rule 65 of the 1997 Rules x x x This, however, is not fatal. In *Abdulrahman v. The Office of the Ombudsman*, this Court held that "neither the misjoinder nor the non-joinder of parties is a ground for the dismissal of an action," particularly a Petition for *Certiorari* under Rule 65; the CA should simply order that a party be impleaded in the case. The Court made the following pronouncement in said case: The acceptance of a petition for certiorari, and necessarily the grant of due course thereto, is addressed to the sound discretion of the court. Thus, the court may reject and dismiss a petition for certiorari (1) when there is no showing of grave abuse of discretion by any court, agency, or branch of the government; or (2) when there are procedural errors, such as violations of the Rules of Court or Supreme Court circulars. x x x Indeed, the rules of procedure need not always be applied in a strict, technical sense, since they were adopted to help secure and not override substantial justice. "In clearly meritorious cases, the higher demands of substantial justice must transcend rigid observance of procedural rules."

2. ID.; ID.; ID.; THE SERVICE OF THE PETITION FOR *CERTIORARI* ON THE RESPONDENTS AS REQUIRED BY SECTION 3, RULE 46 OF THE 1997 RULES IS DEEMED COMPLIED WITH WHEN THE RECORD OF THE CASE INDICATES THAT A COPY THEREOF WAS SERVED UPON THEIR COUNSEL OF RECORD; CASE AT BAR.— [T]he CA dismissed the Petition for lack of appropriate service of the Petition for *Certiorari* on the respondents as required by Section 3, Rule 46 of the 1997 Rules, although the record indicates that a copy thereof was served upon their counsel of record. While this is not sanctioned by the 1997 Rules, this Court has excused it in the past, thus: True it is that Rule 46, Section 3 mandates that a copy of the petition should be served on the other party; and that proof of such service should be filed with the petition in court. However, the rule was substantially complied with when service was made to petitioner's former counsel, Atty. Dennis Ancheta. Without the benefit of a proper notice of petitioner's substitution of counsel, respondent had no recourse but to serve the copy of its petition to whom it knew and perceived as being petitioner's counsel of record. In faithful compliance and with no intention of delay, service was made on Atty. Ancheta.

3. ID.; ID.; ID.; WHILE ONLY ONE OF THE HEIRS VERIFIED THE PETITION FOR *CERTIORARI,* WITHOUT PROOF OF AUTHORITY TO FILE THE SAME OBTAINED FROM THE OTHER HEIRS, THE SAME IS NOT FATAL TO THE PETITION FILED.— [W]hile only one of the heirs, Saya Guiambangan Darus, verified the CA Petition for *Certiorari*, without proof of authority to file the same obtained from the other heirs, this is not fatal. As heirs, they all share a common interest; indeed, even if the other heirs were not impleaded, the Petition may be heard, as any judgment should inure to their benefit just the same. Or, quite simply, the CA could have ordered their inclusion, as earlier stated above. x x x As such co-owners, each of the heirs may properly bring an action for ejectment, forcible entry and detainer, or any kind of action for the recovery of possession of the subject properties. Thus, a co-owner may bring such an action, even without joining all the other co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all.

APPEARANCES OF COUNSEL

Al May Sair F. Patangan for petitioners.
Office of the Solicitor General for public respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this Petition for Review on *Certiorari*[3] are the June 14, 2011 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 04239 which dismissed the herein petitioners' Petition for *Certiorari*,[5] and its September 10, 2012 Resolution[6] which denied their Motion for Reconsideration[7] in said case.

[3] *Id*. at 12-27.

[4] *Id*. at 38; issued by Associate Justices Rodrigo F. Lim, Jr., Pamela Ann A. Maxino and Zenaida Galapate-Laguilles.

[5] *Id*. at 141-176.

[6] *Id*. at 33-37; penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Edgardo A. Camello and Renato C. Francisco.

[7] *Id*. at 177-186.

Factual Antecedents

Datu Eishmael Summagumbra (Eishmael), heir of the late Babai Guiambangan (Babai) and ascendant and predecessor-in-interest of herein petitioners, Kalipa B. Guiambangan, Saya Guiambangan Darus, Neneng P. Guiambangan, and Edgar P. Guiambangan, instituted before the Regional Trial Court of Isulan, Sultan Kudarat (RTC Branch 19) Civil Case No. 989 against herein respondents Municipality of Kalamansig, Sultan Kudarat, its Mayor, Members of its *Sangguniang Bayan*, and its Municipal Treasurer. The case was for recovery of possession of real property, rentals, damages, and attorney's fees, with an additional prayer for injunctive relief, in connection with a 422,129-square meter parcel of land situated in Port Lebak, Kalamansig, Sultan Kudarat which Eishmael claimed was registered in Babai's name as Original Certificate of Title No. 995-A (OCT 995-A).

On March 4, 2002, a Judgment[8] was rendered in Civil Case No. 989, which decreed as follows:

WHEREFORE, upon all the foregoing considerations, judgment is hereby rendered:

(a) – ordering the defendant, Municipality of Kalamansig, Sultan Kudarat, and those acting for and in its behalf to vacate the portions used as market site in Lot 1534-A, Psd-12-031263 and the portion in Lot 1534-B, Psd-12-031263 where the ice plant structure is constructed, and surrender the possession thereof to the plaintiff, Datu Eishmael Summagumbra, and for the latter to appropriate the improvements built by the defendant on the said lot in question, without paying indemnity;

(b) – ordering the defendant to pay back monthly rents to plaintiff for the use of the portion of Lot 1534-A, Psd-12-031263, as market place from January 1997, until the finality of this judgment, at a reasonable amount of ₱5,000.00;

(c) – ordering the defendants to pay to the plaintiff:

[8] Records, pp. 1-24; penned by Judge German M. Malcampo.

1 - moral damages in the reasonable amount of ₱30,000.00;

2 - exemplary damages in the reasonable amount of ₱20,000.00;

3 - ₱20,000.00, as reasonable amount of attorney's fees; and

(d) – ordering the defendant to pay the costs of suit.

For lack of merit, the counterclaim for damages interposed by the defendant should be, as it is hereby dismissed.

IT IS SO ORDERED.[9]

The above March 4, 2002 Judgment became final and executory, and in a May 2, 2002 Order,[10] the trial court directed the issuance of a writ of execution. On June 13, 2002, Sheriff Edwin Cabug[11] (Cabug) issued a Sheriff's Notice[12] to vacate the premises.

On March 26, 2007, Cabug issued a Sheriff's Partial Return of Service,[13] indicating that the writ of execution was not enforced.

On August 4, 2008, fire gutted the Hall of Justice where the files of Civil Case No. 989 was kept; however, the record thereof was not reconstituted.

On September 17, 2010, Cabug issued another Sheriff's Partial Return of Service[14] and a Notice of Garnishment[15] which he sent to the Manager of the Land Bank of the Philippines Lebak, Sultan Kudarat Branch, in an apparent attempt to execute the March 4, 2002 Judgment in Civil Case No. 989.

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

[10] *Rollo*, p. 66.

[11] Also spelled as Cabog in some parts of the records.

[12] *Rollo*, p. 67.

[13] *Id*. at 73.

[14] *Id*. at 74.

[15] *Id*. at 75.

Respondents filed an Urgent Motion to Issue an Order to the Sheriff Prohibiting Him from Executing an Alleged Judgment in the Above-Entitled Case[16] (Urgent Motion), seeking to restrain Cabug from enforcing the decision in Civil Case No. 989 on the ground that since the record thereof was not reconstituted, then there is no judgment in said case to be enforced; and that for failure to reconstitute the record, petitioners have no other recourse but to file the case anew, as Act No. 3110[17] requires. Petitioners filed their Omnibus Comment[18] to the motion, and to this respondents submitted their Comments/Reply.[19]

On December 16, 2010, the trial court issued an Order[20] granting respondents' Urgent Motion, stating as follows:

As shown by the available records of the case, only machine copies of the judgment dated March 4, 2002 (containing twenty three (23) pages), Sheriff's Partial Return of Service dated July 16, 2002, Sheriff's Notice dated June 13, 2002, Order dated May 2, 2002, Order dated October 14, 2002, Certification issued by Atty. Heathcliff H. Leal, dated August 12, 1999, Entry of Judgment dated August 23, 2002 were submitted when the subject motions were filed as the whole records of the case were burned together with the other records of cases of the court on August 4, 2008 when the Hall of Justice housing

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[16] *Id*. at 76-80.

[17] "AN ACT TO PROVIDE AN ADEQUATE PROCEDURE FOR THE RECONSTITUTION OF THE RECORDS OF PENDING JUDICIAL PROCEEDINGS AND BOOKS, DOCUMENTS, AND FILES OF THE OFFICE OF THE REGISTER OF DEEDS, DESTROYED BY FIRE OR OTHER PUBLIC CALAMITIES, AND FOR OTHER PURPOSES," approved on March 19, 1923, provides:

Sec. 29. In case the parties interested in a destroyed record fail to petition for the reconstitution thereof within the six months next following the date on which they were given notice in accordance with section two hereof, they shall be understood to have waived the reconstitution and may file their respective actions anew without being entitled to claim the benefits of section thirty-one hereof.

[18] *Rollo*, pp. 81-88.

[19] *Id*. at 89-91.

[20] *Id*. at 93-102; penned by Acting Presiding Judge Roberto L. Ayco.

it and the Offices of the Provincial Prosecutor, and the Public Attorney's Office was razed to the ground by a fire.

Clearly, after that Sheriff's Notice dated June 13, 2002 and Sheriff's Partial Return of Service dated July 16, 2002 no other proceedings nor incident was taken by the court regarding the case. x x x

x x x x x x x x x

Then suddenly another Sheriff's Partial Return of Service dated September 17, 2010 was issued by Edwin Galor Cabug, Sheriff IV of the court, its content is also quoted as follows:

> 'RESPECTFULLY RETURNED to ERLINDA P. LELIM, OIC-Clerk of Court, of this Court, the herein Writ of Execution issued in the above-entitled case that the same have [sic] already been enforced and implemented and that the Kalamansig Public Market was already turned over to DARUS BASMAN who is the representative of the Plaintiff per Special Power of Attorney.
>
> FOR YOUR INFORMATION AND READY REFERENCE.'

Aside from the said Sheriff's Partial Return of Service dated September 17, 2010, Edwin Galor Cabug, Sheriff IV of the Court also issued a Notice of Garnishment dated September 17, 2010 addressed to the Manager, Land Bank of the Philippines, Lebak Branch, Lebak, Sultan Kudarat. x x x

x x x x x x x x x

The above-mentioned Sheriff's Partial Return of Service and the Notice of Garnishment all dated September 17, 2010 were issued by x x x Cabug x x x without the court knowing it. The court had not issued any Order directing the issuance of any alias writ of execution. This will only show that the writ of execution referred to by him in his Sheriff's Partial Return of Service was that writ of execution directed by the court to be issued through its Order dated May 2, 2002 and the Notice of Garnishment should have been based upon it likewise.

This being so, can it still be legally and lawfully done considering the period of time that had elapsed? Why was there a need for Edwin Galor Cabug to issue another Sheriff's Partial Return of Service when he had issued a similar return on July 16, 2002?

This Acting Presiding Judge having assumed as such just lately, other than the documents forming parts of the carpeta of the case furnished him, he does not personally know the reasons, why this case was handled this way and in this manner.

Based however, upon said available documents, it is clear that after the Sheriff's Partial Return of Service was issued on July 16, 2002 no other move was ever adopted nor availed of by the Plaintiff in order to enforce and satisfy the Judgment of the Court dated March 4, 2002. x x x

x x x x x x x x x

The next that was done thereafter was only the issuance of another Sheriff's Partial Return of Service dated September 17, 2010 and the issuance of a Notice of Garnishment, also on said day, September 17, 2010.

The Sheriff's Partial Return of Service dated July 16, 2002, only served a copy of the writ of execution and Sheriff's Notice upon Hon. Mayor and Hon. Vice Mayor at the Session Hall of the Sangguniang Bayan of the Municipality of Kalamansig, Sultan Kudarat. It had never enforced nor satisfy [sic] the subject Judgment of the court. It would then only show that the judgment of the court in this case was never enforced nor satisfied even partially. There was only service of the copy of the writ of execution and Sheriff's Notice.

The records of the case including the original copy of the judgment of the court dated March 4, 2002 and that of the other records of the cases of the court were burned on August 4, 2008 and nothing was salvaged by the court.

There was no attempt nor effort from either of the parties to have the records of the case reconstituted in accordance with Section 3 of Act No. 3110 despite the Notice of Loss of Judicial Records published in the Official Gazette on September 30, 2008 and in the newspapers both local and national. The period of time provided by said law for the reconstitution of the records of this case had long prescribed and may no longer be availed of. The parties in this case then are considered to have waived their rights to avail of said reconstitution. It is therefore mandatory on the part of the court to declare the records of this case to have been destroyed by fire and may no longer be reconstituted in view of the apparent waiver of the parties.

Section 6 of Rule 39 of the 1997 Rules of Civil Procedure directs the manner on how a final and executory judgment or order may be executed. It provides, as follows:

> '*Execution by motion or by independent action.* – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. (6a)'

This court believes that its judgment dated March 4, 2002 was never executed nor satisfied even partially within the period provided by the pertinent rule above-quoted.

Execution contemplates the usual situation where a judgment is susceptible of enforcement the moment it acquires the character of finality x x x and a judgment becomes final and executory by operation of law, not by judicial declaration x x x. Execution is fittingly called the fruit and end of law, and aptly called the life of law x x x. Execution is the process of the court for carrying its decree into effect. In an action to recover possession of lands, as in this case, if the judgment is for the Plaintiff, the writ of execution will be an order to deliver the possession to the Plaintiff.

The judgment of the court in this case was never carried out nor enforced. The service of a copy of the writ of execution and Sheriff's Notice to the Mayor and Vice Mayor x x x did not in any manner satisfy the said judgment. None of the matters decreed by the court in its judgment was ever enforced.

As shown by the Certification issued by Atty. Heathcliff H. Leal, the Clerk of Court then, the said judgment became final and executory on August 23, 2002.

The five (5) years period provided by Section 6 of Rule 39 of the Rules of Civil Procedure above-quoted had lapsed without the subject judgment being enforced even partially.

WHEREFORE, the court finds, as follows:

a) - the Sheriff's Partial Return of Service and the Notice of Garnishment issued by Edwin Galor Cabug, Sheriff IV of the court

were issued without apparent basis, hence, the same are hereby declared null and void and of no effect at all;

(b) - the judgment of the court dated March 4, 2002 was never enforced nor complied, even partially and had become stale and can no longer be enforced by a mere motion unless the same is revived in accordance with the rules; and

(c) - the records of the case were among the records of cases of the court burned and razed by fire on August 4, 2008, nothing was salvaged by the court, it were [sic] not reconstituted and the period for its reconstitution had long lapsed.

SO ORDERED.[21]

Petitioners filed a Motion for Reconsideration,[22] arguing that the court had no jurisdiction to pass upon the Urgent Motion, invalidate Cabug's actions, and declare stale its March 4, 2002 Judgment for failure to reconstitute the records and failure to execute the decision within the 5-year period provided for under Rule 39 of the 1997 Rules of Civil Procedure (1997 Rules); that when the March 4, 2002 Judgment became final and executory, the trial court lost its jurisdiction to entertain respondents' Urgent Motion, as it may no longer "decide or pass upon any issue that may thereafter be raised by the parties," including the issue of "validity or enforceability of the judgment;" that as shown by Cabug's March 26, 2007 Sheriff's Partial Return of Service, the failure to execute the March 4, 2002 Judgment is attributable to respondents' act of delaying satisfaction by requesting additional time to consult their lawyer and the members of the *Sangguniang Bayan* and other municipal officials; that respondents' delay did not therefore result in the expiration of the 5-year period allowed for the execution of the March 4, 2002 Judgment by mere motion, but instead interrupted it, because a judgment debtor's delay will extend the time within which the writ of execution may be enforced, and the time during which execution is stayed or delayed by him should be excluded from the computation of the 5-year

[21] *Id.* at 94-102.

[22] *Id.* at 103-131.

period allowed for execution by mere motion;[23] that Act No. 3110 on reconstitution of court records applies only to "pending cases," and not to Civil Case No. 989 where the March 4, 2002 Judgment is already final and executory; that assuming *arguendo* that Act No. 3110 applied to Civil Case No. 989, then the assailed December 16, 2010 Order of the trial court in said case is null and void because it could not have acted on a case whose record has not been properly reconstituted; that they and their counsel did not receive any notice of loss of the record of Civil Case No. 989, which notice is required to be sent under Act No. 3110, thus, they may not be blamed for failure to cause reconstitution of the record; and that the enforcement of the writ of execution did not require the court's permission, as well as the issuance of an alias writ of execution, since under the 1997 Rules,[24] alias writs of execution were done away with; the lifetime of a writ of execution is no longer 60 days, but the whole 5-year period during which a judgment may be enforced by motion, and all that the sheriff must do is to make a monthly report/return to the court on the proceedings taken, and such report shall be filed with the court and copies thereof furnished the parties.

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[23] Citing *Yau v. Silverio, Sr.*, 567 Phil. 493 (2008), and Regalado, Florenz D., *Remedial Law Compendium*, Sixth Revised Edition, Volume I, pp. 417-418.

[24] Rule 39, on EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS, states:

> Sec. 14. Return of writ of execution. – The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

However, in a May 3, 2011 Order,[25] the trial court denied the motion for reconsideration.

Ruling of the Court of Appeals

Petitioners filed an original Petition for *Certiorari*[26] before the CA, which was docketed as CA-G.R. SP No. 04239. In a June 14, 2011 Resolution, however, the CA resolved to dismiss the Petition, thus:

> The Court RESOLVES to DISMISS the instant Petition for Certiorari for failing to strictly comply with Rule 65 and other related provisions of the Rules of Court, particularly for:
>
> (a) Failure to implead Public Respondent RTC Br. 19, Sultan Kudarat in the caption of the case;
>
> (b) Lack of appropriate service of the petition on adverse parties Municipality of Kalamansig represented by Mayor Rolando P. Garcia, the Sangguniang Bayan Members and the Municipal Treasurer of the said Municipality as required by Rule 46, Section 3;
>
> (c) Being defective in substance as the verification and certification of non-forum shopping is signed by Saya Guiambangan without any proof that she has been duly authorized by the other heirs of Babai Guiambangan to file the petition on their behalf.[27]

Petitioners filed a Motion for Reconsideration,[28] which the CA denied in its September 10, 2012 Resolution. The appellate court held:

> Petitioners moved for reconsideration. They explain that it was only petitioner Saya Guiambangan Summagumbra who signed the verification and certification against forum shopping, because she is "*the only substituted heir to the late Datu Eishmael Summagumbra*." They claim that this is evident in the affidavit of Renato Consebit (Consebit), the previous counsel for the plaintiff in the case *a quo*.

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[25] *Rollo*, pp. 138-140.

[26] *Id*. at 141-175.

[27] *Id*. at 38.

[28] *Id*. at 177-186.

The relevant portion of the affidavit reads:

> 3. That I will confirm and affirm the fact that when I accepted the position as one of the Prosecutors in the Office of the National Prosecution Service, sometime in May 3, 2005, I did not formally and officially filed [sic] my withdrawal as counsel for the Heirs of the late Babai Guiambangan, but I am quite sure that sometime on October 9, 2003, I filed a Motion to Substitute Datu Eishmael Summagumbra as representative of defendant Heirs of Babai Guiambangan Summagumbra NAMING THEREIN SAYA GUIAMBANGAN DARUS AS THE LEGAL REPRESENTATIVE OF THE HEIRS OF BABAI GUIAMBANGAN. x x x

Petitioners also alleged that although, they were not able to serve copies of the petition to private respondents, they were able to serve it to private respondents' alleged counsel in the case *a quo*. They insists [sic] that when a party is represented by a counsel of record, the service of orders and notices must be made upon such counsel.

Lastly, they claimed that their failure to implead public respondent was only a typographical error.

The motion is bereft of merit.

A petition involving two or more petitioners must be accompanied by a certification of non-forum shopping accomplished by all petitioners, or by one who is authorized to represent them; otherwise, the petition shall be considered as defective and may be dismissed, under the terms of Section 3, Rule 46, in relation [sic] Section 1, Rule 65 of the Rules of Court.

In the title of their petition, petitioners referred [sic] themselves as the '*Heirs of Babai Guiambangan, represented by Saya Guiambangan Summagumbra*.'

The records show that it was only petitioner Saya Guiambangan Summagumbra who signed the certification of non-forum shopping. However, she failed to provide proof that she had authority to sign for the other heirs of Babai Guiambangan (Guiambangan). This makes the petition defective.

Admittedly, the infirmity is only formal. In appropriate cases, it has been waived to give the parties a chance to argue their causes and defenses on the merits. But to justify the relaxation of the rules,

a satisfactory explanation and a subsequent fulfillment of the requirememnts have always been required.

However, instead of securing the consent of the other heirs of Guiambangan, petitioner Saya Guiambangan Summagumbra merely referred Us to the affidavit of Consebit. This did not help their case. Firstly, petitioner Saya Guiambangan Summagumbra failed to establish that she and Saya Guiambangan Darus, the person named in such affidavit, is [sic] the same person. Secondly, the affidavit cannot certainly be the source of petitioner Saya Guiambangan Summagumbra's authority to represent the other heirs of Guiambangan because it merely narrated that Consebit filed a motion in the case *a quo*. As it is, there is on record, no proof that petitioner Saya Guiambangan Summagumbra is authorized to represent the other petitioners in this case. This makes the case dismissible.

With the foregoing disquisition, We find it unnecessary to discuss the other matters raised.

WHEREFORE, the motion for reconsideration is DENIED.

SO ORDERED.[29]

Hence, the present Petition.

In a June 9, 2014 Resolution,[30] the Court resolved to give due course to the instant Petition.

Issues

In essence, petitioners raise the issue of whether their Petition for *Certiorari* before the CA was properly dismissed due to mere procedural technicalities, when these defects should have been overlooked given the circumstances and merit of their case.

Petitioners' Arguments

In praying that the assailed CA dispositions be set aside and that the trial court's December 16, 2010 and May 3, 2011 Orders be invalidated, petitioners contend, in their Petition and Reply,[31]

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

[30] *Id*. at 429-430.

[31] *Id*. at 418-426.

that the CA should not have dismissed their Petition for *Certiorari* on the ground of technicality, and should have treated their case with more leniency and liberality; that while it was only petitioner Saya Guiambangan Darus who executed the verification in the CA Petition, she did the same in her personal capacity and as representative of the other petitioners who are her co-heirs and co-owners; that even if the other heirs did not sign the CA Petition and are not made party to the CA case as a result, still any judgment obtained will be to their benefit as well, considering that they share a common interest in the action, as co-heirs to Babai and Eishmael, and as co-owners of the subject property; that even though the signatory to the CA Petition was designated only as "Saya Guiambangan," it refers to petitioner herein, Saya Guiambangan Darus, who actually signed the said petition, thus, "Saya Guiambangan" and "Saya Guiambangan Darus" refer to one and the same individual; that in any case, they attached a Special Power of Attorney[32] to the instant Petition in order to comply with the procedural requirement; and that if the CA looked beyond the procedural aspect of the case, it would have realized the merit in their cause.

Respondents' Arguments

Respondents, on the other hand, essentially argue in their Comment[33] that the CA committed no error; that a party availing of the remedy of *certiorari* must strictly observe the procedural requirements under the 1997 Rules, failing which his petition should be dismissed or rejected; and that since petitioners' CA Petition contained errors in violation of the 1997 Rules and circulars of the Court requiring proper verification, impleading of parties, and service of pleadings, then the appellate court was correct in exercising its discretion to dismiss the same. Thus, they pray for denial.

In their Memorandum,[34] respondents add that petitioners' claim of ownership is based on OCT 995-A, which on its face is patently

[32] *Id*. at 39-40.

[33] *Id*. at 393-406.

[34] *Id*. at 452-467.

fake as found by the Land Registration Authority (LRA) itself; that OCT 995-A is based on a Land Registration Commission record which actually pertains to a piece of property located in Manila; that petitioners were able to secure the title through defective reconstitution proceedings, in that the trial court hastily allowed reconstitution even without awaiting the LRA's report on the title; and that as a result, the government filed Civil Case No. 1024 against petitioners for the annulment/cancellation of petitioners' title and reversion of the subject property, which case is pending before the same court (Branch 19) handling Civil Case No. 989.[35]

Our Ruling

The Court grants the Petition.

The CA dismissed petitioners' *Certiorari* Petition on three grounds: first, for failure to implead the trial court as required by Section 5, Rule 65 of the 1997 Rules,[36] which states as follows:

> Sec. 5. Respondents and costs in certain cases. – When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.
>
> Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise

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[35] *Id*. at 490-496; Amended Complaint in Civil Case No. 1024.

[36] On *Certiorari*, Prohibition, and *Mandamus*.

specifically directed by the court, they shall not appear or participate in the proceedings therein.

This, however, is not fatal. In *Abdulrahman v. The Office of the Ombudsman*,[37] this Court held that "neither the misjoinder nor the non-joinder of parties is a ground for the dismissal of an action,"[38] particularly a Petition for *Certiorari* under Rule 65; the CA should simply order that a party be impleaded in the case. The Court made the following pronouncement in said case:

> The acceptance of a petition for certiorari, and necessarily the grant of due course thereto, is addressed to the sound discretion of the court. Thus, the court may reject and dismiss a petition for certiorari (1) when there is no showing of grave abuse of discretion by any court, agency, or branch of the government; or (2) when there are procedural errors, such as violations of the Rules of Court or Supreme Court circulars.
>
> In this case, the CA dismissed petitioner's special civil action for certiorari because of procedural errors, namely: (1) failure to implead private respondent; (2) failure to attach copies of the pleadings and documents relevant to the petition; (3) failure to file a motion for reconsideration of the Order of Implementation; and, consequently, (4) failure to allege material dates in the petition.
>
> Petitioner argues that the rules of procedure should be liberally construed when substantial issues need to be resolved.
>
> Indeed, the rules of procedure need not always be applied in a strict, technical sense, since they were adopted to help secure and not override substantial justice. "In clearly meritorious cases, the higher demands of substantial justice must transcend rigid observance of procedural rules."

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[37] G.R. No. 175977, August 19, 2013,

[38] Citing Section 11, Rule 3 of the 1997 Rules, on Parties to Civil Actions, which state:

> Sec. 11. *Misjoinder and non-joinder of parties*. – Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

Thus, we have given due course to a petition because it was meritorious, even though we recognized that the CA was correct in dismissing the petition for certiorari in the light of the failure of petitioner to submit material documents. We have affirmed the CA when it granted a petition for certiorari despite the litigant's failure to file a motion for reconsideration beforehand. We have also had occasion to excuse the failure to comply with the rule on the statement of material dates in the petition, since the dates were evident from the records.[39]

Next, the CA dismissed the Petition for lack of appropriate service of the Petition for *Certiorari* on the respondents as required by Section 3, Rule 46 of the 1997 Rules,[40] although

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[39] *Abdulrahman v. The Office of the Ombudsman*, *supra* note 37.

[40] On Original Cases, which states:

Sec. 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.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other

the record indicates that a copy thereof was served upon their counsel of record. While this is not sanctioned by the 1997 Rules, this Court has excused it in the past, thus:

> True it is that Rule 46, Section 3 mandates that a copy of the petition should be served on the other party; and that proof of such service should be filed with the petition in court. However, the rule was substantially complied with when service was made to petitioner's former counsel, Atty. Dennis Ancheta.
>
> Without the benefit of a proper notice of petitioner's substitution of counsel, respondent had no recourse but to serve the copy of its petition to whom it knew and perceived as being petitioner's counsel of record. In faithful compliance and with no intention of delay, service was made on Atty. Ancheta.[41]

Finally, while only one of the heirs, Saya Guiambangan Darus, verified the CA Petition for *Certiorari*, without proof of authority to file the same obtained from the other heirs, this is not fatal. As heirs, they all share a common interest; indeed, even if the other heirs were not impleaded, the Petition may be heard, as any judgment should inure to their benefit just the same. Or, quite simply, the CA could have ordered their inclusion, as earlier stated above.

> x x x As such co-owners, each of the heirs may properly bring an action for ejectment, forcible entry and detainer, or any kind of action for the recovery of possession of the subject properties. Thus, a co-owner may bring such an action, even without joining all the other

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action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of ₱500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (n)

[41] *Okada v. Security Pacific Assurance Corporation*, 595 Phil. 732, 747 (2008).

co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all.[42]

This *ponente* reiterated this principle in *Heirs of Lazaro Gallardo v. Soliman*,[43] and later, in *Jacinto v. Gumaru, Jr.*[44] Indeed, the CA should not have forgotten the guidelines laid down by the Court regarding verifications and certifications against forum shopping:

For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:

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

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[42] *Iglesia ni Cristo v. Judge Ponferrada*, 536 Phil. 705, 722 (2006).

[43] 708 Phil. 428 (2013).

[44] G.R. No. 191906, June 2, 2014, 724 SCRA 343.

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, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.[45] (Emphasis supplied)

Regarding respondents' argument that petitioners' title is spurious and for this reason Civil Case No. 1024 for annulment of title and reversion of the subject property was instituted, this cannot justify the dismissal of petitioners' *Certiorari* Petition before the CA; it is irrelevant to these proceedings. As far as the trial court and parties are concerned, there is admittedly a Judgment dated March 4, 2002 rendered in favor of petitioners in Civil Case No. 989; indeed, the trial court even cited the dispositive portion of said Judgment in its December 16, 2010 Order, and respondents did the same in their Memorandum before this Court;[46] that said judgment became final and executory; and that the trial court directed the issuance of a writ of execution. All these facts need not be further proved, and reconstitution of the record is irrelevant and unnecessary on this score given the admission of all concerned. The March 4, 2002 Judgment and May 2, 2002 Order of the trial court directing issuance of a writ of execution

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[45] *Altres v. Empleo,* 594 Phil. 246, 261-262 (2008); in *Jacinto v. Gumaru, Jr., supra* note 44 at 355-357.

[46] *Rollo*, pp. 98, 453-454.

are deemed reconstituted. It must be remembered that under Act No. 3110, the judicial record shall be reconstituted to the extent that the parties agree; thereafter, the court shall intervene and determine what proper action to take. It can reconstitute only that part of the record which can stand on its own, and then continue proceedings upon such record so reconstituted.[47] In the present case, it can be said that the Judgment in Civil Case No. 989 and record of subsequent actions taken are deemed reconstituted by agreement of the parties and with the approval of the trial court.

WHEREFORE, the Petition is **GRANTED**. The June 14, 2011 and September 10, 2012 Resolutions in CA-G.R. SP No. 04239 are **REVERSED** and **SET ASIDE** and the case is **REMANDED** to the Court of Appeals for further proceedings.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 208086. July 27, 2016]

FLORENCIO MORALES, JR., *petitioner, vs.* **OMBUDSMAN CONCHITA CARPIO MORALES, ATTY. AGNES VST DEVANADERA, ATTY. MIGUEL NOEL T. OCAMPO, ATTY. JOYCE MARTINEZ-BARUT, ATTY. ALLAN S. HILBERO, and ATTY. EDIZER J. RESURRECION,** *respondents*.

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[47] Act No. 3110,Section 5 states:

In case the counsels or parties are unable to come to an agreement, the Court shall determine what may be proper in the interest of equity and justice, and may also consider the proceeding in question as non-existent and reconstitute only that part of the record which can stand without such proceeding, and continue proceedings upon the record so reconstituted.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE COURT'S INQUIRY IS LIMITED TO DETERMINING WHETHER OR NOT THE PUBLIC OFFICER ACTED WITHOUT OR IN EXCESS OF HIS JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION.— In *certiorari* proceedings under Rule 65 of the Rules of Court, the Court's inquiry is limited to determining whether or not the public officer acted without or in excess of his jurisdiction, or with grave abuse of discretion. x x x It is well to remember that "*certiorari* is an extraordinary prerogative writ that is never demandable as a matter of right." It is "meant to correct only errors of jurisdiction and not errors of judgment committed in the exercise of the discretion of a tribunal or an officer." Clearly, in this case, the Office of the Ombudsman was acting within the bounds of its constitutionally-mandated authority.

2. ID.; ID.; ID.; ID.; THE COURT WILL NOT ORDINARILY INTERFERE WITH THE OMBUDSMAN'S EXERCISE OF HIS INVESTIGATORY AND PROSECUTORY POWERS WITHOUT GOOD AND COMPELLING REASONS TO INDICATE OTHERWISE.— The Court reiterates, "[t]he determination of grave abuse of discretion as the exception to the general rule of non-interference in the Ombudsman's exercise of [his] powers is precisely the province of the extraordinary writ of *certiorari*. However, we highlight the exceptional nature of that determination." The Court has always adhered to the general rule upholding the "non- interference by the courts in the exercise by the office of the prosecutor or the Ombudsman of its plenary investigative and prosecutorial powers." The Court "will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise." This is a recognition of the "initiative and independence inherent in the said Office" which, "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service." Thus, for the Court to exercise its powers, petitioner must "demonstrate clearly that the Office of the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction."

3. ID.; ID.; ID.; ID.; ID.; THE OFFICE OF THE OMBUDSMAN HAS FULL DISCRETION TO DETERMINE WHETHER A CRIMINAL CASE SHOULD BE FILED, INCLUDING WHETHER A PRELIMINARY INVESTIGATION IS WARRANTED.— The Office of the Ombudsman is "empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts." In its role as "protector of the people," the Office of the Ombudsman has the power and duty "to act promptly on complaints filed in any form or manner against public officials" and "to investigate any act or omission of any public official when such act or omission appears to be illegal, unjust, improper, or inefficient." x x x Accordingly, if the Office of the Ombudsman, upon evaluation, finds that the case has no merit, it has the power to recommend that the same be "dismissed outright." Likewise, it has the authority to determine if a preliminary investigation is necessary in the case. x x x However, "a preliminary investigation is by no means mandatory." The Office of the Ombudsman "has full discretion to determine whether a criminal case should be filed, including whether a preliminary investigation is warranted." Thus, it is still acting within its powers when it finds that preliminary investigation is unnecessary and that the complaint should be dismissed. The Court gives due deference to said decision and will not interfere with such exercise of power.

4. ID.; ID.; ID.; ID.; ID.; ID.; PETITIONER HAS THE BURDEN OF PROVING GRAVE ABUSE OF DISCRETION ON THE PART OF THE OFFICE OF THE OMBUDSMAN.— Petitioner has the duty to prove by substantial evidence the allegations in his administrative complaint. The Court reiterates that "on the petitioner lies the burden of demonstrating, plainly and distinctly, all facts essential to establish his right to a writ of *certiorari*." "The burden of proof to show grave abuse of discretion is on petitioner." As petitioner for the writ of *certiorari,* he must "discharge the burden of proving grave abuse of discretion on the part of the Office of the Ombudsman, in accordance with the definition and standards set by law and jurisprudence." Petitioner's belief does not constitute proof. Neither is it enough to impel action on the part of the Office of the Ombudsman. His conviction that there exists sufficient

basis to charge respondent prosecutors -no matter how strong - must be duly supported by evidence. The power to determine whether said allegations would suffice to support a finding of probable cause belongs to the proper authorities designated by law, which in this case, is the Office of the Ombudsman.

APPEARANCES OF COUNSEL

Aguirre Abaño Pamfilo Paras Pineda & Agustin Law Offices for petitioner.

D E C I S I O N

CARPIO, *J.*:

The Case

Before this Court is a petition for *certiorari*[1] under Rule 65 of the Rules of Court filed by Florencio Morales, Jr. (petitioner) assailing the Order dated 13 January 2012, Review Order dated 25 October 2012, and Order dated 15 April 2013, denying his motion for reconsideration, issued by the Office of the Ombudsman in CPL-C-11-2601.

The Facts

On 16 June 2007, Atty. Demetrio L. Hilbero was gunned down near his home in Calamba City, Laguna.[2] The Philippine National Police (PNP) in Calamba City conducted an investigation on the incident. Among the findings were that the shooting was committed by two motorcycle-riding perpetrators and that it was a case of mistaken identity, since other members of the Hilbero family have been found to have conflicts with groups capable of carrying out the killing. The PNP also reported that on 26 December 2007, Atty. Allan S. Hilbero, the victim's son, prepared his *Sinumpaang Salaysay* claiming that the shooting was committed by Sandy Pamplona, petitioner and two others. The PNP's Criminal Investigation and Detection Group in Cabuyao, Laguna

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[1] *Rollo*, pp. 3-32.

[2] *Id*. at 4.

recommended the filing of a criminal case for Murder against petitioner, Sandy Pamplona, Lorenzo Pamplona, and Primo Lopez.[3]

In an undated Memorandum,[4] respondent Atty. Miguel Noel T. Ocampo (Atty. Ocampo) of the Calamba City Prosecutors Office, voluntarily inhibited himself from handling the investigation on the ground that the complainant is his friend, and that the Administrative Officer in his office is a relative of the victim.

On 10 January 2008, Regional State Prosecutor Ernesto C. Mendoza issued Order No. 08-04[5] designating Assistant Regional State Prosecutor Dominador A. Leyros to investigate I.S. No. 1428-07, *Atty. Allan Hilbero v. Florencio Morales, Jr., et al.*, for Murder. After the preliminary investigation, on 6 May 2008, the Office of the Regional State Prosecutor, Region IV issued a Resolution[6] finding probable cause for the filing of an Information for Murder against Lorenzo Pamplona and Primo Lopez. The charges against petitioner and Sandy Pamplona were dismissed.[7]

Atty. Allan S. Hilbero appealed the resolution to the Department of Justice (DOJ), while Lorenzo Pamplona and Primo Lopez also filed their separate petition for review. In Resolution No. 212, series of 2009,[8] dated 18 March 2009, the DOJ dismissed the appeal and absolved the four accused. Atty. Allan S. Hilbero filed a motion for reconsideration. In a Resolution[9] dated 30 September 2009, then Secretary of Justice Agnes VST Devanadera (Sec. Devanadera) ordered the prosecution of all four accused, thus:

WHEREFORE, premises considered, the motion for reconsideration is hereby GRANTED. The DOJ resolution (Resolution 212, series of 2009) is hereby RECONSIDERED and SET ASIDE. Accordingly,

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[3] *Id*. at 43-44.

[4] *Id*. at 45.

[5] *Id*. at 47.

[6] *Id*. at 50-53.

[7] *Id*. at 52.

[8] *Id*. at 55-60.

[9] *Id*. at 61-68.

the Office of the Regional State Prosecutor of Region IV, San Pablo City, is directed to file the necessary information for murder against respondents Primo Lopez, Lorenzo Pamplona, Florencio Morales, Jr. and Sandy Pamplona, should the information filed earlier against respondents Primo Lopez and Lorenzo Pamplona was already withdrawn, otherwise, to cause the amendment thereof to include respondents Sandy Pamplona and Florencio Morales, Jr. in the information as co-accused, and report the action taken hereon within ten (10) days from receipt thereof.[10]

Petitioner then filed a petition for *certiorari* before the Court of Appeals (CA) docketed as CA-G.R. SP No. 111191. In a Decision[11] dated 7 June 2011, the CA modified the DOJ Resolution by dropping the charge against petitioner. Atty. Allan S. Hilbero filed a motion for reconsideration, which was denied.[12] In a Resolution[13] dated 17 October 2011, the RTC complied with the CA decision and dropped petitioner as an accused.

On 19 December 2011, petitioner filed a Complaint-Affidavit before the Office of the Ombudsman charging Sec. Devanadera, Atty. Ocampo, Assistant City Prosecutors Joyce Martinez-Barut, Allan S. Hilbero and Edizer J. Resurrecion with (1) Grave Abuse of Authority, (2) Grave Misconduct, (3) Falsification of Public Documents, and (4) violations of the Anti-Graft and Corrupt Practices Act, as amended, the Code of Conduct of Professional Services, and the Revised Penal Code.

Orders of the Office of the Ombudsman

In the first of the assailed orders dated 13 January 2012,[14] the Office of the Ombudsman dismissed petitioner's complaint. It said,"[a] judicious examination of complainant's allegations

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[10] *Id*. at 68.

[11] *Id*. at 71-83.

[12] *Id*. at 84-86.

[13] *Id*. at 87-90.

[14] *Id*. at 120-123.

and his pieces of evidence impels us to dispense with the conduct of the necessary investigation on the herein complaint."[15]

Meanwhile, in its Review Order[16] dated 25 October 2012, the Office of the Ombudsman noted that the administrative complaint against Sec. Devanadera was filed "after she had ceased to be in service."[17] Citing jurisprudence, it held that "this Office can no longer institute an administrative case against a public servant who, at the time the case was filed, is no longer with the service."[18]

It further held:

> [Under] paragraph[s] (1) and (2), Section 20 of Republic Act 6770 (The Ombudsman Act of 1989), x x x the Office of the Ombudsman may not conduct the necessary investigation of any *administrative* act or omission complained of if it believes that:
>
> (1) The complainant has an adequate remedy in another judicial or quasi-judicial body;
>
> (2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;
>
> [x x x]

Parenthetically, the complainant already availed of a legal remedy when he elevated respondent Devanadera's Resolution *via* Petition for Certiorari, Prohibition and Mandamus with the CA, which held that there was abuse of discretion and thus, ordered the dropping of complainant's name in the Information.

Moreover, the determination on the correctness of the contents of the questioned Amended Information rests with the Regional Trial Court where the same was filed, and not with this Office.

Moreover, complaint's bare allegation that Hilbero was regularly attending the hearing of [C]riminal [C]ase No. 1582-08 conducted at Branch 37 of the Regional Trial Court of Calamba City without

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[15] *Id*. at 121.

[16] *Id*. at 125-129.

[17] *Id*. at 128.

[18] *Id*.

filing of leave of absence cannot be given probative value for being unsubstantiated.

WHEREFORE, the complaint filed by Florencio Morales, Jr. against former Acting Secretary of Justice Agnes VST Devanadera, City Prosecutor Miguel Noel T. Ocampo, and Assistant City Prosecutors-[Designate] Joyce Martinez-Barut, Allan S. Hilbero and Edizer J. Resurrecion is DISMISSED.

SO ORDERED.[19]

Petitioner moved for reconsideration of the Review Order.[20] In its Order[21] dated 15 April 2013, the Office of the Ombudsman denied said motion for reconsideration holding that "[n]o new evidence was submitted nor were there grave errors of facts and laws or serious irregularities committed by this Office prejudicial to the interest of the movant Morales, which would warrant a reversal of the [Review] Order."[22]

Thereafter, petitioner filed the present petition for *certiorari* under Rule 65, arguing that respondent Ombudsman Conchita Carpio-Morales committed grave abuse of discretion in issuing the three assailed orders.

Petitioner's Arguments

Petitioner argues that Ombudsman Carpio-Morales committed grave abuse of discretion:

(1) in not conducting the proper preliminary investigation of the criminal case and taking cognizance of the complaint against private respondents Ocampo, Bar[u]t and [Allan] Hilbero who acted in conspiracy with each other, when with abuse of authority and total disregard of the law, caused the alteration or falsification of the Information and the Amended Information in Criminal Case No. 15782-08-C by making

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[19] *Id*. at 128-129.

[20] *Id*. at 130-139.

[21] *Id*. at 140-142.

[22] *Id*. at 141.

untruthful statement[s] in the Information and Amended Information filed in court by fabricating and including treachery and abuse of superior strength which were not even found and mentioned in the Resolution of respondent Agnes Devanadera dated September 30, 2009 and the Resolution of the Panel of Prosecutors dated May 6, 2008. Petitioner and his then co-accused in said case were denied their constitutional right to due process;[23]

(2) when she refused to investigate and charged [sic] the private respondents of the proper criminal case/s despite the existence of clear and convincing evidence against them which act clearly constitutes denial of due process;[24]

(3) when she failed to rule that respondent Devanadera violated the Code of Professional Conduct, Revised Penal Code and the Anti[-]Graft and Corrupt Practices Act as Amended;[25]

(4) when she failed to assume jurisdiction and investigate the Complaint filed by petitioner which clearly established participation and acts of conspiracy of private respondent Hilbero with the other respondents. Private respondent Hilbero's participation was clearly established from the inception of the fabricated case against petitioner Florencio Morales, Jr.;[26]

(5) in not taking cognizance of the complaint filed by the petitioner despite clear and convincing evidence that private respondent Hilbero as then Clerk of Court was actively participating and appearing in the hearings of Criminal Case No. 15782-08-C without filing leave of absence from his work as clerk of court;[27] and

(6) in not taking cognizance of the complaint filed by the petitioner despite the clear and convincing evidence that private respondent Resurrecion should also be charged and be held accountable.[28]

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

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

[25] *Id*. at 26.

[26] *Id*. at 27.

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

[28] *Id*. at 29.

Petitioner points out that "Ocampo, Bar[u]t and Hilbero were not the one[s] who conducted the preliminary investigation x x x [but nonetheless] made it appear in the [allegedly] falsified Information and Amended Information that treachery and abuse of superior strength were established during the preliminary investigation."[29]

Petitioner argues that the Ombudsman "should have properly conducted a preliminary investigation to determine the culpability of the private respondents"[30] since there was "clear and convincing documentary proof of the existence of two (2) counts of falsification committed by private respondents."[31]

He further argues that filing the case with the Court of Appeals "could not be considered adequate remedy" since that case "involved only the person of [petitioner]" and merely addressed the issue of "erroneously impleading petitioner in the case and NOT the issue of alteration or falsification of the Information and Amended Information."[32]

Petitioner also accuses respondent prosecutors of falsification and abuse of authority for changing the aggravating circumstances in the original Information (nighttime) to treachery and abuse of superior strength in the Amended Information.[33]

Next, petitioner alleges that Sec. Devanadera defied the Court of Appeals' ruling in CA-G.R. SP No. 101196 and, without legal basis, "disregarded the Resolution dated May 6, 2008 made by the Panel of Prosecutors x x x wherein petitioner was exonerated in both decisions."[34]

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[29] *Id*. at 19.

[30] *Id*. at 20.

[31] *Id*. at 19.

[32] *Id*. at 21.

[33] *Id*. at 24.

[34] *Id*. at 26.

Respondent Prosecutors' Arguments

In their Comment,[35] Attys. Ocampo, Martinez-Barut, Allan S. Hilbero, and Resurrecion prayed that the petition be dismissed for lack of merit.[36]

They argue that "findings of fact of the Ombudsman, when duly supported by evidence, are conclusive."[37] Respondent prosecutors pointed out that the Court has refrained from interfering with the Ombudsman's exercise of her constitutional powers to investigate and to prosecute.[38]

Next, they aver that "the record clearly reveals that respondents Ocampo, [Martinez-Barut] and Resurrecion had acted within the scope of their authority and in line with their official duties. Respondent Ocampo amended the [I]nformation as a matter of function, as was the case with respondent [Martinez-Barut] who re-amended the [I]nformation pursuant to a directive[39] dated October 22, 2009 from the Office of the Regional State Prosecutor in conjunction [with] a Resolution[40] dated September 30, 2009 from the Department of Justice to include in the indictment accused Sandy Pamplona and Florencio Morales, Jr. Thus, the fact that their action was later not completely sustained by the Court of Appeals would not render them administratively nor criminally liable."[41]

These amendments, they argue, were "given imprimatur by the trial court, which imprimatur was used by the Ombudsman in brushing aside petitioner's gripe on the matter."[42]

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[35] *Id*. at 148-161.

[36] *Id*. at 157.

[37] *Id*. at 152.

[38] *Id*. at 152-153.

[39] *Id*. at 162.

[40] *Id*. at 163-170.

[41] *Id*. at 153.

[42] *Id*.

Lastly, they insist that "as a rule, a public officer, whether judicial, quasi-judicial or executive, is not personally liable to one injured in consequence of an act performed within the scope of his official authority, and in the line of his official duty."[43]

Office of the Ombudsman's Arguments

On the other hand, the Office of the Ombudsman prays that the Court dismiss the petition on the following grounds:

I.

PUBLIC RESPONDENT OFFICE OF THE OMBUDSMAN DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN DISMISSING THE COMPLAINT FILED BY THE PETITIONER AS THIS IS ALLOWED BY THE PROVISIONS OF PARAGRAPH (1) AND (2), SECTION 20 OF REPUBLIC ACT NO. 6770 (The Ombudsman Act of 1989).

II.

THIS HONORABLE COURT SHOULD UPHOLD ITS POLICY OF NON-INTERFERENCE IN THE EXERCISE OF THE OMBUDSMAN'S CONSTITUTIONALLY MANDATED POWERS.[44]

The Office of the Ombudsman maintains that it did not commit grave abuse of discretion in issuing the assailed orders. There is grave abuse "if a body, tribunal or office tasked to exercise discretion reaches a conclusion that deviates from the evidence before it or disregards the applicable laws. x x x. In short, there is grave abuse of discretion, in the present case, if public respondent issued the Order and Review Order dismissing the complaint against respondents without any basis."[45]

However, in this case, the Office of the Ombudsman argues that the "assailed Order and Review Order were not issued

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[43] *Id*. at 155.

[44] *Id*. at 188.

[45] *Id*. at 189.

without legal bases,"[46] underscoring that the Office "found no substantial basis to hold respondents administratively liable."[47]

Next, it asserts that it is "beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or ***dismissing a complaint before it***. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service."[48]

Lastly, the Office of the Ombudsman holds that petitioner cannot insist that his complaint should not have been dismissed because "[i]n the absence of substantial evidence to support a finding of administrative liability, [the] Office of the Ombudsman cannot maintain otherwise."[49] Likewise, given "the absence of any indication of arbitrariness on the part of the prosecutor or any officer authorized to conduct preliminary investigation, judicial authorities, as a rule, must respect such findings since the determination of the existence of probable cause is the function of the prosecutor."[50]

The Issue

The lone issue in this case is whether the Ombudsman committed grave abuse of discretion in issuing the assailed orders and dismissing petitioner's complaint against respondent prosecutors.

The Court's Ruling

The Court rules that the Office of the Ombudsman did not commit grave abuse of discretion. Accordingly, the petition for *certiorari* is dismissed for lack of merit.

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[46] *Id*. at 190.

[47] *Id*. at 191.

[48] *Id*. at 192-193.

[49] *Id*. at 194.

[50] *Id*. at 196.

Special Civil Action Under Rule 65

In *certiorari* proceedings under Rule 65 of the Rules of Court, the Court's inquiry is limited to determining whether or not the public officer acted without or in excess of his jurisdiction, or with grave abuse of discretion.

As the Court has previously explained:

> A tribunal, board or officer acts without jurisdiction if it/he does not have the legal power to determine the case. There is excess of jurisdiction where, being clothed with the power to determine the case, the tribunal, board or officer oversteps its/his authority as determined by law. And there is grave abuse of discretion where the tribunal, board or officer acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment as to be said to be equivalent to lack of jurisdiction.[51]

It is well to remember that "*certiorari* is an extraordinary prerogative writ that is never demandable as a matter of right." It is "meant to correct only errors of jurisdiction and not errors of judgment committed in the exercise of the discretion of a tribunal or an officer."[52]

Clearly, in this case, the Office of the Ombudsman was acting within the bounds of its constitutionally-mandated authority. As such, the next question to be determined is whether the Office of the Ombudsman is guilty of grave abuse of discretion when it issued the assailed orders.

Non-interference with the Exercise of Powers of the Ombudsman

The Court reiterates, "[t]he determination of grave abuse of discretion as the exception to the general rule of non-interference in the Ombudsman's exercise of [his] powers is precisely the province of the extraordinary writ of *certiorari*. However, we highlight the exceptional nature of that determination."[53]

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[51] *Dr. Brito v. Office of the Deputy Ombudsman for Luzon,* 554 Phil. 112, 125 (2007).

[52] *Angeles v. Gutierrez,* 685 Phil. 183, 193 (2012).

[53] *Id*. at 197.

The Court has always adhered to the general rule upholding the "non-interference by the courts in the exercise by the office of the prosecutor or the Ombudsman of its plenary investigative and prosecutorial powers."[54] The Court "will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise."[55]

This is a recognition of the "initiative and independence inherent in the said Office" which, "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service."[56]

Thus, for the Court to exercise its powers, petitioner must "demonstrate clearly that the Office of the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction."[57]

Plenary Powers of the Ombudsman

The Office of the Ombudsman is "empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts."[58]

In its role as "protector of the people," the Office of the Ombudsman has the power and duty "to act promptly on complaints filed in any form or manner against public officials"

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[54] *Id*. at 194.

[55] *Id*., citing *Esquivel v. Ombudsman*, 437 Phil. 702 (2002).

[56] *Agdeppa v. Office of the Ombudsman*, G.R. No. 146376, 23 April 2014, 723 SCRA 293, 330, citing *Casing v. Ombudsman*, 687 Phil. 468, 475-476 (2012).

[57] *Id*. at 333, citing *Callo-Claridad v. Esteban,* 707 Phil. 173, 183 (2013).

[58] *Presidential Commission on Good Government v. Desierto*, 553 Phil. 733, 742 (2007). Citations omitted.

and "to investigate any act or omission of any public official when such act or omission appears to be illegal, unjust, improper, or inefficient."[59]

The Rules of Procedure of the Office of the Ombudsman provide:[60]

Rule II

PROCEDURE IN CRIMINAL CASES

Section 1. Grounds – A criminal complaint may be brought for an offense in violation of R.A. 3019, as amended, R.A. 1379, as amended, R.A. 6713, Title VII, Chapter II, Section 2 of the Revised Penal Code, and for such other offenses committed by public officers and employees in relation to office.

Section 2. Evaluation – Upon evaluating the complaint, the investigating officer shall recommend whether it may be:

a) dismissed outright for want of palpable merit;
b) referred to respondent for comment;
c) indorsed to the proper government office or agency which has jurisdiction over the case;
d) forwarded to the appropriate office or official for fact-finding investigation;
e) referred for administrative adjudication; or
f) subjected to a preliminary investigation.

Accordingly, if the Office of the Ombudsman, upon evaluation, finds that the case has no merit, it has the power to recommend that the same be "dismissed outright." Likewise, it has the authority to determine if a preliminary investigation is necessary in the case.

The Office of the Ombudsman is empowered to determine if there exists probable cause or "whether there exists a reasonable ground to believe that a crime has been committed, and that the accused is probably guilty thereof and, thereafter, to file the

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[59] *Garcia-Rueda v. Pascasio*, 344 Phil. 323, 329 (1997), citing *Deloso v. Domingo*, 269 Phil. 580, 586 (1990).

[60] Office of the Ombudsman Administrative Order No. 07, Series of 1990.

corresponding information with the appropriate courts."[61] This determination is done by means of a preliminary investigation. However, "a preliminary investigation is by no means mandatory."[62]

The Office of the Ombudsman "has full discretion to determine whether a criminal case should be filed, including whether a preliminary investigation is warranted."[63] Thus, it is still acting within its powers when it finds that preliminary investigation is unnecessary and that the complaint should be dismissed. The Court gives due deference to said decision and will not interfere with such exercise of power.

The Court emphasizes that the Ombudsman's duty is not only to prosecute but, more importantly, to **ensure that justice is served**. This means determining, at the earliest possible time, whether the process should continue or should be terminated. The duty includes using all the resources necessary to prosecute an offending public officer where it is warranted, as well as to refrain from placing any undue burden on the parties in the case, or government resources where the same is not.

Burden of Proof

On which party has the burden to prove allegations in a complaint before the Office of the Ombudsman, the Court has ruled:

> The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence. When the complainant relies on mere conjectures and suppositions, and fails to substantiate his allegations, the complaint must be dismissed for lack of merit.[64]

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[61] *Esquivel v. Ombudsman*, 437 Phil. 702, 711 (2002).

[62] *Angeles v. Gutierrez, supra* note 52, at 195.

[63] *Angeles v. Gutierrez*, *supra* note 52, at 196.

[64] *Agdeppa v. Office of the Ombudsman*, *supra* note 56, at 333 citing *De Jesus v. Guerrero III*, 614 Phil. 520, 529.

Petitioner has the duty to prove by substantial evidence the allegations in his administrative complaint.[65]

The Court reiterates that "on the petitioner lies the burden of demonstrating, plainly and distinctly, all facts essential to establish his right to a writ of *certiorari*."[66] "The burden of proof to show grave abuse of discretion is on petitioner."[67] As petitioner for the writ of *certiorari*, he must "discharge the burden of proving grave abuse of discretion on the part of the Office of the Ombudsman, in accordance with the definition and standards set by law and jurisprudence."[68]

Petitioner's belief does not constitute proof. Neither is it enough to impel action on the part of the Office of the Ombudsman. His conviction that there exists sufficient basis to charge respondent prosecutors – no matter how strong – must be duly supported by evidence. The power to determine whether said allegations would suffice to support a finding of probable cause belongs to the proper authorities designated by law, which in this case, is the Office of the Ombudsman.

In sum, the Office of the Ombudsman did not act with grave abuse of discretion or in excess of its jurisdiction in issuing the assailed orders.

WHEREFORE, the petition is **DISMISSED** for lack of merit. The Order dated 13 January 2012, Review Order dated 25 October 2012, and Order dated 15 April 2013 issued by the Office of the Ombudsman in CPL-C-11-2601 are **AFFIRMED**.

SO ORDERED.

Brion, del Castillo, Mendoza, and *Leonen, JJ.*, concur.

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[65] *De Jesus v. Guerrero III*, 614 Phil. 520, 529 (2009).

[66] *People v. Sandiganbayan*, 681 Phil. 90, 110 (2012), citing *Corpuz v. Sandiganbayan*, 484 Phil. 899, 912 (2004).

[67] *Angeles v. Gutierrez, supra* note 52, at 197.

[68] *Agdeppa v. Office of the Ombudsman*, *supra* note 56, at 332.

SECOND DIVISION

[G.R. No. 208264. July 27, 2016]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **RICO C. MANALASTAS,** *respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY REGISTRATION DECREE (PRESIDENTIAL DECREE NO. 1529); REGISTER OF DEEDS; THE REGISTER OF DEEDS IS NOT AUTHORIZED TO DETERMINE WHETHER OR NOT FRAUD WAS COMMITTED IN THE DOCUMENT SOUGHT TO BE REGISTERED.— Section 10 of Presidential Decree No. 1529 lays down the general functions of the Register of Deeds: x x x Registration is a mere ministerial act by which a deed, contract, or instrument is sought to be inscribed in the records of the Office of the Register of Deeds and annotated at the back of the certificate of title covering the land subject of the deed, contract, or instrument. Being a ministerial act, it must be performed in any case. The public officer having this ministerial duty has no choice but to perform the specific action which is the particular duty imposed by law. The purpose of registration is to give notice to all persons. It operates as a notice of the deed, contract, or instrument to others, but neither adds to its validity nor converts an invalid instrument into a valid one between the parties. Since registration of documents is a ministerial act and merely creates a constructive notice of its contents against all third persons, the Register of Deeds is not authorized to determine whether or not fraud was committed in the document sought to be registered.

2. POLITICAL LAW; LAW ON PUBLIC OFFICERS AND EMPLOYEES; GROSS NEGLIGENCE IMPLIES A WANT OR ABSENCE OF OR FAILURE TO EXERCISE SLIGHT CARE OR DILIGENCE, OR THE ENTIRE ABSENCE OF CARE.— As a public officer, Manalastas enjoys the presumption of regularity in the performance of his official duties and functions. Manalastas accepted the requirements presented by BPI Family for annotation and registration of the real estate

mortgage in the ordinary course of transaction. His examination of the owner's duplicate copy of title and his recommendation to his superiors for the approval of the annotation and registration of the real estate mortgage were made in good faith and not tainted with gross negligence. Gross negligence implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. It is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected.

3. POLITICAL LAW; ADMINISTRATIVE LAW; IN ADMINISTRATIVE CASES, THE QUANTUM OF PROOF NEEDED TO ADJUDGE A RESPONDENT GUILTY IS SUBSTANTIAL EVIDENCE.— In administrative cases, the quantum of proof needed to adjudge a respondent guilty is substantial evidence. In *Miro v. Mendoza*, we held that substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere scintilla of evidence. The standard of substantial evidence is satisfied when there is reasonable ground to believe, based on the evidence submitted, that the respondent is responsible for the misconduct complained of. It need not be overwhelming or preponderant, as is required in an ordinary civil case, or evidence beyond reasonable doubt, as is required in a criminal case, but the evidence must be enough for a reasonable mind to support a conclusion. In sum, in the absence of any substantial evidence that Manalastas did not properly perform his duty as Examiner or that he intentionally performed an illegal act, then the presumption of regularity in the performance of duty should prevail. We do not find Manalastas administratively liable for gross negligence in carrying out his official functions which he had executed within reasonable bounds of diligence and care.

APPEARANCES OF COUNSEL

Office of Legal Affairs for petitioner.
Teves Manalili and Tianco & Associates 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 Decision dated 25 September 2012[2] and Resolution dated 1 July 2013[3] of the Court of Appeals (CA) in CA-G.R. SP No. 114797. The CA reversed and set aside the Decision dated 12 September 2006 of the Office of the Ombudsman, which found Rico C. Manalastas (Manalastas) guilty of gross negligence and imposed on him the penalty of one year suspension without pay.

The Facts

This case originated from a complaint for Grave Misconduct filed by Miriam Jane M. Jacinto (Jacinto), Assistant Vice President of BPI Family Savings Bank, Inc. (BPI Family), against Atty. Lorna S. Dee (Dee), Manalastas, and Gilberto M. Paras (Paras), in their capacities as Register of Deeds, Examiner, and Acting Deputy Register of Deeds, respectively, of the Office of the Register of Deeds of San Juan City, Metro Manila.

In the Complaint, Jacinto alleged that sometime in September 2000, Dy Chiu Ha Tiu or Marian Dy Tiu (Marian) applied for a loan in the amount of ₱20,000,000 with BPI Family. Marian requested that her husband's property located at 19 Lincoln St., West Greenhills, San Juan City be appraised for collateral purposes. The property was registered in the name of Paquito Tiu (Paquito), Marian's husband, and covered by Transfer Certificate of Title (TCT) No. 1035. BPI Family assessed the property at ₱36,072,900. Thereafter, BPI Family approved the loan application of Marian secured by the residential property.

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 34-46. Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez concurring.

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

On 25 January 2001, Marian and a certain person whom she introduced as her husband Paquito, signed, executed, and delivered to BPI Family several documents required for the loan. These documents were the Real Estate Mortgage, Loan Agreement, Promissory Note, and Disclosure Statement, as well as the Owner's Duplicate Copy of TCT No. 1035 in the name of Paquito.

On the same day, Reynold Cuasay, BPI Family's bank personnel, brought the Real Estate Mortgage and the other documents to the Office of the Register of Deeds of San Juan City for annotation and registration of the mortgage.

Manalastas, as Examiner of said office, examined the documents and assessed the corresponding fees. After Cuasay paid for the fees, Manalastas entered the mortgage in the Registration Book under Entry No. 4435/T-1035 and affixed his initials on the Real Estate Mortgage. Thereafter, Manalastas endorsed the same document to Paras, as Acting Deputy Register of Deeds. After examination, Paras affixed his initials on the Real Estate Mortgage then endorsed it further to Dee, the Register of Deeds. Finding the documents to have passed through the natural course of registration, Dee also affixed her signature on the Real Estate Mortgage, the Owner's Duplicate Copy of TCT No. 1035, and the Registry Copy of TCT No. 1035, which served as collateral for the loan.

Thereafter, BPI Family released the net proceeds of the loan in the amount of ₱19,765,093.27 by crediting the Spouses Tiu's Joint Current Account/Savings Account No. 6835-0036-96 which was opened at BPI Family's Commonwealth branch.

On 1 February 2001, the real Paquito Tiu, accompanied by his lawyer, Atty. Deogracias C. Eufemio, went to BPI Family's main office located in Makati City. Paquito informed BPI Family's officers that the signatures of one Paquito Tiu appearing on the loan documents were not his since he was not the same Paquito Tiu who signed them. Paquito presented his Owner's Duplicate Copy of TCT No. 1035 and submitted a Sworn Statement stating that he never signed the loan documents applied for by Marian and that his signatures therein were forged.

BPI Family immediately made a verification with the Office of the Register of Deeds of San Juan City. Upon thorough examination, the Owner's Duplicate Copy of TCT No. 1035 submitted by Marian, although on its face appeared to be real and authentic since the title was in a Land Registration Authority form, turned out to be fake and spurious.

After such discovery, Dee, as Register of Deeds, filed with the Office of the Prosecutor (Pasig City) a case against Marian for falsification of public documents.

Subsequently, BPI Family filed an administrative complaint[4] for Grave Misconduct with the Office of the Ombudsman against Dee, Manalastas, and Paras. BPI Family asserted that due to their negligence and dereliction of duties in failing to examine the genuineness and authenticity of TCT No. 1035, the bank was allegedly defrauded in the amount of ₱16,460,671.63, exclusive of interest and other charges.

In a Decision dated 12 September 2006, the Office of the Ombudsman found Dee, Manalastas, and Paras guilty of gross negligence and imposed on them the penalty of one year suspension without pay. The Office of the Ombudsman declared that the government officials were grossly negligent in the performance of their official functions when they failed to distinguish the discrepancies between the owner's duplicate copy of title presented for registration and the original copy of the title on file with their office. The dispositive portion of the Decision states:

WHEREFORE, herein public respondents Rico S. Manalastas, Gilberto M. Paras, and Atty. Lorna Salangsang Dee, are hereby meted the penalty of ONE (1) YEAR SUSPENSION WITHOUT PAY in accordance with number (2), Section 25, Republic Act No. 6770[5] in

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[4] Docketed as OMB-C-A-03-0386-J and entitled "*BPI Family Savings Bank, Inc. represented by Miriam Jane M. Jacinto. v. Atty. Lorna S. Dee, et al.*"

[5] Republic Act No. 6770 or the Ombudsman Act of 1989, Section 25(2) states:

(2) In other administrative proceedings, the penalty ranging from suspension without pay for one year to dismissal with forfeiture of benefits or a fine

relation to Section 10(b) of Administrative Order 07, Rules of Procedure, Office of the Ombudsman.

x x x x x x x x x

SO ORDERED.[6]

Since Paras retired from government service in October 2003, his penalty of suspension was rendered moot and academic. Dee and Manalastas filed their separate motions for reconsideration which were denied by the Office of the Ombudsman in an undated Order.[7]

Manalastas then filed an appeal[8] with the CA. In a Decision[9] dated 25 September 2012, the CA reversed the ruling of the Office of the Ombudsman. The CA ruled that Manalastas enjoys in his favor the presumption of regularity in the performance of his official duty and BPI Family failed to discharge the burden of proving otherwise. The CA added that no liability could attach to Manalastas in a registration procured through fraud unless he is a party to such fraud. If the real Paquito Tiu did not appear to contest the loan and the mortgage then the forgery would not have been discovered, bolstering Manalastas's claim that he had acted in good faith in his dealings with the documents presented before him for registration. Moreover, the CA declared that the proximate cause of BPI Family's loss was its failure to discover the forgeries in the documents as well as the real identity of the impostor husband. The dispositive portion of the Decision states:

WHEREFORE, the appeal is GRANTED. The Decision dated September 12, 2006 of the Office of the Ombudsman in OMB-C-A-03-0386-J is REVERSED and SET ASIDE. Accordingly, petitioner Rico

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ranging from five thousand pesos (₱5,000.00) to twice the amount malversed illegally taken or lost, or both at the discretion of the Ombudsman, taking into consideration circumstances that mitigate or aggravate the liability of the officer or employee found guilty of the complaint or charges.

[6] CA *rollo,* pp. 46-47.

[7] *Id*. at 65-74.

[8] Docketed as CA-G.R. SP No. 114797.

[9] *Supra* note 2.

C. Manalastas is EXONERATED. Thus, he should be paid his backwages corresponding to the period of his illegal suspension.

SO ORDERED.[10]

BPI Family filed a Motion for Reconsideration which was denied by the CA in a Resolution[11] dated 1 July 2013.

Hence, the instant petition filed by the Office of the Ombudsman.

The Issue

The issue for our resolution is whether the CA erred in exonerating Manalastas for negligence in failing to determine the genuineness of the owner's duplicate copy of the title attached to the real estate mortgage sought to be annotated with the Office of the Register of Deeds of San Juan City.

The Court's Ruling

The petition lacks merit.

Petitioner contends that Manalastas fell short of his duties and responsibilities as Examiner of the Office of the Register of Deeds for failing to determine the genuineness of the owner's duplicate copy of TCT No. 1035 when referred to him for examination in the annotation and registration of the real estate mortgage. Petitioner maintains that there is substantial evidence to hold Manalastas administratively liable for negligence since it is expected of Manalastas to exercise utmost caution in the examination of documents related to registration. Here, the owner's duplicate copy of TCT No. 1035 sought to be annotated and registered is an "authenticated copy." Petitioner insists that the loanable amount with BPI Family involved ₱20,000,000; thus, Manalastas should have been more circumspect in examining the genuineness of the said document.

Manalastas, on the other hand, contends that the owner's duplicate copy of TCT No. 1035 attached to the real estate

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[10] *Rollo*, p. 46.

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

mortgage presented to him purported and appeared to be authentic and there was no patent defect or irregularity on its face. Manalastas asserts that the falsification of the title, which was an almost exact replica of the original, must have been professionally done that reasonable care would not have immediately detected such misrepresentation. Manalastas maintains that registration was effected because there was no defect or irregularity on the face of the document which would cause a person in his position to deny such registration.

In the present case, Manalastas was found guilty of gross negligence for failing to discover the falsity of the owner's duplicate copy of title attached to the real estate mortgage submitted by BPI Family to the Office of the Register of Deeds. The Office of the Ombudsman ruled that BPI Family had adequately established Manalastas's negligence by substantial evidence. The relevant portions of the Ombudsman's Decision dated 12 September 2006 state:

> Considering that the Owner's Duplicate Copy of Title No. 1035 attached to the Real Estate Mortgage being sought to be annotated, is in an authenticated form only, that fact should have put the respondents on guard and therefore, each respondent should have been more vigilant by exerting effort in comparing and verifying its authenticity by looking into its minute details vis-à-vis the original copy on file with them.
>
> x x x [I]t is noted that, the BANK has no means of knowing whether or not a title is genuine except upon verification from the Office of the Registry of Deeds as custodian of the original copies of the transfer certificates of title. Lamentably, it is in this wise that respondents were grossly negligent in the performance of their official functions when they failed to distinguish the discrepancies between the owner's duplicate copy of title being presented for registration and the original copy of the title on file with their office.[12]

However, the CA, in reversing the decision of the Ombudsman, held that the primary reason why BPI Family went to the Office of the Register of Deeds was to have the real estate mortgage registered and annotated and not to verify the authenticity of

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[12] CA *rollo*, pp. 39-40.

the owner's duplicate copy of title. Prior to such registration, BPI Family already approved the loan. The relevant portions of the Decision dated 25 September 2012 state:

> It must be noted that the main purpose of BPI when it brought the Real Estate Mortgage together with the purported owner's duplicate copy of title to the Office of the Register of Deeds was to have the said mortgage inscribed in the records of said office and annotated at the back of the certificate of title covering the land subject of the instrument and *not* to verify the authenticity of the owner's duplicate copy of title. In fact, BPI verified the authenticity of the forged title only after the real Paquito Tiu showed up and informed its head office about the forgery.[13]

We agree with the CA.

Section 10 of Presidential Decree No. 1529[14] lays down the general functions of the Register of Deeds:

> Section 10. *General functions of Registers of Deeds.* – The office of the Register of Deeds constitutes a public repository of records of instruments affecting registered or unregistered lands and chattel mortgages in the province or city wherein such office is situated.
>
> It shall be the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real or personal property which complies with all the requisites for registration. He shall see to it that said instrument bears the proper documentary and science stamps and that the same are properly canceled. If the instrument is not registrable, he shall forthwith deny registration thereof and inform the presentor of such denial in writing, stating the ground or reason therefor, and advising him of his right to appeal by *consulta* in accordance with Section 117 of this Decree.

Registration is a mere ministerial act by which a deed, contract, or instrument is sought to be inscribed in the records of the Office of the Register of Deeds and annotated at the back of the certificate of title covering the land subject of the deed,

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[13] *Rollo*, p. 40.

[14] Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes. Also known as the Property Registration Decree, effective 11 June 1978.

contract, or instrument. Being a ministerial act, it must be performed in any case. The public officer having this ministerial duty has no choice but to perform the specific action which is the particular duty imposed by law. The purpose of registration is to give notice to all persons. It operates as a notice of the deed, contract, or instrument to others, but neither adds to its validity nor converts an invalid instrument into a valid one between the parties.[15]

Since registration of documents is a ministerial act and merely creates a constructive notice of its contents against all third persons,[16] the Register of Deeds is not authorized to determine whether or not fraud was committed in the document sought to be registered.[17]

Here, the falsification of the owner's duplicate copy of title was professionally done, that even someone exercising reasonable prudence and care would not instantly detect. On its face, the title was not apparently discernible as fake or spurious and could pass as a genuine and *bona fide* document. The title was in authentic form issued by the Land Registration Authority and an exact reproduction of the original copy with the same serial numbers, impressions, texts, and signatures. When a document is in "authentic form," this means that at the time the document was inspected and verified, there was nothing extraordinary that would have placed even a reasonable person to suspect of any wrongdoing.

As a public officer, Manalastas enjoys the presumption of regularity in the performance of his official duties and functions.[18] Manalastas accepted the requirements presented by BPI Family for annotation and registration of the real estate mortgage in

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[15] *Pascua v. Court of Appeals*, 401 Phil. 350, 367 (2000).

[16] *Non v. Court of Appeals*, 382 Phil. 538, 544 (2000), citing *People v. Reyes*, 256 Phil. 1015 (1989); *Garcia v. Court of Appeals*, 184 Phil. 358 (1980); *Hongkong & Shanghai Banking Corp. v. Pauli,* 244 Phil. 651 (1988).

[17] *In re Consulta of Vicente J. Francisco on behalf of Cabantog*, 67 Phil. 222 (1939).

[18] *Fernando v. Sto. Tomas*, G.R. No. 112309, 28 July 1994, 234 SCRA 546, 552.

the ordinary course of transaction. His examination of the owner's duplicate copy of title and his recommendation to his superiors for the approval of the annotation and registration of the real estate mortgage were made in good faith and not tainted with gross negligence.

Gross negligence implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[19] It is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected.[20]

In administrative cases, the quantum of proof needed to adjudge a respondent guilty is substantial evidence. In *Miro v. Mendoza*,[21] we held that substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere scintilla of evidence. The standard of substantial evidence is satisfied when there is reasonable ground to believe, based on the evidence submitted, that the respondent is responsible for the misconduct complained of. It need not be overwhelming or preponderant, as is required in an ordinary civil case, or evidence beyond reasonable doubt, as is required in a criminal case, but the evidence must be enough for a reasonable mind to support a conclusion.

In this case, the owner's duplicate copy of title attached to the real estate mortgage was written in an official paper of the Land Registration Authority and contained all the markings of a genuine title. The Office of the Register of Deeds is not

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[19] *Ilao-Oreta v. Spouses Ronquillo*, 561 Phil. 739, 745 (2007), citing *Phil. Aeolus Automotive United Corporation v. NLRC,* 387 Phil. 250, 263 (2000).

[20] *Id*., citing *De la Victoria v. Mongaya*, 404 Phil. 609, 619 (2001).

[21] 721 Phil. 772, 788-789 (2013).

mandated to investigate further than necessary when documents presented before it appear authentic. We agree with the CA when it declared:

> x x x [T]here is no basis to hold petitioner liable for gross negligence simply because he failed to discover the forgery in the owner's duplicate copy of title. It would be a grave injustice to punish him, when, in reality, he himself was a victim of the defraudation.
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> x x x x x x x x x
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> x x x [N]o liability could attach to petitioner in all registration procured through fraud, as in this case, unless he is a party to such fraud. Indeed, were it not for the appearance of the real Paquito Tiu, the forgery would not have been discovered. This bolsters petitioner's claim that he had acted in good faith in his dealings with the documents presented before him for registration.[22]

Also, BPI Family has the burden of proof to overcome the presumption of regularity in the performance of official duty. BPI Family would want to pass the blame to Manalastas by imputing gross negligence on his part when it is BPI Family which is the proximate cause of the loss.

As mentioned by the Office of the Ombudsman in its Decision dated 12 September 2006, BPI Family had been remiss in approving the loan without first making a thorough investigation of the true identity of its clients and the genuineness of the documents submitted to it. The relevant portions of the Decision state:

> x x x [T]he BANK may have been negligent to protect its interests when it approved the loan without first making the necessary investigation normally conducted by banking and/or financial/lending institutions, that is, i) by ascertaining that all the documents presented are authentic and that the persons who introduce themselves as owners are indeed the owner[s] of the property, and borrowers, if not the registered owner, are equipped with the legal document to transact business and ii) by conducting actual character and background

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[22] *Rollo*, p. 43.

investigation on Marian Dy Tiu as applicant and of Paquito Tiu being the registered owner of the property.[23]

Thus, as aptly held by the CA:

> It cannot be said that by reason of the failure of petitioner to discover the forgery, BPI was defrauded in the amount of ₱4,850,000.00 considering that prior to registration of the mortgage, BPI already approved the loan applied for by Marian upon the latter's submission of the requisite documents with the presence of an impostor husband. In other words, as between the failure of BPI to discover the forgeries in the documents as well as the real identity of the impostor husband on one hand, and the failure of petitioner to discover the forged owner's duplicate [copy] of title on the other, the former should be considered as the proximate cause of BPI's loss.[24]

As Justice Tuason opined, in his concurring and dissenting opinions in the case of *Lim v. Register of Deeds of Rizal*,[25] Registers of Deeds are not guardians entrusted with watching over the private interests of contracting parties who are fully capable of looking after their own affairs. Thus, BPI Family has to bear the burden of loss.

In sum, in the absence of any substantial evidence that Manalastas did not properly perform his duty as Examiner or that he intentionally performed an illegal act, then the presumption of regularity in the performance of duty should prevail. We do not find Manalastas administratively liable for gross negligence in carrying out his official functions which he had executed within reasonable bounds of diligence and care.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 25 September 2012 and Resolution dated 1 July 2013 of the Court of Appeals in CA-G.R. SP No. 114797.

SO ORDERED.

Brion, del Castillo, Mendoza, and *Leonen, JJ.,* concur.

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[23] CA *rollo*, p. 40.

[24] *Rollo*, p. 40.

[25] 82 Phil. 789, 797 (1949).

FIRST DIVISION

[G.R. No. 210606. July 27, 2016]

GRACE PARK[*] INTERNATIONAL CORPORATION and WOODLINK REALTY CORPORATION, *petitioners, vs.* **EASTWEST BANKING CORPORATION, SECURITY BANKING CORPORATION, ALLIED BANKING CORPORATION, represented by the Trustee and Attorney-in-Fact of EASTWEST BANKING CORPORATION TRUST DIVISION, EMMANUEL L. ORTEGA, in his capacity as the Ex-Officio Sheriff of the Regional Trial Court, Malolos City, Bulacan, EDRIC C. ESTRADA, in his capacity as Sheriff IV of the Regional Trial Court, Malolos City, Bulacan,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; FORUM SHOPPING; FORUM SHOPPING IS THE ACT OF A LITIGANT WHO REPETITIVELY AVAILED OF SEVERAL JUDICIAL REMEDIES IN DIFFERENT COURTS, SIMULTANEOUSLY OR SUCCESSIVELY.— At the outset, it must be emphasized that "[forum shopping] is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another. ***What is important in determining whether [forum shopping] exists is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.***" In *Heirs of Sotto v. Palicte*,

[*] Mentioned as "Gracepark" in the title of the petition.

the Court held that "[t]he test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to res judicata in the other. x x x In reference to the foregoing, *litis pendentia* is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant*. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.

2. ID.; ID.; ID.; THE ELEMENTS OF FORUM SHOPPING, ENUMERATED AND EXPLAINED. —Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to res judicata in the action under consideration." x x x Anent the first requisite of forum shopping, "[t]here is identity of parties where the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity. Absolute identity of parties is not required, shared identity of interest is sufficient to invoke the coverage of this principle. Thus, it is enough that there is a community of interest between a party in the first case and a party in the second case even if the latter was not impleaded in the first case." With respect to the second and third requisites of forum shopping, "[h]ornbook is the rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action. Hence, a party cannot, by varying

the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies.

3. ID.; ID.; ID.; TESTS TO ASCERTAIN WHETHER TWO SUITS RELATE TO A SINGLE OR COMMON CAUSE OF ACTION.— Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other. Also fundamental is the test of determining whether the cause of action in the second case existed at the time of the filing of the first complaint."

APPEARANCES OF COUNSEL

Fajarito Flores Dagulpo & Associates for petitioners.
Valerio and Associates for respondents.

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 May 22, 2013 and the Resolution[3] dated December 27, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 98880, which affirmed the Order[4] dated April 25, 2012 of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 15 (RTC-Malolos) dismissing Civil Case No. 543-M-2010 on the ground of forum shopping and/or *litis pendentia*.

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[1] *Rollo*, pp. 9-23.

[2] *Id.* at 28-37. Penned by Associate Justice Pedro B. Corales with Associate Justices Sesinando E. Villon and Florito S. Macalino concurring.

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

[4] *Id.* at 143-146. Penned by Judge Alexander P. Tamayo.

The Facts

The instant case arose from an Amended Complaint for Injunction and Annulment of Foreclosure Sale[5] filed by petitioners Grace Park International Corporation (Gracepark) and Woodlink Realty Corporation (Woodlink; collectively, petitioners) against respondents Eastwest Banking Corporation (EBC), Allied Banking Corporation (Allied), and Security Banking Corporation (Security), EBC Trust Division, Sheriff Emmanuel L. Ortega, and Sheriff Edric C. Estrada before the RTC-Malolos, docketed as Civil Case No. 543-M-2010. In their complaint, petitioners alleged that: (*a*) they entered into a Mortgage Trust Indenture[6] (MTI) with EBC, Allied, Security, and Banco De Oro Unibank (BDO), with EBC acting as trustee, in the aggregate amounts of ₱162,314,499.00 and US$797,176.47;[7] (*b*) under the MTI, BDO was the majority creditor with 58.04% ownership of the credit, with EBC, Allied, and Security having 18.33%, 12.58%, and 11.05% ownership, respectively;[8] (*c*) as collaterals, petitioners mortgaged eight (8) parcels of land, as well as the improvements found thereon, covered by Transfer Certificate of Title Nos. 439068, 439069, 439070, 439071, 439072, 439073, 439074, and 439075 (collaterals);[9] (*d*) under the MTI, EBC, as trustee, cannot commence foreclosure proceedings on any or all parts of the collaterals without the written instructions from the majority

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[5] With prayer for temporary restraining order and/or preliminary injunction dated October 3, 2010. *Id.* at 102-113.

[6] Dated November 24, 2004. *Id.* at 40-63.

[7] See *id.* at 29 and 104-105.

The aggregate amount is broken down as follows:

Name of Bank	Value of the Mortgage Participation Certificate	% of ownership
Allied Banking Corporation	Php 25,000,000.00	12.58%
Security Banking Corporation	Php 21,972,656.00	11.05%
East West Banking Corporation	Usd 797,176.47	18.33%
Banco de Oro Unibank	Php 115,341,843.00	58.04%

[8] *Id.* at 105.

[9] *Id.* at 29 and 104.

creditors;[10] (*e*) during the pendency of the MTI, BDO's majority share in the MTI was effectively paid for by Sherwyn Yao, Jeremy Jerome Sy, and Leveric Ng (Sherwyn, *et al.*);[11] (*f*) Sherwyn, et al. should have been subrogated to BDO's majority interest in the MTI; (*g*) EBC refused to honor the subrogation, causing Sherwyn, et al. to file an action for subrogation and injunction[12] before the RTC of Makati City (RTC-Makati), docketed as Civil Case No. 10-323; and (*h*) EBC commenced foreclosure proceedings without written instructions from the majority creditors under the MTI, which by virtue of subrogation, should be Sherwyn, *et al*.[13]

In their Answer[14] and Motion to Dismiss,[15] EBC, Allied, and Security contended that the complaint before the RTC-Malolos should be dismissed on the grounds of forum shopping and *litis pendentia*. They claimed that the action for subrogation pending before the RTC-Makati basically involved the same parties, reliefs, and causes of action with the action pending before the RTC-Malolos in that: (*a*) the individual plaintiffs in the RTC-Makati case, *i.e.*, Sherwyn, *et al.,* represent the same interests as the corporation plaintiffs, *i.e.*, petitioners, in the RTC-Malolos case, since they are the respective owners of petitioner corporations; (*b*) there were glaring similarities in the complaints filed before the RTC-Makati and the RTC-Malolos; and (*c*) both complaints essentially sought the injunction of the foreclosure sale, as well as the inclusion of the claims of Sherwyn, *et al*. in the said foreclosure.[16]

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[10] See *id*. at 30 and 107A-108. See Section 6, Item 6.05 (b) of the MTI; *id.* at 53.

[11] *Id.* at 105-106.

[12] See Complaint for Subrogation and Injunction with prayer for restraining order and/or preliminary injunction dated March 30, 2010; *id.* at 80-88.

[13] *Id.* at 107A-109. See also *id.* at 29-30.

[14] Dated January 27, 2011. *Id.* at 114-121.

[15] Dated March 5, 2012. *Id.* at 122-125.

[16] See *id.* at 119. See also *id*. at 31.

In opposition to the Motion to Dismiss,[17] petitioners insisted that the forum shopping and/or *litis pendentia* are not attendant between Civil Case No. 543-M-2010 and Civil Case No. 10-323, considering that there is no identity of parties and causes of action in both cases.[18] Petitioners likewise averred that the judgment in Civil Case No. 10-323 pending in the RTC-Makati will not amount to *res judicata* in Civil Case No. 543-M-2010 pending in the RTC-Malolos because such judgment can only be used as evidence in the latter case to prove that the requirements of the MTI for the foreclosure of the collaterals were not complied with.[19]

The RTC-Malolos Ruling

In an Order[20] dated April 25, 2012, the RTC-Malolos dismissed Civil Case No. 543-M-2010 on the ground of forum shopping. It found that several similarities existed between the complaint filed before it and that in Civil Case No. 10-323 pending in the RTC-Makati, *i.e.*, (*a*) both complaints dealt with the same collaterals under the MTI, and (*b*) both cases involved substantially the same parties as the individual plaintiffs in Civil Case No. 10-323 (herein Sherwyn, *et al.*) and the corporation plaintiffs in Civil Case No. 543-M-2010 (herein petitioners) represented a common interest adverse to EBC, Allied, and Security.[21] In this light, the RTC-Malolos concluded that the determination of the validity of foreclosure would necessarily be intertwined with the issue of whether or not Sherwyn, *et al.* should be subrogated to the rights of BDO under the MTI — an issue already pending before the RTC-Makati.[22]

Aggrieved, petitioners appealed to the CA.[23]

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[17] Dated March 12, 2012; *id.* at 139-142.

[18] See *id.* at 140.

[19] *Id.* at 141.

[20] *Id.* at 143-146.

[21] See *id.* at 144.

[22] *Id.* at 144-145.

[23] See appellant's brief dated November 5, 2012; *id.* at 147-161.

The CA Ruling

In a Decision[24] dated May 22, 2013, the CA upheld the RTC-Malolos's dismissal of Civil Case No. 543-M-2010 on the ground of forum shopping. It held that the elements of *litis pendentia* are attendant in the said case, considering that: (*a*) there is a community of interests between the parties in the cases pending before the RTC-Malolos and the RTC-Makati, in that the aforesaid cases were instituted to protect the alleged respective rights of the individual and corporation plaintiffs over the collaterals and both sought the identical relief of enjoining the foreclosure thereof;[25] (*b*) although both cases differ in form or nature, they alleged the same facts and the same evidence would be required to substantiate the parties' claim, considering that the resolution of both cases would be based on the right of Sherwyn, et al. to be subrogated to BDO's rights under the MTI;[26] and (*c*) the resolution of said issue in one case would amount to *res judicata* in the other.[27]

Undaunted, petitioners moved for reconsideration,[28] which was, however, denied in a Resolution[29] dated December 27, 2013; hence, this petition.

The Issue Before the Court

The core issue in this case is whether or not the CA correctly upheld the dismissal of Civil Case No. 543-M-2010 pending before the RTC-Malolos on the ground of forum shopping in the concept of *litis pendentia*.

The Court's Ruling

The petition is meritorious.

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[24] *Id.* at 28-37.

[25] *Id.* at 34.

[26] *Id.* at 35.

[27] *Id.* at 36.

[28] The motion for reconsideration is not attached to the *rollo*.

[29] *Rollo*, pp. 38-39.

At the outset, it must be emphasized that "[forum shopping] is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another. ***What is important in determining whether [forum shopping] exists is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.***"[30]

In *Heirs of Sotto v. Palicte*,[31] the Court held that "[t]he test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. **Thus, there is forum shopping when the following elements are present, namely: (*a*) identity of parties, or at least such parties as represent the same interests in both actions; (*b*) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (*c*) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.**"[32]

In reference to the foregoing, *litis pendentia* is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant*. As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same

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[30] *Pentacapital Investment Corporation v. Mahinay,* 637 Phil. 283, 308-309 (2010), emphasis, italics, underscoring supplied and citations omitted.

[31] G.R. No. 159691, February 17, 2014, 716 SCRA 175.

[32] *Id.* at 178-179; emphasis and underscoring supplied.

cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.[33]

Anent the first requisite of forum shopping, "[t]here is identity of parties where the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity. Absolute identity of parties is not required, shared identity of interest is sufficient to invoke the coverage of this principle. Thus, it is enough that there is a community of interest between a party in the first case and a party in the second case even if the latter was not impleaded in the first case."[34]

With respect to the second and third requisites of forum shopping, "[h]ornbook is the rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action. Hence, a party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated

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[33] *Benavidez v. Salvador,* 723 Phil. 332, 342 (2013). See also Section 1 (e), Rule 16 of the Rules of Court, which reads:

> Section 1. *Grounds*. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> xxx xxx xxx
>
> (e) That there is another action pending between the same parties for the same cause[.]

[34] *Degayo v. Magbanua-Dinglasan,* G.R. No. 173148, April 6, 2015, 755 SCRA 1, 13.

between the same parties or their privies. Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other. Also fundamental is the test of determining whether the cause of action in the second case existed at the time of the filing of the first complaint."[35]

Here, it cannot be said that there is an identity of parties between Civil Case No. 10-323 pending before RTC-Makati and Civil Case No. 543-M-2010 pending before RTC-Malolos because the plaintiffs in the former, herein Sherwyn, *et al.,* represent substantially different interests from the plaintiffs in the latter, herein petitioners. This is because in Civil Case No. 10-323, Sherwyn, *et al.*'s interest is to be subrogated into the shoes of BDO as one of the creditors under the MTI; on the other hand, petitioners' interest in Civil Case No. 543-M-2010 is the enforcement of their rights as debtors to the MTI, *i.e.*, ensuring that the foreclosure proceedings were in accord with the foreclosure provisions of the MTI.

Secondly, the underlying circumstances surrounding the causes of action in both cases are likewise substantially different in that: (*a*) in Civil Case No. 10-323, the cause of action arose from EBC's alleged unjust refusal to subrogate Sherwyn, *et al.* to the rights of BDO; while (*b*) in Civil Case No. 543-M-2010, the cause of action stemmed from EBC's purported breach of Section 6.05[36] of the

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[35] *Yap v. Chua,* 687 Phil. 392, 401-402 (2012).

[36] See *rollo*, p. 53. Section 6.05 of the MTI states:

> 6.05. No foreclosure of the Collateral or any part thereof may be made by the TRUSTEE unless:
>
> (*a*) an Event of Default has been declared and has remained unremedied, as provided for in Sections 6.02 and 6.03 hereof (except when sub-paragraphs (a) and (g) of Section 6.01 is applicable); and
>
> (*b*) the Majority Creditors shall have given their written instructions to the TRUSTEE to foreclose the Collateral.
>
> xxx xxx xxx

MTI which provides that it should first secure a written instruction from the Majority Creditors[37] before commencing foreclosure proceedings against the collaterals.

Finally, a judgment in Civil Case No. 10-323 will not necessarily result in *res judicata* in Civil Case No. 543-M-2010. Being principally a subrogation case which is an action *in personam,*[38] a judgment in Civil Case No. 10-323 will not bind any non-parties to it, such as the corporation plaintiffs and the other defendants (aside from EBC) in Civil Case No. 543-M-2010 that represent interests separate and distinct from the parties in Civil Case No. 10-323.[39] At the most, a judgment in Civil Case No. 10-323 may only constitute the *factum probans* (or evidentiary facts) by which the *factum probandum* (or the ultimate fact) sought to be proven by petitioners in Civil Case No. 543-M-2010, *i.e.*, EBC's non-compliance with the foreclosure provisions of the MTI, could be established.

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[37] See *id.* at 41. Section 1.08 of the MTI reads:

> 1.08. "Majority Creditors" shall mean the Creditor or Creditors holding more than fifty percent (50%) of the aggregate principal amount of the Obligations outstanding from time to time (with any Obligation denominated in foreign currency computed in its Peso Equivalent) as of 11:00 a.m. (Philippine Time) on the date any decision or determination by the Majority Creditors is required under this Indenture.

[38] "A proceeding *in personam* is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court. The purpose of a proceeding *in personam* is to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant." (*Macasaet v. Co, Jr.,* 710 Phil. 167, 177 [2013], citing *Domagas v. Jensen,* 489 Phil. 631, 641 [2005].)

[39] See *Green Acres Holdings, Inc. v. Cabral,* 710 Phil. 235, 250-251 (2013), citing *Muñoz v. Yabut, Jr.,* 665 Phil. 488, 509-510 (2011). See also *Dare Adventure Farm Corporation v. CA,* 695 Phil. 681, 690-691 (2012).

In sum, both the RTC-Malolos and the CA erred in dismissing Civil Case No. 543-M-2010 on the ground of forum shopping and/or *litis pendentia*. Hence, Civil Case No. 543-M-2010 stands to be reinstated and remanded to the court *a quo* for further proceedings.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 22, 2013 and the Resolution dated December 27, 2013 of the Court of Appeals in CA-G.R. CV No. 98880 are hereby **REVERSED** and **SET ASIDE**. Civil Case No. 543-M-2010 is **REINSTATED** and **REMANDED** to the Regional Trial Court of Malolos City, Bulacan, Branch 15 for further proceedings.

SO ORDERED.

Sereno, C.J.(Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

THIRD DIVISION

[G.R. No. 210710. July 27, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LUISITO GABORNE *y* CINCO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ANY OBJECTION INVOLVING A WARRANT OF ARREST OR THE PROCEDURE BY WHICH THE COURT ACQUIRED JURISDICTION OVER THE PERSON OF THE ACCUSED MUST BE MADE BEFORE HE ENTERS HIS PLEA, OTHERWISE THE OBJECTION IS DEEMED WAIVED.— Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. In *People v. Velasco*, this Court

held that the accused is estopped from assailing the legality of his arrest for his failure to move for the quashal of the Information before arraignment. In this case, appellant only questioned the legality of his arrest for the first time on appeal. Furthermore, even granting that indeed there has been an irregularity in the arrest of the appellant, it is deemed cured by his voluntary submission to the jurisdiction of the trial court over his person. Thus, appellant is deemed to have waived his constitutional protection against illegal arrest when he actively participated in the arraignment and trial of this case.

2. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.— [T]he elements of murder are: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.

3. ID.; ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; REQUISITES.— [T]here is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. The requisites of treachery are: (1) The employment of means, method, or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) Deliberate or conscious adoption of such means, method, or manner of execution.

4. ID.; ID.; FRUSTRATED MURDER; ESTABLISHED IN CASE AT BAR.— In addition, the lower courts appropriately found appellant liable for the crime of Frustrated Murder. A felony is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator. Dr. Angel Cordero M.D. categorically said that De Luna could have died because of the wounds if the surgery was not conducted timely. Hence, appellant performed all the acts of execution which could have produced the crime of murder as a consequence, but nevertheless, did

not produce it by reason of a cause independent of his will, which is, in this case, the timely and able medical attendance rendered to De Luna.

5. **ID.; ID.; MOTIVE; MOTIVE ALONE IS NOT A PROOF AND IS HARDLY EVER AN ESSENTIAL ELEMENT OF A CRIME.—** Intent is not synonymous with motive. Motive alone is not a proof and is hardly ever an essential element of a crime. As a general rule, proof of motive for the commission of the offense charged does not show guilt and absence of proof of such motive does not establish the innocence of accused for the crime charged such as murder. In *Kummer v. People*, this Court held that motive is irrelevant when the accused has been positively identified by an eyewitness. Evidently, accused-appellant's intent to kill was established beyond reasonable doubt. This can be seen from his act of shooting Elizan and De Luna from behind with a firearm while they were innocently singing and drinking. Intent to kill was also manifest considering the number of gun shot wounds sustained by the victims.

6. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; THE POSITIVE IDENTIFICATION MADE BY THE PROSECUTION WITNESSES BEARS MORE WEIGHT THAN THE NEGATIVE PARAFFIN TEST CONDUCTED THE DAY AFTER THE INCIDENT.—** The positive identification made by the prosecution witnesses bears more weight than the negative paraffin test result conducted the day after the incident. Paraffin tests, in general, have been rendered inconclusive by this Court. Scientific experts concur in the view that the paraffin test was extremely unreliable for use. It can only establish the presence or absence of nitrates or nitrites on the hand; however, the test alone cannot determine whether the source of the nitrates or nitrites was the discharge of a firearm. The presence of nitrates should be taken only as an indication of a possibility or even of a probability but not of infallibility that a person has fired a gun, since nitrates are also admittedly found in substances other than gunpowder.

7. **CRIMINAL LAW; REVISED PENAL CODE; AGGRAVATING CIRCUMSTANCES; USE OF UNLICENSED FIREARM; PRESENT IN CASE AT BAR.—** With regard to the appreciation of the aggravating circumstance of the use of an unlicensed firearm, we agree with the trial court and the appellate court that the same

must be appreciated in the instant case. In *People v. Lualhati*, this Court ruled that in crimes involving unlicensed firearm, the prosecution has the burden of proving the elements thereof, which are: (1) the existence of the subject firearm and (2) the fact that the accused who owned or possessed the firearm does not have the corresponding license or permit to possess the same.

8. ID.; ID.; ID.; ID.; THE EXISTENCE OF THE FIREARM CAN BE ESTABLISHED BY TESTIMONY, EVEN WITHOUT THE PRESENTATION OF THE SAID FIREARM; CASE AT BAR.— Appellant's contention that the *corpus delicti* was not established for the reason that the firearm used was not presented as evidence is not persuasive. In *People v. Orehuela*, this Court held that the existence of the firearm can be established by testimony, even without the presentation of the said firearm. In the present case, the testimonies of Pasana and De Luna indubitably demonstrated the existence of the firearms. Furthermore, the certification from the Philippine National Police that appellant is not a firearm license holder of any caliber proves that he is not licensed to possess the same. Thus, the prosecution was able to prove the existence of the firearm and that the appellant is not licensed to possess the same notwithstanding the fact that the firearm used was not presented as evidence.

9. ID.; ID.; ID.; ID.; WHERE MURDER WAS COMMITTED, THE PENALTY FOR ILLEGAL POSSESSION OF FIREARMS IS NO LONGER IMPOSABLE SINCE IT BECOMES MERELY A SPECIAL AGGRAVATING CIRCUMSTANCE.— In view of the amendments introduced by R.A. No. 8294 and R.A. No. 10591, to Presidential Decree No. 1866, separate prosecutions for homicide and illegal possession are no longer in order. Instead, illegal possession of firearm is merely to be taken as an aggravating circumstance in the crime of murder. It is clear from the foregoing that where murder results from the use of an unlicensed firearm, the crime is not qualified illegal possession but, murder. In such a case, the use of the unlicensed firearm is not considered as a separate crime but shall be appreciated as a mere aggravating circumstance. Thus, where murder was committed, the penalty for illegal possession of firearms is no longer imposable since it becomes merely a special aggravating circumstance. The intent of Congress is to treat the offense of illegal possession of firearm and the commission of homicide or murder with the use of unlicensed

firearm as a single offense. In the case at hand, since it was proven that accused-appellant was not a licensed firearm holder, and that he was positively identified by the witnesses as the one who fired shots against the victims, the use of an unlicensed firearm in the commission of the crimes of Murder and Frustrated Murder should be considered as an aggravating circumstance thereof.

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 the Court is an appeal from the Decision [1] of the Court of Appeals (CA) dated 29 July 2013 in CA-G.R. CR HC No. 01183, affirming the Decision[2] of the Regional Trial Court (RTC), Branch 33, Calbiga, Samar which found appellant Luisito Gaborne y Cinco guilty of the crime of Murder with the use of Unlicensed Firearm, as defined in Article 248 of the Revised Penal Code (RPC) as amended by Sec. 6 of Republic Act (R.A.) No. 7659, and Frustrated Murder as defined in Article 248 in relation to Article 50 of the RPC, respectively.

Together with two others, appellant was charged with Murder with the use of Unlicensed Firearm and Frustrated Murder in the following Informations:

Criminal Case No. CC-2007-1640

That on or about the 2nd day of February 2007, at about 11:00 o'clock in the evening more or less, at Brgy. Mugdo, Hinabangan,

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[1] *Rollo*, pp. 3-21; Penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Edgardo L. Delos Santos and Pamela Ann Abella Maxino concurring.

[2] Records (Crim. Case No. CC-2007-1640), pp. 186-205; Presided by Acting Presiding Judge Yolanda U. Dagandan.

Samar, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating, mutually helping one another, with deliberate intent to kill, and with treachery and evident premeditation, which qualify the offense into murder, did there, willfully, unlawfully, and feloniously, shot (*sic*) Sixto Elizan y Herrera, with the use of an unlicensed firearm a caliber [.]45 pistol, a special aggravating circumstance pursuant to RA 8294, which accused have provided themselves for the purpose, thereby hitting and inflicting upon the said Sixto Elizan y Herrera fatal gun shot wounds on the different parts of his body, which gun shot wounds caused his instantaneous death.[3]

Criminal Case No. CC-2007-1650

That on or about the 2nd day of February 2007, at around 11:00 o'clock in the evening more or less, at Brgy. Mugdo, Municipality of Hinabangan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating, mutually helping one another, with deliberate intent to kill, and with treachery, which qualifies the offense to murder, did, then and there, willfully, unlawfully and feloniously shot [*sic*] the victim, Rey Perfecto C. de Luna, with the use of a caliber [.]45 pistol, an unlicensed firearm, a special aggravating circumstance pursuant to Rep. Act No. 8294, with which the accused have provided themselves for the purpose, thereby inflicting upon the victim the following wounds, to wit:

- Gun shot wound (R) back penetrating (R) chest, lacerating diaphragm, (R) lobe of the liver, thru and thru and greater omentum with massive hemoperitoneum

- Gun shot wound (R) para spinal area at L2 penetrating abdomen perforating ileum thru and thru

thus, accused have performed all the acts of execution which should have produced the crime of murder as a consequence but which nevertheless did not produce it by reason of some cause independent of the will of the accused, that is, the timely medical treatment/intervention rendered to the victim at Saint Paul's Hospital, Tacloban City.[4]

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[3] Records (Crim. Case No. CC-2007-1640), p. 1.

[4] Records (Crim. Case No. CC-2007-1650), pp. 1-2.

On arraignment, appellant entered a plea of NOT GUILTY[5] for both charges. Trial on the merits ensued thereafter.

The Facts

The antecedent facts culled from the Appellee's Brief[6] and the records of the case are summarized as follows:

On 2 February 2007 at around 10:30 in the evening, Rey Perfecto De Luna (De Luna) and Sixto Elizan[7] (Elizan) entered a *videoke* bar[8] at Barangay Mugdo, Hinabangan, Samar.[9] Noli Abayan (Abayan), appellant and Joselito Bardelas (Bardelas) followed five minutes thereafter.[10]

While Elizan and De Luna were drinking, singing and merely having fun, four successive gunshots[11] were fired through the window. Because of this, Elizan and De Luna were hit from behind.[12] Later on, De Luna[13] and Marialinisa Pasana[14] (Pasana) saw appellant, who was then wearing a black t-shirt and a black cap, holding a gun aimed at their location. Pasana also saw accused-appellant and Bardelas escape after the incident.[15]

Elizan and De Luna were brought to St. Paul's Hospital at Tacloban City.[16] Unfortunately, Elizan was pronounced dead upon arrival. De Luna, on the other hand, survived.[17]

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[5] Records (Crim. Case No. CC-2007-1640), p. 43; Records (Crim. Case No. CC-2007-1650), p. 22.

[6] CA *rollo*, pp. 70-87.

[7] Also referred to in the records as Sixto Elisan.

[8] Also referred to in the records as "Mana Riting" & "Narita Gayuso."

[9] TSN, 21 August 2008, pp. 5-8.

[10] TSN, 19 June 2008, pp. 9-11.

[11] TSN, 25 September 2008, pp. 4-5.

[12] TSN, 21 August 2008, pp. 8-9.

[13] *Id.* at 10.

[14] TSN, 19 June 2008, pp. 34-38.

[15] *Id.* at 16-21.

[16] *Id.* at 22.

[17] TSN, 29 January 2009, pp. 7-17 and 29-43.

Appellant steadfastly denied the accusations. According to him, he and his companions ordered for bottles of beer. However, when they tried to order for more bottles, the waitress refused to give them their order unless they pay for their previous orders first.[18] While Abayan was explaining to the father of the owner of the *videoke* bar, appellant and Bardelas went out to urinate,[19] however, the waitress locked the front door.[20] While standing outside, he heard the waitress utter the words, "If you will not pay, I [will] have you killed, all of you, right this moment."[21] He also consistently contend that it was a man wearing black shirt and camouflage pants who fired shots to the *videoke* bar,[22] not him.

The following day, appellant and Bardelas were arrested and underwent paraffin test.[23]

Ruling of the Regional Trial Court

On 12 March 2010, the RTC rendered a joint judgment finding accused-appellant guilty of the two (2) charges of Murder with the use of Unlicensed Firearm and Frustrated Murder. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the [c]ourt finds the co-accused **LUISITO GABORNE *y* CINCO GUILTY BEYOND REASONABLE DOUBT** as principal in the crimes of:

A. Murder with the Use of an Unlicensed Firearm under Art. 248 of the Revised Penal Code in Criminal Case No. CC-2007-1640 and considering the presence of one (1) aggravating circumstance without any mitigating circumstance to offset it, hereby sentences him to suffer imprisonment of RECLUSION PERPETUA; to pay the Heirs of Sixto Elisan

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[18] TSN, 13 August 2009, pp. 9-11.

[19] *Id.* at 12.

[20] TSNs, 8 October 2009, p. 9 and 4 June 2009, pp. 13-14.

[21] *Id.* at 13; TSN, 8 October 2009, p. 9.

[22] *Id.* at 14-17.

[23] TSN, 13 August 2009, pp. 23 and 26.

y Herrera Php75,000.00 as civil indemnity for his death; Php50,000.00 in moral damages and Php25,000.00 in exemplary damages and to pay the costs of this suit.

B. Frustrated Murder penalized under Art. 248 in relation to Art. 50 of the Revised Penal Code in Criminal Case No. CC-2007-1650 and considering the presence of one (1) aggravating circumstance without any mitigating circumstance to offset it hereby sentences him to suffer imprisonment of an indeterminate penalty ranging from ELEVEN (11) YEARS of Prision Mayor as minimum to EIGHTEEN (18) YEARS of Reclusion Temporal as maximum, to pay Perfecto de Luna Php264,866.58 as civil liability without subsidiary imprisonment in case of insolvency and to pay the costs of this suit.

The accused who underwent preventive imprisonment since February 3, 2007 shall be credited with the full time during which he was deprived of his liberty if he agreed voluntarily and in writing to abide by the same disciplinary rules imposed upon convicted prisoners otherwise he will be entitled to only four-fifths (4/5) thereof.

Because the prosecution absolutely failed to prove guilt of accused **NOLI ABAYAN *y* LARGABO** and co-accused **JOSELITO BARDELAS *y* BACNOTAN** from the instant criminal charges, they are **ACQUITTED** in these cases. No civil liability is assessed against them.

Because the said accused are detained, the Provincial Warden of Samar are hereby ordered to release the said accused from detention unless they are held for some other cause or ground.[24]

Ruling of the Court of Appeals

The CA found no merit in appellant's arguments. It pointed out that appellant is estopped from questioning the legality of his arrest as it was raised for the first time on appeal.[25] Thus, the appellate court was fully convinced that there is no ground to deviate from the findings of the RTC. The dispositive portion of the decision reads:

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[24] Records (Crim. Case No. CC-2007-1640), pp. 204-205.

[25] *Rollo*, p. 15.

WHEREFORE, the instant appeal is hereby DENIED. The Joint Judgment dated March 12, 2010 rendered by Branch 33, Regional Trial Court of Calbiga, Samar, 8th Judicial Region in Criminal Case Nos. [CC-]2007-1640 and [CC-]2007-1650 is hereby **AFFIRMED WITH MODIFICATION** as to the award of damages, to wit:

1. The award of civil indemnity in Criminal Case No. [CC-]2007-1640 is affirmed;
2. The award of moral damages in the amount of Php50,000.00 in Criminal Case No. [CC-]2007-1640 is affirmed;
3. The award of exemplary damages in the amount of Php25,000.00 in Criminal Case No. [CC-]2007-1640 is affirmed;
4. In Criminal Case No. [CC-]2007-1650, accused-appellant is ordered to pay moral damages to the private offended party, Rey Perfecto De Luna, in the amount of Php40,000.00;
5. In Criminal Case No. [CC-]2007-1650, accused appellant is likewise ordered to pay exemplary damages to the private offended party, Rey Perfecto De Luna, in the amount of Php20,000.00; and
6. Accused-appellant is further ordered to additionally pay the private offended parties in the two criminal cases, Rey Perfecto De Luna and the heir/s of Sixto Elizan, interest on all damages at the legal rate of six percent (6%) from the date of finality of this judgment until the amounts awarded shall have been fully paid.[26]

Appellant appealed the decision of the CA. The Notice of Appeal was given due course and the records were ordered elevated to this Court for review. In a Resolution[27] dated 19 February 2014, this Court required the parties to submit their respective supplemental briefs. Both parties manifested that they are adopting all the arguments contained in their respective briefs in lieu of filing supplemental briefs.[28]

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

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

[28] *Id.* at 30 and 40-42.

Our Ruling

We find that the degree of proof required in criminal cases has been met in the case at bar. Appellant's defenses of denial and alibi are bereft of merit.

Assailing the legality of arrest should be made before entering a plea

Before anything else, we resolve the procedural issue raised by the appellant.[29]

Any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.[30] In *People v. Velasco*,[31] this Court held that the accused is estopped from assailing the legality of his arrest for his failure to move for the quashal of the Information before arraignment. In this case, appellant only questioned the legality of his arrest for the first time on appeal.[32]

Furthermore, even granting that indeed there has been an irregularity in the arrest of the appellant, it is deemed cured by his voluntary submission to the jurisdiction of the trial court over his person.[33] Thus, appellant is deemed to have waived his constitutional protection against illegal arrest[34] when he actively participated in the arraignment[35] and trial of this case.[36]

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

[30] *Miclat, Jr. v. People*, 672 Phil. 191, 203 (2013).

[31] *People v. Velasco*, 722 Phil. 243, 252 (2013).

[32] *Rollo*, p. 15.

[33] *People v. Ereño*, 383 Phil. 30, 41 (2000).

[34] *People v. Rivera*, 613 Phil. 660, 667 (2009).

[35] Records (Crim. Case No. CC-2007-1640), p. 43.

[36] *Id.* at 155.

Elements of Murder and Frustrated Murder were established

This Court finds that the circumstance of treachery should be appreciated, qualifying the crime to Murder. According to the Revised Penal Code:

> ARTICLE 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion temporal* in its maximum period to death, if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
>
> 2. In consideration of a price, reward or promise.
>
> 3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
>
> 4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity.
>
> 5. With evident premeditation.
>
> 6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Thus, the elements of murder are: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.[37]

Furthermore, there is treachery when the offender commits any of the crimes against the person, employing means, methods

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[37] *People v. Dela Cruz*, 626 Phil. 631, 639 (2010).

or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[38]

The requisites of treachery are:

(1) The employment of means, method, or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and

(2) Deliberate or conscious adoption of such means, method, or manner of execution.[39]

In this case, the hapless victims were merely drinking and singing in-front of the *videoke* machine when shot by the appellant. The firing was so sudden and swift that they had no opportunity to defend themselves or to retaliate. Furthermore, appellant's acts of using a gun and even going out of the *videoke* bar evidently show that he consciously adopted means to ensure the execution of the crime.

In addition, the lower courts appropriately found appellant liable for the crime of Frustrated Murder.

A felony is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.[40]

Dr. Angel Cordero M.D. categorically said that De Luna could have died because of the wounds if the surgery was not conducted timely.[41] Hence, appellant performed all the acts of execution

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[38] *Cirera v. People*, G.R. No. 181843, 14 July 2014, 730 SCRA 27, 47 citing Revised Penal Code, Art. 14 (16).

[39] *People v. Pirame*, 384 Phil. 286, 301 (2000) citing *People v. Gatchalian*, 360 Phil. 178, 196-197 (1998).

[40] *Serrano v. People*, 637 Phil. 319, 335 (2010).

[41] TSN, 29 January 2009, p. 38.

which could have produced the crime of murder as a consequence, but nevertheless, did not produce it by reason of a cause independent of his will, which is, in this case, the timely and able medical attendance rendered to De Luna.

The defense of denial cannot be given more weight over a witness' positive identification

Appellant denies the accusations on the ground that he has no motive to kill Elizan and injure De Luna. This alibi is bereft of merit. Intent is not synonymous with motive. Motive alone is not a proof and is hardly ever an essential element of a crime.[42] As a general rule, proof of motive for the commission of the offense charged does not show guilt and absence of proof of such motive does not establish the innocence of accused for the crime charged such as murder.[43] In *Kummer v. People*,[44] this Court held that motive is irrelevant when the accused has been positively identified by an eyewitness.

Evidently, accused-appellant's intent to kill was established beyond reasonable doubt. This can be seen from his act of shooting Elizan and De Luna from behind with a firearm while they were innocently singing and drinking. Intent to kill was also manifest considering the number of gun shot wounds sustained by the victims.[45]

In the instant case, Pasana and De Luna positively identified accused-appellant as the person who fired shots during the incident:

Pasana's testimony:

Q: Can you recall who among the five (5) went out?
A: Yes, Ma'am.

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[42] *People v. Ballesteros*, 349 Phil. 366, 374 (1998).

[43] *Cupps v. State*, 97 Northwestern Reports, 210.

[44] 717 Phil. 670, 680-681 (2013).

[45] Records, pp. 36-37 and 96.

Q: Of the two (2) among the five (5) who went out, are these two (2) people or persons here in court right now?
A: Yes, Ma'am.

Q: And who are these two (2) persons you are referring to, can you point it out to the Honorable Court if they are here in [c]ourt right now?
A: That person, Ma'am.

Interpreter: Witness, Your Honor, is pointing to a person who earlier identified himself as Luisito Gaborne.

xxx xxx xxx

Q: Point specifically, who among those persons?
A: That person, Ma'am.

Interpreter: Witness, Your Honor, is pointing to a person who identified himself earlier as Luisito Gaborne.[46]

De Luna's Testimony:

Q: How about the appearance of the guy whom you said holding a gun, can you recall?
A: I can recall him if he is inside the court, ma'am.

Q: Can you point it out to the court, the other guy whom you saw at the videoke bar?
A: Yes, ma'am, if I can go with him in a short distance, I can point him.

Q: Can you point him?
A: (The witness stood up and approach (sic) the accused' bench and pointed to a person and when asked his name answered to (sic): Luisito Gaborne)

Q: You said that there was also another guy by the window? (the court butt-in [sic])

[46] TSN, 19 June 2008, pp. 14-16.

THE COURT:

Q: Excuse me, this man who answered Luisito Gaborne was the one holding the fire arm?
A: Yes, your Honor.[47]

This Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.[48]

It is doctrinally entrenched in our jurisprudence[49] that the defense of denial is inherently weak because it can easily be fabricated. Such defense becomes unworthy of merit if it is established only by the accused themselves and not by credible persons. Thus, this Court agrees with the lower courts in giving the positive identification of the eyewitnesses more weight than appellant's defense of denial.

Paraffin Tests are not conclusive

The positive identification made by the prosecution witnesses bears more weight than the negative paraffin test result conducted the day after the incident.

Paraffin tests, in general, have been rendered inconclusive by this Court. Scientific experts concur in the view that the paraffin test was extremely unreliable for use. It can only establish the presence or absence of nitrates or nitrites on the hand; however, the test alone cannot determine whether the source of the nitrates or nitrites was the discharge of a firearm. The presence of nitrates should be taken only as an indication of a possibility or even of a probability but not of

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[47] TSN, 21 August 2008, pp. 11-14.

[48] *People v. Abat*, G.R. No. 202704, 2 April 2014, 720 SCRA 557, 564 citing *People v. Banzuela*, 723 Phil. 797, 814 (2013).

[49] *People v. Barde*, 645 Phil. 434, 457 (2010); *People v. Berdin*, 462 Phil. 290, 304 (2003); *People v. Francisco*, 397 Phil. 973, 985 (2000).

infallibility that a person has fired a gun, since nitrates are also admittedly found in substances other than gunpowder.[50]

In this case, prosecution witness, Pasana[51] and the victim himself, De Luna,[52] testified in the trial court that it was indeed the appellant who was holding the gun during the incident. It should also be considered that appellant was arrested the day after the incident.[53] Thus, it is possible for appellant to fire a gun and yet bear no traces of nitrate or gunpowder as when the hands are bathed in perspiration or washed afterwards.[54]

Corpus delicti of the crime can be established by testimony

With regard to the appreciation of the aggravating circumstance of the use of an unlicensed firearm, we agree with the trial court and the appellate court that the same must be appreciated in the instant case. In *People v. Lualhati*, this Court ruled that in crimes involving unlicensed firearm, the prosecution has the burden of proving the elements thereof, which are: (1) the existence of the subject firearm and (2) the fact that the accused who owned or possessed the firearm does not have the corresponding license or permit to possess the same.[55]

Appellant's contention that the *corpus delicti* was not established for the reason that the firearm used was not presented as evidence is not persuasive. In *People v. Orehuela*,[56] this Court held that the existence of the firearm

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[50] *People v. Cajumocan*, 474 Phil. 349, 358 (2004).

[51] TSN, 19 June 2008, p. 16.

[52] TSN, 21 August 2008, p. 12.

[53] TSN, 13 August 2009, pp. 19-22.

[54] *People v. Pagal*, 338 Phil. 946, 951 (1997).

[55] G.R. Nos. 105289-90, 21 July 1994, 234 SCRA 325, 332.

[56] G.R. Nos. 108780-81, 29 April 1994, 232 SCRA 82, 96.

can be established by testimony, even without the presentation of the said firearm. In the present case, the testimonies of Pasana and De Luna indubitably demonstrated the existence of the firearms. Furthermore, the certification[57] from the Philippine National Police that appellant is not a firearm license holder of any caliber proves that he is not licensed to possess the same. Thus, the prosecution was able to prove the existence of the firearm and that the appellant is not licensed to possess the same notwithstanding the fact that the firearm used was not presented as evidence.

Illegal Possession of Firearm as an aggravating circumstance in the crimes of Murder and Frustrated Murder

The CA appropriately appreciated the use of an unlicensed firearm as an aggravating circumstance in the crimes of Murder and Frustrated Murder. Under R.A. No. 1059, use of loose firearm in the commission of a crime, like murder, shall be considered as an aggravating circumstance.[58]

In view of the amendments introduced by R.A. No. 8294 and R.A. No. 10591, to Presidential Decree No. 1866, separate prosecutions for homicide and illegal possession are no longer in order. Instead, illegal possession of firearm is merely to be taken as an aggravating circumstance in the crime of murder.[59] It is clear from the foregoing that where murder results from the use of an unlicensed firearm, the crime is not qualified illegal possession but, murder. In such a case, the use of the unlicensed firearm is not considered as a separate crime but shall be appreciated as a mere aggravating circumstance. Thus, where murder was committed, the penalty

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[57] Records, p. 41.

[58] *Celino v. CA*, G.R. No. 170562, 553 Phil. 178, 185 (2007) citing *People v. Ladjaalam*, 395 Phil. 1 (2010).

[59] *People v. Avecilla*, 404 Phil. 476, 483 (2001).

for illegal possession of firearms is no longer imposable since it becomes merely a special aggravating circumstance.[60] The intent of Congress is to treat the offense of illegal possession of firearm and the commission of homicide or murder with the use of unlicensed firearm as a single offense.[61]

In the case at hand, since it was proven that accused-appellant was not a licensed firearm holder,[62] and that he was positively identified by the witnesses as the one who fired shots against the victims, the use of an unlicensed firearm in the commission of the crimes of Murder and Frustrated Murder should be considered as an aggravating circumstance thereof.

The presence of such aggravating circumstance would have merited the imposition of the death penalty for the crime of Murder. However, in view of R.A. No. 9346, we are mandated to impose on appellant the penalty of *reclusion perpetua* without eligibility for parole.

Damages and civil liability

This Court resolves to modify the damages awarded by the appellate court in line with the recent jurisprudence.[63] Appellant shall pay the Heirs of Sixto Elizan *y* Herrera ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages for the crime of Murder with the use of Unlicensed Firearm.

Appellant shall also be liable to pay ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages for the crime of Frustrated Murder. In addition, interest at the rate of six percent (6%) *per annum*

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[60] *People v. Molina*, 354 Phil. 746, 786 (1998).

[61] *Id.* at 786-787.

[62] Records, p. 41.

[63] *People v. Jugueta*, G.R. No. 202124, 5 April 2016 citing *People v. Gambao*, 718 Phil. 507, 531 (2013).

shall be imposed on all monetary awards from date of finality of this Judgment until fully paid.

WHEREFORE, the 29 July 2013 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01183 is **AFFIRMED** with **MODIFICATIONS**. Appellant LUISITO GABORNE Y CINCO is found **GUILTY** beyond reasonable doubt of the crime of Murder with the use of Unlicensed Firearm and shall suffer a penalty of *Reclusion Perpetua*, without eligibility for parole and shall pay the Heirs of Sixto Elizan y Herrera ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages; and of the crime of Frustrated Murder and is hereby sentenced to suffer the indeterminate penalty ranging from eleven (11) years of *Prision Mayor* as minimum, to eighteen (18) years of *Reclusion Temporal* as maximum and shall pay ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

All monetary awards for damages shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

In the service of his sentence, appellant, who is a detention prisoner, shall be credited with the entire period of his preventive imprisonment.

SO ORDERED.

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

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* Addititional Member per Raffle dated 13 July 2016.

THIRD DIVISION

[G.R. No. 213598. July 27, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MERCELITA[1] ARENAS *y* BONZO @ MERLY,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; CLEARLY ESTABLISHED IN CASE AT BAR.— For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: (1) the identities of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment for the thing. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. We find all the elements necessary for appellant's conviction for illegal sale of *shabu* clearly established in this case. PO3 Rimando, the poseur-buyer, positively identified appellant as the person whom he caught *in flagrante delicto* selling white crystalline substance presumed to be *shabu* in the buy-bust operation conducted by their police team; that upon appellant's receipt of the ₱2,000.00 buy-bust money from PO3 Rimando, she handed to him the two sachets of white crystalline substance which when tested yielded positive results for *shabu.* Appellant's delivery of the *shabu* to PO3 Rimando and her receipt of the marked money successfully consummated the buy-bust transaction. The seized *shabu* and the marked money were presented as evidence before the trial court.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ESSENTIAL REQUISITES, PRESENT IN CASE AT BAR.— The essential requisites to establish illegal possession of dangerous drugs are: (1) the accused was in possession of the dangerous drug, (2) such possession is not authorized by

[1] Spelled as "Mercilita" in the records of the trial court.

law, and (3) the accused freely and consciously possessed the dangerous drug. What must be proved beyond reasonable doubt is the fact of possession of the prohibited drug itself. This may be done by presenting the police officer who actually recovered the prohibited drugs as a witness, being the person who has the direct knowledge of the possession. In the instant case, PO3 Rimando, the person who had direct knowledge of the seizure and confiscation of the *shabu* from the appellant, testified that he was also able to recover another plastic sachet of *shabu* which appellant was holding with her left hand, which testimony was corroborated by PO2 Aficial. As it was proved that appellant had freely and consciously possessed one (1) plastic sachet of *shabu* without authority to do so, she can be found guilty of illegal possession of *shabu*.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; FAILURE TO RAISE THAT MORE THAN ONE OFFENSE WAS CHARGED IN AN INFORMATION IN A MOTION TO QUASH BEFORE THE ACCUSED PLEADS GUILTY TO THE SAME IS DEEMED A WAIVER.—** Appellant's failure to raise that more than one offense was charged in the Information in a motion to quash before she pleaded to the same is deemed a waiver. As appellant failed to file a motion to quash the Information, she can be convicted of the crimes charged in the Information if proven.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the Decision [2] dated January 22, 2014 of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 05533,

[2] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Amy C. Lazaro-Javier and Pedro B. Corales, concurring; *rollo*, pp. 3-16.

which affirmed *in toto* the Decision dated April 16, 2012 of the Regional Trial Court (*RTC*) of Lingayen Pangasinan, Branch 38, in Criminal Case No. L-8966. The RTC found appellant guilty beyond reasonable doubt of violating Sections 5 and 11 of Article II of Republic Act No. (*RA*) 9165 or the *Comprehensive Dangerous Drugs Act of 2002.*

In an Information[3] dated August 9, 2010, the appellant was charged as follows:

> That on or about August 6, 2010 in the evening, in Brgy. Poblacion, Sual, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully and unlawfully sell two (2) heat-sealed plastic sachets of Metamphetamine (*sic*) Hydrochloride (*Shabu*), a prohibited drug, in exchange for ₱2,000.00 marked money to PO3 Benedict Julius B. Rimando, acting as poseur-buyer, and was likewise in possession, with intent to sell, one (1) heat-sealed plastic sachet of methamphetamine Hydrochloride (*Shabu*) without lawful authority to possess and sell the same.
>
> Contrary to Art. II, Section 5 of RA 9165.[4]

Upon her arraignment[5] on August 25, 2010, she pleaded not guilty to the crimes charged. Pre-trial and trial thereafter ensued.

The prosecution presented the testimonies of PO3 Benedict Julius B. Rimando (*PO3 Rimando*), PO2 Alex Aficial, Jr. (*PO2 Aficial*), Police Senior Inspector Myrna Malojo (*PSI Malojo*), PO2 Catherine Viray (*PO2 Viray*), Barangay Kagawad Dioniso S. Gulen, Police Inspector Ma. Theresa Amor Manuel, and Police Senior Inspector Leo S. Llamas (*PSI Llamas*).

The prosecution evidence established that sometime in July 2010, the Chief of Police (*COP*) of the Sual Police Station, Sual, Pangasinan, PSI Llamas, started conducting a surveillance on the alleged illegal drug-selling activities of appellant. At 6:00 p.m. of August 6, 2010, he called on PO3 Rimando, PO2

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[3] Records, p. 1.

[4] *Id.*

[5] *Id.* at 27.

Aficial, SPO2 Gulen, PO1 Viray and SPO1 Editha Castro to an emergency conference and instructed them to conduct a buy-bust operation on appellant who agreed to deliver the items in front of Las Brisas Subdivision, along the National Highway in Poblacion Sual, Pangasinan. During the briefing, the appellant was described as a woman of about 4 to 5 feet tall and between 45 to 50 years old. PO3 Rimando was designated as the poseur-buyer and was given two (2) ₱1000 bills to be used for the operation, which were photocopied and entered into the police blotter. PO2 Aficial had earlier coordinated with the PDEA of the intended buy bust.[6]

At 6:30 p.m., the team walked to the area which was about 150 meters away from their station. PO3 Rimando and PO2 Aficial stood at the side of the highway beside the subdivision as earlier instructed by PSI Llamas while the other team members were positioned strategically. After 5 minutes of waiting, appellant came near PO3 Rimando who told the former in Ilocano dialect that he was instructed to pick up the items and asked the appellant whether she had the items to which the latter answered in the affirmative. PO3 Rimando then handed appellant the two marked ₱1000.00 bills and the latter gave him the two (2) small plastic sachets containing white crystalline substance. PO3 Rimando signaled PO2 Aficial, who was two meters away from him, to come over and they introduced themselves as police officers. PO3 Rimando conducted a routine body search on appellant and he was able to recover from her the marked money and another small plastic sachet she was holding in her left hand.[7]

Appellant was brought to the Sual Police Station where PO3 Rimando marked the two plastic sachets subject of the buy-bust with "BJB-1" and "BJB-2," and the one plastic sachet recovered from appellant with "BJB-3." He prepared and signed the confiscation receipt of the seized items in the presence of a barangay kagawad, a Department of Justice (*DOJ*) Prosecutor,

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[6] TSN, October 26, 2010, pp. 3-5.

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

and an ABS-CBN reporter, who all affixed their signatures in the Confiscation Receipt, as well as the appellant.[8] PO2 Viray took pictures of the seized items, marked money as well as the signing of the receipt inside the police station.[9] PO3 Rimando brought the seized items as well as the Request for Laboratory Examination[10] prepared by PSI Llamas to the PNP Crime Laboratory in Lingayen, Pangasinan.

PSI Myrna Malojo, a forensic chemist, personally received from PO3 Rimando the letter request and the seized items.[11] The laboratory results showed a positive result for methamphetamine hydrochloride or *shabu*, and having a weight of 0.08 grams, 0.07 grams and 0.05 grams, respectively, which findings were contained in PSI Malojo's initial[12] and confirmatory[13] reports. PSI Malojo sealed the seized items and placed her own markings thereon and turned them to the evidence custodian.[14] She identified in court the items she examined as the same items she received from PO3 Rimando[15] and the latter also identified the subject items as the same items he recovered from the appellant during the buy-bust operation.[16]

Appellant denied the charges alleging that at 7:00 to 8:00 a.m. of August 6, 2010, she was with a certain Mina grilling barbecue at a video bar in front of Jamaica Sual Subdivision; that after a while, Mina's boyfriend, PSI Llamas, arrived and talked with Mina. When PSI Llamas left, Mina asked her to deliver a letter to a certain Renee who owed her money. Mina

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[8] *Id.* at 9-13.

[9] TSN, August 23, 2011, pp. 2-3.

[10] Exhibit "E", records, p. 10.

[11] TSN, February 7, 2011, pp. 3-9.

[12] Exhibit "F", records, p. 11.

[13] Exhibit "H", *id.* at 54.

[14] TSN, February 7, 2011, p. 8.

[15] *Id.*

[16] TSN, July 18, 2011, p. 6.

called on a tricycle driver who would bring her to Renee. When she met Renee, she handed her the letter from Mina and Renee gave her a sealed envelope. Upon her return to the bar, she gave the envelope to Mina who was drinking beer with PSI Llamas. She then asked permission to go home as she would still cook dinner but Mina told her to grill more barbecues. As she insisted in going home, PSI Llamas placed his right arm around her neck and called someone on his cellphone. She tried to remove PSI Llamas' arm around her neck when a police car arrived and brought her to the police station where she was forced to say something about the *shabu* which she had no knowledge of and she was later detained.[17]

In rebuttal, PSI Llamas denied knowing Mina and going to the videoke bar on August 6, 2010; that he only met the appellant at the police station and was not the one who arrested her.[18] In her sur-rebuttal, appellant claimed that she had known PSI Llamas for about 3 weeks prior to her arrest and insisted that he was the one who arrested her.

On April 16, 2012, the RTC rendered a Decision[19] finding appellant guilty of the charged offenses, the dispositive portion of which reads:

> WHEREFORE, premises considered, and the prosecution having established to a moral certainty the guilt of accused MERCILITA ARENAS *y* BONZO @ "Merly," this Court hereby renders judgment as follows:
>
> 1. For violation of Section 5, Art. II of RA 9165, this Court hereby sentences said accused to LIFE IMPRISONMENT, and to pay [a] fine of Five Hundred Thousand Pesos (₱500,000.00);
>
> 2. For violation of Section 11, Art. II of the same Act, this Court hereby sentences said Accused to a prison term of Twelve (12) Years and One (1) Day to Twenty (20) Years, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).

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[17] TSN, January 31, 2012, pp. 3-9.

[18] TSN, February 20, 2012, pp. 5-9.

[19] Per Judge Teodoro C. Fernandez, CA *rollo*, pp. 44-53.

SO ORDERED.[20]

The RTC found that PO3 Rimando, who acted as the poseur-buyer during the buy-bust operation, positively identified appellant as the one who sold and handed him the two plastic sachets of *shabu* in the amount of ₱2,000.00 and the same person who received the marked money from him. It was also proven that during appellant's arrest, PO3 Rimando recovered one more plastic sachet of *shabu* in her possession, and he marked the three plastic sachets with his initials; and that every link in the chain of custody of the confiscated plastic sachets was also established. The RTC found that PO3 Rimando testified in a frank, spontaneous and straightforward manner and his credibility was not crumpled on cross examination, and it rejected appellant's defenses of denial and frame up.

The CA affirmed the RTC decision. The *fallo* of its Decision reads:

WHEREFORE, premises considered, the instant appeal is DISMISSED. The decision of the Regional Trial Court of Lingayen, Pangasinan, Branch 38 dated 16 April 2012 is AFFIRMED.[21]

Hence, this appeal filed by appellant. Both appellant and the Solicitor General manifested that they are adopting their Briefs filed with the CA.

Appellant is now before us with the same issues raised before the CA, *i.e.*, that the RTC gravely erred: (1) in giving weight and credence to the conflicting testimonies of the prosecution witnesses; (2) in holding that there was a legitimate buy-bust operation; (3) in convicting appellant of the crimes charged despite the failure to prove the elements of the alleged sale of *shabu* and the chain of custody and the integrity of the allegedly seized items; and (4) in convicting appellant under an Information which charges two offenses in violation of Section 13, Rule 110 of the Rules of Court.

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

[21] *Rollo*, p. 16.

We find no merit in the appeal.

For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: (1) the identities of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment for the thing. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[22] We find all the elements necessary for appellant's conviction for illegal sale of *shabu* clearly established in this case.

PO3 Rimando, the poseur-buyer, positively identified appellant as the person whom he caught *in flagrante delicto* selling white crystalline substance presumed to be *shabu* in the buy-bust operation conducted by their police team; that upon appellant's receipt of the ₱2,000.00 buy-bust money from PO3 Rimando, she handed to him the two sachets of white crystalline substance which when tested yielded positive results for *shabu*. Appellant's delivery of the *shabu* to PO3 Rimando and her receipt of the marked money successfully consummated the buy-bust transaction. The seized *shabu* and the marked money were presented as evidence before the trial court.

Appellant's reliance on the case of *People v. Ong* [23] wherein the Court acquitted the appellants of the charge of illegal sale of *shabu* for failure of the prosecution to prove all the elements of the crime charged is misplaced. The Court found therein that the testimony of SPO1 Gonzales, who acted as the poseur-buyer, showed that he was not privy to the sale transaction which transpired between the confidential informant, who did not testify, and the appellant.

Here, while it appeared that it was PSI Llamas who initially dealt with appellant regarding the sale of *shabu*, it also appeared

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[22] *People v. Bautista*, 682 Phil. 487, 498 (2012), citing *People v. Naquita*, 582 Phil. 422, 442-443 (2008); *People v. Del Monte,* 515 Phil. 579, 587 (2008); *People v. Santiago*, 564 Phil. 181, 193 (2007).

[23] 476 Phil. 513 (2004).

that PSI Llamas had designated PO3 Rimando as his representative in the sale transaction with appellant. Notably, PO3 Rimando was instructed by PSI Llamas to wait at the specified area where appellant would be the first to approach him for the sale of *shabu*,[24] which established the fact that appellant was already informed beforehand as to the person she was to deal with regarding the sale of *shabu*. Indeed, appellant approached PO3 Rimando who was waiting at the designated area and upon receipt from him of the payment of ₱2000.00, the former handed to the latter the two sachets of *shabu*. The identity of appellant as the seller, as well as the object and consideration for the sale transaction, had been proved by the testimony of PO3 Rimando, the buyer.

We also find appellant guilty of illegal possession of *shabu*. The essential requisites to establish illegal possession of dangerous drugs are: (1) the accused was in possession of the dangerous drug, (2) such possession is not authorized by law, and (3) the accused freely and consciously possessed the dangerous drug.[25] What must be proved beyond reasonable doubt is the fact of possession of the prohibited drug itself. This may be done by presenting the police officer who actually recovered the prohibited drugs as a witness, being the person who has the direct knowledge of the possession.[26]

In the instant case, PO3 Rimando, the person who had direct knowledge of the seizure and confiscation of the *shabu* from the appellant, testified that he was also able to recover another plastic sachet of *shabu* which appellant was holding with her left hand, which testimony was corroborated by PO2 Aficial.[27] As it was proved that appellant had freely and consciously possessed one (1) plastic sachet of *shabu* without authority to do so, she can be found guilty of illegal possession of *shabu*.

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[24] TSN, October 26, 2010, pp. 3-8.

[25] *Miclat, Jr. v. People*, 672 Phil. 191, 209 (2011).

[26] *People v. Belocura*, 693 Phil. 476, 490 (2012).

[27] TSN, October 26, 2010, p. 8.

The RTC and the CA correctly found that the prosecution was able to establish the chain of custody of the seized *shabu* from the time they were recovered from appellant up to the time they were presented in court. Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,[28] which implements the Comprehensive Dangerous Drugs Act of 2002, defines chain of custody as follows:

> Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

It was established that after PO3 Rimando seized the three plastic sachets containing white crystalline substance from appellant, he was in possession of the same from confiscation up to the police station.[29] He marked the three plastic sachets at the police station, which was only 150 meters away from the scene,[30] with "BJB-1", "BJB-2" and "BJB-3."[31] He prepared the confiscation receipt in the presence of a barangay kagawad, a DOJ Prosecutor and an ABS-CBN Reporter, who all affixed their signatures therein, the appellant, PO1 Viray and PO2 Aficial.[32] PO1 Viray then took photographs of the seized items, the preparation and signing of the confiscation receipt. PO3 Rimando then brought the request for laboratory examination

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[28] Guidelines of the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.

[29] TSN, October 26, 2010, p. 9; TSN, June 13, 2011, p. 4; TSN, September 19, 2011, p. 9.

[30] TSN, October 26, 2010, p. 6.

[31] *Id.* at 9.

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

prepared by PSI Llamas of the seized items and personally brought the same to the PNP Crime Laboratory for examination.[33]

PSI Malojo, the forensic chemist, personally received the said request and the three small heat-sealed plastic sachets containing white crystalline substance with markings from PO3 Rimando.[34] After examining the items, PSI Malojo found them to be positive for the presence of methamphetamine hydrochloride, also known as *shabu*, which findings were embodied in her Initial Laboratory Report and eventually, in her Final Chemistry Report. After her examination, PSI Malojo sealed the seized items and placed her own markings thereon, and turned them over to the evidence custodian for safekeeping.[35] During her testimony in court, PSI Malojo identified the items she examined as the same items she received from PO3 Rimando. PO3 Rimando also identified in court the subject items as the same items he recovered from the possession of appellant during the buy-bust operation.[36]

We likewise agree with the CA that the alleged inconsistencies in the testimonies of the prosecution witnesses refer to minor details which did not relate to the crimes charged. The inconsistencies have been sufficiently explained during trial by the witnesses themselves. We quote with approval what the CA said:

> The alleged inconsistencies in the composition of the buy-bust team, in the identity and/or description of accused-appellant, and in the markings on the seized items are collateral matters and not essential elements of the crimes charged. Moreover, a scrutiny of these purported inconsistencies would show that the same are not conflicting at all.
>
> Although PO2 Viray testified that she was at the office at the time PO3 Rimando and PO2 Aficial were conducting the buy-bust operation, it does not necessarily mean that she was not part of the

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[33] TSN, June 13, 2011, p. 9.

[34] TSN, February 7, 2011, pp. 4-5.

[35] *Id.* at 8.

[36] TSN, June 13, 2011, pp. 2-3.

buy-bust team. PO2 Viray testified that before the conduct of the buy-bust operation, she was designated by PO3 Rimando to be the official photographer. She was told to take photographs after the subject operation, a task that she performed when accused-appellant was brought to the police station. This explains why PO3 Rimando included her in his testimony as one of the members of the buy-bust team.

Similarly the testimony of PO2 Aficial that he was with PO3 Rimando during the buy-bust operation is not conflicting with PO3 Rimando's enumeration of the member of the buy-bust team. PO2 Aficial was asked who was with [him] during the buy-bust operation and he merely answered the question of the counsel for the defense. PO2 Aficial was not asked who were the other members of the buy-bust team. His answer was consistent with PO3 Rimando's statement that when the latter gave the pre-arranged signal, he approached PO3 Rimando and they introduced themselves to accused-appellant as police officers.

xxx xxx xxx

As regards the source of the information on the description of accused-appellant which enabled the poseur-buyer to identify her, the same is a trivial matter. Whether the information came from PSI Llamas or a confidential informant, the fact remains that a crime was committed by accused-appellant in the presence of the police officers who were members of the buy-bust team and who had the duty to immediately arrest her after the consummation of the transaction. The fact also remains that the description about the seller matched accused-appellant. x x x

As to the alleged discrepancies in the markings of the seized items, the same are clearly typographical errors. The transcript of PSI Malojo's testimony showed that she identified the markings on the seized plastic sachets as "BJB-1", "NJN-2" and "BJB-3. However, the follow-up question of the prosecutor clarified that she was actually referring to "BJB-1", *"BJB-2"* and "BJB-3", to wit:

> Q. I am showing you then Madam Witness three (3) plastic sachet (*sic*) will you go over the contain (*sic*) to the one you are testifying "BJB-1" to "BJB-3" (sic)?
>
> A. Yes, sir.

The universal practice is that exhibits or evidence are marked chronologically. It is highly unlikely that the second sachet would be marked "NJN-2" when the first one was marked "BJB-1" and the third one was marked "BJB-3". Notably, both Confiscation Receipt and Request for Laboratory Examination showed that the seized items were marked "BJB-1", "BJB-2" and "BJB-3" consistent with the testimony of PO3 Rimando. It should also be noted that in the computer keyboard, the letters "B" and "N" are beside each other. Hence, the only logical conclusion for the purported discrepancy is that the stenographer inadvertently pressed the letter "N" instead of the letter "B."[37]

Anent the matter of the confiscation receipt bearing the date August 5, 2010 when the buy-bust happened on August 6, 2010, PO3 Rimando explained that he committed an error in placing the date August 5 which should be August 6.[38] Moreover, it was established by the testimony of Kagawad Gulen that on August 6, 2010, he was called to witness the items confiscated from appellant and was asked to sit beside PO3 Rimando while the latter was preparing the confiscation receipt.[39] Gulen even identified in court the confiscation receipt where his signature appeared.[40]

Appellant's contention that the RTC erred in convicting him under an Information that charged two offenses is not persuasive. Although the Information in this case charged two offenses which is a violation of Section 13, Rule 110 of the Revised Rules of Criminal Procedure, which provides that "[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses," nonetheless, Section 3, Rule 120 of the Revised Rules of Criminal Procedure also states that "[w]hen two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the

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[37] *Rollo*, pp. 8-10.

[38] TSN, June 13, 2011, p. 8.

[39] TSN, September 19, 2011, pp. 19-20.

[40] *Id.* at 21.

penalty for each offense, setting out separately the findings of fact and law in each offense."[41]

Appellant's failure to raise that more than one offense was charged in the Information in a motion to quash[42] before she pleaded to the same is deemed a waiver.[43] As appellant failed to file a motion to quash the Information, she can be convicted of the crimes charged in the Information if proven.

We also find no merit in appellant's claim that she cannot be convicted of illegal possession of illegal drugs as its possession is absorbed in the charge of illegal sale.

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[41] *People v. Chingh,* 611 Phil. 208, 220 (2011).

[42] Section 3, Rule 117, Revised Rules on Criminal Procedure provides:

Section 3. *Grounds*. — The accused may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;

(b) That the court trying the case has no jurisdiction over the offense charged;

(c) That the court trying the case has no jurisdiction over the person of the accused;

(d) That the officer who filed the information had no authority to do so;

(e) That it does not conform substantially to the prescribed form;

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

(g) That the criminal action or liability has been extinguished;

(h) That it contains averments which, if true, would constitute a legal excuse or justification; and

(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

[43] Section 9, Rule 117, Revised Rules on Criminal Procedure provides:

Section 9. *Failure to move to quash or to allege any ground therefor*. — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.

In *People v. Lacerna,*[44] We held:

> The prevailing doctrine is that possession of marijuana is absorbed in the sale thereof, except where the seller is further apprehended in possession of another quantity of the prohibited drugs not covered by or included in the sale and which are probably intended for some future dealings or use by the seller.

Here, it was established that PO3 Rimando was able to recover from appellant's possession another plastic sachet of *shabu* which was not the subject of the illegal sale; thus, she could be separately charged with illegal possession for the same.

We find that the RTC correctly imposed on appellant the penalty of life imprisonment and a fine of ₱500,000.00[45] for the crime of illegal sale of dangerous drugs.

As to the crime of illegal possession, Section 11, Article II of Republic Act No. 9165 provides:

> **Section 11.** *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:
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> xxx xxx xxx

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[44] 344 Phil. 100, 120 (1997).

[45] Section 5, Article II of Republic Act No. 9165 provides:

> **Article II, Section 5.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

> Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:
>
> (1) . . .
>
> (2) . . . and
>
> (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly-introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Clear from the foregoing, the quantity of the dangerous drugs is determinative of the penalty to be imposed for the crime of illegal possession of dangerous drugs. We note, however, that the quantity of *shabu* found to be in appellant's possession was not indicated in the Information which is important as the law provides for the graduation of penalties. We cannot just rely on the quantity established by the prosecution, which the RTC did in imposing the penalty, without violating appellant's right to be informed of the accusation against her. The RTC imposed the minimum penalty provided by law since the quantity recovered from appellant's possession was less than 5 grams of *shabu*; however, it could have been different if the quantity recovered from appellant was more than 5 grams where the penalty imposable is imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), or even the maximum penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos

(₱10,000,000.00), because in this case, the Court could not impose the penalty provided by law in view of the non-allegation of the true quantity in the information.

By analogy, in theft cases,[46] where the penalty is graduated according to the value of the thing stolen, we ruled that when the prosecution failed to establish the amount of property taken by an independent and reliable estimate, we may fix the value of the property taken based on attendant circumstances or impose the minimum penalty. Since it was proved that appellant was in possession of *shabu* but the quantity was not specified in the Information, the corresponding penalty to be imposed on her should be the minimum penalty corresponding to illegal possession of less than five grams of methamphetamine hydrochloride or *shabu* which is penalized with imprisonment of *twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00)*.[47]

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[46] *People v. Anabe*, 644 Phil. 261, 286 (2010); *Viray v. People*, 720 Phil. 841, 854 (2013).

[47] Section 11, Article II, RA No. 9165 provides:

Section 11. *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

xxx xxx xxx.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

xxx xxx xxx.

(3) *Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00)*, if the quantities of dangerous drugs are *less than five (5) grams* of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, *methamphetamine hydrochloride or* "*shabu*", or other dangerous drugs such as, but not limited to, MDMA or

Applying the Indeterminate Sentence Law, the minimum period of the imposable penalty shall not fall below the minimum period set by the law; the maximum period shall not exceed the maximum period allowed under the law; hence, the imposable penalty should be within the range of *twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.*

One final note. Public prosecutors are reminded to carefully prepare the criminal complaint and Information in accordance with the law so as not to adversely affect the dispensation of justice.

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Decision dated January 22, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 05533 is **AFFIRMED with MODIFICATION** only insofar as to the penalty imposable for the crime of illegal possession so that appellant is sentenced to suffer the indeterminate sentence of *twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 213601. July 27, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FRANKIE GERERO, ROLITO GERERO** ***y***

"ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly-introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 8, 2014.

ARMIROL, CHRISTOPHER GERERO, ALFIE ESPINOSA *y* MENDEZ and RENATO BARTOLOME *y* JAIME, *accused,*

ROLITO GERERO *y* ARMIROL, ALFIE ESPINOSA y **MENDEZ and RENATO BARTOLOME *y* JAIME,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; FELONY; CONSPIRACY; THE ESSENCE OF CONSPIRACY IN THE UNITY OF ACTION AND PURPOSE.— Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence of conspiracy is the unity of action and purpose. Its elements, like the physical acts constituting the crime itself, must be proved beyond reasonable doubt. When there is conspiracy, the act of one is the act of all. Conspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests. However, in determining whether conspiracy exists, it is not sufficient that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants. What is determinative is proof establishing that the accused were animated by one and the same purpose.

2. ID.; ID.; MURDER; IMPOSABLE PENALTY.— Article 248 of the Revised Penal Code (RPC) states that a person shall be guilty of murder if committed with the attending circumstance of "cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse." The penalty for murder under Article 248 of the RPC is *reclusion perpetua* to death. With the aggravating circumstance of cruelty and no mitigating circumstance, the penalty imposed should be in its maximum, which is death. However, in view of Republic Act No. 9346, which was signed into law on 24 June 2006, the penalty imposed must be reduced from death to *reclusion perpetua* without eligibility for parole.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

R E S O L U T I O N

PEREZ, *J.*:

Before us on appeal is the Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 05834 dated 24 March 2014 which dismissed the appeal of appellants Rolito Gerero y Armirol (Rolito), Alfie Espinosa y Mendez (Alfie) and Renato Bartolome y Jaime (Renato) and affirmed with modification the Judgment[2] dated 16 November 2010 of the Regional Trial Court (RTC) of San Mateo, Rizal, Branch 76, in Criminal Case No. 6666 finding appellants guilty beyond reasonable doubt of the crime of Murder.

Appellants, together with the other accused murder were charged in an Information, to wit:

That on or about the 8th day of October 2002, in the Municipality of Rodriguez, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one alias Rene Demonyo, whose true name, identity and present whereabouts is still unknown, while armed with and using bolos and a firearm, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, hack and stab one Robert Glee y Gubat, hitting the latter in different parts of his body and neck, thereby inflicting upon him fatal injuries which caused his death soon thereafter, the said killing attended by the **qualifying circumstances of treachery, evident premeditation, outraging or scoffing at the person or corpse by decapitating the victims (sic) head, with the aid of armed men and abuse of superior strength which changes (sic) the nature of the felony qualifying such killing to the more serious Capital Crime of Murder aggravated by the circumstances of having**

[1] *Rollo*, pp. 2-11; Penned by Associate Justice Florito S. Macalino with Associate Justices Sesinando E. Villon and Eduardo B. Peralta, Jr. concurring.

[2] Records, pp. 291-303; Presided by Judge Josephine Zarate Fernandez.

committed the crime in an uninhabited place, cruelty and ignominy.[3]

All of the accused, except for Frankie Gerero (Frankie) were arrested in 2005. Upon arraignment, they all entered a "not guilty" plea. Accused-appellants pleaded not guilty to all the charges. At the pre-trial conference, the parties stipulated that on the 8th day of October 2002, all of the accused were in Sitio Calumpit, Barangay Macabud, Rodriguez, Rizal.[4]

The prosecution's version goes: The victim, Robert Glee (Robert) and his wife, Marilyn were having lunch in their house at the Watershed Compound of La Mesa Dam when they heard the five accused challenge Robert to a fight. Before Robert could act, the five accused barged into the house and simultaneously hacked Robert with their bolos. Robert managed to run out of the house but the accused caught up with him inside a *carinderia*. Thereat, they resumed in hacking him until his head was decapitated. Frankie then threw Robert's head into the mud.[5] Marilyn claimed that Frankie and Alfie were her husband's co-workers and Robert was killed out of envy.[6]

Renato, Frankie and Christopher Gerero (Christopher) are related to each other. Frankie is Renato's nephew while Christopher is his grandson. The defense version is that on the date of the incident, Renato ordered his fourteen year-old grandchild Christopher to cook rice while he went to the nearby store to buy food. Upon reaching the store, Renato recounted that he saw Frankie, Alfie, Rolito, and Robert in a drinking spree. He then witnessed Frankie attack Robert. Renato immediately fled.[7] Rolito claimed that Frankie and Robert were arguing over their work when Frankie suddenly stabbed Robert.

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[3] *Id.* at 1.

[4] *Id.* at 95-97.

[5] TSN, 12 October 2006, pp. 3-7 and 12.

[6] Records, p. 292.

[7] TSN, 24 September 2009, pp. 3-11.

Rolito immediately left the place of incident for fear of being implicated in the crime.[8] Alfie corroborated Rolito's testimony.

On 16 November 2010, all the accused, except for Christopher were found guilty beyond reasonable doubt of Murder. The dispositive portion of the RTC Decision reads:

> **WHEREFORE**, judgment is hereby rendered finding accused(s) Rolito Gerero y Armirol, Alfie Espinosa y Mendez and Renato Bartolome y Jaime **GUILTY** beyond reasonable doubt of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, as amended and sentencing each to suffer the penalty of *Reclusion Perpetua* and to indemnify the heirs of the victim in the amount of Php50,000.00 as death indemnity and Moral damages in the amount of Php50,000.00. No pronouncement as to cost.
>
> Accused(s) Rolito Gerero y Armirol, Alfie Espinosa y Mendez and Renato Bartolome y Jaime are to be credited for the time spent for their preventive detention in accordance with Art. 29 of the Revised Penal Code as amended by R.A. 6127 and E.O. 214.
>
> Accused(s) Rolito Gerero y Armirol, Alfie Espinosa y Mendez and Renato Bartolome y Jaime are hereby committed to the National Bilibid Prisons in Muntinlupa City for service of sentence.
>
> Considering that accused Frankie Gerero remains at large, let an Alias Warrant of Arrest be issued against him. In the meantime, send the instant case to the archives pending his apprehension.[9]

On appeal, the Court of Appeals rendered the assailed decision dated 24 March 2014 affirming with modification the trial court's judgment. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, the instant Appeal is hereby **DENIED**. Accordingly, the 16 November 2010 Decision of the Regional Trial Court of San Mateo, Rizal, Branch 76 in Criminal Case No. 6666 is **AFFIRMED WITH MODIFICATION**. Accused-Appellants are hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. Further, in addition to moral damages awarded by the trial court in the amount of Php50,000.00, Accused-Appellants are

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[8] TSN, 4 February 2009, pp. 4-6.

[9] Records, pp. 302-303.

ordered to pay the heirs of the victim death indemnity in the increased amount of PhP75,000.00 and exemplary damages in the amount of PhP30,000.00. All damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of this judgment until fully paid.[10]

Appellants filed the instant appeal. In a Resolution[11] dated 19 November 2014, appellants and the Office of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. Appellants and the OSG manifested that they would no longer file a Supplemental Brief.[12]

Appellants contend that conspiracy in the commission of the crime was not established. Appellants also aver that abuse of superior strength and evident premeditation were not proven by the prosecution to qualify the crime to murder.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence of conspiracy is the unity of action and purpose. Its elements, like the physical acts constituting the crime itself, must be proved beyond reasonable doubt. When there is conspiracy, the act of one is the act of all. Conspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests. However, in determining whether conspiracy exists, it is not sufficient that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants. What is determinative is proof establishing that the accused were animated by one and the same purpose.[13]

The lower courts found conspiracy among the accused. The accused had acted in concert in barging into the house of the victim. Two men entered through the front door while three of them used

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[10] *Rollo*, p. 10.

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

[12] *Id.* at 20-21 and 24-26.

[13] *Quidet v. People*, 632 Phil. 1, 12 (2010).

the back door. They jointly attacked Robert using their bolos. When Robert managed to run out of the house, he was chased by these men until they caught him and started decapitating his head. The Court of Appeals correctly found conspiracy in these acts, thus:

> x x x Where conspiracy is established, the act of one is the act of all. Here, by the concurrent acts of Accused-Appellants and Accused Frankie and Christopher of entering into the house of the victim, simultaneously hacking and stabbing him and eventually decapitating his head, all are deemed to have agreed to commit the crime of murder. Each of their contributory acts without semblance of desistance reflected their resolution to commit the crime.[14]

The twin qualifying circumstances of abuse of superior strength and evident premeditation were not considered by the Court of Appeals in imposing the penalty to be imposed on appellants because the prosecution was not able to prove them.

Finally, all elements of the crime of Murder were present in this case. As aptly ruled by the Court of Appeals:

> In the case at bench, all of the above mentioned elements of the crime of murder were proven beyond reasonable doubt by the prosecution. First, it was established that Robert, the victim, was killed. Second, Accused-Appellants and Accused Frankie and Christopher killed the victim as testified by the prosecution witnesses, who saw how the victim was simultaneously hacked and stabbed by them. Third, the killing was attended by the **qualifying circumstance of outraging or scoffing at the victim's person or corpse.** It was established that after the victim was hacked and stabbed, Accused Frankie decapitated his head and threw the same in the "lubluban ng kalabaw". It is well-settled that mere decapitation of the victim's head constitute outraging or scoffing at the corpse of the victim, thus qualifying the killing to murder. Lastly, the killing of the victim neither constituted parricide nor infanticide.[15] (Emphasis Supplied)

Based on the foregoing, we see no cogent reason to deviate from findings of the trial court and the Court of Appeals that appellants are guilty of murder. Article 248 of the Revised Penal

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[14] *Rollo*, p. 9.

[15] *Id.* at 8.

Code (RPC) states that a person shall be guilty of murder if committed with the attending circumstance of "cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse."

The penalty for murder under Article 248 of the RPC is *reclusion perpetua* to death. With the aggravating circumstance of cruelty and no mitigating circumstance, the penalty imposed should be in its maximum, which is death. However, in view of Republic Act No. 9346, which was signed into law on 24 June 2006, the penalty imposed must be reduced from death to *reclusion perpetua* without eligibility for parole.[16]

The awards of civil indemnity, moral damages and exemplary damages must be increased to ₱100,000.00 each in line with prevailing jurisprudence.[17] Additionally, temperate damages must be awarded to the heirs of the victim in the amount of ₱50,000.00 in lieu of actual damages.[18] Finally, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Resolution until fully paid.

WHEREFORE, the assailed 24 March 2014 Decision of the Court of Appeals in CA-G.R. CR HC No. 05834 finding appellants ROLITO GERERO *y* ARMIROL, ALFIE ESPINOSA *y* MENDEZ, and RENATO BARTOLOME *y* JAIME guilty beyond reasonable doubt of the crime of murder is **AFFIRMED** with the following **MODIFICATIONS**:

1. The awards of civil indemnity, moral damages, and exemplary damages are increased to ₱100,000.00 each;

2. The heirs of the victim are entitled to temperate damages in the amouont of ₱50,000.00;

3. That appeallants are not eligible for parole; and

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[16] *People v. Bernabe*, 619 Phil. 203, 224-225 (2009).

[17] *People v. Jugueta*, G.R. No. 202124, 5 April 2016.

[18] *Id.*

4 All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from date of finality of the Resolution until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Reyes and Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 215192. July 27, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BERNABE M. BARTOLINI,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; ELEMENTS.— For a successful prosecution of the offense of illegal sale of dangerous drugs under RA 9165, the following elements must be proven: (1) the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) the buyer and the seller were identified. In this case, we find that the prosecution failed to prove these elements beyond reasonable doubt.

2. ID.; ID.; ID.; IN A CASE INVOLVING DANGEROUS DRUGS, THE SUBSTANCE ITSELF CONSTITUTES THE VERY *CORPUS DELICTI* OF THE OFFENSE AND THE FACT OF ITS EXISTENCE IS VITAL TO SUSTAIN A JUDGMENT OF CONVICTION.— In a case involving dangerous drugs, the substance itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction. In *People v. Gatlabayan*, this

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* Additional Member per Raffle dated 13 June 2016.

Court held that it is of prime importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with exactitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. We find that the prosecution failed to establish the *corpus delicti* of the crime beyond reasonable doubt as there were significant gaps in the chain of custody. The requirement of an unbroken chain of custody is to ensure that unnecessary doubts on the identity of the evidence – the dangerous drugs – are removed. The prosecution has the duty to prove every link in the chain, from the moment the dangerous drug was seized from the accused until the time it is offered in court as evidence. The marking of the seized item, the first link in the chain of custody, is crucial in proving an unbroken chain of custody as it is the starting point in the custodial link that succeeding handlers of the evidence will use as a reference point. The succeeding links in the chain are the different processes the seized item will go through under the possession of different persons. This is why it is vital that each link is sufficiently proven to be unbroken – to obviate switching, planting, or contaminating the evidence.

3. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; SERIOUS UNCERTAINTY IS CREATED ON THE IDENTITY OF THE *CORPUS DELICTI* IN VIEW OF THE BROKEN LINKAGES IN THE CHAIN OF CUSTODY.— This Court has been consistent in holding that the failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties. This is consistent with the provisions of RA 9165 x x x There have been cases when the Court relaxed the application of Section 21 and held that the subsequent marking at the police station is valid. However, this non-compliance is not fatal only when there are (1) justifiable grounds and (2) the integrity and evidentiary value of the seized items are properly preserved. And while the amendment of RA 9165 by RA 10640 now allows the conduct of physical inventory in the nearest police station, the principal concern remains to be the preservation of the integrity and evidentiary value of the seized items. In this case, however, the prosecution offered no explanation at all for the non-compliance with Section 21, more particularly that relating to the immediate marking of the seized items. This non-explanation creates doubt on whether the

buy-bust team was able to preserve the integrity and evidentiary value of the items seized from Bartolini. The prosecution also failed to offer any explanation as to why no media representative was present, despite the fact that the police had already conducted a test-buy operation a few days before. x x x The failure to immediately mark the seized items, taken together with the absence of a representative from the media to witness the inventory, without any justifiable explanation, casts doubt on whether the chain of custody is truly unbroken. Serious uncertainty is created on the identity of the *corpus delicti* in view of the broken linkages in the chain of custody. The prosecution has the burden of proving each link in the chain of custody – from the initial contact between buyer and seller, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug. The prosecution must prove with certainty each link in this chain of custody and each link must be the subject of strict scrutiny by the courts to ensure that law-abiding citizens are not unlawfully induced to commit an offense.

4. ID.; ID.; ID.; ID.; THE NON-PRESENTATION OF THE POSEUR-BUYER IS FATAL TO THE PROSECUTION WHEN NOBODY CAN COMPETENTLY TESTIFY ON THE FACT OF SALE OF THE DANGEROUS DRUGS; CASE AT BAR.— The non-presentation of the poseur- buyer was fatal to the prosecution as nobody could competently testify on the fact of sale between Bartolini and the poseur-buyer. In this case, SPO4 Larot admitted that he did not hear the conversation between the poseur- buyer and Bartolini, and that he only saw the pre-arranged signal before apprehending Bartolini: x x x As SPO4 Larot could not hear the conversation between Bartolini and the poseur-buyer, his testimony was mere hearsay and thus the prosecution failed to prove the fact of the transaction. The non-presentation of the poseur-buyer was fatal to the prosecution. x x x While there have been instances where the Court affirmed the conviction of an accused notwithstanding the non-presentation of the poseur-buyer in a buy-bust operation, this is only when the testimony of such poseur-buyer is merely corroborative, and another eyewitness can competently testify on the sale of the illegal drug. In this case however, the lone witness for the prosecution was not competent to testify on the sale of the illegal drug as he merely relied on the pre-arranged signal to apprehend Bartolini.

5. ID.; ID.; ID.; THE ACQUITTAL OF THE ACCUSED IS PROPER UPON FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.— It is well-settled in criminal law that the conviction of an accused must be based on the strength of the prosecution's evidence and not on the weakness or absence of evidence of the defense. Bartolini has the constitutional presumption of innocence in his favor which outweighs the presumption of regularity of duties of the policemen involved. Conviction must stand on the strength of the prosecution's evidence, and not on the weakness of the defense - the prosecution must be able to prove beyond reasonable doubt that the accused is guilty of the crime charged. In this case however, we find that the prosecution fell short in proving beyond reasonable doubt that the accused is indeed guilty of the crime charged. In sum, this Court finds that the prosecution failed (1) to establish an unbroken chain of custody of the seized items; (2) to prove the *corpus delicti* of the crime; (3) to offer any justifiable reason for the non-compliance with Section 21 of RA 9165; and (4) to establish the fact of sale between the poseur-buyer and Bartolini. There is a failure on the part of the prosecution to prove beyond reasonable doubt the guilt of Bartolini - he should be acquitted of the crime charged.

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO, *J.*:

The Case

On appeal is the 13 August 2014 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 00550-MIN. The Court of

[1] *Rollo*, pp. 3-9. Penned by Associate Justice Henri Jean Paul B. Inting, with Associate Justices Edgardo A. Camello and Pablito A. Perez concurring.

Appeals affirmed the 16 November 2006 Judgment[2] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 25, convicting appellant Bernabe M. Bartolini (Bartolini) for violating Section 5, Article II of Republic Act (RA) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

The Information dated 21 September 2004 reads:

> That on or about the 22nd day of June 2004 at about 7:20 o'clock in the evening, more or less, at Barangay Sugbongcogon, Municipality of Tagoloan, Province of Misamis Oriental, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess and to sell any dangerous drugs, knowingly, willfully and feloniously did then and there sell and convey to a third person twenty-six (26) pieces of white rolled Marijuana sticks, having a total weight of 2.2 grams, which when examined gave positive result to the test of the presence of Marijuana, a dangerous drug.
>
> Contrary to and in violation of Section 5, Article II of RA 9165.[3]

Upon arraignment, Bartolini entered a plea of not guilty.

The facts, as culled from the records, are as follows:

On 12 June 2004, the Provincial Anti-Illegal Drugs Special Operation Task Unit (PAID-SOTU) of Misamis Oriental conducted a test-buy operation on Bartolini and was able to buy two marijuana sticks from the latter. The following day, the PAID-SOTU tried to conduct a buy-bust operation but failed because Bartolini could not be found within the area.

On 22 June 2004, at around 7:00 in the evening, the PAID-SOTU conducted a buy-bust operation against Bartolini in Sugbongcogon, Tagoloan, Misamis Oriental. The buy-bust team was composed of SPO4 Lorenzo Larot (SPO4 Larot) as team leader, SPO3 Wilfred Saquilayan, PO3 Arthur Catalan, PO3 Juancho Dizon (PO3 Dizon), PO2 Roel Sereño, and Barangay

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[2] CA *rollo*, pp. 75-78. Penned by Judge Noli T. Catli.

[3] *Id.* at 75.

Kagawad Leonardo Abenque (Barangay Kagawad Abenque). They also had a confidential informant to act as the poseur-buyer to help with the operation. Marked money in the amount of Eighty Pesos (₱80), composed of one Fifty Peso bill, one Twenty Peso bill, and one Ten Peso bill, was given to the poseur-buyer.

The members of the buy-bust team were inside a store pretending to be customers while the poseur-buyer was about two meters outside of the store. Bartolini approached the poseur-buyer and thereafter, SPO4 Larot saw the decoy show and give the marked money to Bartolini. Bartolini then went to his house and came back giving the decoy 26 sticks of marijuana. The decoy then placed his white towel on his shoulder, which was the pre-arranged signal that the transaction took place. The buy-bust team then rushed to Bartolini and arrested him. They recovered the marked money and three stalks of marijuana from Bartolini. The buy-bust team, together with Bartolini, went to the Tagoloan Police Station where the seized items were marked by SPO4 Larot. The Certificate of Inventory was also prepared by SPO4 Larot and was signed by SPO4 Larot, Bartolini, and Barangay Kagawad Abenque.

SPO4 Larot prepared the request for: (1) the laboratory examination of the 26 sticks and 3 stalks of marijuana; (2) the drug test for Bartolini; and (3) the test for ultra-violet radiation of the marked money and the body of Bartolini. The Chemistry Reports from the Philippine National Police Crime Laboratory showed that: (1) the sticks tested positive for the presence of marijuana; (2) Bartolini tested positive for marijuana; and (3) the marked money and the hands of Bartolini were positive for bright green ultra-violet fluorescent powder.

Bartolini, for his defense, stated that on 22 June 2014, at around 7:00 in the evening, he was on his way home when he met two acquaintances – Dodong and Lito, whom he inquired regarding a job at Swift Processing Plant. During the course of their conversation, two persons walked towards them and put him under arrest. These persons were SPO4 Larot and PO3 Dizon. PO3 Dizon thereafter asked him if he was Roger Patok, and when Bartolini denied that he was Roger Patok, PO3 Dizon continued to insist that he was.

After asking where Bartolini lived, they went inside his house and searched it. Bartolini saw SPO4 Larot pull something from his pocket and place a white cellophane on the stove of his kitchen. He was then brought to the highway where he was handcuffed, and thereafter, he was brought to the police station where he was made to hold money bills, one One Hundred Peso bill and one Ten Peso bill, and to urinate.

Bartolini strongly denied the accusations against him and contended that he is merely a victim of a frame-up by the police and no such buy-bust operation ever happened.

The Ruling of the RTC

In a Judgment dated 16 November 2006, the RTC found Bartolini guilty beyond reasonable doubt for violation of Section 5, Article II of RA 9165,[4] to wit:

> WHEREFORE, in view of the foregoing, the Constitutional presumption of innocence of accused having been overcome by substantial evidence beyond reasonable doubt, this Court finds accused BERNABE M. BARTOLINI, "guilty" beyond reasonable doubt for Violation of Section 5, Article II of R.A. 9165 and without any aggravating nor mitigating circumstance, hereby sentences accused to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).
>
> Accused is credited in the service of his sentence consisting of deprivation of liberty with the full time during which he has undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

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[4] Section 5 of RA 9165 provides in part:

> Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. x x x.

The twenty-six (26) pieces of white rolled Marijuana sticks are forfeited in favor of the government to be dispensed in accordance withlaw.

SO ORDERED.[5]

Bartolini filed his Notice of Appeal[6] which was given due course by the RTC.

The Ruling of the Court of Appeals

In a Decision dated 13 August 2014,[7] the Court of Appeals affirmed the decision of the RTC finding Bartolini guilty of violating Section 5, Article II of RA 9165. The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, the instant appeal is DENIED. The Decision of the Regional Trial Court is AFFIRMED.[8]

Bartolini filed his Notice of Appeal dated 18 September 2014 with the Court of Appeals.[9]

The Issue

The issue to be resolved in this appeal is whether or not the Court of Appeals gravely erred in finding Bartolini guilty of violating Section 5, Article II of RA 9165. Bartolini argues that the non-compliance with Section 21, Article II of RA 9165 and the failure to establish the *corpus delicti* of the offense and the unbroken chain of custody should necessarily result in the reversal of his conviction.

The Ruling of the Court

The appeal is meritorious.

For a successful prosecution of the offense of illegal sale of dangerous drugs under RA 9165, the following elements must be

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[5] CA *rollo*, p. 78.

[6] *Rollo*, pp. 10-12.

[7] *Id.* at 3-9.

[8] *Id.* at 9.

[9] CA *rollo*, pp. 120-122.

proven: (1) the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) the buyer and the seller were identified.[10] In this case, we find that the prosecution failed to prove these elements beyond reasonable doubt.

Specifically, Bartolini argues that the *corpus delicti* of the crime was not established, and the unbroken chain of custody was likewise not established. We find merit in his arguments.

In a case involving dangerous drugs, the substance itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction.[11] In *People v. Gatlabayan*,[12] this Court held that it is of prime importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with exactitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court.

We find that the prosecution failed to establish the *corpus delicti* of the crime beyond reasonable doubt as there were significant gaps in the chain of custody. The requirement of an unbroken chain of custody is to ensure that unnecessary doubts on the identity of the evidence – the dangerous drugs – are removed.[13] The prosecution has the duty to prove every link in the chain, from the moment the dangerous drug was seized from the accused until the time it is offered in court as evidence. The marking of the seized item, the first link in the chain of custody, is crucial in proving an unbroken chain of custody as it is the starting point in the custodial link that succeeding handlers of the evidence will use as a reference point.[14] The succeeding links in the chain are the different processes the seized item will go through under the possession

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[10] *People v. De la Cruz*, 591 Phil. 259, 269 (2008).

[11] *People v. Frondozo*, 609 Phil. 188, 198 (2009).

[12] 669 Phil. 240, 252 (2011).

[13] *Mallillin v. People*, 576 Phil. 576 (2008).

[14] *People v. Zakaria*, 699 Phil. 367 (2012).

of different persons. This is why it is vital that each link is sufficiently proven to be unbroken – to obviate switching, planting, or contaminating the evidence.[15]

In this case, we find that the prosecution failed to sufficiently establish the first link in the chain of custody. There was a failure to mark the drugs immediately after the items were seized from Bartolini. The items were marked only at the police station and the prosecution offered no reasonable explanation as to why the items were not immediately marked after seizure. We have previously held that the failure to mark the drugs immediately after seizure from the accused cast doubt on the prosecution's evidence, which warrants an acquittal on reasonable doubt.[16] In this case, SPO4 Larot admitted that the items were marked only at the Tagoloan Police Station where Bartolini was brought after he was arrested:

Q It was only in Tagoloan Police Station where you brought the suspect later after his arrest and where you marked the twenty-six sticks and three (3) stalks of marijuana?
A Yes, Ma'am.

Q At the police station?
A Yes, Ma'am.[17]

This Court has been consistent in holding that the failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties.[18] This is consistent with the provisions of RA 9165 which state:

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[15] *People v. Coreche*, 612 Phil. 1238 (2009).

[16] See *People v. Umipang,* 686 Phil. 1024 (2012), citing *People v. Coreche*, *id*.; *People v. Laxa*, 414 Phil. 156 (2001); *People v. Casimiro*, 432 Phil. 966 (2002).

[17] TSN, 11 May 2005, p. 22.

[18] *People v. Sabdula*, 733 Phil. 85 (2014).

SECTION 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused** or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;
>
> x x x (Emphasis supplied)

There have been cases when the Court relaxed the application of Section 21 and held that the subsequent marking at the police station is valid. However, this non-compliance is not fatal only when there are (1) justifiable grounds and (2) the integrity and evidentiary value of the seized items are properly preserved.[19] And while the amendment of RA 9165 by RA 10640[20] now allows the conduct of physical inventory in the nearest police station, the principal concern remains to be the preservation of the integrity and evidentiary value of the seized items. In this case, however, the prosecution offered no explanation at all for the non-compliance with Section 21, more particularly that relating to the immediate marking of the seized items. This non-explanation creates doubt on whether the buy-bust team was able to preserve the integrity and evidentiary value of the items seized from Bartolini.

The prosecution also failed to offer any explanation as to why no media representative was present, despite the fact that

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[19] *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[20] Took effect on 15 July 2014.

the police had already conducted a test-buy operation a few days before. As testified by SPO4 Larot, there was no representative from the media during the inventory and taking of photographs of the seized items as required in Section 21:

ATTY. MALANOG:
Q So you took pictures of the marijuana sticks and stalks?
A Yes, Ma'am.

Q Where?
A Tagoloan Police Station.

Q In the presence of the accused?
A Yes, Ma'am.

Q Was there a media representative present?
A There was no media representative[.] But there were barangay officials present.

Q But, are you aware of Section 21, RA 9165, that when you took pictures as a result of the entrapment operation, you are supposed to get a media representative to witness the inventory of the items seized?
x x x x
A At that time, we did not contact any media[.] But, there were barangay officials present at that time.

Q You have been enforcing RA 6425 since when, Mr. Witness?
A Since 1995.

Q What about RA 9165?
A In the year 2002.

Q And, having enforced that law since 2002, you are aware of the provision on how the evidence should be handled?
A Yes, Ma'am. I already have the knowledge since I took up some seminars in anti-narcotics.

COURT: (To the witness)
Q Handling, custody and marking of evidence?
A Yes, Your Honor.

ATTY. MALANOG: (To the witness)
Q Of course, you are familiar with Section 21 of RA 9165?
A Yes, Ma'am.[21]

The failure to immediately mark the seized items, taken together with the absence of a representative from the media to witness the inventory, without any justifiable explanation, casts doubt on whether the chain of custody is truly unbroken. Serious uncertainty is created on the identity of the *corpus delicti* in view of the broken linkages in the chain of custody.[22] The prosecution has the burden of proving each link in the chain of custody – from the initial contact between buyer and seller, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug.[23] The prosecution must prove with certainty each link in this chain of custody and each link must be the subject of strict scrutiny by the courts to ensure that law-abiding citizens are not unlawfully induced to commit an offense.[24]

Moreover, there was failure to identify who placed certain markings on the seized items. While SPO4 Larot testified that he made the markings "A" and "C" on the items, he was not able to identify who placed the other markings on the evidence presented in court:

Q Alright, now, the twenty-six (26) sticks marijuana cigarettes were confiscated by you from the person of the accused Bernabe Bartolini, as well as, the three (3) stalks of suspected marijuana[.] If those exhibits or specimens will be shown to you, will you be able to identify them?
A Yes, Sir.

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[21] TSN, 11 May 2005, pp. 22-23.

[22] *People v. Havana*, G.R. No. 198450, 11 January 2016.

[23] *People v. Doria*, 361 Phil. 595 (1999), citing *People v. Tadepa*, 314 Phil. 231 (1995) and *People v. Crisostomo*, G.R. No. 97427, 24 May 1993, 222 SCRA 511, 515.

[24] *Id*.

Q Alright, I have here with me these drugs specimens[.] Kindly take a look at them and tell this Honorable Court what relation have these drugs specimens to those drugs confiscated by you on June 22, 2004 from the accused Bernabe Bartolini?
A This Exhibit "E" with markings "E-D-292-04" were the ones confiscated from Bernabe Bartolini on that day.

Q Who placed the markings here?
A **I don't know, Your Honor**. But, I made a marking inside this "A".

Q There is a masking tape around the plastic transparent cellophane with marking "A-D-292-04". Do you know who made these markings?
A **I don't know**. I already have a marking inside Alpha.

Q How about this "E-1"? There is also a masking tape marked "D-292-04"?
A I think that represents the Chemistry Report, Your Honor.[25] (Emphasis supplied)

SPO4 Larot categorically stated that he did not know who placed the other markings on the seized items, although he offered his view that it represents the Chemistry Report. However, the prosecution did not formally offer the testimony of Police Senior Inspector and Forensic Chemist April Garcia Carbajal, who prepared such Chemistry Report.[26] While the testimony of the forensic chemist was dispensed with,[27] the prosecution failed to identify such markings in other ways, such as an affidavit, to establish the unbroken chain of custody of the seized items. In fact, there is no evidence as to who handled the seized items after SPO4 Larot turned them over to the laboratory. SPO4 Larot also did not categorically state in his testimony to whom the seized items were turned over to in the laboratory. This failure raises questions as to who exercised custody and possession of the specimen in the laboratory, as well as the

[25] TSN, 11 May 2005, p. 11.

[26] Records, p. 164.

[27] *Id.* at 137.

manner it was handled, stored and safeguarded pending its offer in court. In *People v. Coreche*, we held that the failure of the prosecution to provide details pertaining to the post-examination custody of the seized item created a gap in the chain of custody which again raises reasonable doubt on the authenticity of the *corpus delicti*.[28] This also applies in this case, where the prosecution failed to offer any details in the links pertaining to the seized items after they were allegedly turned over by SPO4 Larot to the laboratory which failure casts doubt on the integrity and evidentiary value of the *corpus delicti*.

Based on the foregoing, we find that the prosecution failed to establish an unbroken chain of custody, and the *corpus delicti* of the crime was not sufficiently proven.

Aside from the points raised by Bartolini on the chain of custody and *corpus delicti*, we find that the first element of the crime involving the sale of illegal drugs – that the transaction or sale took place – was also not sufficiently proven by the prosecution. The non-presentation of the poseur-buyer was fatal to the prosecution as nobody could competently testify on the fact of sale between Bartolini and the poseur-buyer. In this case, SPO4 Larot admitted that he did not hear the conversation between the poseur-buyer and Bartolini, and that he only saw the pre-arranged signal before apprehending Bartolini:

ATTY. MALANOG:
Q While the buy-bust operation was ongoing, you were inside the store[.] The store was how many meters away from the house of Bernabe Bartolini?
A Five (5) to eight (8) meters away.

Q Now, how many houses were in-between the store and the house of Bernabe Bartolini?
A There was none.

Q It's in the opposite area of the road?
A It was only divided by the road. What I mean is that in this area is the store and across the road is the house of Bernabe Bartolini.

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[28] *People v. Coreche*, *supra* note 15, at 1250-1251.

Q How about the decoy, where was he situated?
A In front of the store.

Q Why? You mean Bernabe Bartolini was inside the store?
A Our decoy was in the store. Few minutes later, Bernabe Bartolini approached our decoy.

Q When Bernabe Bartolini approached your decoy, what did Bernabe Bartolini tell your decoy?
A **I cannot hear because they were at a distance**[.] But, when I looked at them, our decoy showed the money and gave it to Bernabe Bartolini.

Q You have not heard the conversation between Bernabe Bartolini and your decoy and you only saw your decoy handing the money to Bernabe Bartolini?
A Yes, Ma'am.

Q And how many minutes elapsed before Bernabe Bartolini gave the twenty-six (26) marijuana cigarettes from the time he received the money?
A More than a minute.

Q More than a minute[.] **Because you were inside the store and you did not actually hear the conversation and what were they talking about**[.] **The only time you knew that the transaction was consummated was when he put his white towel on his shoulder?**
A **Yes, Ma'am.**

Q Which shoulder? Right or left?
A Right shoulder.

Q So, before the decoy gave the pre-arranged signal, you had no idea that the transaction was already consummated because you waited for that signal?
A We were always waiting for the signal.

Q My question is this: The only time that you knew that the transaction was consummated was when the decoy put his towel on his shoulder[.] **But, before that, you were not**

sure whether the transaction was already consummated because you were waiting for the signal?

A Yes, Ma'am. That was my briefing. That was my instruction.[29] (Emphasis supplied)

As SPO4 Larot could not hear the conversation between Bartolini and the poseur-buyer, his testimony was mere hearsay and thus the prosecution failed to prove the fact of the transaction. The non-presentation of the poseur-buyer was fatal to the prosecution. In *People v. Polizon*, we held:

> We agree with the appellant's contention that the non-presentation of Boy Lim, the alleged poseur-buyer, weakens the prosecution's evidence. Sgt. Pascua was not privy to the conversation between Lim and the accused. He was merely watching from a distance and he only saw the actions of the two. As pointed out by the appellant, Sgt. Pascua had no personal knowledge of the transaction that transpired between Lim and the appellant. Since appellant insisted that he was forced by Lim to buy the marijuana, it was essential that Lim should have been presented to rebut accused's testimony.[30]

While there have been instances where the Court affirmed the conviction of an accused notwithstanding the non-presentation of the poseur-buyer in a buy-bust operation, this is only when the testimony of such poseur-buyer is merely corroborative, and another eyewitness can competently testify on the sale of the illegal drug.[31] In this case however, the lone witness for the prosecution was not competent to testify on the sale of the illegal drug as he merely relied on the pre-arranged signal to apprehend Bartolini.

We also find that the marked money presented by the prosecution as evidence raises questions as to the alleged transaction between the poseur-buyer and Bartolini. While SPO4 Larot testified that the transaction was for One Hundred Pesos

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[29] TSN, 11 May 2005, pp. 14-15.

[30] 288 Phil. 821, 826-827 (1992).

[31] See *People v. Guzon*, 719 Phil. 441 (2013), citing *People v. Orteza*, 555 Phil. 700, 709 (2007); *People v. Ambrosio*, 471 Phil. 241 (2004).

(₱100) worth of marijuana, the money that was actually marked was only Eighty Pesos (₱80) – One Fifty Peso bill, one Twenty Peso bill, and one Ten Peso bill. No explanation was given as to why the remaining Twenty Pesos (₱20) was not marked:

> ATTY. MALANOG (To the witness)
> Q Mr. Witness, I heard when you said in your direct-testimony that when you arrested the accused, you recovered from him the marked money, but, only ₱80.00. Tell this Court how much did you actually recover from him when you subjected him to a body search?
> A ₱100.00, Your Honor. But, the marked money was only ₱80.00.
>
> Q Yes. But you only produced ₱80.00. Where is now the other ₱20.00 not listed in the Certificate of Inventory that you prepared?
> A It was listed, Your Honor.
>
> Q Where?
> A At the bottom, listed there are five (5) pieces of ₱20.00 bills[.] And, I think I have exhibited the ₱100.00.
>
> Q Why there are now five (5) pieces of ₱20.00 bills?
> A I have submitted it to the Court as exhibits.[32]

While it is not essential that the marked money be presented in court or that the money used in the buy-bust operation be marked,[33] we find that the discrepancy in the marked money, taken together with the other gaps and lapses in this case, raises questions on the transaction that allegedly took place. In *People v. Cruz*,[34] where the Court held that the failure to use marked money or to present it in evidence is not material since the sale cannot be essentially disproved by the absence thereof, the poseur-buyer was presented as a witness, and there was a direct testimony to establish that the transaction involving the illegal drug indeed

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[32] TSN, 11 May 2005, p. 13.

[33] *People v. Cruz,* 667 Phil. 420 (2011).

[34] *Id*.

took place. This is in stark contrast to the case at bar, as the testimony of the poseur-buyer was not offered in evidence. SPO4 Larot did not hear the conversation between the poseur-buyer and Bartolini. The marked money was not equal to the amount of the alleged transaction. Considering that the team had already conducted a test-buy a few days prior, they should have been more prepared for the buy-bust operation, which includes the preparation of the marked money. All of these, taken in totality, create doubt as to the fact of sale between the poseur-buyer and Bartolini.

It is well-settled in criminal law that the conviction of an accused must be based on the strength of the prosecution's evidence and not on the weakness or absence of evidence of the defense.[35] Bartolini has the constitutional presumption of innocence in his favor which outweighs the presumption of regularity of duties of the policemen involved. Conviction must stand on the strength of the prosecution's evidence, and not on the weakness of the defense – the prosecution must be able to prove beyond reasonable doubt that the accused is guilty of the crime charged.[36] In this case however, we find that the prosecution fell short in proving beyond reasonable doubt that the accused is indeed guilty of the crime charged.

In sum, this Court finds that the prosecution failed (1) to establish an unbroken chain of custody of the seized items; (2) to prove the *corpus delicti* of the crime; (3) to offer any justifiable reason for the non-compliance with Section 21 of RA 9165; and (4) to establish the fact of sale between the poseur-buyer and Bartolini. There is a failure on the part of the prosecution to prove beyond reasonable doubt the guilt of Bartolini – he should be acquitted of the crime charged.

WHEREFORE, the appeal is **GRANTED.** The assailed 13 August 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00550-MIN, which affirmed the 16 November 2006 Judgment of the Regional Trial Court of Cagayan de Oro City,

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[35] *People v. Suan*, 627 Phil. 174, 192-193 (2010), citing *People v. Teves*, 408 Phil. 82, 102 (2001).

[36] *People v. Mendoza*, 736 Phil. 749 (2014), citing *People v. Belocura,* 693 Phil. 476 (2012) further citing *Patula v. People*, 685 Phil. 376 (2012).

Branch 25, in Criminal Case No. 2004-797, is **REVERSED** and **SET ASIDE.**

Accordingly, appellant Bernabe M. Bartolini is **ACQUITTED** on reasonable doubt.

The Director of the Bureau of Corrections is directed to cause the immediate release of appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five (5) days from notice.

SO ORDERED.

Brion, del Castillo, Mendoza, and *Leonen, JJ.,* concur,

FIRST DIVISION

[G.R. No. 215723. July 27, 2016]

DOREEN GRACE PARILLA MEDINA, *a.k.a.* "DOREEN GRACE MEDINA KOIKE," *petitioner, vs.* **MICHIYUKI KOIKE, THE LOCAL CIVIL REGISTRAR OF QUEZON CITY, METRO MANILA, and THE ADMINISTRATOR AND CIVIL REGISTRAR GENERAL OF THE NATIONAL STATISTICS OFFICE,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; THE LAW CONFERS JURISDICTION ON PHILIPPINE COURTS TO EXTEND THE EFFECT OF A FOREIGN DIVORCE DECREE TO A FILIPINO SPOUSE WITHOUT UNDERGOING TRIAL TO DETERMINE THE VALIDITY OF THE DISSOLUTION OF THE MARRIAGE.— At the outset, it bears stressing that Philippine law does not provide for absolute divorce; hence, our courts cannot grant it. However, Article

26 of the Family Code — which addresses foreign marriages or mixed marriages involving a Filipino and a foreigner — allows a Filipino spouse to contract a subsequent marriage in case the divorce is validly obtained abroad by an alien spouse capacitating him or her to remarry. x x x Under the 2nd paragraph of Art. 26, the law confers jurisdiction on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage. x x x Thus, in *Garcia v. Recio,* it was pointed out that in order for a divorce obtained abroad by the alien spouse to be recognized in our jurisdiction, it must be shown that the divorce decree is valid according to the national law of the foreigner. Both the divorce decree and the governing personal law of the alien spouse who obtained the divorce must be proven. Since our courts do not take judicial notice of foreign laws and judgment, our law on evidence requires that both the divorce decree and the national law of the alien must be alleged and **proven like any other fact.**

2. REMEDIAL LAW; APPEALS; APPEALS RAISING A QUESTION OF FACT OR MIXED QUESTIONS OF FACT AND LAW SHOULD BE BROUGHT TO THE COURT OF APPEALS; REFERRAL OF THE APPEAL TO THE COURT OF APPEALS BY THE SUPREME COURT, JUSTIFIED.— Well entrenched is the rule that this Court is not a trier of facts. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect and are in fact binding subject to certain exceptions. In this regard, it is settled that appeals taken from judgments or final orders rendered by RTC in the exercise of its original jurisdiction raising questions of fact or mixed questions of fact and law should be brought to the Court of Appeals (CA) in accordance with Rule 41 of the Rules of Court. Nonetheless, despite the procedural restrictions on Rule 45 appeals as above-adverted, the Court may refer the case to the CA under paragraph 2, Section 6 of Rule 56 of the Rules of Court. x x x Since the said Rules denote discretion on the part of the Court to either dismiss the appeal or refer the case to the CA, the question of fact involved in the instant appeal and substantial ends of justice warrant that the case be referred to the CA for further appropriate proceedings. It bears to stress that procedural rules were intended to ensure proper administration of law and justice. The rules of procedure ought not to be applied in a very rigid, technical

sense, for they are adopted to help secure, not override, substantial justice. A deviation from its rigid enforcement may thus be allowed to attain its prime objective, for after all, the dispensation of justice is the core reason for the existence of the courts.

APPEARANCES OF COUNSEL

Lorenzo U. Padilla for petitioner.

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 July 31, 2014 and the Resolution[3] dated November 28, 2014, of the Regional Trial Court of Quezon City, Branch 106 (RTC), in Sp. Proc. No. Q-13-72692, denying petitioner's petition for judicial recognition of foreign divorce and declaration of capacity to remarry pursuant to Article 26 of the Family Code.

The Facts

Petitioner Doreen Grace Parilla (Doreen), a Filipino citizen, and respondent Michiyuki Koike (Michiyuki), a Japanese national, were married on June 14, 2005 in Quezon City, Philippines.[4] Their union bore two children, Masato Koike, who was born on January 23, 2006, and Fuka Koike who was born on April 4, 2007.[5]

On June 14, 2012, Doreen and Michiyuki, pursuant to the laws of Japan, filed for divorce[6] before the Mayor of Ichinomiya

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[1] *Rollo*, pp. 3-54.

[2] *Id.* at 58-65. Penned by Judge Angelene Mary W. Quimpo-Sale.

[3] *Id.* at 66-70.

[4] *Id.* at 80.

[5] *Id.* at 59.

[6] See Certificate of Receiving; *id.* at 109.

City, Aichi Prefecture, Japan. They were divorced on even date as appearing in the Divorce Certificate[7] and the same was duly recorded in the Official Family Register of Michiyuki Koike.[8]

Seeking to have the said Divorce Certificate annotated on her Certificate of Marriage[9] on file with the Local Civil Registrar of Quezon City, Doreen filed on February 7, 2013 a petition[10] for judicial recognition of foreign divorce and declaration of capacity to remarry pursuant to the second paragraph of Article 26 of the Family Code[11] before the RTC, docketed as Sp. Proc. No. Q-13-72692.

At the hearing, no one appeared to oppose the petition.[12] On the other hand, Doreen presented several foreign documents, namely, "Certificate of Receiving/Certificate of Acceptance of Divorce"[13] and "Family Register of Michiyuki Koike"[14] both issued by the Mayor of Ichinomiya City and duly authenticated by the Consul of the Republic of the Philippines for Osaka, Japan. She also presented a certified machine copy of a document entitled "Divorce Certificate" issued by the Consul for the Ambassador of Japan in Manila that was authenticated by the Department of the Foreign Affairs, as well as a Certification[15] issued by the City Civil Registry Office in Manila that the original of said divorce certificate was filed and recorded in the said Office. In addition, photocopies of the Civil Code of Japan and their corresponding English translation, as well as two (2)

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[7] *Id.* at 81.

[8] See *id.*

[9] *Id.* at 97.

[10] *Id.* at 71-79.

[11] Executive Order No. 209, as amended, entitled "THE FAMILY CODE OF THE PHILIPPINES," August 4, 1988.

[12] *Rollo*, p. 58.

[13] *Id.* at 109-110.

[14] *Id.* at 101-107.

[15] *Id.* at 83.

books entitled "The Civil Code of Japan 2000"[16] and "The Civil Code of Japan 2009"[17] were likewise submitted as proof of the existence of Japan's law on divorce.[18]

The RTC Ruling

In a Decision [19] dated July 31, 2014, the RTC denied Doreen's petition, ruling that in an action for recognition of foreign divorce decree pursuant to Article 26 of the Family Code, the foreign divorce decree and the national law of the alien recognizing his or her capacity to obtain a divorce must be proven in accordance with Sections 24[20] and 25[21] of Rule 132 of the Revised Rules on Evidence. The RTC ruled that while the divorce documents presented by Doreen were successfully proven to be public or official records of Japan, she nonetheless fell short of proving the national law of her husband, particularly the existence of the law on divorce. The RTC observed that the "The Civil Code of Japan 2000" and "The Civil Code of Japan 2009," presented were not duly authenticated by the Philippine Consul in Japan as required

[16] *Id.* at 111-115.

[17] *Id.* at 116-119.

[18] See *id.* at 62.

[19] *Id.* at 58-65.

[20] SECTION 24. *Proof of official record*. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul-general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

[21] SECTION 25. *What attestation of copy must state*. — Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

by Sections 24 and 25 of the said Rules, adding too that the testimony of Doreen relative to the applicable provisions found therein and its effect on the matrimonial relations was insufficient since she was not presented as a qualified expert witness nor was shown to have, at the very least, a working knowledge of the laws of Japan, particularly those on family relations and divorce. It likewise did not consider the said books as learned treatises pursuant to Section 46,[22] Rule 130 of the Revised Rules on Evidence, since no expert witness on the subject matter was presented and considering further that Philippine courts cannot take judicial notice of foreign judgments and law.[23]

Doreen's motion for reconsideration[24] was denied in a Resolution[25] dated November 28, 2014; hence, this petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the RTC erred in denying the petition for judicial recognition of foreign divorce.

The Court's Ruling

At the outset, it bears stressing that Philippine law does not provide for absolute divorce; hence, our courts cannot grant it. However, Article 26 of the Family Code — which addresses foreign marriages or mixed marriages involving a Filipino and a foreigner — allows a Filipino spouse to contract a subsequent marriage in case the divorce is validly obtained abroad by an alien spouse capacitating him or her to remarry. The provision reads:

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[22] SECTION 46. *Learned treatises*. — A published treatise, periodical or pamphlet on a subject of history, law, science, or art is admissible as tending to prove the truth of a matter stated therein if the court takes judicial notice, or a witness expert in the subject testifies, that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as expert in the subject.

[23] *Rollo*, pp. 63-64.

[24] *Id.* at 169-193.

[25] *Id.* at 66-70.

Art. 26. All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter *validly obtained abroad by the alien spouse* capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law. (Emphasis supplied)

Under the above-highlighted paragraph, the law confers jurisdiction on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage.[26]

In *Corpuz v. Sto. Tomas*,[27] the Court had the occasion to rule that:

The starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws. Justice Herrera explained that, as a rule, "no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country." **This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien himself or herself.** The recognition may be made in an action instituted specifically for the purpose or in another action where a party invokes the foreign decree as an integral aspect of his claim or defense.[28] (Emphasis and underscoring supplied; citation omitted)

Thus, in *Garcia v. Recio*,[29] it was pointed out that in order for a divorce obtained abroad by the alien spouse to be

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[26] *Fujiki v. Marinay*, 712 Phil. 524, 555 (2013).

[27] 642 Phil. 420 (2010).

[28] *Id.* at 432-433.

[29] 418 Phil. 723 (2001).

recognized in our jurisdiction, it must be shown that the divorce decree is valid according to the national law of the foreigner. Both the divorce decree and the governing personal law of the alien spouse who obtained the divorce must be proven.[30] Since our courts do not take judicial notice of foreign laws and judgment, our law on evidence requires that both the divorce decree and the national law of the alien must be alleged and **proven like any other fact**.[31]

Considering that the validity of the divorce decree between Doreen and Michiyuki, as well as the existence of pertinent laws of Japan on the matter are essentially factual that calls for a re-evaluation of the evidence presented before the RTC, the issue raised in the instant appeal is obviously a question of fact that is beyond the ambit of a Rule 45 petition for review.

Well entrenched is the rule that this Court is not a trier of facts. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect and are in fact binding subject to certain exceptions.[32] In this regard, it is settled that appeals taken from judgments or final orders rendered by RTC in the exercise of its original jurisdiction raising questions of fact or mixed questions of fact and law should be brought to the Court of Appeals (CA) in accordance with Rule 41 of the Rules of Court.[33]

Nonetheless, despite the procedural restrictions on Rule 45 appeals as above-adverted, the Court may refer the case to the CA under paragraph 2, Section 6 of Rule 56 of the Rules of Court, which provides:

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[30] *Id.* at 725.

[31] *Id.* at 735.

[32] *Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation*, 715 Phil. 420, 433-435 (2013).

[33] See *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 766-767 (2013).

SEC. 6. *Disposition of improper appeal*. — x x x

An appeal by *certiorari* taken to the Supreme Court from the Regional Trial Court submitting issues of fact may be referred to the Court of Appeals for decision or appropriate action. The determination of the Supreme Court on whether or not issues of fact are involved shall be final.

This, notwithstanding the express provision under Section 5 (f) thereof that an appeal likewise "may" be dismissed when there is error in the choice or mode of appeal.[34]

Since the said Rules denote discretion on the part of the Court to either dismiss the appeal or refer the case to the CA, the question of fact involved in the instant appeal and substantial ends of justice warrant that the case be referred to the CA for further appropriate proceedings. It bears to stress that procedural rules were intended to ensure proper administration of law and justice. The rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice. A deviation from its rigid enforcement may thus be allowed to attain its prime objective, for after all, the dispensation of justice is the core reason for the existence of the courts.[35]

WHEREFORE, in the interest of orderly procedure and substantial justice, the case is hereby **REFERRED** to the Court of Appeals for appropriate action including the reception of evidence to **DETERMINE** and **RESOLVE** the pertinent factual issues in accordance with this Decision.

SO ORDERED.

Sereno, C.J.(Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

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[34] *CGP Transportation and Services Corporation v. PCI Leasing and Finance, Inc*., 548 Phil. 242, 253-254 (2007).

[35] *Spouses Agbulos v. Gutierrez*, 607 Phil. 288, 295 (2009).

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firearms is no longer imposable since it becomes merely a special aggravating circumstance. (*Id*.)

APPEALS

Appeal under Rule 41 — Appeals taken from judgments or final orders rendered by RTC in the exercise of its original jurisdiction raising questions of fact or mixed questions of fact and law should be brought to the Court of Appeals (CA) in accordance with Rule 41 of the Rules of Court. (Madina *a.k.a.* "Doreen Grace Medina Koike" *vs.* Koike, G.R. No. 215723, July 27, 2016) p. 645

Appellant's brief — The Court of Appeals may dismiss the appeal if the appellant fails to file his brief within the period prescribed by the rules, except where the appellant is represented by a counsel *de officio*; when it comes to appellants represented by a counsel *de officio*, the appeal should not be dismissed outright as the rule on filing briefs on time applied to appellants represented by a counsel *de parte* is not automatically applied to them. (People *vs.* Ramos, G.R. No. 206906, July 25, 2016) p. 162

Notice of appeal — Distinction between the failure to file a notice of appeal within the reglementary period and the failure to file a brief within the period granted by the appellate court; the former results in the failure of the appellate court to acquire jurisdiction over the appealed decision resulting in its becoming final and executory upon failure of the appellant to move for reconsideration; the latter simply results in the abandonment of the appeal which can lead to its dismissal upon failure to move for its reconsideration. (People *vs.* Ramos, G.R. No. 206906, July 25, 2016) p. 162

Petition for review on certiorari to the Supreme Court under Rule 45 — A petition for review under Rule 45 of the Rules of Court covers only questions of law; questions of fact are not reviewable and cannot be passed upon by the Court in the exercise of its power to review under Rule 45; exceptions. (Gumabon *vs.* PNB, G.R. No. 202514, July 25, 2016) p. 101

render him liable; 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. (*Id*.)

— Disclosure of a client's affairs is allowed only to partners or associates of the law firm, unless the client prohibits it. (*Id*.)

Disbarment — Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio;* however, the lawyer must have the full opportunity upon reasonable notice to answer the charges against him; no attorney shall be removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel; but if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter *ex parte*. (*In Re:* Resolution dtd. Aug. 14, 2013 of the CA in CA-G.R. CV No. 94656 *vs.* Atty. Mortel, A.C. No. 10117, July 25, 2016) p. 1

Duties — An attorney owes it to himself and to his clients to adopt an efficient and orderly system of receiving and attending promptly to all judicial notices. (*In Re:* Resolution dtd. Aug. 14, 2013 of the CA in CA-G.R. CV No. 94656 *vs.* Atty. Mortel, A.C. No. 10117, July 25, 2016) p. 1

— Lawyers are particularly called upon to obey court orders and processes and this deference is underscored by the fact that willful disregard thereof may subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well. (*Id*.)

— Lawyers have the obligation to apprise themselves of the court's resolution and not to simply second-guess it. (*Id*.)

Liabilities of — A counsel who failed to receive the Court of Appeals' notice and resolution due to the fault of his

orderly manner that is in accord with the established rules of procedure but must also be promptly decided to better serve the ends of justice; excessive delay in the disposition of cases renders the rights of the people guaranteed by the Constitution and by various legislations inutile. (People *vs*. Sandiganbayan (5th Div.), G.R. Nos. 199151-56, July 25, 2016) p. 37

— The passage of time affects the parties' and their witnesses' ability to prepare a cogent case or defense, secure witnesses and preserve honor and reputation, financial resources, memory and evidence. (Almeda *vs*. Office of the Ombudsman (Mindanao), G.R. No. 204267, July 25, 2016) p. 129

— The right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried; equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed and such factors as length of the delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered. (*Id*.)

— The right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. (People *vs.* Sandiganbayan (5th Div.), G.R. Nos. 199151-56, July 25, 2016) p. 37

— The unjustified length of time miring the Office of the Ombudsman's resolution of the case, as well as the concomitant prejudice that the delay in this case has caused, it is undeniable that respondent's constitutional

— Failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties; however, this non-compliance is not fatal only when there are: (1) justifiable grounds; and (2) the integrity and evidentiary value of the seized items are properly preserved; and while the amendment of R.A. No. 9165 by R.A. No. 10640 now allows the conduct of physical inventory in the nearest police station, the principal concern remains to be the preservation of the integrity and evidentiary value of the seized items. (People *vs*. Bartolini, G.R. No. 215192, July 27, 2016) p. 626

— The failure to immediately mark the confiscated items at the place of arrest does not render them inadmissible nor impair the integrity of the seized drugs. (People *vs.* Tumulak *y* Cuenca, G.R. No. 206054, July 25, 2016) p. 148

Illegal possession of dangerous drugs — Essential requisites to establish illegal possession of dangerous drugs are: (1) the accused was in possession of the dangerous drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the dangerous drug; what must be proved beyond reasonable doubt is the fact of possession of the prohibited drug itself; this may be done by presenting the police officer who actually recovered the prohibited drugs as a witness, being the person who has the direct knowledge of the possession. (People *vs.* Arenas *y* Bonzo @ Merly, G.R. No. 213598, July 27, 2016) p. 601

Illegal sale of dangerous drugs — Elements that must be proved: (1) the identities of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment for the thing; what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. (People *vs.* Arenas *y* Bonzo @ Merly, G.R. No. 213598, July 27, 2016) p. 601

buy-bust operation is exactly the same substance offered in evidence before the court. (*Id*.)

— Under the rule on variance, while the accused cannot be convicted of the offense of illegal sale of dangerous drugs because the sale was never consummated, he may be convicted for the attempt to sell as it is necessarily included in the illegal sale of dangerous drugs; crime is attempted when the offender commences the commission of a felony directly by overt acts and does not perform all the acts of execution, which should produce the felony, by reason of some cause or accident other than his own spontaneous desistance. (People *vs.* Tumulak *y* Cuenca, G.R. No. 206054, July 25, 2016) p. 148

CONSPIRACY

Existence of — In determining whether conspiracy exists, it is not sufficient that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants; what is determinative is proof establishing that the accused were animated by one and the same purpose. (People *vs.* Gerero, G.R. No. 213601, July 27, 2016) p. 618

CONTEMPT

Indirect contempt — The sanction should be meaningful and condign; otherwise, it would be mocked and derided, rendering it inutile for the purpose. (*Re:* Verified complaint for Disbarment of AMA Land, Inc. (Represented by Joseph B. Usita) against CA Associate Justice Hon. Danton Q. Bueser, OCA IPI No. 12-204-CA-J, July 26, 2016) p. 233

Power to punish for contempt — A corporation and its officers and agents may be held liable for contempt of court for disobeying judgments, decrees, or orders of a court issued in a case within its jurisdiction, or for committing any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice. (*Re:* Verified complaint for Disbarment of Ama Land, Inc.

Offer of — The court shall consider no evidence which has not been formally offered; formal offer means that the offeror shall inform the court of the purpose of introducing its exhibits into evidence; without a formal offer of evidence, courts cannot take notice of this evidence even if this has been previously marked and identified; exception from the requirement of a formal offer of evidence, namely: (a) the evidence must have been duly identified by testimony duly recorded; and (b) the evidence must have been incorporated in the records of the case. (Gumabon *vs.* PNB, G.R. No. 202514, July 25, 2016) p. 101

EXECUTIVE DEPARTMENT

Executive agreement — Diplomatic exchanges of notes are not treaties but rather formal communication tools on routine agreements, akin to private law contracts, for the executive branch; this cannot truly amend or change the terms of the treaty, but merely serve as private contracts between the executive branches of government; they cannot *ipso facto* amend treaty obligations between States, but may be treaty-authorized or treaty-implementing. (Saguisag *vs.* Exec. Sec. Ochoa, Jr., G.R. No. 212426, July 26, 2016) p. 277

FALSIFICATION OF PUBLIC DOCUMENT

Commission of — Elements of the crime of falsification of public document: (1) that the offender is a public officer, employee, or notary public; (2) that he takes advantage of his official position; (3) that he falsifies a document by causing it to appear that persons have participated in any act or proceeding; and (4) that such person or persons did not in fact so participate in the proceeding. (Pascual *vs.* People, G.R. No. 204873, July 27, 2016) p. 506

FAMILY CODE

Article 26 — Foreign marriages or mixed marriages involving a Filipino and a foreigner allows a Filipino spouse to contract a subsequent marriage in case the divorce is validly obtained abroad by an alien spouse capacitating him or her to remarry; the law confers jurisdiction on

— The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid, absent a clear and unmistakable showing to the contrary, in deference to the doctrine of separation of powers. (*Id*.)

— There are two (2) factors to be considered before a case is deemed one capable of repetition yet evading review: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration; and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action. (*Id*.)

— Whether a case involves paramount public interest in relation to the mootness principle, as a common guidepost for application, there should be some perceivable benefit to the public which demands the Court to proceed with the resolution of otherwise moot questions. (*Id*.)

JUDICIARY REORGANIZATION ACT OF 1980 (B.P. BLG. 129)

Section 42 — Contemporaneous construction is the interpretation or construction placed upon the statute by an executive or administrative officer called upon to execute or administer the statute; it includes the construction by the Secretary of Justice in his capacity as the chief legal adviser of the government; courts should respect the contemporaneous construction placed upon a statute by the executive officers whose duty is to enforce it, and unless such interpretation is clearly erroneous will ordinarily be controlled thereby. (*Re*: Letter of CA Justice Veloso for Entitlement to Longevity Pay for his Services as Commission Member III of the NLRC, A.M. No. 12-8-07-CA, July 26, 2016) p. 177

— Inclusion of the services rendered in the National Labor Relations Commission (NLRC) in the computation of longevity pay does not constitute judicial legislation, but is grounded on existing laws, jurisprudence, and executive contemporaneous construction. (*Id*.)

— Longevity pay is an amount equivalent to 5% of the monthly basic pay given to Judges and Justices for each five years of continuous, efficient, and meritorious service rendered in the Judiciary; it is not only an amount given as an addition to the basic monthly pay but, more importantly, it forms part of the salary of the recipient thereof. (*Id*.)

— Longevity pay under Sec. 42 of Batas Pambansa Blg. 129 must be treated as salary and to extend it to certain officials in the Executive Department who are, by law, granted the same salary as their counterparts in the Judiciary. (*Id*.)

— The definition of the "salary" of the concerned public officers who enjoy the same rank and salary as Judges or Justices, if the word "same" employed in the laws pertaining to executive officials is to be understood in its plain and ordinary meaning; a narrow and restrictive approach which limits the longevity pay under Sec. 42 of Batas Pambansa Blg. 129, as amended, to service rendered in the Judiciary only is to unduly restrict the definition of salary, fixing it to the basic pay. (*Id*.)

— The increase in the salary of Judges and Justices by virtue of the longevity pay should also result in the corresponding increase in the salary of the public officers who, under relevant laws, enjoy the same rank and salary as their judicial counterparts; otherwise, the law's express language and its intention to grant the same rank and salary of a member of the Judiciary to the said public officers will be defeated. (*Id*.)

— The longevity pay under Sec. 42 of Batas Pambansa Blg. 129 is among the salaries and benefits enjoyed by members of the Judiciary that are extended to the public officers conferred by law with the rank of Judges of the lower courts or Justices of the Court of Appeals; the services rendered in their respective offices by the public officers required by law to have the same qualifications, rank, and salary of their counterparts in the Judiciary

accused is probably guilty thereof and thereafter, to file the corresponding information with the appropriate courts; in its role as protector of the people, the Office of the Ombudsman has the power and duty to act promptly on complaints filed in any form or manner against public officials and to investigate any act or omission of any public official when such act or omission appears to be illegal, unjust, improper, or inefficient. (Morales, Jr. *vs*. Ombudsman Carpio-Morales, G.R. No. 208086, July 27, 2016) p. 539

PARTIES TO CIVIL ACTIONS

Death of party — The application of the rule on substitution depends on whether or not the action survives the death of the litigant; the following actions that survive the death of a party, namely: (1) recovery of real or personal property, or an interest from the estate; (2) enforcement of liens on the estate; and (3) recovery of damages for an injury to person or property; actions abated by death as including: (1) claims for funeral expenses and those for the last sickness of the decedent; (2) judgments for money; and (3) all claims for money against the deceased, arising from contract, express or implied. (Sulpicio Lines, Inc. *vs.* Sesante, G.R. No. 172682, July 27, 2016) p. 409

PRESUMPTIONS

Regularity in the performance of its official duty — The presumption of regularity cannot prevail over the constitutional presumption of innocence and cannot, by itself, constitute proof of guilt beyond reasonable doubt; the presumption of regularity is just a presumption disputable by contrary proof; when challenged by evidence, it cannot serve as binding proof. (People *vs.* Ramos, G.R. No. 206906, July 25, 2016) p. 162

— Without the presumption of regularity, the testimonies of the police witnesses must stand on their own merits and the defense cannot be burdened with having to dispute these testimonies. (*Id*.)

a preparatory contract to the principal contract of sale, it is separate and distinct therefrom, thus, its essential elements should be distinguished from those of a sale. (Phil. Nat'l. Oil Co. *vs.* Keppel Phils. Holdings, Inc., G.R. No. 202050, July 25, 2016) p. 64

— The absence of a consideration supporting the option contract, however, does not invalidate an offer to buy (or to sell); an option unsupported by a separate consideration stands as an unaccepted offer to buy (or to sell) which, when properly accepted, ripens into a contract to sell; when an offer is supported by a separate consideration, a valid option contract exists, *i.e.*, there is a contracted offer which the offeror cannot withdraw from without incurring liability in damages; on the other hand, when the offer is not supported by a separate consideration, the offer stands but, in the absence of a binding contract, the offeror may withdraw it any time; in either case, once the acceptance of the offer is duly communicated before the withdrawal of the offer, a bilateral contract to buy and sell is generated which, in accordance with the first paragraph of Art. 1479 of the Civil Code, becomes reciprocally demandable. (*Id*.)

— When the consideration is not monetary, the consideration must be clearly specified as such in the option contract or clause; when the written agreement itself does not state the consideration for the option contract, the offeree or promisee bears the burden of proving the existence of a separate consideration for the option. (*Id*.)

STATUTES

Interpretation of — Constitution cannot be viewed solely as a list of prohibitions and limitations on governmental power, but rather as an instrument providing the process of structuring government in order that it may effectively serve the people; it is not simply a set of rules, but an entire legal framework for Philippine society. (Saguisag *vs.* Exec. Sec. Ochoa, Jr., G.R. No. 212426, July 26, 2016) p. 277

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