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OF THE

PHILIPPINES

FROM

DECEMBER 6, 2016 TO DECEMBER 9, 2016

SUPREME COURT
MANILA
2018

Prepared
by

The Office of the Reporter
Supreme Court
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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. SDC-14-7-P. December 6, 2016]
(Formerly A.M. No. 14-09-01-SC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ASHARY M. ALAUYA, CLERK OF COURT VI, SHARI'A DISTRICT COURT, MARAWI CITY, LANAO DEL SUR,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; SHOULD IMMEDIATELY DEPOSIT THE VARIOUS FUNDS THEY RECEIVE TO THE AUTHORIZED GOVERNMENT DEPOSITORIES, FOR THEY ARE NOT SUPPOSED TO KEEP THE FUNDS IN THEIR CUSTODY.— The clerk of court is an important officer in our judicial system. His office is the nucleus of all court activities, adjudicative and administrative. His administrative functions are as vital to the prompt and proper administration of justice as his judicial duties. The clerk of court performs a very delicate function. He or she is the custodian of the courts funds and revenues, records, property and premises. Being the custodian thereof, the clerk of court is liable for any loss, shortage, destruction or impairment of said funds and property. Hence, clerks of court have always been reminded of their duty to immediately deposit the various funds they receive to the authorized government depositories, for they are not supposed to keep the funds in their custody. The same should be deposited immediately upon receipt thereof.

2. ID.; ID.; ID.; ID.; ID.; GROSS NEGLECT OF DUTY, DISHONESTY AND GRAVE MISCONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; FAILURE TO REMIT COURT FUNDS, A CASE OF; PENALTY.— Here, it was established that cash bonds for the FF were not remitted to the depository bank, but instead, were kept by respondent clerk of court until withdrawn by the bondsmen. It was likewise established that the GF-old, SGF, JDF, SAJF and LRF were irregularly remitted. x x x [T]he One Hundred Thousand Pesos (₱100,000.00) unremitted FF collection was in the possession of Mr. Alauya, as the latter admitted that it was the cash bond in the "Landua Case" and said amount was on hand. However, when the audit team directed respondent clerk of court to bring the said amount, he failed to return to the court on the same day to turn it over. Such failure was detrimental to Mr. Alauya's cause. Clerks of Courts are not supposed to keep the funds in their custody. Further, settled is the rule that "the failure of a public officer to remit funds upon demand by an authorized officer [is] *prima facie* evidence that the public officer has put such missing funds or property to personal use." x x x By failing to properly remit the cash collections constituting public funds, Mr. Alauya violated the trust reposed in him as the disbursing officer of the Judiciary. Delayed remittance of cash collections constitutes gross neglect of duty because this omission deprives the court of the interest that could have been earned if the amounts were deposited in the authorized depository bank. x x x Delay in the remittance of court funds in the period required casts a serious doubt on the court employee's trustworthiness and integrity. Mr. Alauya's failure to remit the court funds is tantamount to gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service. x x x As clerk of court, he should have known that he performs a delicate function as designated custodian of the court's funds, revenues, records, properties and premises. As such, he should have discharged his duties with due care and utmost diligence. Any deceitful act, conduct of dishonesty and deliberate omission in the performance of duties are grave offenses which carries the extreme penalty of dismissal from the service even if committed for the first time. Hence, this Court is left with no other recourse but to impose upon him the extreme penalty of dismissal from the service.

3. ID.; ID.; ID.; ID.; ID.; MUST BE ASSIDUOUS IN PERFORMING THEIR OFFICIAL DUTIES AND IN

SUPERVISING AND MANAGING COURT DOCKETS AND RECORDS.— Mr. Alauya's attempt to pass the blame on his subordinate, Ms. Guro, stating that he is no longer in charge of the collection of docket/legal fees and of handling and controlling the official receipts as he immediately issued a memorandum designating Ms. Guro as cash clerk and the one in charge of the collection of docket/legal fees after his six (6) months suspension, cannot be countenanced. As the court's administrative officer, he had control and supervision over all court records, exhibits, documents, properties and supplies. Furthermore, he had to see to it that his subordinates performed their functions well. Clerks of court are key figures in the judicial system. For this reason, they must be assiduous in performing their official duties and in supervising and managing court dockets and records.

4. **ID.; ID.; ID.; ID.; THE CONDUCT REQUIRED OF COURT PERSONNEL, FROM THE PRESIDING JUDGE TO THE LOWLIEST CLERK, MUST ALWAYS BE BEYOND REPROACH AND CIRCUMSCRIBED WITH A HEAVY BURDEN OF RESPONSIBILITY.—** Those who work in the judiciary, such as Mr. Alauya, must adhere to high ethical standards to preserve the court's good name and standing. They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence since they are officers of the court and agents of the law. Indeed, any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced. The conduct required of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and circumscribed with a heavy burden of responsibility. As forerunners in the administration of justice, they ought to live up to the strictest standards of honesty and integrity, considering that their positions primarily involve service to the public.

D E C I S I O N

***PER CURIAM*:**

This administrative matter stemmed from the financial audit conducted on the books of accounts of the Shari'a District Court

(SDC), Marawi City, Lanao del Sur, covering the period of 1 March 1992 to 28 February 2003 and 1 March 2005 to 31 August 2013.

The financial audit on the books of accounts of Mr. Ashary M. Alauya[1] (Mr. Alauya), Clerk of Court VI, SDC, Marawi City was conducted upon the recommendation of the Legal Office[2] and the request of the Accounting Division, Financial Management Office (FMO),[3] both in the Office of the Court Administrator (OCA), for failure of the aforesaid court to submit monthly financial reports despite several notices and due to the anonymous letter-complaint filed against its clerk of court.

The primary objective of the audit was to determine the accuracy and regularity of the cash transactions of the SDC, Marawi City and whether all the judiciary fund collections have been deposited in full within the prescribed period. The audit was also for the purpose of examining whether the filing fees collected are in accordance with Rule 141 of the Rules of Court. It was also an opportunity to apprise the clerk of court concerned on proper bookkeeping and accounting of the court's judiciary funds.

The judiciary funds being collected by the court are the Fiduciary Fund (FF), Sheriff's Trust Fund (STF), Judiciary Development Fund (JDF), Special Allowance for the Judiciary Fund (SAJF), General Fund-Old (GF-Old), Sheriff's General Fund (SGF), Mediation Fund (MF) and Legal Research Fund (LRF).

After the examination of all available documents of SDC of Marawi City, the audit team made the following findings and observations, to wit:

I. Cash Count

Mr. Alauya was not in the Office of the Clerk of Court (OCC), SDC, Marawi City when the audit team arrived on 2 September

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[1] *Rollo*, p. 40; Annex "F", AODS of Mr. Alauya.

[2] *Id.* at 33; Annex "D", Office Memorandum dated 4 April 2013.

[3] *Id.* at 39; Annex "E", Letter Request for Audit from the Accounting Division, FMO, OCA.

2013. Hence, the team asked the staff to contact Mr. Alauya and require him to report for work to witness the conduct of the financial audit on his books of accounts. The team, however, was only able to talk, over the phone, to Mr. Alauya's wife and she informed the team that Mr. Alauya was out of town.

Nevertheless, the team proceeded with the examination and found that the court's accountable forms and financial records were in the custody of Ms. Alejandrea L. Guro (Ms. Guro), while the court collections were allegedly in the possession of Mr. Alauya. Verification of relevant documents disclosed that the collections, with a total amount of One Hundred Four Thousand Eight Hundred Fifty-Two Pesos (₱104,852.00), covering the period from 23 January 2013 to 15 August 2013 were unremitted as of the cash count date.

The team checked the office drawer of Mr. Alauya, in the presence of Ms. Guro and Mr. Ibrahim M. Umungan, Clerk IV, same court, to look for the aforesaid cash balances but these were nowhere to be found. Hence, the team charged the ₱104,852.00 as the initial cash shortage incurred in the cash count conducted.[4]

On 3 September 2013, Mr. Alauya appeared in the office and presented to the team the deposit slips of his remittances to the JDF, SAJF and LRF, in the amount of One Thousand Eight Hundred Seventy-Four Pesos (₱1,874.00), Two Thousand Nine Hundred Twenty-Six Pesos (₱2,926.00) and Fifty-Two Pesos (₱52.00), respectively, all dated 3 September 2013.[5] When Mr. Alauya was asked about the One Hundred Thousand Pesos (₱100,000.00) unremitted Fiduciary Fund collection, he alleged that the amount was kept in their house as the court has no existing trust fund account with the Land Bank of the Philippines (LBP). Right away, the team directed Mr. Alauya to bring the ₱100,000.00, allegedly kept in his house, but the latter failed

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[4] *Id.* at 41-42; Annex "G", Cash Count Sheet.

[5] *Id.* at 43; Annex "H", Deposit Slips of JDF, SAJF and LRF dated 3 September 2013.

to return to the court to tum over the unremitted amount. His failure gave rise to the presumption of malversation of public funds.

The succeeding days of examination were conducted in the Halls of Justice (HOJ), Iligan City due to the volatile situation in Marawi City, in line with Office Memorandum dated 30 July 2013.[6] On 5 September 2013, a staff from SDC, Marawi City called by telephone and informed the audit team that Mr. Alauya is in their office with the ₱100,000.00. Over the phone, the team leader instructed Mr. Alauya deposit the money in the City Treasurer's Office (CTO) or in the OCC, Regional Trial Court (RTC), Marawi City, considering that they do not have an existing account with the LBP and cannot instantly open an account without their judge, who was officially in RTC, Malabang, Lanao del Sur. Mr. Alauya refused to follow the instructions of the audit team because he claimed that he doesn't trust the aforesaid offices. He insisted on depositing the money only to the LBP. For this reason and for the immediate remittance of the ₱100,000.00, the team advised Hon. Rasad G. Balindong (Judge Balindong), Acting Presiding Judge, over the phone, to immediately relieve Mr. Alauya as financial custodian of the court and in his stead designate an Officer-in-Charge (OIC) who can properly and effectively manage the judiciary funds.

Accordingly, Judge Balindong designated Ms. Guro as financial custodian to handle the financial transactions of SDC, Marawi City, effective 6 September 2013.[7] Along with the Office Order is a directive to Mr. Alauya to immediately turn-over all unremitted collections to Ms. Guro. Consequently, on 10 September 2013 Mr. Alauya turned-over the ₱100,000.00 to Ms. Guro, who subsequently deposited the same to the OCC, RTC, Marawi City, as evidenced by the Official Receipt[8] issued by the said office.

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[6] *Id.* at 44-45; Annex "I", Office Memorandum dated 30 July 2013.

[7] *Id.* at 46; Annex "J", Designation of Ms. Guro as Officer-in-Charge.

[8] *Id.* at 47; Annex "K", Official Receipt issued by the RTC, OCC, Marawi City.

II. Inventory of Used and Unused Official Receipts

Based on the list of Official Receipts (ORs) requisitioned from the Property Division, Office of the Administrative Services (OAS), OCA,[9] the following ORs are unaccounted for and were not found in the office files, to wit:

a) 2344251 – 2344300
b) 2344301 – 2344350
c) 2344351 – 2344400
d) 2344403 – 2344450
e) 2344501 – 2344550
f) 2344551 – 2344600
g) 2344451 – 2344486
h) 2344601 – 2344607
i) 2344651 – 2344654
j) 2344776 – 2344800
k) 166851 – 166858
l) 2344734, 2344735, 2344739
m) 18590902

The missing ORs, particularly 2344251-2344400; 2344501-2344600; and 2344651-2344654 were also included in Administrative Matter No. 02-4-03-SDC, previously filed against Mr. Alauya, where he was found guilty of gross neglect of duty in the custody of court property and was suspended for eighteen (18) months.[10]

III. Filing Fees

In view of the unaccounted ORs and the possibility of its issuance in the collection of filing fees, the audit team conducted an examination of all available case records of the SDC, Marawi City. Accordingly, the team found discrepancies on some original ORs of filing fees and Legal Fees Forms (LFF) attached to the case records from 2003 to the present. The LFF data gathered were compared with the available triplicate and original copies of ORs. It was found out that several OR numbers were used in two (2) different transactions. It also disclosed that the LFF was falsified to make it appear that the filing fees were properly receipted. Mr. Alauya assigned receipt numbers in the LFF even

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[9] *Id.* at 48; Annex "L", Index Card of Official Receipts issued to SDC, Marawi City.

[10] *Re: Withholding of all the Salary of Mr. Ashary Alauya*, 473 Phil. 180 (2004).

without actual issuance of OR. As evidenced by the copy of ORs and LFF on file, Mr. Alauya received payments of filing fees for Civil Case Nos. 132-10, 140-10, 126-10, 136-10, 141-10, 162-11, 153-10, 169-11, 179-11, 185-11, 187-12 and 194-12. Instead of issuing ORs, he assigned spurious ORs in the LFF, using either an already issued or unissued OR. The schedules of payments are hereunder presented as evidence of the anomaly:

SCHEDULE 1 - Falsified LFF for Case No. 132-10[11]

OR#	Data per OR				Falsified LFF - Case# spl 132-10			
	Payor	Date	Fund	Amount	Payor	Date	Fund	Amount
18590696	B. Amintao	3.15.10	SAJ	1,600.00	M. Marohom	3.25.10	SAJ	1,432.00
18590697			SAJ	288.00			SAJ	144.00
18591059			JDF	112.00			JDF	568.00
18591060	S. Abdulsamad	3.8.10	JDF	624.00			JDF	56.00
0223732	B. Pangcatan	5.5.10	LRF	387.00			LRF	20.00
TOTAL				**3,011.00**				**2,220.00**

SCHEDULE 2- Falsified LFF for Case No. 140-10[12]

OR#	Data per OR				Falsified LFF - Case# 140-10			
	Payor	Date	Fund	Amount	Payor	Date	Fund	Amount
18590703	A. Sabra	8.13.10	SAJ	1,432.00	A. Malawani	7.5.10	SAJ	1,432.00
18590704			SAJ	144.00			SAJ	144.00
18591066			JDF	568.00			JDF	568.00
18591067			JDF	56.00			JDF	56.00
0223734	I. Ansano	6.24.10	LRF	20.00			LRF	20.00
TOTAL				**2,220.00**				**2,210.00**

[11] *Rollo*, pp. 49-52; Annex "M", ORs Used and Falsified LFF in Case No. 132-10.

[12] *Id.* at 56-60; Annex "N", ORs Used and Falsified LFF in Case No. 140-10.

SCHEDULE 3- Falsified LFF for Case No. 126-10[13]

OR#	Data per OR - Case# spl 128-10				Falsified LFF - Case# spl 126-10			
	Payor	Date	Fund	Amount	Payor	Date	Fund	Amount
18590692			SAJ	1,432.00			SAJ	1,432.00
18590693			SAJ	144.00	D.	1.13.10	SAJ	144.00
18591055	M. Balenti	2.24.10	JDF	568.00	Tambilawan		JDF	568.00
18591056			JDF	56.00			JDF	56.00
0223730			LRF	20.00			LRF	20.00
			STF	1,000.00				
TOTAL				**3,220.00**				**2,220.00**

SCHEDULE 4- Falsified LFF for Case No. 136-10[14]

OR#	Data per OR				Falsified LFF - Case# spl 136-10			
	Payor	Date	Fund	Amount	Payor	Date	Fund	Amount
18590701			SAJ	1,432.00			SAJ	332.00
18590702			SAJ	144.00			SAJ	144.00
18591064	I. Ansano	6.24.10	JDF	568.00	A. Mandangan	5.25.10		
18591065			JDF	56.00			JDF	168.00
0223734			LRF	20.00			LRF	10.00
18591066	A.Sabra	8.13.10	JDF	568.00			JDF	56.00
TOTAL				**2,788.00**				**710.00**

SCHEDULE 5 - Falsified LFF for Case No. 141-10[15]

OR#	Data per OR - Case# spl 147-10				Falsified LFF - Case# spl 141-10			
	Payor	Date	Fund	Amount	Payor	Date	Fund	Amount
18590705			SAJ	3,790.00			SAJ	832.00
18590706			SAJ	144.00			SAJ	144.00
18591068	N. Bantuas	8.20.10	JDF	2,210.00	A. Rahman	7.6.10	JDF	168.00
18591069			JDF	56.00			JDF	56.00
0223736			LRF	20.00			LRF	10.00
TOTAL				**6,220.00**				**1,210.00**

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[13] *Id.* at 62; Annex "O", ORs Used and Falsified LFF in Case No. 126-10.

[14] *Id.* at 67-70; Annex "P", ORs Used and Falsified LFF in Case No. 136-10.

[15] *Id.* at 73-75; Annex "Q", ORs Used and Falsified LFF in Case No. 141-10.

SCHEDULE 6- Falsified LFF for Case No. 162-11[16]

OR#	Data per OR - Case# spl 212-11				Falsified LFF - Case# spl 162-11			
	Payor	Date	Fund	Amount	Payor	Date	Fund	Amount
18590719	H. Amintao	2.7.11	SAJ	1,432.00	H. Usodan	1.17.11	SAJ	1,432.00
18590720			SAJ	144.00			SAJ	144.00
18591082			JDF	568.00			JDF	568.00
18591083			JDF	56.00			JDF	56.00
0223743			LRF	20.00			LRF	10.00
TOTAL				**2,220.00**				**2,220.00**

SCHEDULE 7- Falsified LFF for Case No.153-10[17]

OR#	Data per OR - Case# spl 161-11				Falsified LFF - Case# spl 153-10			
	Payor	Date	Fund	Amount	Payor	Date	Fund	Amount
18590711	S. Balindong	12.23.10	SAJ	332.00	A. Bano	10.4.10	SAJ	1,432.00
18590712			SAJ	144.00			SAJ	144.00
18591074			JDF	168.00			JDF	568.00
18591075			JDF	56.00			JDF	56.00
0223739			LRF	10.00			LRF	20.00
			STF	1,000.00				
TOTAL				**1,710.00**				**2,220.00**

SCHEDULE 8- Falsified LFF for Case No. 169-11[18]

OR#	Data per OR - Case# spl 171-11				Falsified LFF - Case# 169-11			
	Payor	Date	Fund	Amount	Payor	Date	Fund	Amount
18590729	T. Mutaba	5.11.11	SAJ	1,432.00	A. Mama	5.9.11	SAJ	332.00
18590730			SAJ	144.00			SAJ	144.00
18591092			JDF	568.00			JDF	168.00
18591093			JDF	56.00			JDF	56.00
0223748			LRF	20.00			LRF	10.00
TOTAL				**2,220.00**				**710.00**

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[16] *Id.* at 76-80; Annex "R", ORs Used and Falsified LFF in Case No. 162-11.

[17] *Id.* at 83-85; Annex "S", ORs Used and Falsified LFF in Case No. 153-10.

[18] *Id.* at 86-92; Annex "T", ORs Used and Falsified LFF in Case No. 169-11.

SCHEDULE 9- Falsified LFF for Case No.179-11[19]

OR#	Data per OR - Case# spl 216-11				Falsified LFF - Case# 179-11			
	Payor	Date	Fund	Amount	Payor	Date	Fund	Amount
18590733	N. Basir	7.11.11	SAJ	1,298.00			SAJ	1,432.00
18590734							SAJ	144.00
18591096	N. Basir	7.11.11	JDF	1,210.00	M. Salic	6.17.11	JDF	568.00
18591097							JDF	56.00
0223740							LRF	20.00
0223750	N. Basir	7.11.11	LRF	25.00				
TOTAL				**2,533.00**				**2,220.00**

SCHEDULE 10 - Falsified LFF for Case No. 185-11[20]

OR#	Data per OR				Falsified LFF - Case# spl 185-11			
	Payor	Date	Fund	Amount	Payor	Date	Fund	Amount
18590738	D. Baute	12.28.11	SAJ	61,217.30			SAJ	144.00
18590739	V. Macabago	3.5.12	SAJ	24,998.00			SAJ	832.00
18591099	M. Farida	11.1.11	JDF	168.00	A. Datudacula	12.27.11	JDF	168.00
18591100			JDF	56.00			JDF	56.00
0255002			LRF	20.00			LRF	20.00
TOTAL				**86,459.30**				**1,220.00**

SCHEDULE 11- Falsified LFF for Case No. 187-12[21]

OR#	Data per OR				Falsified LFF - Case# spl 187-12			
	Payor	Date	Fund	Amount	Payor	Date	Fund	Amount
18590741			SAJ	332.00			SAJ	1,600.00
18590742			SAJ	144.00			SAJ	144.00
18591105	O. Maunda	5.30.12	JDF	168.00	H. Musa	4.18.12	JDF	56.00
18591106			JDF	56.00				
0255005			LRF	20.00			LRF	20.00
18591104	F. Hassan	5.2.12	JDF	200.00			JDF	400.00
TOTAL				**920.00**				**2,220.00**

[19] *Id.* at 95-97; Annex "U", ORs Used and Falsified LFF in Case No. 179-11.

[20] *Id.* at 100-105; Annex "V", ORs Used and Falsified LFF in Case No. 185-11.

[21] *Id.* at 106-109; Annex "W", ORs Used and Falsified LFF in Case No. 187-12.

Further, OR numbers assigned in Civil Case No. 194-12, particularly OR No. 18590607 was actually issued for FF and OR No. 18590608 is still unused as of date of audit, to wit:

SCHEDULE 12- Falsified LFF for Case No. 194-12[22]

OR#	Data per OR				Falsified LFF - Case# spl 194-12			
	Payor	Date	Fund	Amount	Payor	Date	Fund	Amount
18590607	A. Landua	8.15.13	FF	100,000.00	S. Serabo	11.22.12	SAJ	1,432.00
18590608	Unused						SAJ	144.00
18591110	A. Saro	1.23.13	JDF	1,250.00			JDF	568.00
18591111			JDF	56.00			JDF	56.00
0255007	N. Musa	11.12.12	LRF	20.00			LRF	20.00
TOTAL								**2,220.00**

The amounts in the Data per OR column in Schedules 1 to 12 above were found remitted to their respective accounts.

Moreover, the audit team did not find proof of collection of filing fees in Civil Case No. 105-09, entitled "Correction of Entry in the Civil Registry of Ms. Fatima B. Olama," although there was no showing that petitioner was an indigent. The case was decided favorably. The audit team computed the corresponding filing fees and added this to the accountability of Mr. Alauya, to wit: SAJF = ₱476.00; JDF = ₱224.00; and LRF = ₱10.00.

Based on the foregoing findings, the total amount of unreceipted, unreported and misappropriated filing fees amounted to Twenty-Two Thousand Three Hundred Ten Pesos (₱22,310.00)

The audit team was not able to conduct a comprehensive examination for the period 1992 to 2002 due to the absence of LFF and other relevant documents attached to the case records necessary in the computation of filing fees. Hence, the team's examination on the subject years was based solely on the presented financial documents.

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[22] *Id.* at 112-116; Annex "X", ORs Used and Falsified LFF in Case No. 194-12.

IV. Fiduciary Fund (FF)

The accountability period for the FF is from 25 January 2007 to 31 August 2013. Examination of this fund disclosed a shortage of Five Hundred Pesos (₱500.00) and unwithdrawn balance of One Hundred Thousand Five Hundred Pesos (₱100,500.00).

The FF collections of the court consisted only of cash bonds posted by the administrators in the settlement, distribution and disposition of estate of deceased Muslims. However, all collections were not remitted to the depository bank, but instead, kept by Mr. Alauya until withdrawn by the bondsmen. Mr. Alauya wittingly violated OCA Circular No. 50-95, which provides that "*all Fiduciary Fund collections shall be deposited within twenty-four (24) hours upon receipt thereof with the depository bank*." If opening a Trust Fund account with the LBP is impractical, Mr. Alauya as the Clerk of Court has no authority to retain the collection in his possession, as he has the option to deposit such collection in the City Treasurer's Office (CTO) or even in the OCC, RTC, Marawi City.

V. Sheriff's Trust Fund (STF)

The accountability period for the STF is from 7 March 2008 to 31 August 2013. The team did not find any financial records pertaining to this fund, except for the LFF[23] attached to the case records, which shows a miscellaneous fee of ₱1,000.00, the required deposit to defray the actual expenses to be incurred in the service of court processes. Collections in this fund are all unremitted to the depository bank. The provisions under Paragraphs 2 and 3 of Section 10, Rule 141 of the Revised Rules of Court, as amended, were not being followed. Mr. Abdulsamad B. Alawi, Sheriff III, same court, asserted that he has not claimed a single amount from the clerk of court to defray his expenses in the service of summons and other court processes relative to the trial of the case, which proved that the said miscellaneous fee of ₱1,000.00 collected by Mr. Alauya were presumably used for his personal purposes.

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[23] *Id.* at 123-136; Annex "AA", Legal Fees Forms with Miscellaneous Fee of ₱1,000.00.

The examination of this fund disclosed a shortage of Sixteen Thousand Pesos (₱16,000.00).

VI. Judiciary Development Fund (JDF)

The examination of the JDF for the period covered, disclosed a shortage of Seven Thousand Sixty-Four Pesos (₱7,064.00).

As shown in the schedule/aging of delayed remittances, the JDF collections were irregularly remitted.[24]

VII. Special Allowance for the Judiciary Fund (SAJF)

The examination of the SAJF for the period covered disclosed a shortage of Ten Thousand Two Hundred Fourteen Pesos (₱10,214.00).

The SAJF collections were also irregularly remitted per attached schedule/aging of delayed remittances.[25]

VIII. General Fund-Old (GF-Old) and Sheriff's General Fund (SGF)

The examination of the GF-Old and SGF for the period covered disclosed a shortage of One Thousand Five Hundred Eighty Pesos (₱1,580.00) and Fifty-Six Pesos (₱56.00).

These funds were also irregularly remitted as shown in the schedule/aging of delayed remittances.[26]

IX. Mediation Fund (MF)

This court started its collection of MF on 12 June 2007. Examination of this fund revealed a shortage of Two Thousand Pesos (₱2,000.00).

The shortage was due to unremitted collections. Likewise, the subject court has not maintained an official cashbook and monthly financial reports for this fund.

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[24] *Id.* at 138-140; Annex "CC", Schedule of Delayed Deposits for JDF.

[25] *Id.* at 141-142; Annex "DD", Schedule of Delayed Deposits for SAJF.

[26] *Id.* It 143-146; Annex "EE", Schedule of Delayed Deposits for GF-Old and SGF.

X. Legal Research Fund (LRF)

The audit team also examined pertinent documents for the LRF after the team noticed discrepancies. Examination of this fund for the period covered disclosed an overage of One Thousand Ninety-Seven Pesos and 71/100 (₱1,097.71).

As evidenced in the schedule/aging of delayed remittances, the LRF collections were irregularly remitted.[27]

The following JDF, SAJF and LRF collections for the corresponding periods were remitted only on 13 February 2013, after several years from the date of their collection, relative to the audit findings and memorandum of the Commission on Audit (COA),[28] to wit:

JDF		SAJF		LRF	
Period	**Amount**	**Period**	**Amount**	**Period**	**Amount**
December 2002	2,090.00	May 2008	11,734.00	Sept-Dec 1994	50.00
January 2003	2,578.00	June 2008	2,214.00	1995	140.00
February 2003	1,186.00	July 2008	3,000.00	1996	100.00
May 2008	6,956.00	August 2008	9,140.00	1997	80.00
June 2008	986.00	September 2008	3,976.00	1998	70.00
August 2008	6,460.00	January 2011	3,632.00	1999	70.00
September 2008	224.00	February 2011	4,728.00	2000	70.00
January 2011	3,068.00	March 2011	1,576.00	2002	90.00
February 2011	1,872.00	Apri1 2011	476.00	Aug-Sept 2006	12,699.92
March 2011	624.00	May 2011	1,576.00	June-Dec 2007	270.00
April 2011	224.00	July 2011	1,298.00	2008	952.00
May 2011	624.00	October 2011	2,794.00	2009	928.00

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[27] *Id.* at 147-149; Annex "FF", Schedule of Delayed Deposits for LRF.

[28] *Id.* at 150-151; Annex "GG", COA Audit Observation Memorandum.

July 2011	1,210.00	November 2011	976.00	2010	581.00
October 2011	1,906.00	May 2012	476.00	2011	302.00
November 2011	224.00	October 2012	3,144.00	May-Nov 2012	60.00
May 2012	108.00	November 2012	1,576.00		
Total	**30,340.00**		**52,316.00**		**16,462.92**

The audit team was convinced that Mr. Alauya violated the prescribed period within which to remit the collections of the court. If not due to the audit conducted, the 23 January 2013 to 15 August 2013 collections in the total amount of One Hundred Four Thousand Eight Hundred Fifty-Two Pesos (₱104,852.00), would not have been remitted on 2 September 2013.

XI. Summary of Shortages

Fund	Amount
Fiduciary Fund	₱ 500.00
Sheriff's Trust Fund	16,000.00
Judiciary Development Fund	7,064.00
Special Allowance for the Judiciary Fund	10,214.00
General Fund-Old	1,580.00
Sheriff's General Fund	56.00
Mediation Fund	2,000.00
TOTAL	**₱ 37,414.00**

In their exit conference, the team discussed with Ms. Guro the proper collection and allocation of .filing fees as tabulated in Rule 141 of the Rules of Court, as amended, as well as the proper handling and reporting of judiciary funds. Conversely, the audit team was not able to discuss with Mr. Alauya their initial audit findings for he did not report for work until the last day of the audit.

In the Resolution[29] dated 9 September 2014, this Court resolved to re-docket the audit report as a regular administrative matter

[29] *Id.* at 152-158.

against Ashary M. Alauya, incumbent Clerk of Court VI, Shari'a District Court, Marawi City, Lanao del Sur. He was immediately placed under preventive suspension pending the outcome of the administrative matter, in line with the Civil Service rules. He was also directed to comment on the matter and explain in writing the following infractions:

(c.1) Non-remittance and/or delay in the remittance of collections;

(c.2) Using the already issued official receipts for other transactions to deceive the paying public and the Court;

(c.3) Non-issuance of official receipts for the court collections in Case No. 132-10, 140-10, 126-10, 136-10, 141-10, 162-11, 153-10, 169-11, 179-11, 185-11, 187-12, 194-12, 105-09.

(c.4) Falsification of LFF of the following case numbers to willfully appear that the filing fees were properly receipted:

a) 132-10
b) 140-10
c) 126-10
d) 136-10
e) 141-10
f) 162-11
g) 153-10
h) 169-11
i) 179-11
j) 185-11
k) 187-12

(c.5) Another set of unaccounted/missing official receipts, to wit:

a) 2344403 - 2344450
b) 2344451 - 2344486
c) 2344601 - 2344607
d) 2344776 - 2344800
e) 166851 - 166858
f) 2344734 - 2344735
g) 2344739
h) 18590902

(c.6) Non-submission of Monthly Financial Reports;

(c.7) Initial cash shortage of One Hundred Four Thousand Eight Hundred Fifty-Two Pesos (₱104,852.00), found in the cash count, to wit:

FUND	OR USED	PERIOD COVERED	AMOUNT
Fiduciary Fund	18590607	8.15.13	100,000.00
Judiciary Development Fund	18590743-747	1.23.13-7.15.13	1,874.00
Special Allowance for the Judiciary	1859110-113	1.23.13-7.15.13	2,926.00
Legal Research Fund	255008-009	1.23.13-7.15.13	52.00
TOTAL			**104,852.00**

(c.8) For the shortages incurred in the following funds:

Fund	Amount
Fiduciary Fund	₱ 500.00
Sheriff's Trust Fund	16,000.00
Judiciary Development Fund	7,064.00
Special Allowance for the Judiciary	10,214.00
General Fund-Old	1,580.00
Sheriffs General Fund	56.00
Mediation Fund	2,000.00
TOTAL	**₱ 37,414.00**

In his Comment[30] dated 24 October 2014, Mr. Alauya branded the allegations against him as insulting, preposterous and bespeaking of personal hatred. He averred that the Financial Audit Team, headed by Ms. Sheryl A. Reambonanza (Ms. Reambonanza), had already pre-judged his case. He refused to take responsibility for the numerous charges levelled against him and pinpointed to Ms. Guro, the designated financial custodian, SDC, Marawi City, Lanao del Sur, as the one responsible for the shortages and omissions.

He narrated that when he reported on 3 January 2005, after his six (6) months suspension, he became apprehensive of collecting docket and other legal fees and handling official receipts, thus, he immediately issued a Memorandum dated 3 January 2005 designating Ms. Guro as cash clerk and the one in charge of the collection of docket/legal fees. Corollary to her new function, he claimed that Ms. Guro was actually in charge of the handling and control of the official receipts.

Mr. Alauya denied that there were shortages incurred, non-remittance and/or delay in the remittance of collections and branded these charges as baseless and fabricated. During the period when he was suspended from July 2004 up to December 2004, and from November 2011 up to April 2012, he maintained

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[30] *Id.* 130-174.

that it was Ms. Guro who remitted all collections to the Chief, Accounting Division, OCA. He belied that there was non-remittance. He averred that as per their record, collections for 2010 had already been deposited with the Land Bank, Marawi Branch, Marawi City.

Mr. Alauya alleged that there is no truth as to the ₱500.00 shortage in the FF because Ms. Guro told him that the latter does not collect FF.

Mr. Alauya also averred that there is no shortage of ₱16,000.00 in the STF because Ms. Guro does not collect STF. He explained that occasionally, litigants who were used to giving money to the sheriff for service of summons and other processes voluntarily give the amount for the service of summons and this is just listed in a coupon bond as miscellaneous. The amount is immediately given to the Sheriff, the Process Server, or the policeman authorized by the Station Commander to serve the summons. He claimed that in most cases, the promises of litigants to give miscellaneous expenses were not fulfilled. Hence, even if erroneously listed, no amount was actually given — so there was no collection. Hence, since she did not collect STF, she could not remit it. Besides, when they inquired from the RTC personnel, they were told that if ever STF is collected, it is not authorized by the court to serve court processes. He maintained that the cash clerk, much less the clerk of court, does not benefit from the STF as it is given directly to the serving officer.

He likewise denied the alleged "non-submission of Monthly Financial Reports" for being "out of tune with reality." As per their records, the cash clerk prepared their Monthly Reports of Collected Docket/Legal Fees and sent these to The Chief, Accounting Division, OCA, Supreme Court, Manila.

With respect to the alleged use of already issued ORs for another transaction, Mr. Alauya argued that it was impossible for him to have done so because once an OR is issued, it can never be re-issued, the reason being that the ballpen-ink used in the issuance of these receipts cannot be erased easily. Moreover, if a person uses one OR for two (2) transactions, the mark of the two (2) writings would easily appear thereon.

Mr. Alauya noted that a scrutiny of the handwritings in the ORs issued would reveal that all these belonged to Ms. Guro, the very person who issued them.

Mr. Alauya added that he never issued any OR since 3 January 2005 up to the present as it was Ms. Guro who issued ORs for the docket/legal fees; deposited the collected amounts with the Landbank, Marawi City; and prepared the transmittals of docket/legal fees and letters addressed to the Accounting Division, OCA.

With respect to the alleged falsification of LFF to make it appear that the filing fees were properly receipted, Mr. Alauya explained their procedure in that Ms. Guro attaches a bond paper on the record of the case, which procedure was patterned from the RTC. The items indicated on the bond paper are: the Ors issued for the Docket Fees (JDF), Docket Fees (SAJ), Sheriffs Fees (JDF), Sheriffs Fees (SAJ), and LRF.

Mr. Alauya decried as an absolute falsity the alleged "initial cash shortage of One Hundred Four Thousand Eight Hundred Fifty Two Pesos, found in the cash count." According to him, the ₱100,000.00 cash bond was on hand. This was the cash bond in the "Landua Case," which was collected by the cash clerk under O.R. No. 18590607. He alleged that when he was about to be submit to audit team leader Ms. Reambonanza, the latter immediately called by cellphone from Iligan City, telling him not to deposit the money in the bank and stated that "(I) WILL NOT RECOGNIZE IT."

Considering that Mr. Alauya in his Comment dated 24 October 2014; Manifestation dated 23 February 2015; and Letter dated 29 July 2015 were pointing to Ms. Guro as the one responsible for some of the accusations against him, the Court directed Ms. Guro to comment on Mr. Alauya's allegations.

In her Comment[31] dated 22 December 2015, Ms. Guro alleged that indeed on 3 January 2005, immediately after the re-

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[31] *Id.* at 311-317.

assumption to office of respondent clerk of court, the latter issued a Memorandum of the same date designating her as in-charge of the collection of docket/legal fees and turned over to her all the official receipts, docket/legal fees books and other financial records and made her in-charge and in custody of all those records; that as such, she collected all the docket/legal fees and issued all the official receipts for all the cases filed with their court; that the ORs were individually issued for each case; that as the person issuing the official receipts, she was the one writing thereon the name of the payor, the case number and the amount received, after which she presents it to Mr. Alauya for the latter's signature; that she assisted the Mr. Alauya, and as authorized by him, received all the cases filed with the court, and collected the required docket/legal fees as well as issued the pertinent ORs; that she was also authorized by Mr. Alauya to deposit their collections with the Land Bank-Marawi City Branch, and with Mr. Alauya signing the Deposit Slips for the JDF, General Fund, and LRF Accounts. With respect to the cash bond, Ms. Guro reported that Mr. Alauya informed her that he failed to bring the amount of ₱100,000.00 to Ms. Reambonanza in Iligan City because it is dangerous to bring such huge amount through a public transport, and much more dangerous to give away that money as he would be held liable for its loss — either way; that Mr. Alauya readily gave her the ₱100,000.00 cash bond which she deposited with the account of the OCC, RTC-Marawi City per instruction of Ms. Reambonanza; that there was no falsification whatsoever done by the cash clerk or the clerk of court, nor was there any intent to falsify any paper or document; that on some very rare occasions, she might have unwittingly or mistakenly listed an amount promised by litigants for the miscellaneous, which they never gave, hence, there was no collection whatsoever; that they do not collect STF in most cases, and usually the summons signed by the clerk of court, were sent to the Station Commander, PNP, through a Letter-Request asking him to allow one of his police personnel to cause the service thereof to the defendant/s who is/are residing in his Municipality; and that in her capacity as designated-cash clerk and OIC-Financial Custodian, she kept all financial records, docket/legal fees books, official receipts

and the like. These are allegedly locked in her table and being the one in charge thereof, she can say that all her collections for the docket/legal fees were all transmitted to the Chief, Accounting Division, OCA, Supreme Court, Manila.

The clerk of court is an important officer in our judicial system. His office is the nucleus of all court activities, adjudicative and administrative. His administrative functions are as vital to the prompt and proper administration of justice as his judicial duties.[32]

The clerk of court performs a very delicate function. He or she is the custodian of the courts funds and revenues, records, property and premises. Being the custodian thereof, the clerk of court is liable for any loss, shortage, destruction or impairment of said funds and property.[33] Hence, clerks of court have always been reminded of their duty to immediately deposit the various funds they receive to the authorized government depositories, for they are not supposed to keep the funds in their custody.[34] The same should be deposited immediately upon receipt thereof.

Section B(4) of Supreme Court (SC) Circular No. 50-95, on the collection and deposit of court fiduciary funds, mandates that:

> 4. All collections from bail bonds, rental deposits, and other fiduciary collections shall be deposited within twenty-four (24) hours by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of the Philippines.

SC Circular Nos. 13-92 and 5-93 provides the guidelines for the proper administration of court funds.

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[32] *Office of the Court Administrator v. Banag*, 651 Phil. 308, 342 (2010) citing *Re: Report on the Financial Audit Conducted in the RTC, Branch 34, Balaoan, La Union*, 480 Phil. 484, 493 (2004) further citing *Dizon v. Bawalan*, 453 Phil. 125, 133 (2003).

[33] *Id.* at 324 citing *Office of the Court Administrator v. Fortaleza*, 434 Phil. 511, 522 (2002).

[34] *Id.* at 324-325.

SC Circular No. 13-92 commands that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. Section 4 of SC Circular No. 5-93 designates the Land Bank as the depository bank for the JDF.

Other provisions of SC Circular No. 5-93 give more explicit instructions on how clerks of court and OICs should handle court funds:

> 3. *Duty of the Clerks of Court, Officers-in-Charge or accountable officers*. The Clerks of Court, Officers-in-Charge of the Office of the Clerk of Court, or their accountable duly authorized representatives designated by them in writing, who must be accountable officers, shall receive the Judiciary Development Fund collections, issue the proper receipt therefor, maintain a separate cash book properly marked x x x, deposit such collections in the manner herein prescribed, and render the proper Monthly Report of Collections for said Fund.
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> x x x x x x x x x
>
> 5. Systems and Procedures:
>
> x x x x x x x x x
>
> c. *In the RTC, SDC, MeTC, MTCC, MTC, MCTC and SCC*. The daily collections for the Fund in these courts shall be deposited every day with the local or nearest LBP branch for the account of the Judiciary Development Fund, Supreme Court, Manila Savings Account NO. 159-01163-1; or if depositing daily is not possible, deposits for the Fund shall be every second and third Fridays and at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the days above indicated.
>
> Where there is no LBP branch at the station of the judge concerned, the collections shall be sent by postal money order payable to the Chief Accountant of the Supreme Court, at the latest before 3:00 P.M. of that particular week.
>
> x x x x x x x x x
>
> d. Rendition of Monthly Report. Separate Monthly Report of Collections shall be regularly prepared for the Judiciary

> Development Fund, which shall be submitted to the Chief Accountant of the Supreme Court within ten (10) days after the end of every month, together with the duplicate of the official receipts issued during such month covered and validated copy of the Deposit Slips.
>
> The aggregate total of the Deposit Slips for any particular month should always equal to, and tally with, the total collections for that month as reflected in the Monthly Report of Collections.
>
> If no collection was made during any month, notice to that effect should be submitted to the Chief Accountant of the Supreme Court by way of a formal letter within ten (10) days after the end of every month.

Here, it was established that cash bonds for the FF were not remitted to the depository bank, but instead, were kept by respondent clerk of court until withdrawn by the bondsmen. It was likewise established that the GF-old, SGF, JDF, SAJF and LRF were irregularly remitted. In fact, the audit team found that the JDF, SAJF and LRF collections for the corresponding periods were remitted only on 13 February 2013, after several years from the date of collection, relative to the audit findings and memorandum of the COA. For this alone, respondent Clerk of Court should be penalized as the delayed remittance of cash collections by clerks of court and cash clerks constitute gross neglect of duty.

It was likewise established that the One Hundred Thousand Pesos (₱100,000.00) unremitted FF collection was in the possession of Mr. Alauya, as the latter admitted that it was the cash bond in the "Landua Case" and said amount was on hand. However, when the audit team directed respondent clerk of court to bring the said amount, he failed to return to the court on the same day to turn it over. Such failure was detrimental to Mr. Alauya's cause. Clerks of courts are not supposed to keep the funds in their custody. Further, settled is the rule that "the failure of a public officer to remit funds upon demand by

an authorized officer [is] *prima facie* evidence that the public officer has put such missing funds or property to personal use."[35]

In *Office of the Court Administrator v. Fortaleza*,[36] the Court stressed the responsibility and accountability of clerks of court for the collected legal fees in their custody, thus:

> Clerks of court are the chief administrative officers of their respective courts; with regard to the collection of legal fees, they perform a delicate function as judicial officers entrusted with the correct and effective implementation of regulations thereon. Even the undue delay in the remittances of amounts collected by them at the very least constitutes misfeasance.[37] x x x

By failing to properly remit the cash collections constituting public funds, Mr. Alauya violated the trust reposed in him as the disbursing officer of the Judiciary. Delayed remittance of cash collections constitutes gross neglect of duty because this omission deprives the court of the interest that could have been earned if the amounts were deposited in the authorized depository bank. It should be stressed that clerks of court are required by SC Circular No. 13-92 to withdraw interest earned on deposits, and to remit the same to the account of the JDF within two (2) weeks after the end of each quarter. Delay in the remittance of court funds in the period required casts a serious doubt on the court employee's trustworthiness and integrity. Mr. Alauya's failure to remit the court funds is tantamount to gross neglect of duty, dishonesty and grave misconduct prejudicial to the best interest of the service.[38]

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[35] *Id.* at 327 citing *Office of the Court Administrator v. Besa*, 437 Phil. 372, 380-381 (2002).

[36] 434 Phil. 511 (2002).

[37] *Id.* at 522 citing *Re: Report on the Financial Audit in RTC, General Santos City and the RTC and MTC of Polomolok, South Cotabato*, A.M. No. 96-1-25-RTC, 8 March 2000, 327 SCRA 414.

[38] *Office of the Court Administrator v. Melchor, Jr.*, A.M. No. P-06-2227, 19 August 2014, 733 SCRA 246, 260.

Mr. Alauya's attempt to pass the blame on his subordinate, Ms. Guro, stating that he is no longer in charge of the collection of docket/legal fees and of handling and controlling the official receipts as he immediately issued a memorandum designating Ms. Guro as cash clerk and the one in charge of the collection of docket/legal fees after his six (6) months suspension, cannot be countenanced. As the court's administrative officer, he had control and supervision over all court records, exhibits, documents, properties and supplies. Furthermore, he had to see to it that his subordinates performed their functions well. Clerks of court are key figures in the judicial system. For this reason, they must be assiduous in performing their official duties and in supervising and managing court dockets and records.[39] Moreover, in the case of *Office of the Court Administrator v. Dureza-Aldevera*,[40] the Court held that [c]lerks of court cannot pass the blame for the shortages incurred to his/her subordinates who perform the task of handling, depositing, and recording of cash and check deposits x x x x for it is incumbent upon the clerk of court to ensure his/her subordinates are performing his/her duties and responsibilities in accordance with the circulars on deposits and collections to ensure that all court funds are properly accounted for.

Moreover, it could be gleaned that Mr. Alauya points to Ms. Guro as the one responsible for the alleged anomalies during the periods when he was suspended from July 2004 up to December 2004, and from November 2011 up to April 2012, but he is apparently silent on those charges falling outside the said period. Such silence is detrimental to his cause.

It is the natural instinct of man to resist an unfounded claim or imputation and defend himself. It is totally against our human nature to just remain reticent and say nothing in the face of false accusations. Hence, silence in such cases is

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[39] *Zacarias v. Judge Marcos*, 465 Phil. 834, 847 (2004).

[40] 534 Phil. 102, 132 (2006).

almost always construed as an implied admission of the truth thereof.[41]

Mr. Alauya averred that he had already been previously suspended for the missing official receipts in his court. He, however, failed to explain the loss of the other sets of missing official receipts as later found by the audit team. Such loss manifests the deliberate neglect of respondent's duties and responsibilities. As Supply Officer and Property Custodian of the court, he is required to exercise control and supervision over the possession, custody and safekeeping of court properties and supplies.[42]

Mr. Alauya also averred that the Financial Audit Team, headed by Ms. Reambonanza, targeted him and singled him out from the other clerks of court and already pre-judged his case. However, aside from his bare allegations, no proof was presented to substantiate his claims. In the absence of evidence manifesting any ill motive on the part of the audit team, it logically follows that no such improper motive could have existed and that, corollarily, their report is worthy of full faith and credit.

Those who work in the judiciary, such as Mr. Alauya, must adhere to high ethical standards to preserve the court's good name and standing. They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence since they are officers of the court and agents of the law. Indeed, any conduct, act or omission on the part of those who would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary shall not be countenanced.[43]

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[41] *Office of the Court Administrator v. Savadera*, 717 Phil. 469, 487 (2013).

[42] 2002 Revised Manual for Clerks of Court.

[43] *Office of the Court Administrator v. Banag*, *supra* note 32 at 327-328 citing *Re: Report on the Financial Audit conducted in the MTCC-OCC, Angeles City*, 525 Phil. 548, 561 (2006).

The conduct required of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and circumscribed with a heavy burden of responsibility. As forerunners in the administration of justice, they ought to live up to the strictest standards of honesty and integrity, considering that their positions primarily involve service to the public.[44]

Mr. Alauya repeated his infractions despite the COA auditor's audit findings on his late remittances of collections and advise to restitute the same. We note that he was previously administratively charged for the deliberate delay in the remittance of collections, falsification of documents and unaccounted official receipts in A.M. No. 02-4-03-SDC, wherein he was found guilty of gross neglect of duty in the custody of court property and was suspended for eighteen (18) months without pay. It appears that he did not learn from his previous mistakes and has ignored the warnings given to him.

As clerk of court, he should have known that he performs a delicate function as designated custodian of the court's funds, revenues, records, properties and premises. As such, he should have discharged his duties with due care and utmost diligence. Any deceitful act, conduct of dishonesty and deliberate omission in the performance of duties are grave offenses which carries the extreme penalty of dismissal from the service even if committed for the first time.[45] Hence, this Court is left with no other recourse but to impose upon him the extreme penalty of dismissal from the service.

IN THE LIGHT OF THE FOREGOING PREMISES, we find Ashary M. Alauya, Clerk of Court VI, Shari'a District Court, Marawi City, Lanao del Sur **GUILTY** of gross neglect of duty, dishonesty and grave misconduct prejudicial to the

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[44] *Id.* at 328 citing *Re: Report on the Financial Audit conducted at the MTCs of Bani, Alaminos and Lingayen, in Pangasinan,* 462 Phil. 535, 544 (2003).

[45] Rule IV of the Uniform Rules on Administrative Cases in the Civil Service. (1999).

best interest of the service; and **DISMISS** him from the service with cancellation of eligibility, forfeiture of all his retirement benefits except his accrued leave credits, and with perpetual disqualification for reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. The Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator is directed to monitor the book of accounts of the Shari'a District Court, Marawi City to ensure compliance with the issuances of the Court on the collection and allocation of filing fees and submissions of monthly reports.

SO ORDERED.

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

Caguioa, J., on leave.

EN BANC

[G.R. No. 197146. December 6, 2016]

HON. MICHAEL L. RAMA, IN HIS CAPACITY AS MAYOR OF CEBU CITY, METROPOLITAN CEBU WATER DISTRICT (MCWD), REPRESENTED BY ITS GENERAL MANAGER, ARMANDO PAREDES; THE BOARD OF DIRECTORS OF MCWD, REPRESENTED BY ITS CHAIR, ELIGIO A. PACANA; JOEL MARI S. YU, IN HIS CAPACITY AS MEMBER OF THE MCWD BOARD; AND THE HONORABLE TOMAS R. OSMEÑA, IN HIS CAPACITY AS CONGRESSIONAL REPRESENTATIVE OF THE SOUTH DISTRICT, CEBU CITY, *petitioners, vs.* **HON. GILBERT P.**

MOISES, IN HIS CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT, BRANCH 18, CEBU CITY; AND HON. GWENDOLYN F. GARCIA, IN HER CAPACITY AS GOVERNOR OF THE PROVINCE OF CEBU, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOOT AND ACADEMIC CASES; CASE SHOULD STILL BE DECIDED WHERE PUBLIC INTEREST IS INVOLVED AND THE ISSUE IS CAPABLE OF REPETITION YET EVADING REVIEW; CASE AT BAR.— The case should still be decided, despite the intervening developments that could have rendered the case moot and academic, because public interest is involved, and because the issue is capable of repetition yet evading review. For sure, the appointment by the proper official of the individuals to manage the system of water distribution and service for the consumers residing in the concerned cities and municipalities involves the interest of their populations and the general public affected by the services of the MCWD as a public utility. Moreover, the question on the proper appointing authority for the members of the MCWD Board of Directors should none of the cities and municipalities have at least 75% of the water consumers will not be definitively resolved with finality if we dismiss the petition on the ground of mootness.

2. POLITICAL LAW; POLITICAL AND JUSTICIABLE QUESTIONS; THE MATTER ABOUT SECTION 3(b) OF P.D. NO. 198 WAS A JUSTICIABLE QUESTION.— Political questions refer to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity; or in regard to which full discretionary authority has been delegated to the legislature or executive branch of the government." They are "neatly associated with the wisdom" of a particular act. x x x [that] x x x **the issue of the validity of [the Presidential] Decrees is plainly a justiciable one, within the competence of this Court to pass upon**. Section 2 (2), Article X of the new Constitution provides: "All cases involving the constitutionality of a treaty, executive agreement, or law [may] shall be heard and decided by the Supreme Court. x x x The petitioners have averred the unconstitutionality or invalidity

of Section 3 (b) of P.D. No. 198 based on the provision's arbitrariness in denying substantive due process and equal protection to the affected local government units (LGUs). Such issue, being justiciable, comes within the power of judicial review.

3. ID.; LOCAL GOVERNMENTS; PROVINCIAL WATER UTILITIES ACT OF 1973 (PD NO. 198); SECTION 3(b) ON APPOINTING AUTHORITY FOR MEMBERS OF THE METRO CEBU WATER DISTRICT (MCWD) BOARD OF DIRECTORS; PARTIALLY UNCONSTITUTIONAL FOR BEING REPUGNANT TO THE LOCAL AUTONOMY OF THE LOCAL GOVERNMENT UNITS (LGUs) AND INCONSISTENT WITH THE LOCAL GOVERNMENT CODE AND RELATED LAWS.— PD No. 198 (Provincial Water Utilities Act of 1973) was issued by President Ferdinand Marcos on May 25, 1973. By virtue of PD 198, Cebu City formed the Metro Cebu Water District (MCWD) in 1974. Thereafter, the Cities of Mandaue, Lapu-Lapu and Talisay, and the Municipalities of Liloan, Compostela, Consolacion, and Cordova turned over their waterworks systems and services to the MCWD. Since then, the MCWD has distributed water and sold water services to said cities and municipalities. Section 3(b) of PD No. 198, on Appointing Authority, provides, among others, x x x **In the event that more than seventy-five percent of the total active water service connections of a local water district are within the boundary of any city or municipality, the appointing authority shall be the mayor of that city or municipality,** as the case may be; **otherwise, the appointing authority shall be the governor of the province within which the district is located.** x x x The enactment of P.D. No. 198 on May 25, 1973 was prior to the enactment on December 22, 1979 of Batas Pambansa Blg. 51 (*An Act Providing for the Elective or Appointive Positions in Various Local Governments and for Other Purposes*) and antedated as well the effectivity of the *1991 Local Government Code* on January 1, 1992. At the time of the enactment of P.D. No. 198, Cebu City was still a component city of Cebu Province. Section 3 of B.P. Blg. 51 reclassified the cities of the Philippines based on well-defined criteria. x x x Later on, Cebu City, already an HUC, was further effectively rendered *independent from* Cebu Province pursuant to Section 29 of the *1991 Local Government Code*; x x x Hence, all matters relating to its administration, powers and functions

were exercised through its local executives led by the City Mayor, subject to the President's retained power of general supervision over provinces, HUCs, and independent component cities pursuant to and in accordance with Section 25 of the *1991 Local Government Code*, a law enacted for the purpose of strengthening the autonomy of the LGUs in accordance with the 1987 Constitution. x x x To conform with the guarantees of the Constitution in favor of the autonomy of the LGUs, therefore, it becomes the duty of the Court to declare and pronounce Section 3(b) of P.D. No. 198 as already partially unconstitutional.

4. ID.; ID.; ID.; ID.; THE INTERVENING RECLASSIFICATION OF THE CITY OF CEBU INTO AN HUC AND THE SUBSEQUENT ENACTMENT OF THE 1991 LOCAL GOVERNMENT CODE RENDERED THE CONTINUED APPLICATION OF SECTION 3(b) IN DISREGARD OF THE RECLASSIFICATION UNREASONABLE AND UNFAIR .— [In] substantive due process x x x to be determined is whether the law has a valid governmental objective, like the interest of the public as against that of a particular class. On the other hand, the principle of equal protection enshrined in the Constitution does not require the territorial uniformity of laws. According to *Tiu v. Court of Appeals*, the fundamental right of equal protection of the law is not absolute, but subject to reasonable classification. Classification, to be valid, must: (1) rest on substantial distinctions; (2) be germane to the purpose of the law; (3) not be limited to existing conditions only; and (4) apply equally to all members of the same class. We opine that although Section 3(b) of P.D. No. 198 provided for substantial distinction and was germane to the purpose of P.D. No. 198 when it was enacted in 1973, the intervening reclassification of the City of Cebu into an HUC and the subsequent enactment of the *1991 Local Government Code* rendered the continued application of Section 3(b) in disregard of the reclassification unreasonable and unfair. Clearly, the assailed provision no longer provided for substantial distinction because, firstly, it ignored that the MCWD was built without the participation of the provincial government; secondly, it failed to consider that the MCWD existed to serve the community that represents the needs of the majority of the active water service connections; and, thirdly, the main objective of the decree was to improve the water service while keeping up with the needs of the growing population.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION.— Grave abuse of discretion means either that the judicial or quasi judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction. Mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave.

LEONEN, *J., concurring opinion*:

POLITICAL LAW; LOCAL GOVERNMENTS; PROVINCIAL WATER UTILITIES ACT OF 1973 (PD NO. 198); SECTION 3(b) THEREOF IS UNCONSTITUTIONAL BECAUSE IT VIOLATES THE LOCAL AUTONOMY OF CITIES AND MUNICIPALITIES COVERED BY THE METROPOLITAN CEBU WATER DISTRICT (MWCD); IT IS THE MAYOR, NOT THE PROVINCIAL GOVERNOR THAT HAS POWER TO APPOINT MEMBERS OF THE MCWD BOARD.— The provincial governor has no power to appoint members of Metropolitan Cebu Water District's (MCWD) board. This case involves the validity and proper interpretation of Section 3(b) of Presidential Decree No. 198 or the Provincial Water Utilities Act of 1973. x x x Section 3(b) of Presidential Decree No. 198 is unconstitutional because it violates the local autonomy of cities and municipalities covered by MCWD. It interferes with the cities' and municipalities' power and duty to conduct their own affairs, particularly with regard to the delivery of basic services. x x x [T]o attain the goals of giving local autonomy to local governments, the smallest possible unit of local government should be allowed to determine and provide the basic services needed by its constituents in accordance with the Local Government Code. More than the provincial government, municipalities and cities are more familiar with the needs and are more capable of determining the best policies that would serve their constituents. Since MCWD's polices are created by MCWD's Board of Directors, the appointment of directors is the only means by which local government units

may exercise control over the policies that will be implemented by MCWD. Any exercise of this appointment power entails great consideration not only of the needs of the most affected but also judgment as to whose decisions could best determine and serve the needs of the local community. The person who could make such judgment is not the governor but the mayor of the most number of barangays served by MCWD. It is that city or municipality that will be most affected by the decisions and policies of the board of directors of MCWD.

LEONARDO-DE CASTRO, *J., dissenting opinion*:

POLITICAL LAW; STATUTORY CONSTRUCTION; P.D. NO. 198 IS NOT REPUGNANT TO THE LOCAL AUTONOMY GRANTED BY THE 1987 CONSTITUTION TO LOCAL GOVERNMENT UNITS (LGUs), AND IT IS NOT INCONSISTENT WITH THE LOCAL GOVERNMENT CODE (RA NO. 7160) AND RELATED LAWS ON LOCAL GOVERNMENT.— There is no impairment of the local autonomy provided by the 1987 Constitution and its implementing legislations for the following reasons: The decision to form a local water district is lodged upon the legislative body of any city, municipality or province itself, which can do so by enacting a resolution to form or join a district. An LGU is free to decide to join or not a local water district based on its own assessment of whether or not it will redound to its benefit to be covered by Presidential Decree No. 198, which provides, among others, for a package of **powers, rights** and **obligations**. Specifically, the local water district is assured of "support" on the national level in the area of technical advisory services and financing (Fifth Preambulatory Clause of Presidential Decree No. 198), guarantee of exclusive franchise for domestic water service within the district (Section 46), and exemption from income taxes under Section 45 x x x Moreover, the LGU joining a local water district does not surrender any of its powers under the Constitution or the Local Government Code to another LGU vested with the power to appoint the members of the Board of the local water district since Presidential Decree No. 198 expressly provides that a district once formed shall **not be under the jurisdiction of any political subdivision**. The local water district has a separate juridical personality which is independent of the LGUs. It is governed by its Board of

Directors pursuant to Section 17 x x x the power to appoint the members of the Board of Directors of the local water districts, which is vested upon the LGU determined in accordance with the formula or rule prescribed by Presidential Decree No. 198, does not impair the autonomy of the other LGUs included in the District.

BRION, *J.*, *dissenting opinion*:

1. **REMEDIAL LAW; HIERARCHY OF COURTS; ORIGINAL JURISDICTION OF THE COURT TO ISSUE WRITS OF *CERTIORARI* AGAINST FINAL JUDGMENTS RESOLVING THE VALIDITY OF LAWS IS CONCURRENT WITH THAT OF THE CA AND IN PROPER CASES, WITH THE RTCs; PETITIONS FOR THE ISSUANCE OF EXTRAORDINARY WRITS AGAINST FIRST LEVEL COURTS SHOULD BE FILED WITH THE RTC, AND THOSE AGAINST THE RTC WITH THE CA.—** [T]his Court's original jurisdiction to issue writs of *certiorari* (as well as prohibition, mandamus, *quo warranto*, *habeas corpus*, and injunction) is not exclusive. Its jurisdiction is concurrent with that of the CA and, in proper cases, with the RTCs. However, such concurrence of jurisdiction does not give a party the absolute freedom to file his petition with the court of his choice. Parties must observe the *principle of judicial hierarchy of courts* before they can seek relief directly from this Court. The principle of judicial hierarchy ensures that this Court remains a court of last resort. Unwarranted demands upon this Court's attention must be prevented so that the Court may devote its time to more pressing matters within its exclusive jurisdiction. Thus, petitions for the issuance of extraordinary writs against first level (inferior) courts should be filed with the RTC, and those against the RTC with the CA.

2. **ID.; JURISDICTION; COURTS HAVE POWER OF JUDICIAL REVIEW TO DETERMINE THE CONSTITUTIONALITY OF STATUTES; REFUSAL OF LOWER COURT TO ENGAGE IN JUDICIAL REVIEW IS CORRECTIBLE BY PETITION FOR *CERTIORARI*.—** Courts have the power to determine the constitutionality of statutes. This power, aptly named as the power of judicial review, is incidentally also a duty and a limitation. It is a ***duty*** because it proceeds from the

Court's expanded power 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. It is also a ***limitation*** because Courts can only exercise the power of judicial review if: (1) the case presents an actual case or justiciable controversy; (2) the constitutional question is ripe for adjudication; (3) the person challenging the act is a proper party; and (4) the issue of constitutionality was raised at the earliest opportunity and is the very *litis mota* of the case. Lower courts share this duty and limitation. Consequently, a refusal on the lower court's part to engage in judicial review, whenever warranted, is a virtual refusal to perform a duty correctible by a petition for *certiorari*.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT COMMITTED BY THE RTC WHEN IT IMPROPERLY RELIED ON THE POLITICAL QUESTION DOCTRINE TO SKIRT THE DUTY OF JUDICIAL REVIEW.— [T]o determine whether the RTC committed grave abuse of discretion, the Court must go beyond the present petition, x x x we should determine how the petitioners attacked Section 3(b)'s constitutionality before the RTC, and from this prism, determine if the RTC's resolution of the constitutional questions, or the lack thereof, consists of grave abuse of discretion. x x x I disagree with the *ponencia's* conclusion that the RTC **gravely** abused its discretion because it ***improperly relied*** on the political question doctrine to skirt the duty of judicial review. ***To my mind, albeit not exhaustively, the RTC exercised its power of judicial review and, therefore, did not commit grave abuse of discretion.*** The November 16, 2010 decision does not ***patently*** show that the RTC ***arbitrarily, capriciously, or whimsically*** withheld the power of judicial review. On the contrary, as the *ponencia* itself noted, "the RTC, which indisputably had the power and the duty to determine and decide the issue of constitutionality of Section 3(b) of P.D. 198, **discharged its duty**." x x x *This Court must not allow litigants to directly resort to certiorari petitions simply because they think the presiding judge lacked the skill to close out all arguments presented before the trial court.*

4. POLITICAL LAW; JUDICIARY; JUDICIAL REVIEW; THE PERSON WHO CHALLENGES A STATUTE'S CONSTITUTIONALITY MUST HAVE *LOCUS STANDI;*

NOT PRESENT IN CASE AT BAR.— [O]ne of the requisites of judicial review is that the person who challenges a statute's constitutionality must have *locus standi*. x x x To have *locus standi*, one must show that he has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or the act complained of. *In other words, locus standi* or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain **direct injury** as a result of the governmental act that is being challenged. x x x [There is] no merit in Cebu City's claim that it retains proprietary rights over MCWD's waterworks. The MCWD is a separate and distinct entity from the LGUs it serves, including the City of Cebu. Neither can the City of Cebu claim that it retains ownership, or that it has a better right, over MCWD's waterworks than any other LGU. x x x Without any property right over MCWD's waterworks, the City of Cebu cannot claim that Section 3(b) operates to **deprive it** of any property right without due process of law. Accordingly, the City of Cebu lacks the requisite standing to question Section 3(b)'s constitutionality under the due process clause.

5. ID.; LOCAL GOVERNMENTS; PROVINCIAL WATER UTILITIES ACT OF 1973 (PD NO. 198); SECTION 3(b) ON APPOINTING AUTHORITY FOR MEMBERS OF THE METRO CEBU WATER DISTRICT (MCWD) BOARD OF DIRECTORS; NO VIOLATION OF THE EQUAL PROTECTION CLAUSE IN THE PRESENCE OF REASONABLE CLASSIFICATION.— [T]he equal protection of the law is not violated by a legislation based on reasonable classification. To be reasonable, the classification: (1) must rest on substantial distinctions; (2) must be germane to the law's purpose; (3) must not be limited to existing conditions only; and (4) must equally apply to all members of the same class. x x x One of PD 198's purposes is to extend reliable and economically viable and sound water supply and wastewater disposal systems to meet the need of communities, including those who receive no piped water service whatsoever. To enable LWDs to expand its services, PD 198 allows LWDs to Annex and De-Annex (and whenever necessary exclude) territories. To this end, LWDs can enter into contracts, acquire and construct waterworks, and exercise the power of eminent domain. To

reiterate, LWDs are GOCCs that are independent from any political subdivision. ***All powers, privileges, and duties of the LWD are exercised and performed by and through the LWD's board of directors, and not by any LGU official.*** Accordingly, neither the LGUs, which created the LWD, nor the LGU official, to whom the appointing power resides, can countermand the LWD should it decide to expand its services, regardless if the expansion *dilutes* or *increases* the city's or municipality's waterworks connection below or above the 75% threshold. In fact, PD 198 expressly prohibits LGUs from "dissolving, altering or affecting" the LWDs they created. x x x With PD 198's purpose in mind, I find that Section 3(b) contains a reasonable classification.

6. ID.; ID.; ID.; ID.; SECTION 3 (b) WAS NOT SUPERSEDED BY THE CONSTITUTIONAL PROVISIONS ON LOCAL AUTONOMY AS IMPLEMENTED BY THE LOCAL GOVERNMENT CODE.— [I] disagree with the *ponencia*'s conclusion that Section 3(b) was superseded by the constitutional provisions on local autonomy, as implemented by the Local Government Code. I find nothing irreconcilable between Section 3(b) and the Local Government Code. On the contrary, a reading of the law shows that Congress created the Local Government Code with PD 198 in mind. While the Local Government Code mandates and empowers the Sangguniang Panlalawigan, Panlunsod and Bayan "to enact ordinances, approve resolutions, and appropriate funds" for "the establishment, operation, maintenance, and repair of an efficient waterworks system," the Local Government Code explicitly states the LGU's can only exercise such power "*subject to existing laws*." Indisputably, one of these existing laws is PD 198. Following the principle of harmonization of laws, the LWDs created under PD 198 - such as the MCWD — are still governed by PD 198 as a special law. Accordingly, these LWDs remain independent from the political subdivisions they serve, and their subsisting relations with the proper appointing official, as provided for in PD 198, must be respected.

APPEARANCES OF COUNSEL

Office of the City Attorney for petitioner Cebu City Mayor.

MCWD-Legal Department for petitioner MCWD & Board of Directors.

Office of the Solicitor General for public respondents.

Benjamin R. Militar for petitioners Congressman Tomas Osmeña and Joel Mari S. Yu.

D E C I S I O N

BERSAMIN, *J.*:

A law enacted prior to the 1987 Constitution, like a presidential decree, is presumed to be valid and constitutional on the theory that it was carefully studied by the Legislative and Executive Departments prior to its enactment, and determined to be in accord with the Fundamental Law. However, the presumption of validity and constitutionality is overturned and the law should be struck down once it becomes inconsistent with the present Constitution and the later laws.

Antecedents

On May 25, 1973, President Ferdinand E. Marcos issued Presidential Decree No. 198 (*Provincial Water Utilities Act of 1973*). By virtue of P. D. No. 198, Cebu City formed the Metro Cebu Water District (MCWD) in 1974. Thereafter, the Cities of Mandaue, Lapu-Lapu and Talisay, and the Municipalities of Liloan, Compostela, Consolacion, and Cordova turned over their waterworks systems and services to the MCWD. Since then, the MCWD has distributed water and sold water services to said cities and municipalities. From 1974 to 2002, the Cebu City Mayor appointed all the members of the MCWD Board of Directors in accordance with Section 3 (b) of P. D. No. 198, to wit:

> **Section 3.** *Definitions*. – As used in this Decree, the following words and terms shall have the meanings herein set forth, unless a different meaning clearly appears from the context. The definition of a word or term applies to any of its variants.
>
> (a) *Act*. This is the Provincial Water Utilities Act of 1973.
>
> (b) *Appointing authority*. The person empowered to appoint the members of the board of Directors of a local water district, depending

upon the geographic coverage and population make-up of the particular district. **In the event that more than seventy-five percent of the total active water service connections of a local water district are within the boundary of any city or municipality, the appointing authority shall be the mayor of that city or municipality, as the case may be; otherwise, the appointing authority shall be the governor of the province within which the district is located.** If portions of more than one province are included within the boundary of the district, and the appointing authority is to be the governors then the power to appoint shall rotate between the governors involved with the initial appointments made by the governor in whose province the greatest number of service connections exists. (bold underscoring supplied for emphasis)

In July 2002, Cebu Provincial Governor Pablo L. Garcia wrote to the MCWD to assert his authority and intention to appoint the members of the MCWD Board of Directors.[1] He stated in his letter that since 1996, the active water service connections in Cebu City had been below 75% of the total active water service connection of the MCWD; that no other city or municipality under the MCWD had reached the required percentage of 75%; and that, accordingly, he, as the Provincial Governor of Cebu, was the appointing authority for the members of the MCWD Board of Directors pursuant to Section 3 (b) of P. D. No. 198.

Later on, the MCWD commenced in the Regional Trial Court in Cebu City (RTC) its action for declaratory relief seeking to declare Section 3(b) of P.D. No. 198 unconstitutional; or, should the provision be declared valid, it should be interpreted to mean that the authority to appoint the members of the MCWD Board of Directors belonged solely to the Cebu City Mayor.[2]

The RTC (Branch 7) dismissed the action for declaratory relief without any finding and declaration as to the proper appointing authority for the members of the MCWD Board of Directors should none of the cities and municipalities reach

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[1] *Rollo*, p. 151.

[2] *Id.*

75% of the total water service connections in the areas under the MCWD.[3]

In the meanwhile, the terms of two members of the MCWD Board of Directors ended, resulting in two vacancies. To avoid a vacuum and in the exigency of the service, Provincial Governor Gwendolyn F. Garcia and Cebu City Mayor Tomas R. Osmeña jointly appointed Atty. Adelino Sitoy and Leo Pacaña to fill the vacancies.[4] However, the position of Atty. Sitoy was deemed vacated upon his election as the Municipal Mayor of Cordova, Cebu in the 2007 elections.

Consequently, Governor Garcia commenced an action for declaratory relief to seek the interpretation of Section 3 (b) of P.D. No. 198 on the proper appointing authority for the members of the MCWD Board of Directors.[5]

It appears that on February 7, 2008, the Cebu Provincial Legal Office, upon being informed that Mayor Osmeña would be appointing Joel Mari S. Yu to replace Atty. Sitoy as a member of the MCWD Board of Directors, formally advised in writing Cynthia A. Barrit, the MCWD Board Secretary, to defer the submission of the list of nominees to any appointing authority until the RTC rendered its final ruling on the issue of the proper appointing authority.[6] On February 22, 2008, however, Mayor Osmeña appointed Yu as a member of the MCWD Board of Directors.[7] Accordingly, on May 20, 2008, the RTC dismissed the action for declaratory relief on the ground that declaratory relief became improper once there was a breach or violation of the provision.[8]

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[3] *Id.*

[4] *Id.*

[5] *Id.* at 152.

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

[7] *Id.* at 96.

[8] *Id.* at 152.

On June 13, 2008, Governor Garcia filed a complaint to declare the nullity of the appointment of Yu as a member of the MCWD Board of Directors (docketed as Civil Case No. CEB-34459), alleging that the appointment by Mayor Osmeña was illegal; that under Section 3(b) of P.D. No. 198, it was she as the Provincial Governor of Cebu who was vested with the authority to appoint members of the MCWD Board of Directors because the total active water service connections of Cebu City and of the other cities and municipalities were below 75% of the total water service connections in the area of the MCWD.[9] She impleaded Mayor Osmeña, the MCWD, and Yu as defendants.

In his answer, Mayor Osmeña contended that the authority to appoint the members of the MCWD Board of Directors solely belonged to him; that since the creation of the MCWD in 1974, it was the Cebu City Mayor who had been appointing the members of the MCWD Board of Directors; that the Province of Cebu had not invested or participated in the creation of the MCWD; and that Cebu City, being a highly urbanized city (HUC), was independent from the Province of Cebu under the provisions on local autonomy of the 1987 Constitution.[10]

The RTC (Branch 18), to which the case was raffled, required the parties to submit their memorandum.

In their joint memorandum, Osmeña and Yu posited that the Province of Cebu did not participate in the organization of the MCWD; that the words and sentences of Section 3(b) of P.D. No. 198 should not be read and understood or interpreted literally; and that the case should be dismissed because: (1) Section 3(b) of P.D. No. 198 was unconstitutional for being arbitrary and unreasonable; (2) Governor Garcia had no authority to appoint any members of the MCWD Board of Directors; and (3) that the Mayor of the city or municipality having the majority of water connections within the area under the MCWD had the

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[9] *Id*. at 85-95.

[10] *Id*. at 102-128.

power to appoint the members of the MCWD Board of Directors.[11]

On November 16, 2010, the RTC rendered the assailed judgment declaring the appointment of Yu as illegal and void,[12] holding as follows:

> The questioned provision, paragraph (b) of Section 3 of P.O. 198 is clear enough that it needs no interpretation. It expressly states in unequivocal terms the appointing authority in the water district's board of directors — *if more than seventy-five percent of the total active water service connections of a local water district are within the boundary of any city or municipality, the appointing authority shall be the mayor of the city or municipality, as the case may be; otherwise, the appointing authority shall be the governor of the province within which the district is located.*
>
> It has not been belied by defendants that the active water service connections of Cebu City in the Metropolitan Cebu Water District (MCWD), at 61.28%, have gone below the required 75% required by law for the city mayor to have the authority to appoint members of the board of directors of the water district. Lacking such percentage requisite, the appointing power is now vested with the governor of the Province of Cebu. While it may be true that the governor had not participated in organizing MCWD and neither did the Province of Cebu invest in establishing waterworks in the component local governments, the law, however, does not impose any condition or restriction in transferring the power to the governor to appoint members of the board of directors when the percentage falls below 75%. Thus, there is no doubt that when any of the water district's participating city or municipality could not obtain 75% of the active water service connections, the governor shall appoint the members of the board of directors of the water district, whether it is a participant or not, in its organization.
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> As to the constitutionality of the questioned provision, the Court finds that Sec. 3 of P.O. 198 does not violate the Constitution or the Local Government Code. Vesting the authority in the governor to appoint a member of the board of directors of a water district is not

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[11] *Id*. at 164-188.

[12] *Id*. at 73-80.

intruding into the affairs of the highly urbanized cities and component cities which comprise the district, and neither is it a threat to their autonomy. It does not interfere with their powers and functions and neither can it be considered an exercise of the provincial government's supervisory powers. At most, it is simply giving the authority to appoint the head of the government unit (the governor) where all the members of the water district are geographically located, and only when none of these cities and municipalities has the required 75% of the active water service connections. Nevertheless, the issue is not whether the governor took any part in organizing the water district or has contributed to its formation, but that by law, she has been made the appointing authority even if she has no participation or involvement in the cooperative effort of the members of the water district. This may not be the most expedient and appropriate solution, but still, it is not illegal. As to why this is so is a question only our lawmakers could answer.

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

Notably, among the admissions found in the Answer for defendants Yu and MCWD states: "*x x x with respect to the two (2) vacancies in the Board of MCWD and that joint appointment was made by the plaintiff and defendant Mayor Osmeña to Atty. Adelino Sitoy and Mr. Eligio Pacana*." The Court surmises from this statement that as early as the previous appointments (of Mr. Pacana and Atty. Sitoy) defendants have already recognized the appointing authority of the governor for members of the MCWD board of directors, considering Cebu City's failure to reach the 75% benchmark on active water service connections.

In sum, the Court has not been able to find any constitutional infirmity in the questioned provision (Sec. 3) of Presidential Decree No. 198. *The fundamental criterion is that all reasonable doubts should be resolved in favor of the constitutionality of a statute. Every law has in its favor the presumption of constitutionality. For a law*

to be nullified, there must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt. Those who seek to declare the law, or parts thereof unconstitutional, must clearly establish the basis therefore. Otherwise, the arguments fall short.

Based on the grounds raised by defendants to challenge the constitutionality of Section 3 of P.D. 198, the Court finds that defendants have failed to overcome the presumption of constitutionality of the law. As to whether the questioned section constitutes a wise legislation, considering the issues being raised by petitioners, is for Congress to determine.

WHEREFORE, Judgment is hereby rendered in favour of plaintiff and against defendants, finding the appointment of defendant Joel Mari S. Yu as member of the Metropolitan Cebu Water District (MCWD) as illegal, null and void.[13]

Mayor Osmeña and Yu jointly moved for reconsideration,[14] but the RTC denied their motion.[15]

Issues

Hence, the petitioners have instituted this special civil action for *certiorari*,[16] contending that:

I.

THE RESPONDENT COURT ABDICATED ITS CONSTITUTIONAL DUTY IN REFUSING TO DELVE ON THE ISSUE OF CONSTITUTIONALITY.

II.

THE JUDGMENT IS VOID ON ITS FACE BECAUSE OF CLEAR CONSTITUTIONAL VIOLATIONS APPARENT BY A MERE READING OF THE DECREE.

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[13] *Id*. at 78-80.

[14] *Id*. at 189-221.

[15] *Id*. at 81-84.

[16] *Id*. at 3-72.

III.
THE JUDGMENT VIOLATES DUE PROCESS AND THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION.[17]

Ruling of the Court

The petition for *certiorari* is granted.

1.
Preliminary Matter:
Yu's expiration of term did not render case moot and academic

We note that respondent Yu's term as a member of the MCWD Board of Directors expired on December 31, 2012.[18] However, this fact does not justify the dismissal of the petition on the ground of its being rendered moot and academic. The case should still be decided, despite the intervening developments that could have rendered the case moot and academic, because public interest is involved, and because the issue is capable of repetition yet evading review.[19]

For sure, the appointment by the proper official of the individuals to manage the system of water distribution and service for the consumers residing in the concerned cities and municipalities involves the interest of their populations and the general public affected by the services of the MCWD as a public utility. Moreover, the question on the proper appointing authority for the members of the MCWD Board of Directors should none of the cities and municipalities have at least 75% of the water consumers will not be definitively resolved with finality if we dismiss the petition on the ground of mootness. It is notable that the two cases for declaratory relief filed for the purpose of determining the proper appointing authority were

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[17] *Id*. at 22.

[18] *Id*. at 96.

[19] *David v. Macapagal-Arroyo*, G.R. No. 171397, May 3, 3006, 489 SCRA 160, 214-215.

dismissed without any definitive declaration or ultimate determination of the merits of the issue. The issue festers. Hence, the Court needs to decide it now, not later.

2.
First Issue:
RTC explained its holding of the assailed provision as valid and constitutional but it thereby erred nonetheless

The petitioners take the RTC to task for not explaining why it held Section 3(b) of P.D. No. 198 to be not violative of the constitutional provision on local autonomy and HUCs, and why it only opined that the question of constitutionality of the provision should be left to Congress; that it did not determine whether the requisites for raising the constitutional issue had been met; that it did not discuss the reasons for holding that the issue about Section 3(b) of P.D. No. 198 was a political question; that no political question was involved because what was being inquired into was not the wisdom of the provision but its validity; and that because it did not perform its constitutional duty of reviewing the provision, its judgment was void.[20]

The petitioners are mistaken on the first issue. The records show that the RTC, which indisputably had the power and the duty to determine and decide the issue of the constitutionality of Section 3(b) of P.D. No. 198,[21] fully discharged its duty. In its assailed decision of November 16, 2010, the RTC ruled as follows:

As to the constitutionality of the questioned provision, the Court finds that Sec. 3 of P.D. 198 does not violate the Constitution or the Local Government Code. Vesting the authority in the governor to

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[20] *Rollo*, pp. 22-41.

[21] *Mirasol v. Court of Appeals*, G.R. No. 128448, February 1, 2001, 351 SCRA 44, 51-52; *Ynot v. Intermediate Appellate Court*, No. 74457, March 20, 1987, 148 SCRA 659, 665-666.

appoint a member of the board of directors of a water district is not intruding into the affairs of the highly urbanized cities and component cities which comprise the district, and neither is it a threat to their autonomy. It does not interfere with their powers and functions and neither can it be considered an exercise of the provincial government's supervisory powers. At most, it is simply giving the authority to appoint the head of the government unit (the governor) where all the members of the water district are geographically located, and only when none of these cities and municipalities has the required 75% of the active water service connections. Nevertheless, the issue is not whether the governor took any part in organizing the water district or has contributed to its formation, but that by law, she has been made the appointing authority even if she has no participation or involvement in the cooperative effort of the members of the water district. This may not be the most expedient and appropriate solution, but still, it is not illegal. As to why this is so is a question only our lawmakers could answer.

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

x x x *x x x* *x x x*

In sum, the Court has not been able to find any constitutional infirmity in the questioned provision (Sec. 3) of Presidential Decree No. 198. *The fundamental criterion is that all reasonable doubts should be resolved in favor of the constitutionality of a statute. Every law has in its favor the presumption of constitutionality. For a law to be nullified, there must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt.* Those who seek to declare the law, or parts thereof, unconstitutional, must clearly establish the basis therefore. Otherwise, the arguments fall short.[22]

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[22] *Supra* note 13, at 79-80.

Nonetheless, the petitioners rightly contend that the RTC improperly regarded the matter about Section 3(b) of P.D. No. 198 as a political question; hence, not justiciable. It was not.

Political questions refer to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity; or in regard to which full discretionary authority has been delegated to the legislature or executive branch of the government."[23] They are "neatly associated with the wisdom" of a particular act.[24]

The difference between the political and the justiciable questions has been noted in *Sanidad v. Commission on Elections*,[25] as follows:

> x x x The implementing Presidential Decree Nos. 991, 1031, and 1033, which commonly purport to have the force and effect of legislation are assailed as invalid, **thus the issue of the validity of said Decrees is plainly a justiciable one, within the competence of this Court to pass upon**. Section 2 (2), Article X of the new Constitution provides: "All cases involving the constitutionality of a treaty, executive agreement, or law shall be heard and decided by the Supreme Court en banc and no treaty, executive agreement, or law may be declared unconstitutional without the concurrence of at least ten Members...." The Supreme Court has the last word in the construction not only of treaties and statutes, but also of the Constitution itself. The amending, like all other powers organized in the Constitution, is in form a delegated and hence a limited power, so that the Supreme Court is vested with that authority to determine whether that power has been discharged within its limits. (Emphasis supplied)

The petitioners have averred the unconstitutionality or invalidity of Section 3 (b) of P.D. No 198 based on the provision's

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[23] *Estrada v. Desierto*, G.R. Nos. 146710-15, March 2, 2001, 353 SCRA 452, 459.

[24] *Sanidad v. Commission on Elections*, No. L-44640, October 12, 1976, 73 SCRA 333, 360.

[25] *Id*.

arbitrariness in denying substantive due process and equal protection to the affected local government units (LGUs). Such issue, being justiciable, comes within the power of judicial review. As such, the RTC skirted its duty of judicial review by improperly relying on the political question doctrine. It should have instead adhered to the pronouncement in *Estrada v. Desierto*,[26] to wit:

> To a great degree, the 1987 Constitution has narrowed the reach of the political question doctrine when it expanded the power of judicial review of this court not only to settle actual controversies involving rights which are legally demandable and enforceable but also 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 government. Heretofore, the judiciary has focused on the "thou shalt not's" of the Constitution directed against the exercise of its jurisdiction. With the new provision, however, courts are given a greater prerogative to determine what it can do to prevent grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Clearly, the new provision did not just grant the Court power of doing nothing. x x x (Italics omitted)

3.
Second Issue:
Section 3(b) of P.D. 198 is already superseded

The petitioners argue that the MCWD became a water district by the pooling of the water utilities belonging to several HUCs and municipalities; that the active water connections in the MCWD have been distributed as follows: Cebu City: 61.28%; Mandaue City: 16%; Lapulapu City: 6.8%; Talisay City and the Municipalities of Liloan, Consolacion, Compostela, and Cordova: 16.92%; that Section 3 (b) of P.D. No. 198 was unconstitutional on its face for being unreasonable and arbitrary because the determination of who would exercise the power to appoint the members of the MCWD Board of Directors was thereby made to depend on the shifting number of water users

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[26] *Supra* note 24.

in the water district's component LGUs; that the provision on the authority of the Provincial Governor to appoint in cases where the water connections of any of the water district's cities or municipalities were below 75% was arbitrary for not distinguishing whether or not the province had contributed any waterworks to the water district; that the provision did not consider whether a city or municipality comprised the majority or more of the water consumers; that the provision was irrational as it gave the Provincial Governor the power to appoint regardless of whether the province had participated in the organization of the water district or not; that in a democracy, the principle that if power or authority was conferred through determination of numerical figures then the numerical superiority or the rule of the majority should apply; that the rule of the majority was being applied in electing government leaders as well as in choosing the leaders in the private sector; that the provision violated the rule of the majority; that at the time of the filing of this case, the majority of MCWD water service connections were in Cebu City (61.28%); and that the appointing power should necessarily remain in the City Mayor of Cebu City because the appointing power was based on the number of water service connections.

The petitioners asseverate that the provision or any part of P.D. No. 198 did not state any reason for departing from the rule of the majority; that the provision failed reasonableness as a standard of substantive due process; that the appointing authority should be the mayor of the city or municipality having the majority of the water connections; that if such majority could not be attained, there must be a power sharing scheme among those having the largest number of water connections conformably with the rule of the majority; that the temporary alternative was the Board of Directors themselves, who, under Section 10 of P.D. No. 198, could appoint upon failure of the appointing authority to do so; that the assailed provision was void on its face for violating the constitutional provision on local autonomy and independence of HUCs under Article X of the 1987 Constitution; that the provision unduly interfered with the internal affairs of Cebu City, and diminished the autonomy

of the LGUs; that the provision undermined the independence of HUCs; that both the Office of the Government Corporate Counsel and the Office of the Solicitor General have opined that because Cebu City was an HUC, the City Mayor of Cebu City should retain the right to appoint the members of the MCWD Board of Directors; that the chief executive of the LGU having the majority of water consumers was in the best position to exercise the discretion of choosing the most competent persons who could best serve the constituents; that because the largest number of water consumers were in Cebu City, any intrusion on the City Mayor's power to appoint would violate its independence and autonomy; that the Province of Cebu could not exercise powers that affected the constituents of HUCs; that providing water to constituents was the sole responsibility of the concerned LGU; that the water utility of the LGU was a patrimonial property that was not for public use; that as such, the operation, ownership and management of the public utility should belong to the LGU; and that the operation of the water utilities involved the private rights of the LGUs that could not be amended or altered by a statute.[27]

The Court opines that Section 3(b) of P.D. No. 198 should be partially struck down for being repugnant to the local autonomy granted by the 1987 Constitution to LGUs, and for being inconsistent with R.A. No. 7160 (*1991 Local Government Code*) and related laws on local governments.

P.D. No. 198 - issued by President Marcos in the exercise of his legislative power during the period of Martial Law proclaimed under the 1973 Constitution — relevantly provided:

MALACAÑANG
Manila

PRESIDENTIAL DECREE No. 198 May 25, 1973

DECLARING A NATIONAL POLICY FAVORING LOCAL OPERATION AND CONTROL OF WATER SYSTEMS;

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[27] *Id*. at 41-59.

AUTHORIZING THE FORMATION OF LOCAL WATER DISTRICTS AND PROVIDING FOR THE GOVERNMENT AND ADMINISTRATION OF SUCH DISTRICTS; CHARTERING A NATIONAL ADMINISTRATION TO FACILITATE IMPROVEMENT OF LOCAL WATER UTILITIES; GRANTING SAID ADMINISTRATION SUCH POWERS AS ARE NECESSARY TO OPTIMIZE PUBLIC SERVICE FROM WATER UTILITY OPERATIONS, AND FOR OTHER PURPOSES

WHEREAS, one of the pre-requisites to the orderly and well-balanced growth of urban areas is an effective system of local utilities, the absence of which is recognized as a deterrent to economic growth, a hazard to public health and an irritant to the spirit and well-being of the citizenry;

WHEREAS, domestic water systems and sanitary sewers are two of the most basic and essential elements of local utility system, which, with a few exceptions, do not exist in provincial areas in the Philippines;

WHEREAS, existing domestic water utilities are not meeting the needs of the communities they serve; water quality is unsatisfactory; pressure is inadequate; and reliability of service is poor; in fact, many persons receive no piped water service whatsoever;

WHEREAS, conditions of service continue to worsen for two apparent reasons, namely: (1) that key element of existing systems are deteriorating faster than they are being maintained or replaced, and (2) that they are not being expanded at a rate sufficient to match population growth; and

WHEREAS, local water utilities should be locally-controlled and managed, as well as have support on the national level in the area of technical advisory services and financing;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081 dated September 21, 1972 and General Order No. 1 dated September 22, 1972, as amended, do hereby decree, order and make as part of the law of the land the following measure:

TITLE I

PRELIMINARY PROVISIONS

Section 1. *Title*. – This Decree shall be known and referred to as the "Provincial Water Utilities Act of 1973."

Section 2. *Declaration of Policy*. – The creation, operation, maintenance and expansion of reliable and economically viable and sound water supply and wastewater disposal system for population centers of the Philippines is hereby declared to be an objective of national policy of high priority. For purpose of achieving said objective, the formulation and operation of independent, locally controlled public water districts is found and declared to be the most feasible and favored institutional structure. To this end, it is hereby declared to be in the national interest that said districts be formed and that local water supply and wastewater disposal systems be operated by and through such districts to the greatest extent practicable. To encourage the formulation of such local water districts and the transfer thereto to existing water supply and wastewater disposal facilities, this Decree provides the general act the authority for the formation thereof, on a local option basis. It is likewise declared appropriate, necessary and advisable that all funding requirements for such local water systems, other than those provided by local revenues, should be channeled through and administered by an institution on the national level, which institution shall be responsible for and have authority to promulgate and enforce certain rules and regulations to achieve national goals and the objective of providing public waterworks services to the greatest number at least cost, to effect system integration or joint investments and operations whenever economically warranted and to assure the maintenance of uniform standards, training of personnel and the adoption of sound operating and accounting procedures.

Section 3. *Definitions*. – As used in this Decree, the following words and terms shall have the meanings herein set forth, unless a different meaning clearly appears from the context. The definition of a word or term applies to any of its variants.

(a) Act. This Provincial Water Utilities Act of 1973.

(b) Appointing authority. The person empowered to appoint the members of the Board of Directors of a local water district, depending upon the geographic coverage and population make-up of the particular district. **In the event that more than seventy-five percent of the**

total active water service connections of a local water district are within the boundary of any city or municipality, the appointing authority shall be the mayor of that city or municipality, as the case may be; **otherwise, the appointing authority shall be the governor of the province within which the district is located**. If portions of more than one province are included within the boundary of the district, and the appointing authority is to be the governors then the power to appoint shall rotate between the governors involved with the initial appointments made by the governor in whose province the greatest number of service connections exists. (Emphasis supplied)

x x x x x x x x x

The enactment of P.D. No. 198 on May 25, 1973 was prior to the enactment on December 22, 1979 of Batas Pambansa Blg. 51 (*An Act Providing for the Elective or Appointive Positions in Various Local Governments and for Other Purposes*) and antedated as well the effectivity of the *1991 Local Government Code* on January 1, 1992. At the time of the enactment of P.D. No. 198, Cebu City was still a component city of Cebu Province. Section 3[28] of B.P. Blg. 51 reclassified the cities of the Philippines based on well-defined criteria. Cebu City thus became an HUC, which immediately meant that its inhabitants were ineligible to vote for the officials of Cebu Province. In accordance with Section 12 of Article X of the 1987 Constitution, cities that are highly urbanized, as determined by law, and component cities whose charters prohibit their voters from voting for provincial elective officials, shall be *independent of the province*, but the voters of component cities within a province, whose

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[28] Sec. 3. Cities. – x x x x

Until cities are reclassified into highly urbanized and component Cities in accordance with the standards established in the Local Government Code as provided for in Article XI, Sec. 4 (1) of the Constitution, **any city now existing with an annual regular income derived from infrastructure and general funds of not less than forty million pesos (₱40,000,000.00) at the time of the approval of this Act shall be classified as a highly urbanized city. All other cities shall be considered components of the provinces where they are geographically located**.

x x x x x x x x x

charters contain no such prohibition, shall not be deprived of their right to vote for elective provincial officials. Later on, Cebu City, already an HUC, was further effectively rendered *independent from* Cebu Province pursuant to Section 29 of the *1991 Local Government Code, viz*.:

> Section 29. *Provincial Relations with Component Cities and Municipalities*. – The province, through the governor, shall ensure that every component city and municipality within its territorial jurisdiction acts within the scope of its prescribed powers and functions. **Highly urbanized cities and independent component cities shall be independent of the province.** (Emphasis supplied)

Hence, all matters relating to its administration, powers and functions were exercised through its local executives led by the City Mayor, subject to the President's retained power of general supervision over provinces, HUCs, and independent component cities pursuant to and in accordance with Section 25[29] of the *1991 Local Government Code*, a law enacted for the purpose of strengthening the autonomy of the LGUs in accordance with the 1987 Constitution.

Article X of the 1987 Constitution guarantees and promotes the administrative and fiscal autonomy of the LGUs.[30] The

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[29] Sec. 25. National Supervision over Local Government Units. –

(a) Consistent with the basic policy on local autonomy, the President shall exercise general supervision over local government units to ensure that their acts are within the scope of their prescribed powers and functions.

The President shall exercise supervisory authority directly over provinces, highly urbanized cities, and independent component cities; through the province with respect to component cities and municipalities; and through the city and municipality with respect to barangays.

x x x x x x x x x

[30] The pertinent provisions of Article X on this are:

Sec. 2. The territorial and political subdivisions shall enjoy local autonomy.

Sec. 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local

foregoing statutory enactments enunciate and implement the local autonomy provisions explicitly recognized under the 1987 Constitution. To conform with the guarantees of the Constitution in favor of the autonomy of the LGUs, therefore, it becomes the duty of the Court to declare and pronounce Section 3(b) of P.D. No. 198 as already partially unconstitutional. We note that this pronouncement is also advocated by the National Government, as shown in the comment of the Solicitor General.[31]

In *Navarro v. Ermita*,[32] the Court has pointed out that the central policy considerations in the creation of local government units are economic viability, efficient administration, and capability to deliver basic services to their constituents. These considerations must be given importance as they ensure the success of local autonomy. It is accepted that the LGUs, more than the National Government itself, know the needs of their constituents, and cater to such needs based on the particular circumstances of their localities. Where a particular law or statute affecting the LGUs infringes on their autonomy, and on their rights and powers to efficiently and effectively address the needs of their constituents, we should lean in favor of their autonomy, their rights and their powers.

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government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

Sec. 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

Sec. 6. Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.

Sec. 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

[31] *Rollo*, pp. 272-304.

[32] G.R. No. 180050, April 12, 2011, 648 SCRA 400, 436.

Water and its efficient supply are among the primary concerns of every LGU. Issues that tend to reduce or diminish the authority of the boards of directors to manage the water districts are imbued with public interest. Bearing this in mind, and recalling that the MCWD had been established from the erstwhile Osmeña Waterworks Systems (OWS) without any investment or contribution of funds and material from the Province of Cebu towards the creation and maintenance of OWS and the MCWD,[33] and considering that it had always been the City Mayor of the City of Cebu who appointed the members of the MCWD Board of Directors regardless of the percentage of the water subscribers, our pronouncement herein rests on firm ground.

4.
Third Issue:
Section 3(b) of P.D. 198 is unconstitutional for violating the Due Process Clause and the Equal Protection Clause

The petitioners assert that Section 3(b) of P.D. No. 198, being unfair, violated substantive due process; that Governor Garcia could not determine the water needs of each of the LGUs within the MCWD; that the provision allowed inequality of treatment of the cities and municipalities in relation to the province, and thus violated the Equal Protection Clause of the Constitution; that the provision unduly deprived Cebu City of the power to determine the membership in the MCWD Board of Directors despite Cebu City having the majority of the water service connections; that the Province of Cebu was given unreasonable and unwarranted benefit despite Cebu City being independent from the Province of Cebu; that Section 3(b) of P.D. No. 198 did not distinguish whether the province contributed any resource to the water district or not; that under the provision, if two or more provinces contributed to the water district, they were not subject to the 75% requirement to avail of the power of appointment, indicating that the power to appoint devolved only

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[33] *Rollo*, pp. 109-110.

in the provinces; that this violated the guarantee of equality of treatment in favor of the participating LGUs; that the provision created a privileged class (the provinces) without any justification in reason; and that "the classification is not germane to the purpose of the law and is not based on substantial distinctions that make real differences."[34]

Substantive due process "requires that the law itself, not merely the procedures by which the law would be enforced, is fair, reasonable, and just."[35] It demands the intrinsic validity of the law in interfering with the rights of the person to life, liberty or property. In short, to be determined is whether the law has a valid governmental objective, like the interest of the public as against that of a particular class.[36]

On the other hand, the principle of equal protection enshrined in the Constitution does not require the territorial uniformity of laws. According to *Tiu v. Court of Appeals*,[37] the fundamental right of equal protection of the law is not absolute, but subject to reasonable classification. Classification, to be valid, must: (1) rest on substantial distinctions; (2) be germane to the purpose of the law; (3) not be limited to existing conditions only; and (4) apply equally to all members of the same class.

We opine that although Section 3(b) of P.D. No. 198 provided for substantial distinction and was germane to the purpose of P.D. No. 198 when it was enacted in 1973, the intervening reclassification of the City of Cebu into an HUC and the subsequent enactment of the *1991 Local Government Code* rendered the continued application of Section 3(b) in disregard of the reclassification unreasonable and unfair. Clearly, the assailed provision no longer provided for substantial distinction

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[34] *Id*. at 59-64.

[35] *Corona v. United Harbor Pilots Association*, G.R. No. 111953, December 12, 1997 283 SCRA 31, 39-40.

[36] See *ABAKADA GURO Partylist v. Hon. Ermita*, G.R. No. 169056, September 1, 2005, 469 SCRA 1.

[37] G.R. No. 127410, January 20, 1999, 301 SCRA 278, 289.

because, firstly, it ignored that the MCWD was built without the participation of the provincial government; secondly, it failed to consider that the MCWD existed to serve the community that represents the needs of the majority of the active water service connections; and, thirdly, the main objective of the decree was to improve the water service while keeping up with the needs of the growing population.

The Whereas Clauses of P.D. No. 198 essentially state the *raison d'etre* of its enactment, to wit:

> WHEREAS, **existing domestic water utilities are not meeting the needs of the communities they serve**; water quality is unsatisfactory; pressure is inadequate; and reliability of service is poor; in fact, many persons receive no piped water service whatsoever;
>
> WHEREAS, conditions of service continue to worsen for two apparent reasons, namely: (1) that key element of existing systems are deteriorating faster than they are being maintained or replaced, and (2) **that they are not being expanded at a rate sufficient to match population growth**; and
>
> WHEREAS, **local water utilities should be locally-controlled and managed**, as well as have support on the national level in the area of technical advisory services and financing; (**bold** emphasis supplied)

Verily, the decree was enacted to provide adequate, quality and reliable water and waste-water services to meet the needs of the local communities and their growing populations. The needs of the communities served were paramount. Hence, we deem it to be inconsistent with the true objectives of the decree to still leave to the provincial governor the appointing authority if the provincial governor had administrative supervision only over municipalities and component cities accounting for 16.92% of the active water service connection in the MCWD. In comparison, the City of Cebu had 61.28%[38] of the active service water connections; Mandaue, another HUC, 16%; and Lapu Lapu City, another HUC, 6.8%. There is no denying that the MCWD has been primarily serving the needs of Cebu City.

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[38] *Rollo*, pp. 97-101.

Although it is impermissible to inquire into why the decree set 75% as the marker for determining the proper appointing authority, the provision has meanwhile become unfair for ignoring the needs and circumstances of Cebu City as the LGU accounting for the majority of the active water service connections, and whose constituency stood to be the most affected by the decisions made by the MCWD's Board of Directors. Indeed, the classification has truly ceased to be germane or related to the main objective for the enactment of P.D. No. 198 in 1973.

Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction. Mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave.[39]

Under the foregoing circumstances, therefore, the RTC gravely abused its discretion in upholding Section 3(b) of P.D. No. 198. It thereby utterly disregarded the clear policies favoring local autonomy enshrined in the 1987 Constitution and effected by the *1991 Local Government Code* and related subsequent statutory enactments, and for being violative of the Due Process Clause and the Equal Protection Clause of the 1987 Constitution.

WHEREFORE, we **GRANT** the petition for *certiorari*; **ANNUL** and **SET ASIDE** the decision rendered in Civil Case No. CEB-34459 on November 16, 2010 by the Regional Trial Court, Branch 18, in Cebu City; and **DECLARE** as **UNCONSTITUTIONAL** Section 3(b) of Presidential Decree No. 198 to the extent that it applies to highly urbanized cities

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[39] See *De los Santos v. Metropolitan Bank and Trust Corporation*, G.R. No. 153852, October 24, 2012, 684 SCRA 410, 422-423.

like the City of Cebu and to component cities with charters expressly providing for their voters not to be eligible to vote for the officials of the provinces to which they belong for being in violation of the express policy of the 1987 Constitution on local autonomy, the *1991 Local Government Code* and subsequent statutory enactments, and for being also in violation of the Due Process Clause and the Equal Protection Clause.

ACCORDINGLY, the Mayor of the the City of Cebu is declared to be the appointing authority of the Members of the Board of Directors of the Metro Cebu Water District.

No pronouncement on costs of suit.

SO ORDERED.

Sereno, C. J., Velasco, Jr., Peralta, Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.*, concur.

Leonen, J., see separate concurring opinion.

Carpio, del Castillo, and *Jardeleza, JJ.*, join the dissent of *J.* Brion.

Leonardo-de Castro, J., joins the dissent of Justice Brion in her separate dissenting opinion.

Brion, J., dissents, see dissenting opinion.

Caguioa, J., on leave.

CONCURRING OPINION

LEONEN, *J.*:

I concur. The provincial governor has no power to appoint members of Metropolitan Cebu Water District's (MCWD) board.

This case involves the validity and proper interpretation of Section 3(b) of Presidential Decree No. 198 or the Provincial Water Utilities Act of 1973. Metropolitan Cebu Water District, having been created in 1974 by virtue of this Decree, was subject to its provisions including that in dispute:

Section 3. *Definitions*. — As used in this Decree, the following words and terms shall have the meanings herein set forth, unless a different meaning clearly appears from the context. The definition of a word or term applies to any of its variants.

(a) Act — This Provincial Water Utilities Act of 1973.

(b) Appointing authority. The person empowered to appoint the members of the board of Directors of a local water district, depending upon the geographic coverage and population make-up of the particular district. In the event that more than seventy-five percent of the total active water service connections of a local water district are within the boundary of any city or municipality, the appointing authority shall be the mayor of that city or municipality, as the case may be; otherwise, the appointing authority shall be the governor of the province within which the district is located. If portions of more than one province are included within the boundary of the district, and the appointing authority is to be the governors then the power to appoint shall rotate between the governors involved with the initial appointments made by the governor in whose province the greatest number of service connections exists.

The controversy started when in 2002, after consistent exercise by the Cebu City Mayor of the power to appoint MCWD directors from 1974 to 2002, the Governor of the Province of Cebu decided to assert her power of appointment. The Governor claims that the provision gives her the power to appoint directors of MCWD whenever none of the cities or municipalities covered by MCWD holds seventy-five percent (75%) of its total active water service connections.

Despite the Provincial Governor's claim, however, the Cebu City Mayor exercised the authority when he appointed Joel Mari S. Yu in 2008 to fill a vacant seat in MCWD's board of directors.

Both the Mayor of Cebu City and the Provincial Governor of Cebu claim authority to appoint directors of MCWD in case none of the cities or municipalities covered by MCWD reaches seventy-five percent (75%) of its total active water service connections.

Petitioners claim that Section 3(b) of Presidential Decree No. 198 is unconstitutional because it violates Cebu City's local autonomy, and the due process and equal protection clause. The provincial government had not participated in the creation of MCWD. Cebu City also holds majority, though not 75% of MCWD's total active water service connections. Hence, Cebu City's Mayor and not Cebu's Provincial Governor should be given the power to appoint directors of MCWD.

On the other hand, respondents claim that Section 3(b) of Presidential Decree No. 198 is clear that if the 75% requirement under Section 3(b) of Presidential Decree No. 198 is not met, it is the Provincial Governor who has the authority to appoint MCWD directors.

We are asked to determine whether Section 3(b) of Presidential Decree No. 198 is unconstitutional.

I

Section 3(b) of Presidential Decree No. 198 is unconstitutional because it violates the local autonomy of cities and municipalities covered by MCWD. It interferes with the cities' and municipalities' power and duty to conduct their own affairs, particularly with regard to the delivery of basic services.

Local governments were instituted as a means to allocate powers and responsibilities to units that are most aware of and can best meet the needs of its constituents.[1] Through this, the

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[1] LOCAL GOVT. CODE, Sec. 3 provides:

Section 3. Operative Principles of Decentralization. – The formulation and implementation of policies and measures on local autonomy shall be guided by the following operative principles:

(a) There shall be an effective allocation among the different local government units of their respective powers, functions, responsibilities, and resources;

(b) There shall be established in every local government unit an accountable, efficient, and dynamic organizational structure and operating mechanism that will meet the priority needs and service requirements of its communities[.]

State fosters self-reliant communities and furthers a government structure that is both responsive and accountable to its citizens.[2]

The importance of self-reliant communities was expressed in the 1900 McKinley Instructions:

You will instruct the commission to proceed to the city of Manila, where they will make their principal office, and to communicate with the military governor of the Philippine Islands, whom you will at the same time direct to render to them every assistance within his power in the performance of their duties. Without hampering them by too specific instructions, they should in general be enjoined, *after making themselves familiar with the conditions and needs of the country, to devote their attention in the first instance to the establishment of municipal governments, in which the natives of the islands, both in the cities and in the rural communities, shall be afforded the opportunity to manage their own local affairs to the fullest extent of which they are capable, and subject to the least degree of supervision and control which a careful study of their capacities and observations of the workings of native control show to be consistent with the maintenance of law, order, and loyalty*.

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[2] LOCAL GOVT. CODE, Sec. 2 provides:

Section 2. Declaration of Policy.

(a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities and resources. The process of decentralization shall proceed from the national government to the local government units.

(b) It is also the policy of the State to ensure the accountability of local government units through the institution of effective mechanisms of recall, initiative, and referendum.

(c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, non-governmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.

The next subject in order of importance should be the organization of government in the larger administrative divisions corresponding to counties, departments, or provinces, in which the common interests of many or several municipalities falling within the same tribal lines, or the same natural geographical limits, may best be subserved by a common administration. Whenever the commission is of the opinion that the condition of affairs in the islands is such that the central administration may safely be transferred from military to civil control, they will report that conclusion to you, with their recommendations as to the form of central government to be established for the purpose of taking over the control.[3] (Emphasis supplied)

Local government autonomy had been impliedly adopted as State policy as early as 1935 when our Constitution defined the kind of power that the President may exercise over executive departments and local governments. Article VII, Section 11(1) of the 1935 Constitution provided that the President exercised control over executive departments. However, the President's power over local governments was limited to general supervision:

SEC. 11. (1) The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed.

"Control" has been consistently defined in our jurisprudence as the power to "alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter."[4] On the other hand, "supervision" has been defined as "overseeing, or the power or authority of an officer to see that subordinate officers perform their duties, and to take such action

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[3] Full text of "Instructions of the President to the Philippine commission, April 7, 1900.." <https://archive.org/stream/instructionspre00mckigoog/instructionspre00mckigoog_djvu.txt> (Last visited November 15, 2016).

[4] *The National Liga ng mga Barangay v. Judge Paredes*, 482 Phil. 331, 355 (2004) [Per *J*. Tinga, *En Banc*], *citing Mondano v. Silvosa, etc., et al.*, 97 Phil. 143, 148 (1955) [Per *J*. Padilla, *En Banc*]. *See also Taule v. Secretary Santos*, 277 Phil. 584, 598 (1991) [Per *J*. Gancayco, *En Banc*].

as prescribed by law to compel his subordinates to perform their duties."[5]

This court further explained the difference between "control" and "supervision" in *Drilon v. Lim*:[6]

> An officer in control lays down the rules in the doing of an act. If they are not followed, he may, in his discretion, order the act undone or re- done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. The supervisor or superintendent merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done but only to conform to the prescribed rules. He may not prescribe his own manner for the doing of the act. He has no judgment on this matter except to see to it that the rules are followed.[7]

Thus, when the 1935 Constitution limited the President's power over local government units to supervision, he or she had been proscribed from interfering or taking an active part in the affairs of local government units. The State, at that time, had already recognized local autonomy as a means to more effectively determine and address local concerns.

The principle of local autonomy was expressly adopted as a State policy in Article II, Section 10 of 1973 Constitution:

> SEC. 10. The State shall guarantee and promote the autonomy of local government units, especially the [barangays], to ensure their fullest development as self-reliant communities.

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[5] *The National Liga ng mga Barangay v. Judge Paredes*, 482 Phil. 331, 355 (2004) [Per *J*. Tinga, *En Banc*], *citing Mondano v. Silvosa, etc., et al.*, 97 Phil. 143, 147 (1955) [Per *J*. Padilla, *En Banc*]. *See also Taule v. Secretary Santos*, 277 Phil. 584, 598 (1991) [Per *J*. Gancayco, *En Banc*], *Pimentel, Jr. v. Hon. Aguirre*, 391 Phil. 84, 98-100 (2000) [Per *J*. Panganiban, *En Banc*], and *Drilon v. Lim*, 235 Phil. 135, 140-141 (1994) [Per *J*. Cruz, *En Banc*].

[6] 235 Phil. 135 (1994) [Per *J*. Cruz, *En Banc*].

[7] *Id*. at 142.

A similar provision can be found among the State policies enumerated in Article II of the 1987 Constitution:

SECTION 25. The State shall ensure the autonomy oflocal governments.

Both the 1973 Constitution and the 1987 Constitution devoted a whole Article to local governments as a means to institutionalize the principle of local autonomy.[8]

The Article XI[9] of the 1973 Constitution enjoined the enactment of a Local Government Code. It defined the relationship between local government units with their component units.[10] It explicitly gave local government units a form of fiscal

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[8] CONST. (1973), Art. XI and CONST., Art. X.

[9] CONST. (1973), Art. XI, Sec. 2 provides:

ARTICLE XI. LOCAL GOVERNMENT

. . . . . .

SEC. 2. The Batasang Pambansa shall enact a local government code which may not thereafter be amended except by a majority vote of all its Members, defining a more responsive and accountable local government structure with an effective system of recall, allocating among the different local government units their powers, responsibilities, and resources, and providing for the qualifications, election and removal, term, salaries, powers, functions, and duties of local officials, and all other matters relating to the organization and operation of the local units. However, any change in the existing form of local government shall not take effect until ratified by a majority of the votes cast in a plebiscite called for the purpose.

[10] CONST. (1973), Art. XI, Sec. 4(1) provides:

ARTICLE XI. LOCAL GOVERNMENT

. . . . . .

SEC. 4(1). Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barrios, shall ensure that the acts of their component units are within the scope of their assigned powers and functions. Highly urbanized cities, as determined by standards established in the local government code, shall be independent of the province.

independence by giving them power to create their own revenues.[11]

As a reflection of the increasing importance our State gives to local autonomy, the present Constitution expanded the 1973 Constitution's Article XI to reiterate the guarantee that local governments shall enjoy local autonomy. Section 2 of Article X provides:

> SECTION 2. The territorial and political subdivisions shall enjoy local autonomy.

Aside from the power to create their own revenues, the present Constitution gave local governments entitlement to shares in the national taxes and in proceeds of the utilization of their wealth and resources.[12] Local government units were also guaranteed sectoral representation.[13]

Further, the present Constitution created autonomous regions for areas "sharing common and distinctive historical and cultural heritage, economic and social structures[.]"[14]

The present Constitution, like the 1935 Constitution provides that the President's power over local government units is limited to general supervision. Thus:

> SECTION 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of

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[11] CONST. (1973), Art. XI, Sec. 5 provides:

> ARTICLE XI. LOCAL GOVERNMENT
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> . . . . . .
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> SEC. 5. Each local government unit shall have the power to create its own sources of revenue and to levy taxes, subject to such limitations as may be provided by law.

[12] CONST., Art. X, Secs. 6 and 7.

[13] CONST., Art. X, Sec. 9.

[14] CONST., Art. X, Sec. 15.

their component units are within the scope of their prescribed powers and functions.[15]

In other words, the present Constitution reiterated that not even the President may determine and dictate how local government units' duties shall be performed.

The autonomy guaranteed by the Constitution to local government units should apply not only against the national government but also against other local government units. After all, Section 4 of Article X of the Constitution does not limit only the President's powers over local government units but also the local government units' powers over other local government units. It provides that provinces and cities or municipalities shall only "ensure that the acts of their component units are within the scope of their prescribed powers and functions." This, essentially, refers only to the power of supervision.

Thus, the national government may only exercise supervisory powers over local government units. Similarly, local government units may only exercise supervisory powers over their component units. Provinces do not exercise control over their component cities and/or municipalities and over highly urbanized cities.[16] Cities or municipalities do not control their barangays.

The Local Government Code has a general welfare clause that provides local government units with as much power necessary to "[accelerate] economic development and [upgrade]

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[15] CONST., Art. X, Sec. 4.

[16] CONST., Art. X, Sec. 12 provides:

ARTICLE X. Local Government

. . . . . .

SECTION 12. Cities that are highly urbanized, as determined by law, and component cities whose charters prohibit their voters from voting for provincial elective officials, shall be independent of the province. The voters of component cities within a province, whose charters contain no such prohibition, shall not be deprived of their right to vote for elective provincial officials.

the quality of life for the people in the community[.]"[17] Section 16 of the Local Government Code provides:

SECTION 16. General Welfare. – Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

Further, the Local Government Code provides that local government units "shall endeavor to be self-reliant"[18] and shall be responsible for providing the basic services needed by its constituents. Thus:

SECTION 17. Basic Services and Facilities.

(a) Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code. Local government units shall likewise exercise such other powers and discharge such other functions and responsibilities

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[17] LOCAL GOVT. CODE, Sec. 5(c) provides:

SECTION 5. Rules of interpretation. – In the interpretation of the provisions of this Code, the following rules shall apply:

. . . . . .

(c) The general welfare provision in this Code shall be liberally interpreted to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people in the community.

[18] LOCAL GOVT. CODE, Sec. 17(a).

as are necessary, appropriate, or incidental to efficient and effective provisions of the basic services and facilities enumerated herein[.]

Among the basic services that municipalities and cities must provide their constituents are infrastructure facilities such as water supply systems. Thus:

SECTION 17. Basic Services and Facilities

. . . . . .

(b) Such basic services and facilities include, but are not limited to, the following:

(2) For a municipality:

. . . . . .

(viii) Infrastructure facilities intended primarily to service the needs of the residents of the municipality and which are funded out of municipal funds including, but not limited to, municipal roads and bridges; school buildings and other facilities for public elementary and secondary schools; clinics, health centers and other health facilities necessary to carry out health services; communal irrigation, small water impounding projects and other similar projects; fish ports; artesian wells, spring development, rainwater collectors and *water supply systems*; seawalls, dikes, drainage and sewerage, and flood control; traffic signals and road signs; *and similar facilities*;

. . . . . .

(4) For a City:

All the services and facilities of the municipality and province[.] (Emphasis supplied)

Presidential Decree No. 198 allows provinces to interfere with this duty of municipalities and cities when it empowered the governor to appoint MWCD directors in case none of the cities and municipalities covered by MCWD reached the 75% requirement.

Indeed, provinces are also given the power and the duty to provide its constituents with inter-municipal waterworks and other similar facilities.[19] However, this is not equivalent to a grant of power to take control of duties necessarily imposed on cities or municipalities. Provisions granting powers to the provincial government should not only be interpreted in a manner that favors its own local autonomy, but also the local autonomy of local government units outside its control.[20] The spirit of the principle of local autonomy is upheld if local government units are allowed to exercise the most degree of control possible over its policies and operations to the exclusion of other local government units.

Thus, to attain the goals of giving local autonomy to local governments, the smallest possible unit of local government should be allowed to determine and provide the basic services needed by its constituents in accordance with the Local Government Code. More than the provincial government, municipalities and cities are more familiar with the needs and are more capable of determining the best policies that would serve their constituents.

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[19] LOCAL GOVT. CODE, Sec. 17(3)(vii) provides:

SECTION 17. Basic Services and Facilities.

....

(3) For a Province:

....

(vii) Infrastructure facilities intended to service the needs of the residents of the province and which are funded out of provincial funds including, but not limited to, provincial roads and bridges; inter-municipal waterworks, drainage and sewerage, flood control, and irrigation systems; reclamation projects; and similar facilities[.

[20] *See also San Juan v. Civil Service Commission* (273 Phil. 271, 279 (1991) [Per *J*. Gutierrez, Jr., *En Banc*]), where the Court upheld the primacy of interpretations favouring local autonomy over interpretations favouring centralized power of the national government.

Since MCWD's policies are created by MCWD's Board ofDirectors,[21] the appointment of directors is the only means by which local government units may exercise control over the policies that will be implemented by MCWD. Any exercise of this appointment power entails great consideration not only of the needs of the most affected but also judgment as to whose decisions could best determine and serve the needs of the local community. The person who could make such judgment is not the governor but the mayor of the most number of barangays served by MCWD. It is that city or municipality that will be most affected by the decisions and policies of the board of directors of MCWD.

Thus, the power to appoint MCWD's directors may not be taken away by the provincial government from the cities or municipalities covered by MCWD without violating their local

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[21] Pres. Decree No. 198 (1973), Secs. 17, 18, 23, and 24 provide:

SEC. 17. Performance of District Powers. – All powers, privileges, and duties of the district shall be exercised and performed by and through the board: Provided, however, That any executive, administrative or ministerial power shall be delegated and redelegated by the board to officers or agents designated for such purpose by the board.

SEC. 18. Functions Limited to Policy Making. – The function of the board shall be to establish policy. The Board shall not engage in the detailed management of the district.

. . . . . .

SEC. 23. The General Manager. – At the first meeting of the Board, or as soon thereafter as practicable, the Board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. Said officer shall not be removed from office, except for cause and after due process. (As amended by Pres. Decree No. 768 (1975), Sec. 9 and Rep. Act No. 9286 (2003), Sec. 2)

SEC. 24. Duties. – The duties of the General Manager and other officers shall be determined and specified from time to time by the board. The general manager, who shall not be a director, shall have full supervision and control of the maintenance and operation of water district facilities, with power and authority to appoint all personnel of the district: Provided, That the appointment of personnel in the supervisory level shall be subject to approval by the board. (As amended by Pres. Decree No. 768 (1975), Sec. 9)

autonomy. This interpretation is in consonance with the spirit of the principle of local autonomy. It is in accordance with our state policy to foster self-reliant communities and accountable systems of government.

II

Further, the presumption of constitutionality accorded to laws passed by Congress should not apply in the same degree to presidential decrees. Presidential decrees and laws passed by the Congress do not belong in the same category.

The presumption of constitutionality enjoyed by laws is based on the principle of separation of powers implied under our Constitution.

The executive, legislative, and judicial branches each has distinct powers and duties, which may not be encroached upon by the other.[22]

"The executive power [is] vested in the President of the Philippines,"[23] who must ensure the faithful execution of laws.[24]

Judicial power is vested upon courts, whose duties, essentially, is to settle actual controversies and declare acts, in proper cases, as void for being an exercise of grave abuse of discretion or for being unconstitutional.[25]

Legislative powers are vested solely upon the Congress.[26] It is the Congress, composed of senators and representatives elected periodically by the people, that enact laws.[27]

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[22] *Angara v. Electoral Commission*, 63 Phil. 139, 156 (1936) [Per *J.* Laurel, *En Banc*].

[23] CONST., Art. VII, Sec. 1.

[24] CONST., Art. VII, Sec. 17.

[25] CONST., Art. VIII, Sec. 1.

[26] CONST., Art. VI, Sec. 1.

[27] CONST., Art. VI, Secs. 1, 2, 4, 5(1), and 7 provide:

ARTICLE VI. The Legislative Department

"The principle [of separation of powers] presupposes mutual respect by and between the executive, legislative and judicial departments of the government and calls for them to be left alone to discharge their duties as they see fit."[28]

The principle of separation of powers prevents government powers from being concentrated in one branch of the

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SECTION 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

SECTION 2. The Senate shall be composed of twenty-four Senators who shall be elected at large by the qualified voters of the Philippines, as may be provided by law.

. . . . . .

SECTION 4. The term of office of the Senators shall be six years and shall commence, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

No Senator shall serve for more than two consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

SECTION 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.

. . . . . .

SECTION 7. The Members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.

No member of the House of Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

[28] *Anak Mindanao Party-List Group v. Executive Secretary Ermita*, 558 Phil. 338, 353 (2007) [Per *J.* Carpio Morales, *En Banc*], citing *Atitiw v. Zamora*, 508 Phil. 321, 342 (2005) [Per *J.* Tinga, *En Banc*].

government.[29] It has been theorized that a combination of any of the government powers into one person "would create a system with an inherent tendency towards tyrannical actions[.]"[30]

Thus, the principle of separation of powers under our present Constitution ensures that none of the branches are superior to another. The three branches of the government are considered co-equal branches.

Our Constitution, however, also recognizes the need for coordination among the three branches of the government. Hence, the three branches operate under a system of checks and balances.[31] Each government branch has a means of checking the workings of another branch.

In *Angara v. Electoral Commission*:[32]

> But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. For example, the Chief Executive under our Constitution is so far made a check on the legislative power that this assent is required in the enactment of laws. This, however, is subject to the further check that a bill may become a law notwithstanding the refusal of the President to approve it, by a vote of two-thirds or three-fourths, as the case may be, of the National Assembly. The President has also the right to convene the Assembly in special session whenever he chooses. On the other hand, the National Assembly operates as a check on the Executive in the sense that its consent through its Commission on Appointments is necessary in the appointment of certain officers; and the concurrence of a majority of all its members

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[29] *J.* Puno, Concurring and Dissenting Opinion in *Atty. Macalintal v. Commission on Elections*, 453 Phil. 586, 732 (2003) [Per *J.* Austria-Martinez, *En Banc*].

[30] *Id.* at 734.

[31] *Angara v. Electoral Commission*, 63 Phil. 139, 156 (1936) [Per *J.* Laurel, *En Banc*].

[32] 63 Phil. 139 (1936) [Per *J.* Laurel, *En Banc*].

is essential to the conclusion of treaties. Furthermore, in its power to determine what courts other than the Supreme Court shall be established, to define their jurisdiction and to appropriate funds for their support, the National Assembly controls the judicial department to a certain extent. The Assembly also exercises the judicial power of trying impeachments. And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.[33]

The presumption of constitutionality accorded to laws passed by the Congress also recognizes the meticulousness imposed by our Constitution on the process by which the legislative department should promulgate laws. Each law passed by the legislative department undergoes three readings.[34] In between those readings, public hearings may be conducted wherein the representatives from the public and private sectors, members of the academe, and experts in the field related to the proposed law may participate. The law may also undergo discussions and debates. Opinions by the representatives from the public, private, and academic communities and the differences that emerge from the discussions and debates will result to several amendments of the proposed law before its actual passage.[35] After

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[33] *Id.* at 156-157.

[34] CONST., Art. VI, Sec. 26 provides:

ARTICLE VI. The Legislative Department

. . . . . .

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

(2) No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the yeas and nays entered in the Journal.

[35] *Legislative Process: How a bill becomes a law*, House of Representatives <http://congress.gov.ph/legisinfo/?l=process> (Last visited November 15, 2016).

its passage by the Congress, the law shall be submitted to the President for approval.[36]

In sum, the principles of separation of powers, the special process of legislation that allows participation of representatives of the people and the operation of the system of checks and balances provide bases for the presumption of constitutionality we accord to legislative enactments. In *Angara v. Electoral Commission*:

> More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because *the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments* of the government.[37] (Emphasis supplied)

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[36] CONST., Art. VI, Sec. 27 provides:

ARTICLE VI. The Legislative Department

. . . . . .

SECTION 27. (1) Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.

(2) The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.

[37] *Angara v. Electoral Commission*, 63 Phil. 139, 158-159 (1936) [Per *J*. Laurel, *En Banc*].

In *Romualdez v. Hon. Sandiganbayan*:[38]

In *Garcia v. Executive Secretary*, the rationale for the presumption of constitutionality was explained by this Court thus:

> "The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. *The theory is that as the joint act of Congress and the President of the Philippines, a law has been carefully studied and determined to be in accordance with the fundamental law before it was finally enacted.*"[39] (Emphasis supplied)

In *Lawyers Against Monopoly and Poverty (LAMP), et al. vs. The Secretary of Budget and Management, et al.*:[40]

In determining whether or not a statute is unconstitutional, the Court does not lose sight of the presumption of validity accorded to statutory acts of Congress. In *Fariñas v. The Executive Secretary*, the Court held that:

> Every statute is presumed valid. *The presumption is that the legislature intended to enact a valid, sensible and just law* and one which operates no further than may be necessary to effectuate the specific purpose of the law. Every presumption should be indulged in favor of the constitutionality and the burden of proof is on the party alleging that there is a clear and unequivocal breach of the Constitution.

To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation *because "to invalidate [a law] based on x x x baseless supposition is an affront*

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[38] 479 Phil. 265 (2004) [Per *J.* Panganiban, *En Banc*].

[39] *Id*. at 284-285, citing *Congressman Garcia v. The Executive Secretary*, 281 Phil. 572, 579-580 (1991) [Per *J.* Cruz, *En Banc*].

[40] 686 Phil. 357 (2012) [Per *J.* Mendoza, *En Banc*].

to the wisdom not only of the legislature that passed it but also of the executive which approved it."[41] Emphasis supplied)

These principles were inoperative when President Ferdinand Marcos issued presidential decrees. Presidential decrees were laws promulgated by President Ferdinand Marcos in arrogation of the Congress' legislative powers, under his martial law powers.[42] The issuance of presidential decrees at that time was an exercise by the executive of his legislative powers.[43] This was made possible in the 1973 Constitution, which had provisions allowing for such combined powers. Under the 1973 Constitution, the President may exercise legislative powers as long as martial law was in effect.[44]

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[41] *Id*. at 372-373, citing *Fariñas v. The Executive Secretary*, 463 Phil. 179, 197 (2003) [Per *J*. Callejo, Sr., *En Banc*] and *ABAKADA GURO Party List (formerly AASJS), et al. v. Hon. Purisima, et al.*, 584 Phil. 246, 267-268 (2008) [Per *J*. Corona, *En Banc*].

[42] See also *Presidential Decrees*, Official Gazette <http://www.gov.ph/section/executive-issuances/presidential-decrees-executive-issuances/> (Last visited November 15, 2016).

[43] See *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705 (2006) [Per *J*. Sandoval-Gutierrez, *En Banc*].

[44] 1976 Amendments <http://www.gov.ph/constitutions/1973-constitution-of-the-republic-of-the-philippines-2/> (Last visited November 15, 2016).

1. There shall be, in lieu of the interim National Assembly, an interim Batasang Pambansa. Members of the interim Batasang Pambansa which shall not be more than 120, unless otherwise provided by law, shall include the incumbent President of the Philippines, representatives elected from the different regions of the nation, those who shall not be less than eighteen years of age elected by their respective sectors, and those chosen by the incumbent President from the Members of the Cabinet. Regional representatives shall be apportioned among the regions in accordance with the number of their respective inhabitants and on the basis of a uniform and progressive ratio, while the sector shall be determined by law. The number of representatives from each region or sector and the manner of their election shall be prescribed and regulated by law.

2. The interim Batasang Pambansa shall have the same powers and its Members shall have the same functions, responsibilities, rights, privileges, and disqualifications as the interim National Assembly and the regular National Assembly and the Members thereof.

Thus, the premises for according in favor of statutes a presumption of constitutionality are absent in presidential decrees. Separation of powers, as well as the principle of checks and balances, were limited during the martial law. Indeed, presidential decrees are laws, but they are laws that did not undergo the careful process of discussion, debates, approval and disapproval by representatives of the people. They are not in reality the product of two government branches in coordination and in accordance with the system of checks of balances. They are essentially laws issued by one person.

Hence, presidential decrees and statutes promulgated by the Congress should not be examined under the same lens. The presumption of constitutionality accorded to legislative acts by the Congress should not equally apply to presidential decrees. The courts should consider the different circumstances under

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3. The incumbent President of the Philippines shall, within 30 days from the election and selection of the Members, convene the interim Batasang Pambansa and preside over its sessions until the Speaker shall have been elected. The incumbent President of the Philippines shall be the Prime Minister and he shall continue to exercise all his powers even after the interim Batasang Pambansa is organized and ready to discharge its functions, and likewise he shall continue to exercise his powers and prerogatives under the 1935 Constitution and the powers vested in the President and the Prime Minister under this Constitutions.

4. The President (Prime Minister) and his Cabinet shall exercise all the powers and functions, and discharge the responsibilities of the regular President (Prime Minister) and his Cabinet, and shall be subject only to such disqualifications as the President (Prime Minister) may prescribe. The President (Prime Minister), if he so desires, may appoint a Deputy Prime Minister or as many Deputy Prime Ministers as he may deem necessary.

5. *The incumbent President shall continue to exercise legislative powers until martial law shall have been lifted.*

6. Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders, or letters of instructions, which shall form part of the law of the land. (Emphasis supplied)

which presidential decrees were issued whenever they examine their validity. Presidential decrees should undergo a stricter review than statutes promulgated by the Congress.

Accordingly, I vote to GRANT the Petition.

DISSENTING OPINION

LEONARDO-DE CASTRO, *J.*:

I concur fully with the Dissenting Opinion of Justice Arturo D. Brion. For brevity, I submit with due respect, the serious flaws in the conclusions reached by the majority opinion.

Firstly, I disagree with the majority opinion that Section 3(b) of Presidential Decree No. 198 should be partially struck down for being repugnant to the local autonomy granted by the 1987 Constitution to local government units (LGUs), and for being inconsistent with Republic Act No. 7160 (1991 Local Government Code) and related laws on local government.

There is no impairment of the local autonomy provided by the 1987 Constitution and its implementing legislations for the following reasons:

The decision to form a local water district is lodged upon the legislative body of any city, municipality or province itself, which can do so by enacting a resolution to form or join a district. An LGU is free to decide to join or not a local water district based on its own assessment of whether or not it will redound to its benefit to be covered by Presidential Decree No. 198, which provides, among others, for a package of **powers, rights** and **obligations**. Specifically, the local water district is assured of support on the national level in the area of technical advisory services and financing (Fifth Preambulatory Clause of Presidential Decree No. 198), guarantee of exclusive franchise for domestic water service within the district (Section 46), and exemption from income taxes under Section 45 which provides:

SEC. 45. *Exemption from Taxes*.— A district shall (1) be exempt from paying income taxes, and (2) shall be exempt from the payment

of (a) all National Government, local government and municipal taxes and fees, including any franchise, filing, recordation, license or permit fees or taxes and fees, charges or costs involved in any court of administrative proceeding in which it may be a party and (b) all duties or imposts on imported machinery, equipment and materials required for its operations.

Moreover, the LGU joining a local water district does not surrender any of its powers under the Constitution or the Local Government Code to another LGU vested with the power to appoint the members of the Board of the local water district since Presidential Decree No. 198 expressly provides that a district once formed shall **not be under the jurisdiction of any political subdivision**.

The local water district has a separate juridical personality which is independent of the LGUs. It is governed by its Board of Directors pursuant to Section 17 which reads:

Sec. 17. *Performance of District Powers*. – All powers, privileges, and duties of the district shall be exercised and performed by and through the board: *Provided, however,* That any executive, administrative or ministerial power shall be delegated and redelegated by the board to officers or agents designated for such purpose by the board.

Hence, the power to appoint the members of the Board of Directors of the local water districts, which is vested upon the LGU determined in accordance with the formula or rule prescribed by Presidential Decree No. 198, does not impair the autonomy of the other LGUs included in the District.

If a province can join a local water district and be subjected to the provisions of Presidential Decree No. 198, there is no cogent reason why the change of status of a component city of a province, which would later on become a highly urbanized city, should affect its powers, rights and obligations under Presidential Decree No. 198.

A province which enjoys local autonomy may join a local water district and be subject to the provisions of Presidential

Decree No. 198 pursuant to Section 6 of said Decree, which is quoted as follows:

SEC. 6. *Formation of District*. – This Act is the source of authorization and power to form and maintain a district. Once formed, a district is subject to the provisions of this Act and not under the jurisdiction of any political subdivision. To form a district, the legislative body of any city, municipality or province shall enact a resolution containing the following:

(a) The name of the local water district, which shall include the name of the city, municipality, or province, or region thereof, served by said system, followed by the words "Water District.

(b) A description of the boundary of the district. In the case of a city or municipality, such boundary may include all lands within the city or municipality. A district may include one or more municipalities, cities or provinces, or portions thereof.

(c) A statement of intent to transfer any and all waterworks and/or sewerage facilities owned by such city, municipality or province to such district pursuant to a contract authorized by Section 31(b) of this Title.

(d) A statement identifying the purpose for which the district is formed, which shall include those purposes outlined in Section 5 above.

(e) The names of the initial directors of the district with the date of expiration of term of office for each.

(f) A statement that the district may only be dissolved on the grounds and under the conditions set forth in Section 44 of this Title.

(g) A statement acknowledging the powers, rights and obligations as set forth in Section 36 of this Title.

Nothing in the resolution of formation shall state or infer that the local legislative body has the power to dissolve, alter or affect the district beyond that specifically provided for in this Act.

If two or more cities, municipalities or provinces, or any combination thereof, desire to form a single district, a similar resolution shall be adopted in each city, municipality and province.

Secondly, the majority opinion indulged itself in constitutionally objectionable judicial legislation by effectively

amending Section 3(b) of Presidential Decree No. 198, which provides:

> SEC. 3. *Definitions*. – x x x.
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> x x x x x x x x x
>
> (b) *Appointing authority*. – The person empowered to appoint the members of the board of Directors of a local water district, depending upon the geographic coverage and population make-up of the particular district. In the event that more than seventy-five percent of the total acting water service connections of a local water district are within the boundary of any city or municipality, the appointing authority shall be the mayor of that city or municipality, as the case may be; otherwise, the appointing authority shall be the governor of the province within which the district is located. If portions of more than one province are included within the boundary of the district, and the appointing authority is to be the governors then the power to appoint shall rotate between the governors involved with the initial appointments made by the governor in whose province the greatest number of service connections exists.

The majority opinion criticized the 75% threshold prescribed by Section 3(b) of Presidential Decree No. 198 to vest an LGU with the power to appoint the members of the Board of Directors of the local water district, and in doing so, framed it within the supposed violation of the due process clause and equal protection of the laws.

We only need to underscore the legislative process that each LGU should go through to become a part of a local water district and to be subject to the provisions of Presidential Decree No. 198. It is a conscious and deliberate decision reached by an LGU through its legislative body or Sanggunian which should follow the procedure prescribed by law for the enactment of a resolution. It is for the said legislative body to evaluate the advantages and disadvantages, if any, of joining a local water district. Furthermore, for this Court to say that there was a denial of substantive due process of law and equal protection of the law, it must first closely scrutinize not only one provision of Presidential Decree No. 198 but all of its other provisions,

particularly those pertaining to the power, rights and obligations of the component LGUs of the local water district. This the majority opinion failed to do. Moreover, it partially struck down Section 3(b) of Presidential Decree No. 198 taking into account only the particular situation of the City of Cebu.

The majority opinion substituted its own rule or formula with that provided by Presidential Decree No. 198 to identify the appointing authority of the Board of Directors of the local water district by reducing the threshold of 75% of total active water service connections within the boundary of any city or municipality to a majority of said water connections, meaning, at least 51%, based on a supposed majority rule which has no basis in law.

While the majority opinion claimed to have partially struck down Section 3(b) of Presidential Decree No. 198, it had practically nullified too the last sentence of said Section 3(b), which did not apply the threshold of 51% or majority rule in case more than one province are included in the local water district. In this case, Section 3(b) of Presidential Decree No. 198 provides that the appointing authority among the provinces is determined by rotation.

Assuming that Section 3(b) of Presidential Decree No. 198, as argued in the majority opinion, is no longer in keeping with the recent developments in the status, socio-economic and political conditions of the LGUs comprising a local water district, the remedy is legislative amendment. It is not for this Court to prescribe another rule or formula to determine who shall have the authority to appoint the Board of Directors of a local water district. I join Justice Brion who, with clarity, extensively expounded on this issue to support the view which was early on tritely expressed in the appealed decision of the Regional Trial Court, particularly, that the question or issue on the situs of the appointing authority is for our lawmakers to address.

In view of the foregoing, I join Justice Brion in voting to **DENY** the petition.

DISSENTING OPINION

BRION, *J.*:

Background

The constitutional challenge before us springs from a single issue: who — between the Governor of the Province of Cebu and the Mayor of Cebu City — has the power to appoint the Board of Directors of the Metro Cebu Water District (*MCWD*).

The MCWD is a Local Water District (*LWD*) created under Presidential Decree No. 198, otherwise known as the Provincial Water Utilities Act of 1973. The MCWD services the cities of Cebu, Mandaue, Lapu-Lapu, and Talisay, and the municipalities of Liloan, Compostela, Consolacion, and Cordova — all *geographically* located within the Province of Cebu.

Since MCWD began its operations in 1975,[1] the Mayor of Cebu City has always appointed the members of the MCWD Board of Directors.

On July 11, 2002, Cebu Provincial Governor Pablo L. Garcia (*Gov. Pablo*) wrote MCWD a letter asserting his authority under Section 3 (b) of PD 198 (*hereafter referred to as "Section 3 (b)"*) to appoint the members of the MCWD Board:[2]

x x x x x x x x x

(b) **Appointing authority.** The person empowered to appoint the members of the board of Directors of a local water district, depending upon the geographic coverage and population make-up of the particular district. ***In the event that more than seventy-five percent of the total active water service connections of a local water district are within the boundary***

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[1] Executive Summary of COA 2014 Report on MCWD. http://www.coa.gov.ph/phocadownloadpap/userupload/annual_audit_report/GOCCs/2014/COA-Regional-Office/Region-VII/MetropolitanCebuWD-R7_ES2014.pdf, last accessed December 6, 2016.

[2] *Rollo*, p. 151.

> ***of any city or municipality, the appointing authority shall be the mayor of that city or municipality, as the case may be; otherwise, the appointing authority shall be the governor of the province within which the district is located.*** x x x (emphasis and omissions supplied)

In his letter, Gov. Pablo pointed out that since 1996, MCWD's active waterworks connections in Cebu City had gone below Sec 3 (b)'s 75% threshold, and that no other city or municipality under MCWD had reached the same threshold.[3] Hence, he (Gov. Pablo) and not the Mayor of Cebu City has the power to appoint members to the MCWD board.

Meanwhile, the terms of office of two MCWD Directors expired.

To avoid a vacuum in the MCWD Board, Gov. Pablo and Cebu Mayor Tomas Osmeña jointly appointed the new Directors, one of whom was Atty. Adelino Sitoy (*Atty. Sitoy*).[4]

In May 2007, Atty. Sitoy was elected as Mayor of Cordova, Cebu, and, thus, had to vacate his post in the MCWD Board.

Prompted by the vacancy left by Atty. Sitoy, then Cebu Provincial Governor, Gwendolyn F. Garcia (*Gov. Gwendolyn*), filed before the Regional Trial Court (*RTC*) an Action for Declaratory Relief[5] against Mayor Osmeña and the MCWD to seek an interpretation of Section 3(b).[6]

Notwithstanding the pendency of the Action for Declaratory Relief, Mayor Osmeña appointed respondent Joel Mari S. Yu (*Yu*) as Atty. Sitoy's replacement.[7] Viewing Yu's appointment

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[3] Page 3 of the *Ponencia*.

[4] *Id.*

[5] *Id.* This was the Second Action for Declaratory Relief filed. The first was filed by MCWD after it received Governor Pablo Garcia's letter. The case was dismissed without pronouncement on Section 3 (b)'s constitutionality.

[6] *Rollo*, p. 152.

[7] On February 22, 2008; *id.* at 96.

as a breach on Mayor Osmeña's part, the RTC dismissed the Action for Declaratory Relief on May 20, 2008.[8]

On June 13, 2009, Gov. Gwendolyn filed before the RTC a complaint to annul Yu's appointment and impleaded Yu, the MCWD, the MCWD Board of Directors, and the City Mayor (*petitioners*) as defendants.

In their defense, the petitioners claimed that Section 3(b) violates the due process clause and the equal protection clause, and that Section 3(b) had been superseded by Constitutional provisions on local autonomy and the Local Government Code of 1991 (LGC). They also argue that the Governor has no right to appoint the MCWD's board of directors because: (*i*) the Province neither invested nor participated in creating the MCWD; (*ii*) Cebu City is a Highly Urbanized City and, therefore, independent from the Province of Cebu; and (*iii*) the *majority* of MCWD's active water connections are located in Cebu city.

In its November 16, 2000 decision, the RTC annulled Yu's appointment, and observed that Section 3(b) lodges the appointing power to the Provincial Governor *in the event* that 75% of the LWD's waterworks do not fall within any city or municipality.[9] Since Cebu City accounts for only 61.28% of MCWD's total waterworks, the Governor of Cebu must appoint the members of the MCWD Board.

The RTC likewise ruled that Section 3(b) does not violate the Constitution and the LGC because the Governor's appointing power does not amount to an intrusion into the affairs, nor threaten the autonomy, of Cebu City.[10] The RTC also ruled that whether the Governor contributed to MCWD's creation is immaterial because Section 3(b) does not impose such condition.[11]

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[8] *Id.* at 153.

[9] *Id.* at 74.

[10] *Id.* at 79.

[11] *Id.*

Dissatisfied, the petitioners moved for reconsideration,[12] but the RTC denied their motion on March 30, 2011.[13]

Thus, on June 23, 2011, the petitioners filed directly to this Court a petition for certiorari claiming that the RTC resorted to impermissible shortcuts in dealing with the constitutional issues raised.[14] They insist that Section 3(b) is unconstitutional and antiquated, and pray for the Court to issue an Order "*declaring*" that the appointing power should be lodged with the Mayor of the city or municipality: (i) which participated in the formation of the water district[15] and (*ii*) where a ***majority*** of the LWD's water service connections lie.[16]

The Ponencia and my Dissent

The *ponencia* granted the petition, and ruled that the RTC committed grave abuse of discretion.

According to the *ponencia*, while the RTC ***"discharged" its "duty to determine and (to) decide the issue of constitutionality,"***[17] the RTC nevertheless "*skirt[ed] the duty of judicial review*"[18] *by improperly treating Section 3(b) as a "political question."*[19]

As for the petitioners' constitutional challenge, the *ponencia* ruled that Section 3(b) had been superseded by the LGC and the constitutional provisions on local autonomy which granted highly urbanized cities, such as Cebu City, independence from the province.[20]

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[12] *Id.* at 189.

[13] *Id.* at 6.

[14] *Id.* at 26.

[15] *Id.* at 65.

[16] *Id.*

[17] Page 8 of the *Ponencia*.

[18] *Id.* at 10.

[19] *Id.* at 9.

[20] *Id.* at 12.

The *ponencia* likewise ruled that Section 3(b) violates the due process and the equal protection clause.

According to the *ponencia*, while Section 3(b) was initially valid when enacted in 1973, the intervening reclassification of Cebu City into a highly urbanized city, and the subsequent enactment of the 1991 Local Government Code rendered Section 3(b)'s continued application unreasonable and unfair.[21]

The *ponencia* noted that 61.28% of MCWD's water connections are located in Cebu City, whereas the province's component cities and municipalities only account for 16.92% of MCWD's water connections.[22] Thus, to continuously uphold the validity of Section 3(b) — which grants the Governor the appointing power — is no longer germane to PD 198's objective, which is to provide adequate, quality, and reliable water services to local communities and their growing populations.[23]

I disagree with these positions; hence, this dissent.

In my opinion, the present petition must be dismissed because: ***first***, the petitioners disregarded the hierarchy of courts; ***second***, the RTC did not commit grave abuse of discretion; ***and third***, Section 3(b) does not violate the Constitution, nor was it superseded by the Local Government Code, or by Cebu City's reclassification as a highly urbanized city.

I. The Petitioners disregarded the Hierarchy of Courts.

Section 5(2)(a), Article VIII of the 1987 Constitution states:

> SECTION 5. The Supreme Court shall have the following powers:
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> x x x x x x x x x

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[21] *Id.* at 17.

[22] *Id.*

[23] *Id.* at 17-18.

(2) **Review, revise, reverse, modify, or affirm on appeal or *certiorari,* as the law or the Rules of Court may provide**, final judgments and orders of lower courts in:

(a) **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**. (omissions and emphases supplied)

x x x x x x x x x

Unquestionably, this Court has the original jurisdiction to issue writs of *certiorari* against final judgments resolving the constitutionality or validity of laws, including presidential decrees. However, this Court's *certiorari* jurisdiction is not exclusive.

No less than the Constitution states that this Court's power to revise, reverse, or modify final judgments on *certiorari* is subject to what "the law or the Rules of Court may provide."

Section 9 of Batas Pambansa 129, otherwise known as the Judiciary Reorganization Act of 1980, as amended by Republic Act No. 7902,[24] also grants the Court of Appeals (*CA*) *original jurisdiction* to issue writs of *certiorari* whether or not in aid of its appellate jurisdiction:

Section 9. *Jurisdiction*. The Court of Appeals shall exercise:

1. Original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari, habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction;

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Thus, this Court's original jurisdiction to issue writs of *certiorari* (as well as prohibition, mandamus, *quo warranto, habeas corpus*, and injunction) is not exclusive. Its jurisdiction

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[24] An Act Expanding The Jurisdiction of the Court of Appeals, Amending for the Purpose Section Nine Of Batas Pambansa Blg. 129, as Amended, Known As The Judiciary Reorganization Act of 1980.

is concurrent with that of the CA and, in proper cases, with the RTCs.[25]

However, such concurrence of jurisdiction does not give a party the absolute freedom to file his petition with the court of his choice.[26] Parties must observe the *principle of judicial hierarchy of courts* before they can seek relief directly from this Court.

The principle of judicial hierarchy ensures that this Court remains a court of last resort. Unwarranted demands upon this Court's attention must be prevented so that the Court may devote its time to more pressing matters within its exclusive jurisdiction.[27] Thus, petitions for the issuance of extraordinary writs against first level (inferior) courts should be filed with the RTC, and those against the RTC with the CA.[28]

In this case, since the petitioners insist on filing a Petition for *Certiorari*, they should have done so before the CA. Hence, *I vote to dismiss the petition*.

Neither do I find anything special or important in this case to invoke the Court's original *certiorari* jurisdiction. Neither the petitioner nor the respondent allege that MCWD's operations has been, or will be paralyzed, simply because the appointing power has shifted from one government official to another.

At any rate, what is clear to me is that MCWD's operations are not hampered by the existence of the constitutional issues presented before us, and that the CA is more than capable of resolving the present petition.

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[25] *Cruz v. Gingoyon*, G.R. No. 170404, September 28, 2011, 554 SCRA 50, citing *Ouano v. PGTT International Investment Corp.*, 434 Phil. 28, 34 (2002).

[26] *Id.*, *Cruz v. Gingoyon*.

[27] *Id.*

[28] *Id.*

II. The RTC did not commit grave abuse of discretion.

In any case, I am of the view that the RTC did not commit grave abuse in the exercise of its discretion.

Courts have the power to determine the constitutionality of statutes. This power, aptly named as the power of judicial review, is incidentally also a duty and a limitation.

It is a ***duty*** because it proceeds from the Court's expanded power 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.[29]

It is also a ***limitation*** because Courts can only exercise the power of judicial review if: (1) the case presents an actual case or justiciable controversy; (2) the constitutional question is ripe for adjudication; (3) the person challenging the act is a proper party; and (4) the issue of constitutionality was raised at the earliest opportunity and is the very *litis mota* of the case.[30]

Lower courts share this duty and limitation.[31] Consequently, a refusal on the lower court's part to engage in judicial review,

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[29] SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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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.

[30] *Funa v. Villar*, G.R. No. 192791, April 24, 2012, 670 SCRA 579, 593. According to Black's Law Dictionary (Ninth Edition), *lis motais* "means [a] dispute that has begun and later forms the basis of a lawsuit."

[31] This Court's power to "review, revise, reverse, modify or affirm on appeal or *certiorari*" final judgments and orders of lower courts in cases involving the constitutionality of statutes means that the resolution of such cases may be made in the first instance by the lower courts. See *Ynot v. Intermediate Appellate Court*, G.R. No. 74457, March 20, 1987, 148 SCRA 659, 660.

whenever warranted, is a virtual refusal to perform a duty[32] correctible by a petition for *certiorari*.

Certiorari, however, is not synonymous with appeal.

Appeal is the proper remedy where the error is one of fact and/or of law.[33] *Certiorari*, on the other hand, is a remedy designed to correct of errors of jurisdiction and not errors of judgment.[34]

As a rule, erroneous conclusions are correctible by way appeal and not by *certiorari*. Thus, *certiorari* cannot be used to review a decision's wisdom or legal soundness.[35]

However, mere abuse of discretion still does not merit the issuance of a writ of *certiorari*. The petitioner must amply demonstrate **grave abuse of discretion** since the jurisdiction of the court, no less, will be affected.[36] Jurisprudence[37] has defined grave abuse of discretion in this wise:

> Grave abuse of discretion is defined as capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law,

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[32] Grave abuse of discretion is defined as capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. *Marcelo G. Ganaden, et al. v. The Hon. Court of Appeals, et al.*, G.R. Nos. 170500 and 170510-11, June 1, 2011, sc.judiciary.gov.ph.

[33] *Vios v. Pantangco, Jr.*, G.R. No. 163103, February 6, 2009, 578 SCRA 129.

[34] *Id.*

[35] *Id.*

[36] *People v. Nazareno*, G.R. No. 168982, August 5, 2009, 595 SCRA 438, 452-453.

[37] *Supra* note 31.

or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.

Thus, to determine whether the RTC committed grave abuse of discretion, the Court must go beyond the present petition, and determine whether the RTC resolved the constitutional issues framed by the parties before it.

In other words, we should determine how the petitioners attacked Section 3(b)'s constitutionality before the RTC, and from this prism, determine if the RTC's resolution of the constitutional questions, or the lack thereof, consists of grave abuse of discretion.

The petitioners' arguments before the RTC

The petitioners argued before the RTC that Section 3(b) is unconstitutional for violating *substantive due process* and *the equal protection clause.*

The petitioners' *substantive due process* argument is based on two points:

First, the power to appoint the MCWD Board is Cebu City's *proprietary function* because most of MCWD's waterworks originated from the Osmeña Waterworks srsstem (*OWS*) — a water district organized and owned by the City of Cebu.[38]

Thus, they argue that Section 3(b) *violates substantive due process* because it allows the Province of Cebu—an LGU which did not participate in MCWD's creation, and whose component

[38] The petitioners argued in the court below that "[MCWD] is a government corporation, whose existence emanates from the patrimony of local governments, particularly Cebu City's Osmeña Waterworks, which maintains and services the majority of water consumers within the district. They are paid only through an annual in-lieu shares with restrictions; thus the exercise of the authority of appointment to the governing body of MCWD is not a political power but a proprietary right. *Rollo,* p. 122.

cities and municipalities have a *minority* of MCWD's water connections—to deprive Cebu City of its proprietary right; *and*

Second, Section 3(b)'s 75% threshold is *arbitrary*.[39]

To stress their point, the petitioners asked the RTC why PD 198 set the threshold at 75%, and not "80%, 85%, 90%," "30% or 40%."[40] They blame the Section 3(b)'s numerical sloppiness on the martial law days, when anything signed by the President became law.[41]

As for their equal protection argument, the petitioners claim that Cebu City is a highly urbanized city and is therefore, a co-equal of the Province of Cebu. Thus, the Province of Cebu has no right to interfere with, or exercise its power of supervision over Cebu City insofar as the MCWD is concerned.[42]

The RTC's ruling on the Constitutional Issues.

A reading of the RTC's eight-page decision[43] shows that the presiding judge had considered all of the parties' arguments, and limited the issues into three:

a) Who has the authority to appoint the members of the Board of Directors of the [MCWD] under [PD 198];

b) The constitutionality of Section 3(b) of PD 198; and

c) Whether or not the Province of Cebu is a participant in the operation, management and organization of MCWD.[44]

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[39] *Id.* at 184.

[40] *Id.*

[41] *Id.*

[42] *Id.* at 121.

[43] *Id.* at 73-80.

[44] *Id.* at 74.

As I discussed at the beginning of this dissent, the RTC resolved the first issue.

As for the second and third issues, the presiding judge wrote:

> As to the constitutionality of the questioned provision, the Court finds that Section 3, of PD 198 does not violate the Constitution or the Local Government Code. **Vesting the authority in the governor to appoint a member of the board of directors of a water district is not intruding into the affairs of the Highly Urbanized Cities** and component cities which comprise the district and neither is it a threat to their autonomy. **It does not interfere with their powers and functions and neither can it be considered an exercise of the provincial government's supervisory powers.** At most it is simply giving the authority to appoint to the head of the government unit (the governor) where all the members of the water district are geographically located, and only when none of these cities and municipalities has the required 75% of the active water connections. **Nevertheless, the issue is not whether the governor took part in organizing the water district or has contributed to its formation, but that by law,** she has been made the appointing authority even if she has no participation or involvement in the cooperative effort of the members of the water district. **This may not be the most expedient and appropriate solution, but still, it is not illegal. As to why this is so is a question only our lawmakers could answer.** (emphasis supplied).

While the presiding judge had devoted only one paragraph to address the second and third issues, he emphasized three observations: ***first,*** Section 3(b) is not an intrusion into Cebu City's autonomy; ***second,*** the issue is not whether the governor participated in organizing the water district, but whether the law granted him the power to appoint the LWD's board of directors; ***and third,*** granting the power appoint to the governor may not be the most appropriate solution but it is not illegal.

I find that the above observations satisfactorily addressed the petitioners' constitutional challenge. In fact, no less than the petitioners themselves admitted in their December 30, 2010 motion for reconsideration before the RTC that they (petitioners)

"fully [appreciate] the extensive effort made by the Court in arriving at its conclusions for its decision."[45]

If there is any flaw in the RTC's decision at all, it would be the lack of a more detailed discussion.

Despite this flaw, however, I disagree with the *ponencia's* conclusion that the RTC **gravely** abused its discretion because it ***improperly relied*** on the political question doctrine to skirt the duty of judicial review.[46]

To my mind, albeit not exhaustively, the RTC exercised its power of judicial review and, therefore, did not commit grave abuse of discretion.

The November 16, 2010 decision does not ***patently*** show that the RTC ***arbitrarily, capriciously, or whimsically*** withheld the power of judicial review. On the contrary, as the *ponencia* itself noted, "the RTC, which indisputably had the power and the duty to determine and decide the issue of constitutionality of Section 3(b) of P.D. 198, **discharged its duty**."[47]

Admittedly, the presiding judge's writing style which did not address the constitutional issues point-by-point may have resulted in a poorly written draft. Still, the draft's poor quality does not amount to grave abuse of discretion in the absence of arbitrariness or personal hostility on the part of the trial judge. *This Court must not allow litigants to directly resort to certiorari petitions simply because they think the presiding judge lacked the skill to close out all arguments presented before the trial court.*

In any case, I find that the petitioners not only made the mistake of filing their petition for certiorari with the wrong court, they also made the mistake of filing with this Court a wrong petition.

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[45] *Id.* at 189.

[46] As such, the political question doctrine was improperly relied upon by the RTC to skirt the duty of judicial review. Page 10 of the *Ponencia*.

[47] *Id.* at 8.

Notably, appeals from the RTC, in the exercise of its original jurisdiction, where only questions of law are raised or are involved, are filed directly with this Court *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.[48]

Thus, had petitioners simply stuck with the constitutional issues instead of filing a baseless petition for *certiorari*, they could have appealed directly to the Court on pure questions of law. This, in my view, is the petitioners' more plain, speedy, and adequate remedy.

III. Section 3(b) is Neither Unconstitutional Nor Antiquated.

Procedural niceties aside, I still vote to dismiss the petition on the merits.

A close analysis of the petitioners' due process position shows that they do not have the requisite standing to question Section 3(b)'s validity based on the due process clause. Neither do I agree with the *ponencia* that Section 3(b) is unconstitutional for violating the equal protection clause, or that it has become antiquated with the advent of the Local Government Code.

Petitioners have no Locus Standi.

Section 1, Article III of the 1987 Constitution states that "no person shall be **deprived** of life, liberty or property without due process of law."

Due process consists of two broad aspects: the procedural and the substantive.[49]

Procedural due process refers to the procedures that the government must follow before it **deprives** a person of life, liberty, or property.[50] Procedural due process concerns itself

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[48] Section 2 (c), Rule 41 of the Rules of Court.

[49] Santiago, Miriam, *Constitutional Law*, Volume 2, Bill of Rights, 2002 ed., p. 227.

[50] *Lopez v. Director of Lands*, 47 Phil. 23, 32 (1924).

with the established process the government must adhere to before it intrudes into the private sphere.[51] Succinctly, procedural due process is the person's "right to be heard."

If due process were confined solely to its procedural aspects, the government can resort to arbitrary action provided it follows the proper formalities.[52] Substantive due process completes the protection by inquiring whether the government has sufficient justification to **deprive** a person of life, liberty, or property.[53]

Whether in its procedural or substantive aspect, the due process clause is mainly concerned with governmental policies that deprive a person's life, liberty, and property.[54]

Incidentally, one of the requisites of judicial review is that the person who challenges a statute's constitutionality must have *locus standi*.

The rationale for the requirement of *locus standi* is by no means trifle. Not only does it assure the vigorous adversarial presentation of the case; more importantly, it must suffice to warrant the Judiciary's overruling the determination of a coordinate, democratically elected organ of government.[55]

To have *locus standi*, one must show that he has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or the act complained of.[56]

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[51] *White Light Corporation v. The City of Manila*, G.R. No. 122846, January 20, 2009, 576 SCRA 416.

[52] *Id.* at 419.

[53] *Id.*; See *City of Manila v. Hon. Laguio, Jr.*, G.R. No. 118127, April 12, 2005, 455 SCRA 308 citing CHEMERINSKY, ERWIN, *CONSTITUTIONAL LAW PRINCIPLES AND POLICIES*, 2nd Ed. 523 (2002).

[54] *Supra* note 49.

[55] *Galicto v. Aquino, III*, G.R. No. 193978, February 28, 2012, 667 SCRA 150, 172.

[56] *Anak Mindanao Party-List Group v. The Executive Secretary*, G.R. No. 166052, 531 SCRA 583, citing *Agan, Jr. v. Phil. International Air Terminals Co., Inc.*, 450 Phil. 744 (2003).

In other words, locus standi or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain **direct injury** as a result of the governmental act that is being challenged.[57]

The acceptable degree of standing, however, varies between private suits, on one hand, and public suits, on the other.

In public suits, the *plaintiff* who asserts a "public right" in assailing an allegedly illegal official action, does so as a representative of the general public. He may be a person who is affected no differently from any other person. He could be suing as a "stranger," or in the category of a "citizen," or "taxpayer."[58]

I wish to emphasize, however, that insofar as the due process challenge is concerned, the petitioners are not suing on behalf of their constituents. Instead, the City of Cebu questions Section 3(b)'s arbitrariness from a private standpoint.

To repeat, the petitioner Cebu City claims that the operation of LWDs, such as the MCWD, is a **patrimonial property** of the local government unit it serves.[59]

In support of this view, the City points out that MCWD's assets originated from the Osmeña Waterworks System (*OWS*) — a waterworks system previously operated and maintained by the City of Cebu. They argue that since the Province of Cebu never invested in the OWS,[60] or in the MCWD, the Governor has no right to appoint the members of the MCWD Board.

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[57] *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 893 (2003).

[58] *LAMP v. Secretary of DBM*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 375, citing *David v. Macapagal-Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489, and 171424, May 3, 2006, 489 SCRA 160.

[59] *Rollo*, p. 54.

[60] *Id.* at 11.

I disagree with this view as the City of Cebu has no proprietary right over MCWD's waterworks.

The History of the City of Cebu, PD 198 and the MCWD

To determine whether the petitioners' argument has merit, we must briefly trace the history of the City of Cebu, PD 198, and the MCWD.

In the early part of the 20th century, the Municipality of Cebu's water supply was provided and maintained by the Osmeña Waterworks System (OWS).[61]

In 1934,[62] Commonwealth Act No. 58 transformed the municipality of Cebu into a city. In 1964, the City's Revised Charter[63] placed the exclusive ownership, control, direction and supervision of the OWS to the City of Cebu.[64]

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[61] *Id.* at 73.

[62] https://www.cebucity.gov.ph/index.php/home-new/cebu-city-charter, last accessed December 6, 2016.

[63] Republic Act No. 3857.

[64] *Id.*, Section 31 (30) To provide for the establishment and maintenance and regulate the use of public drains, sewers, latrines, and cesspools; to regulate the construction and use of private sewers, drains, cesspools, water closets and privies; to provide for the establishment and maintenance of waterworks, for the purpose of supplying water to the inhabitants of the city, and for the purification of the source of water supply and places through which the same passes, and to regulate the consumption and use of the water; to fix and provide for the collection of rents therefore, and to regulate the construction, repair, and use of hydrants, pumps, cisterns and reservoirs. Any and all waterworks systems, including the Osmeña Waterworks System, provided for or undertaken by the city government shall exclusively belong to it, such that the city shall have the exclusive control, direction and supervision over the same, and all laws and executive orders and circulars issued by the Office of the President making reference to the ownership, possession, control and operation of waterworks and sewers shall not be applicable to the City of Cebu.

Acknowledging the lack of water utilities and the poor water quality in provincial areas,[65] President Ferdinand Marcos issued PD 198 on May 25, 1973.

PD 198 seeks to provide quality, adequately pressured and reliable water service by encouraging LGUs to form local water districts, and **to transfer thereto** existing water supply and wastewater disposal facilities on a local option basis.[66] In turn, the National Government promises LGUs support in the areas of technical advisory, service, and financing.[67]

To create LWDs, PD 198 authorized LGUs to form water districts by enacting Resolutions for the purpose, and by filing copy/ies of the resolution/s to the Local Water Utilities Administration (*LWUA*) — an office attached to the office of the president.[68]

Once formed, the districts shall become government-owned and - controlled corporations (GOCC)[69] ***and will NO longer be under the jurisdiction of any political subdivision.***[70]

Under these terms, the City of Cebu, through the then mayor Engr. Eulogio Borres, approved on May 9, 1974 Resolution No. 873 creating the MCWD.[71] Thereafter, ***the City of Cebu***

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[65] PD 198 "whereas" clauses of the law explain the need to establish local water districts.

[66] Section 2, Title I, Presidential Decree No. 198.

[67] WHEREAS, local water utilities should be locally-controlled and managed, as well as have support on the national level in the area of technical advisory services and financing; Presidential Decree No. 198.

[68] Section 49, PD 198, as amended by Section 21, PD 768.

[69] The PD originally reads: "For purposes of this Act, a district shall be considered a quasi-public corporation x x x." However, in the 1991 case of *Davao City Water District, et al. vs.* CSC, *et al.*, the Supreme Court ruled that LWUs are government-owned and -controlled corporations.

[70] Section 6, PD 198.

[71] Executive Summary of COA 2014 Report on MCWD http://www.coa.gov.ph/phocadownloadpap/userupload/annual_audit_report/GOCCs/2014/COA-Regional-Office/Region-VII/MetropolitanCebuWD-R7_ES2014.pdf, last accessed December 6, 2016.

transferred all of OWS' assets and facilities (approximately worth ₱25.4 million Pesos[72]) to MCWD.[73]

Soon after, the City Councils of Mandaue and Lapu-Lapu, and the municipal governments of Compostela, Consolacion, and Cordova, all located within the Province of Cebu, approved concurring resolutions turning over their respective waterworks to MCWD.[74]

Section 3(b) does not deprive The City of Cebu of any proprietary right.

Based on the above facts, I see no merit in Cebu City's claim that it retains proprietary rights over MCWD's waterworks. The MCWD is a separate and distinct entity from the LGUs it serves, including the City of Cebu.

Neither can the City of Cebu claim that it retains ownership, or that it has a better right, over MCWD's waterworks than any other LGU. That the City of Cebu had transferred all of OWS' waterworks to the MCWD, to my mind, is beyond question.

Without any property right over MCWD's waterworks, the City of Cebu cannot claim that Section 3(b) operates to **deprive it** of any property right without due process of law. Accordingly, the City of Cebu lacks the requisite standing to question Section 3(b)'s constitutionality under the due process clause.[75]

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[72] Executive Summary of COA 2014 Report on MCWD. http://www.coa.gov.ph/phocadownloadpap/userupload/annual_audit_report/GOCCs/2014/COA-Regional-Office/Region-VII/MetropolitanCebuWD-R7_ES2014.pdf, last accessed December 6, 2016.

[73] *Rollo*, p. 129.

[74] *Id.* at 11 and 134-141.

[75] *Locus standi* or legal standing has been defined as a **personal and substantial interest** in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question on standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for

In these lights, I cannot but disagree with the *ponencia's* conclusion that since "it had always been the City Mayor of the City of Cebu who had appointed the members of the MCWD Board of Directors regardless of the percentage of the water subscribers, [the *ponencia*'s] pronouncement herein rests on firm ground."[76]

Nothing in PD 198 implies that the power to appoint the members of the LWD's Board of Directors is a right that can be acquired or vested thru time. On the contrary, and as I will discuss further, PD 198 designed the appointing power to shift depending on the circumstances.

Section 3(b) does not violate the equal protection clause.

The equal protection clause guarantees the *legal equality* of all persons before the law.[77] The equality guaranteed, however, is not a disembodied equality, and does not deny the State the power to recognize and act upon factual differences between individuals and classes.[78]

Accordingly, the equal protection of the law is not violated by a legislation based on reasonable classification. To be reasonable, the classification: (1) must rest on substantial distinctions; (2) must be germane to the law's purpose; (3) must not be limited to existing conditions only; and (4) must equally apply to all members of the same class.[79]

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illumination of difficult constitutional questions. This requirement of standing relates to the constitutional mandate that this Court settle only actual cases or controversies. *Supra* note 55.

[76] See pp. 15-16, *Ponencia*.

[77] Bernas, Joaquin, *the 1987 Constitution of the Republic of the Philippines*, a commentary. 2009 ed., p. 139, citing II Schwartz, The Right of the Person, 487-8 (1968).

[78] Bernas, Joaquin, *the 1987 Constitution of the Republic of the Philippines*, a commentary, 2009 ed., p. 139.

[79] *People v. Cayat*, 68 Phil. 12, 83, 90 (1951).

The City of Cebu claims that Section 3(b) violates the equal protection clause because it gives the province the unreasonable and unwarranted benefit of appointing the MCWD's Board of Directors.

The *ponencia* agreed with the petitioners, and ruled that while the substantial distinctions espoused by Section 3(b) were germane to PD 198's purpose at the time of its enactment, the City of Cebu's intervening reclassification into a Highly Urbanized City and the subsequent enactment of the Local Government Code rendered Section 3(b)'s continued application unreasonable.[80]

Hence, the *ponencia* opines that Section 3(b) is invalid because it: (i) ignores the province's lack of participation in creating the MCWD; (ii) fails to consider the needs of the *majority*; (iii) runs counter to PD 198's objective to improve the water service connection while keeping up with the needs of the growing population.[81]

I again disagree with this position. To my mind, the *ponencia* missed out on one of PD 198's main purposes.

PD 198's purpose is to expand the LWD's services without being hampered by any LGU.

One of PD 198's purposes is to extend reliable and economically viable and sound water supply and wastewater disposal systems[82] to meet the need of communities, including those who receive no piped water service whatsoever.[83]

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[80] Page 17 of the *Ponencia*.

[81] *Id.*

[82] See Section 2, Title I, PD 198.

[83] WHEREAS, existing domestic water utilities are not meeting the needs of the communities they serve; water quality is unsatisfactory; pressure is inadequate; and reliability of service is poor; in fact, many persons receive no piped water service whatsoever;

To enable LWDs to expand its services, PD 198 allows LWDs to Annex and De-Annex (and whenever necessary exclude) territories.[84] To this end, LWDs can enter into contracts,[85] acquire and construct waterworks,[86] and exercise the power of eminent domain.[87]

To reiterate, LWDs are GOCCs that are independent from any political subdivision. ***All powers, privileges, and duties of the LWD are exercised and performed by and through the LWD's board of directors,***[88] ***and not by any LGU official.***

Accordingly, neither the LGUs, which created the LWD, nor the LGU official, to whom the appointing power resides, can countermand the LWD should it decide to expand its services, regardless if the expansion *dilutes* or *increases* the city's or municipality's waterworks connection below or above the 75% threshold. In fact, PD 198 expressly prohibits LGUs from "dissolving, altering or affecting" the LWDs they created.[89]

PD 198's purpose in this aspect is not difficult to appreciate. By ensuring their independence, LWDs are freed from the political strings of the LGUs that created them, thus enabling LWDs to expand and serve the country's increasing populace.

Section 3(b) contains a Reasonable classification.

With PD 198's purpose in mind, I find that Section 3(b) contains a reasonable classification.

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[84] By filing the appropriate resolutions to, and after hearing conducted by, the LWUA; See Sections 42 and 43 of the PD 198, as amended by PD 768.

[85] Section 31 of PD 198.

[86] *Id.*, Section 26.

[87] *Id.*, Section 25, as amended by Section 4, PD 1479.

[88] Section 17, of PD 198.

[89] Section 6, PD 198 states that "Nothing in the resolution of formation shall state or infer that the local legislative body has the power to dissolve, alter or affect the district beyond that specifically provided for in this Act."

One substantial distinction between provinces, on one hand, and cities (whether component, highly urbanized, or independent) and municipalities, on the other, is the land areas they cover.

Under the Local Government Code, a province must have a contiguous territory of at least two thousand (2,000) square kilometers.[90] On the other hand, a city or a municipality must have a contiguous territory of at least one hundred (100), and fifty (50) square kilometers, respectively.[91]

By giving the Governor the power to appoint, Section 3(b) entrusts the appointing power to the highest local official who oversees the *largest geography where the LWD may expand its operations*.

However, Section 3(b) also realizes that confining the appointing power to the Governor loses its relevance where the LWD operates *almost entirely* within a single city or municipality. Thus, as an alternative, Section 3(b) lodges the appointing power with the Mayor of the City or Municipality where 75% or 3/4 of the LWDs water connections are located.

Neither was the 75% threshold created to favor Governors, as specific class, over Mayors; nor is it limited to conditions existing at the time PD 198 was enacted, or at the time an LWD is created.

The phrase "***In the event*** that more than seventy-five percent of the total active water service connections of a local water district are within the boundary of any city or municipality" ***signifies that the appointing power may shift at any time depending on the circumstances***.

To illustrate this dynamic, while the province of Cebu now enjoys the appointing power, a future increase in MCWD's water connections within Cebu City may re-shift the appointing power to the Mayor.

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[90] Section 461 of the Local Government Code.

[91] *Id.*, Sections 450 and 442, respectively.

Finally, do I not see anything wrong in applying the 75% threshold to all cities, regardless of their respective status as a component, independent component or highly urbanized.

Ironically, what would consist of discrimination is to treat highly urbanized and independent component cities differently from component cities on the supposed reason that the former enjoys autonomy over its territory. ***The authority to appoint, as I will discuss below, does not equate to control over the other LGUs serviced by an LWD.***

Section 3(b) is not superseded by the Local Government Code.

The main flaw in the petitioners' argument and corollary, in the *ponencia's* conclusions, is the misconception that PD 198 grants the appointing power *control* over LWDs and, therefore, violates the constitutional and statutory provisions on local autonomy.

This is simply not the case.

All laws including Presidential Decrees issued by President Marcos enjoy the presumption of constitutionality. Both the 1986 Freedom[92] and the 1987[93] Constitutions recognize the validity of PDs unless and until they are amended, repealed, and revoked.

Hand in hand with the presumption of validity, this Court must first attempt to harmonize Section 3(b) with other laws on the same subject matter so as to form a complete, coherent,

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[92] Section 1, Article IV of the Freedom Constitution states that "All existing laws, decrees, executive orders, proclamations, letters of instruction, implementing rules and regulations, and other executive issuances not inconsistent with this Proclamation shall remain operative until amended, modified, or repealed by the President or the regular legislative body to be established under a New Constitution."

[93] Section 3, Article XVIII of the 1987 Constitution states that "All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked."

and intelligible system.[94] In other words, the Court must exercise every effort to harmonize seemingly conflicting laws. It is only when harmonization is impossible that the Court must choose which law to uphold.

As I discussed above, the appointing power has NO control over the LWD. ***Since the appointing power has no control over the LWD, Section 3(b) does not create a link between the LGU where the appointing power sits, and the LGUs served by the LWD.***

As applied to this case, reposing the appointing authority on the Governor of Cebu ***does not*** grant the provincial government control or supervision over Cebu City or over the other LGUs where the LWD operates. In the same way, the Mayor of Cebu — during the period he/she exercised the appointing power — never exercised control or supervision over the other LGUs served by MCWD, *i.e.*, Mandaue City, Lapu-Lapu City, Talisay City, and the municipalities of Liloan, Compostela, Consolacion and Cordova.

In short, the shift of the appointing power to the Governor does not infringe on the autonomy that Cebu City enjoys as a highly urbanized city.

Neither do I subscribe to the view that the power to appoint is a form of indirect control over the appointee.

In this jurisdiction, it is not a novel setup to grant the appointing authority to a person who, after making the appointment, renounces complete control over the appointee.

For instance, while the President has the power to appoint the commissioners of the Constitutional Commissions,[95] judges,[96] and even the members of this Court,[97] the President

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[94] *Dreamwork Construction v. Janiola*, G.R. No. 184861, June 30, 2009, 591 SCRA 466, citing R.E. Agpalo, *STATUTORY CONSTRUCTION 97* (4th ed., 1998), pp. 269-270.

[95] Section B, 1 (2); C, 1 (2); D, 1 (2), Article IX, Constitution.

[96] Section 9, Article VIII, Constitution.

[97] *Id.*

does not exercise any degree of control over the appointee. While the appointing power may enjoy his appointee's loyalty, such circumstance does not reduce the latter's independence; loyalty and lack of independence may amount to an ethically and legally objectionable situation.

In these lights, I cannot but disagree with the *ponencia*'s conclusion that Section 3(b) was superseded by the constitutional provisions on local autonomy, as implemented by the Local Government Code.[98]

At any rate, I find nothing irreconcilable between Section 3(b) and the Local Government Code. On the contrary, a reading of the law shows that Congress created the Local Government Code with PD 198 in mind.

While the Local Government Code mandates and empowers the Sangguniang Panlalawigan,[99] Panlunsod[100] and

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[98] Page 15 of the *Ponencia*.

[99] Section 468. *Powers, Duties, Functions and Compensation.* —

(a) The sangguniang panlalawigan, as the legislative body of the province, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the province and its inhabitants xxx and shall:

x x x x x x x x x

(4) Approve ordinances which shall ensure the efficient and effective delivery of basic services and facilities as provided for under Section 17 of this Code, and, in addition to said services and facilities, shall:

x x x x x x x x x

(ii) **Subject to applicable laws**, facilitate or provide for the establishment and maintenance of **waterworks system or district waterworks** for supplying water to inhabitants of component cities and municipalities; xxx (omission and emphasis supplied)

[100] Section 458. *Powers, Duties, Functions and Compensation.* —

(a) The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants xxx and shall:

x x x x x x x x x

Bayan[101] "to enact ordinances, approve resolutions, and appropriate funds" for "the establishment, operation, maintenance, and repair of an efficient waterworks system," the Local Government Code explicitly states the LGU's can only exercise such power "*subject to existing laws*."

Indisputably, one of these existing laws is PD 198.

Following the principle of harmonization of laws, the LWDs created under PD 198 – such as the MCWD – are still governed by PD 198 as a special law. Accordingly, these LWDs remain independent from the political subdivisions they serve, and their subsisting relations with the proper appointing official, as provided for in PD 198, must be respected.

> (5) Approve ordinances which shall ensure the efficient and effective delivery of the basic services and facilities as provided for under Section 17 of this Code, and in addition to said services and facilities, shall:
>
> x x x x x x x x x
>
> (vii) **Subject to existing laws**, establish and provide for the maintenance, repair and operation of an **efficient waterworks system** to supply water for the inhabitants and to purify the source of the water supply; x x x.

[101] Section 447. *Powers, Duties, Functions and Compensation.* —

(a) The sangguniang bayan, as the legislative body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants xxx and shall:

> x x x x x x x x x
>
> (5) Approve ordinances which shall ensure the efficient and effective delivery of the basic services and facilities as provided for under Section 17 of this Code, and in addition to said services and facilities, shall:
>
> x x x x x x x x x
>
> (vii) **Subject to existing laws, provide for the establishment, operation, maintenance, and repair of an efficient waterworks system to supply water for the inhabitants;** xxx. (omission and emphasis supplied)

The Court should not resort to judicial legislation.

As a final note, I wish to address the petitioners' prayer for this Court to "declare" that the appointing power should be lodged with the Mayor of the city or municipality which participated in the LWD's formation and where a *majority* of the LWD's water connections lie.[102]

Citing Judge Learned Hand, the petitioners argue that while Courts cannot engage in judicial legislation, they must fill the gaps in the law.[103] The petitioners argue that by making such declaration, the Court will not be creating a policy but will merely enforce the "constitutional doctrine of majority rule."[104]

I have serious difficulty in accepting this argument.

First and foremost, this Court cannot resort to judicial legislation even if it declares a law unconstitutional.

Second, the petitioners are mistaken in implying that legislative *fiat* will result if this Court declares Section 3(b) void. Section 10 of PD 198 empowers the majority of the incumbent directors to fill vacancies in the board should the appointing power fail to make an appointment.[105]

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[102] *Rollo*, p. 65.

[103] *Id.* at 47.

[104] *Id.*

[105] **Section 10.** *Nominations*. — On or before October 1 of each even-numbered year, the secretary of the district shall conduct each known organization, association, or institution being represented by the director whose term will expire on December 31 and solicit nominations from these organizations to fill the position for the ensuring term. One nomination may be submitted in writing by each such organization to the secretary of the district on or before November 1 of such year: This list of nominees shall be transmitted by the Secretary of the district to the office of the appointing authority on or before November 15 of such year and he shall make his appointment from the list submitted on or before December 15. ***In the event the appointing authority fails to make his appointments on or before December 15, selection shall be made from said list of nominees by majority vote of the seated directors of the district constituting a quorum***. xxx (emphasis and omission supplied)

Lastly, there is simply no constitutional provision or principle that provides for the so-called doctrine of majority rule. In fact, modern legal principles (such as the social justice principle) focus less on numerical superiority and, instead, ensures that the less privileged have more in law.

For all these reasons, I vote to deny the petition.

EN BANC

[G.R. No. 207132. December 6, 2016]

ASSOCIATION OF MEDICAL CLINICS FOR OVERSEAS WORKERS, INC., (AMCOW), REPRESENTED HEREIN BY ITS PRESIDENT, DR. ROLANDO VILLOTE, *petitioner, vs.* **GCC APPROVED MEDICAL CENTERS ASSOCIATION, INC. AND CHRISTIAN CANGCO,** *respondents.*

[G.R. No. 207205. December 6, 2016]

HON. ENRIQUE T. ONA, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF HEALTH, *petitioner, vs.* **GCC APPROVED MEDICAL CENTERS ASSOCIATION, INC. AND CHRISTIAN E. CANGCO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; CHARACTERIZED AS "SUPERVISORY WRIT" UNDER THE RULES OF COURT AND USED FOR PETITIONS INVOKING THE COURTS' EXPANDED JURISDICTION UNDER THE CONSTITUTION.— The use

of petitions for *certiorari* and prohibition under Rule 65 is a remedy that judiciaries have used long before our Rules of Court existed. As footnoted below, these writs — now recognized and regulated as remedies under Rule 65 of our Rules of Court — have been characterized as "supervisory writs" used by superior courts to keep lower courts within the confines of their granted jurisdictions, thereby ensuring orderliness in lower courts' rulings. x x x This situation changed after 1987 when the new Constitution "expanded" the scope of judicial power by providing that – Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine ***whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government***. x x x Meanwhile that no specific procedural rule has been promulgated to enforce this "expanded" constitutional definition of judicial power and because of the commonality of "grave abuse of discretion" as a ground for review under Rule 65 and the courts' expanded jurisdiction, the Supreme Court – *based on its power to relax its rules* – allowed Rule 65 to be used as the medium for petitions invoking the courts' expanded jurisdiction based on its power to relax its Rules. This is however an *ad hoc* approach that does not fully consider the accompanying implications, among them, that Rule 65 is an essentially distinct remedy that cannot simply be bodily lifted for application under the judicial power's expanded mode. The terms of Rule 65, too, are not fully aligned with what the Court's expanded jurisdiction signifies and requires.

2. ID.; ID.; ID.; ID.; BASIC REQUIREMENT IS THE PRESENCE OF ACTUAL CONTROVERSY.— Basic in the exercise of judicial power – whether under the traditional or in the expanded setting – is the presence of an actual case or controversy. For a dispute to be justiciable, a legally demandable and enforceable right must exist as basis, and must be shown to have been violated. Whether a case actually exists depends on the pleaded allegations, as affected by the elements of ***standing*** x x x The Court's expanded jurisdiction – ***itself an exercise of judicial power*** – does not do away with the actual case or controversy requirement in presenting a constitutional issue, but effectively simplifies this requirement by merely

requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act.

3. ID.; ID.; ID.; ID.; ID.; ON ACTIONS CORRECTIBLE BY *CERTIORARI*; PETITIONS UNDER THE EXPANDED JURISDICTION INVOLVES COMMISSION BY ANY BRANCH OF GOVERNMENT OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHILE RULE 65 CONFINES COURT *CERTIORARI* ACTION SOLELY TO THE REVIEW OF *JUDICIAL* AND *QUASI-JUDICIAL* ACTS.— A basic feature of the expanded jurisdiction under the constitutional definition of judicial power, is the authority and command for the courts to act on petitions involving the commission by *any branch or instrumentality of government of grave abuse of discretion amounting to lack or excess of jurisdiction*. This command distinctly contrasts with the terms of Rule 65 which confines court *certiorari* action solely to the review of *judicial* and *quasi-judicial* acts. These differing features create very basic distinctions that must necessarily result in differences in the application of remedies. While actions by lower courts do not pose a significant problem because they are necessarily acting judicially when they adjudicate, a critical question comes up for the court acting on *certiorari* petitions when governmental agencies are involved – ***under what capacity does the agency act?***

4. ID.; ID.; ID.; ID.; ID.; DISTINCTION AS TO THE GROUND OF GRAVE ABUSE OF DISCRETION.— Another distinction relates to the cited ground of a *certiorari* petition under Rule 65 which speaks of *lack or excess of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction*, as against the remedy under the courts' expanded jurisdiction which expressly only mentions *grave abuse of discretion amounting to lack or excess of jurisdiction*. This distinction is apparently not legally significant when it is considered that action outside of or in excess of the granted authority necessarily involves action with grave abuse of discretion: no discretion is allowed in areas outside of an agency's granted authority so that any such action would be a gravely abusive exercise of power. The constitutional grant of power, too, pointedly addresses grave abuse of discretion *when it amounts to lack or excess of jurisdiction*, thus establishing that the presence of jurisdiction

is the critical element; failure to comply with this requirement necessarily leads to the *certiorari* petition's immediate dismissal. x x x [Further,] [i]n the former, the conclusion may be plain illegality or legal error that characterized the law or exec order (as tested, for example, under the established rules of interpretation); no consideration is made of how the governmental entity exercised its function. In the latter case, on the other hand, it is the governmental entity's exercise of its function that is examined and adjudged independently of the result, with impact on the legality of the result of the gravely abusive action. Where the dispute in a case relates to plain legal error, ordinary court action and traditional mode are called for and this must be filed in the lower courts based on rules of jurisdiction while observing the hierarchy of courts. Where grave abuse of discretion is alleged to be involved, the expanded jurisdiction is brought into play based on the express wording of the Constitution and constitutional implications may be involved but this must likewise be filed with the lowest court of concurrent jurisdiction, unless the court highest in the hierarchy grants exemption. Note that in the absence of express rules, it is only the highest court, the Supreme Court, that can only grant exemptions. From these perspectives, the use of grave abuse of discretion can spell the difference in deciding whether a case filed **directly** with the Supreme Court has been properly filed.

5. ID.; ID.; ID.; ID.; ID.; ON EXHAUSTION OF AVAILABLE REMEDIES.— The doctrine of exhaustion of administrative remedies applies to a petition for *certiorari*, regardless of the act of the administrative agency concerned, *i.e.*, whether the act concerns a quasi-judicial, or quasi-legislative function, or is purely regulatory. x x x In every case, remedies within the agency's administrative process must be exhausted before external remedies can be applied. Thus, even if a governmental entity may have committed a grave abuse of discretion, litigants should, as a rule, first ask reconsideration from the body itself, or a review thereof before the agency concerned. This step ensures that by the time the grave abuse of discretion issue reaches the court, the administrative agency concerned would have fully exercised its jurisdiction and the court can focus its attention on the questions of law presented before it. Additionally, ***the failure to exhaust administrative remedies affects the***

ripeness to adjudicate the constitutionality of a governmental act, which in turn affects the existence of the need for an actual case or controversy for the courts to exercise their power of judicial review. The need for ripeness — an aspect of the timing of a case or controversy does not change regardless of whether the issue of constitutionality reaches the Court through the traditional means, or through the Court's expanded jurisdiction. In fact, separately from ripeness, one other concept pertaining to judicial review is intrinsically connected to it; the concept of a case being moot and academic.

6. ID.; ID.; ID.; ID.; ID.; SITUATIONS WHERE A PETITION FOR *CERTIORARI* MAY BE USED.— The process of questioning the constitutionality of a governmental action provides a notable area of comparison between the use of *certiorari* in the traditional and the expanded modes. **Under the traditional mode**, plaintiffs question the constitutionality of a governmental action through the cases they file before the lower courts; the defendants may likewise do so when they interpose the defense of unconstitutionality of the law under which they are being sued. A petition for declaratory relief may also be used to question the constitutionality or application of a legislative (or quasi-legislative) act before the court. For quasi-judicial actions, on the other hand, *certiorari* is an available remedy, as acts or exercise of functions that violate the Constitution are necessarily committed with grave abuse of discretion for being acts undertaken outside the contemplation of the Constitution. Under both remedies, the petitioners should comply with the traditional requirements of judicial review. In both cases, the decisions of these courts reach the Court through an appeal by *certiorari* under Rule 45. In contrast, existing Court rulings in the **exercise of its expanded jurisdiction** have allowed the direct filing of petitions for *certiorari* and prohibition with the Court to question, for grave abuse of discretion, actions or the exercise of a function that violate the Constitution. The governmental action may be questioned regardless of whether it is quasi-judicial, quasi-legislative, or administrative in nature. The Court's expanded jurisdiction does not do away with the actual case or controversy requirement for presenting a constitutional issue, but effectively simplifies this requirement by merely requiring a *prima facie* showing of grave abuse of discretion in the exercise of the governmental act. To return to

judicial review, in constitutional cases where the question of constitutionality of a governmental action is raised, the judicial power the courts exercise is likewise identified as the ***power of judicial review*** – the power to review the constitutionality of the actions of other branches of government. As a rule, as required by the ***hierarchy of courts principle***, these cases are filed with the lowest court with jurisdiction over the matter. x x x In the **non-constitutional situation**, the same requirements essentially apply, less the requirements specific to the constitutional issues. In particular, there must be an actual case or controversy and the compliance with requirements of standing, as affected by the hierarchy of courts, exhaustion of remedies, ripeness, prematurity, and the moot and academic principles.

7. ID.; ID.; ID.; REQUIREMENT OF "STANDING," DISCUSSED.— Under both situations, the party bringing suit must have the necessary "standing." This means that this party has, in its favor, the demandable and enforceable right or interest giving rise to a justiciable controversy after the right is violated by the offending party. The necessity of a person's standing to sue derives from the very definition of judicial power. Judicial power includes the duty of the courts to settle actual controversies involving rights which are legally demandable and enforceable. *Necessarily, the person availing of a judicial remedy must show that he possesses a legal interest or right to it, otherwise, the issue presented would be purely hypothetical and academic.* This concept has been translated into the requirement to have "standing" in judicial review, or to be considered as a "real-party-in-interest" in civil actions, as the "offended party" in criminal actions and the "interested party" in special proceedings. While the Court follows these terms closely in both non-constitutional cases and constitutional cases under the traditional mode, it has relaxed the rule in constitutional cases handled under the expanded jurisdiction mode. In the latter case, a *prima facie* showing that the questioned governmental act violated the Constitution, effectively disputably shows an injury to the sovereign Filipino nation who approved the Constitution and endowed it with authority, such that the challenged act may be questioned by any Philippine citizen before the Supreme Court. In this manner, the "standing" requirement is relaxed compared with the standard of personal stake or injury that the traditional petition requires. The relaxation of the standing requirement

has likewise been achieved through the application of the "transcendental importance doctrine" under the traditional mode for constitutional cases.

8. ID.; ID.; ID.; ID.; ID.; APPLICATION OF THE PRINCIPLE OF HIERARCHY OF COURTS.— Another requirement that a *certiorari* petition carries, springs from the principle of "hierarchy of courts" which recognizes the various levels of courts in the country as they are established under the Constitution and by law, their ranking and effect of their rulings in relation with one another, and how these different levels of court interact with one another. x x x Petitions for *certiorari* and prohibition fall under the concurrent jurisdiction of the regional trial courts and the higher courts, all the way up to the Supreme Court. As a general rule, under the hierarchy of courts principle, the petition must be brought to the lowest court with jurisdiction; the petition brought to the higher courts may be dismissed based on the hierarchy principle. Cases, of course, may ultimately reach the Supreme Court through the medium of an appeal. The recognition of exceptions to the general rule is provided by the Supreme Court through jurisprudence, *i.e.*, through the cases that recognized the propriety of filing cases directly with the Supreme Court. This is possible as the Supreme Court has the authority to relax the application of its own rules.

9. ID.; ID.; *CERTIORARI* AND PROHIBITION; PROPER REMEDY TO ASSAIL THE DEPARTMENT OF HEALTH CEASE AND DESIST ORDER (DOH CDO) ISSUED IN THE EXERCISE OF DOH QUASI-JUDICIAL FUNCTIONS, THE SAME FALLS WITHIN THE JURISDICTION OF THE COURT OF APPEALS.— [T]he Court held that the ***nature of the act to be performed, rather than of the office, board, or body which performs it***, should determine whether or not an action is in the discharge of a judicial or a quasi-judicial function. x x x In the administrative realm, a government officer or body exercises a quasi-judicial function when it hears and determines questions of fact to which the legislative policy is to apply, and decide, based on the law's standards, matters relating to the enforcement and administration of the law. The DOH CDO letter directed GAMCA to cease and desist from engaging in the referral decking system practice within three days from receipt of the letter. By issuing this CDO letter implementing Section 16 of RA No. 10022, the

DOH (1) made the finding of fact that GAMCA implements the referral decking system, and (2) applied Section 16 of RA No. 10022, to conclude that GAMCA's practice is prohibited by law and should be stopped. From this perspective, the DOH acted in a quasi-judicial capacity: its CDO letter determined a question of fact, and applied the legislative policy prohibiting the referral decking system practice. x x x [A]cts or omissions by quasi-judicial agencies, regardless of whether the remedy involves a Rule 43 appeal or a Rule 65 petition for *certiorari*, is cognizable by the Court of Appeals. x x x Since the DOH is part of the Executive Department and has acted in its quasi-judicial capacity, the petition challenging its CDO letter should have been filed before the Court of Appeals. x x x The provision in Section 4, Rule 65 requiring that *certiorari* petitions challenging quasi-judicial acts to be filed with the CA is in full accord with Section 9 of Batas Pambansa Blg. 129 on the same point.

10. ID.; ID.; ID.; REMEDY PREMATURE IN THE PRESENCE OF OTHER PLAIN, SPEEDY, AND ADEQUATE REMEDY; ADMINISTRATIVE REMEDIES, NOT EXHAUSTED.— [T]he Regional Trial Court of Pasay City unduly disregarded the requirements that there be "*no other plain, speedy and adequate remedy at law*" and the doctrine of exhaustion of administrative remedies, when it gave due course to the *certiorari* and prohibition petition against the DOH's CDO. Under Chapter 8, Book IV of Executive Order (*EO*) No. 292, series of 1987, the DOH Secretary "*shall have supervision and control over the bureaus, offices, and agencies under him*" and "*shall have authority over and responsibility for x x x operation*" of the Department. Section 1, Chapter 1, Title I, Book III of EO No. 292 in relation with Article VII, Sections 1 and 17 of the Constitution, on the other hand, provides that the "*President shall have control of all the executive departments, bureaus, and offices.*" These provisions both signify that remedies internal to the Executive Branch exist before resorting to judicial remedies: GAMCA could ask the DOH Secretary to reconsider or clarify its letter-order, after which it could appeal, should the ruling be unfavorable, to the Office of the President. x x x Noncompliance with the Section 1, Rule 65 requirement that there be no other plain, speedy, and adequate remedy in law is more than just a pro-forma requirement in the present case.

Since the petitions for *certiorari* and prohibition challenge a governmental act – *i.e.* action under the DOH CDO letters, as well as the validity of the instruments under which these letters were issued – compliance with Section 1, Rule 65 and the doctrine of exhaustion of administrative remedies that judicial review requires is also mandatory.

11. POLITICAL LAW; POLICE POWER; TO BE REASONABLE, IT MUST SATISFY THE VALID OBJECT AND MEANS METHOD OF ANALYSIS: INTEREST OF THE PUBLIC GENERALLY AND THE MEANS EMPLOYED ARE REASONABLY NECESSARY TO ATTAIN THE OBJECTIVE SOUGHT.— The State's police power is vast and plenary and the operation of a business, especially one that is imbued with public interest (such as healthcare services), falls within the scope of governmental exercise of police power through regulation. As defined, police power includes (1) the imposition of restraint on liberty or property, (2) in order to foster the common good. The exercise of police power involves the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare." By its very nature, the exercise of the State's police power limits individual rights and liberties, and subjects them to the "far more overriding demands and requirements of the greater number." Though vast and plenary, this State power also carries limitations, specifically, it may not be exercised arbitrarily or unreasonably. Otherwise, it defeats the purpose for which it is exercised, that is, the advancement of the public good. To be considered reasonable, the government's exercise of police power must satisfy the "valid object and valid means" method of analysis: ***first***, the interest of the public generally, as distinguished from those of a particular class, requires interference; and ***second***, the means employed are reasonably necessary to attain the objective sought and not unduly oppressive upon individuals.

12. ID.; PRINCIPLE OF SOVEREIGN EQUALITY AND INDEPENDENCE OF STATES; RECOGNITION OF THIS PRINCIPLE IS DIFFERENT FROM EXEMPTING GOVERNMENTS WHOSE AGENTS ARE IN THE PHILIPPINES FROM COMPLYING WITH OUR DOMESTIC LAWS.— In *Republic of Indonesia v. Vinzon*, we recognized the principle of sovereign independence and

equality as part of the law of the land. We used this principle to justify the recognition of the principle of sovereign immunity which exempts the State – both our Government and foreign governments – from suit. x x x [But] [t]his recognition is altogether different from exempting governments whose agents are in the Philippines from complying with our domestic laws. We have yet to declare in a case that the principle of sovereign independence and equality exempts agents of foreign governments from compliance with the application of Philippine domestic law.

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

1. REMEDIAL LAW; JURISDICTION; REGIONAL TRIAL COURTS; ISSUANCE FOR WRITS OF *CERTIORARI* AND PROHIBITION; NOT APPLICABLE TO ENJOIN ISSUANCE OF WRITS WHICH ARE NATIONWIDE IN ITS SCOPE.— The special civil actions filed with the Regional Trial Court were both for the issuance of a writ of *certiorari* and a writ of prohibition. x x x Section 21 of Batas Pambansa No. 129 provides: Section 21. *Original jurisdiction in other cases.* – Regional Trial Courts shall exercise original jurisdiction: (1) In the issuance of writs of certiorari, prohibition, mandamus, quo warranto, *habeas corpus* and injunction which may be enforced in any part of their respective regions[.] The Regional Trial Court of Pasay had jurisdiction over the remedies invoked, which were petitions for a writ of *certiorari* and a writ of prohibition. However, it did not have jurisdiction to enjoin to issue the writs for its intended scope. The Order of the Department of Health dated August 23, 2010 and its reiterative Order dated November 2, 2010 was nationwide in its scope. After all, the Department of Health is a nationwide agency. The respondent GCC Approved Medical Centers Association, Inc. did not clearly and convincingly show that all its members were located only within the territorial jurisdiction of the Regional Trial Court of Pasay City.

2. POLITICAL LAW; JUDICIARY; JUDICIAL REVIEW; CONSTITUTIONAL LITIGATION PROPER ONLY WHEN THERE IS ACTUAL CONTROVERSY.— Fundamental to constitutional litigation is the assurance that

judicial review should only happen when there is an actual case or controversy. That is, the judiciary is not an advisory body to the President, Congress, or any other branch, instrumentality, or agency of the government. Thus, absent any actual or sufficiently imminent breach, which will cause an injury to a fundamental right, a provision of law or an administrative regulation cannot be challenged. This Court is co-equal with the other branches of government. The Constitution is a legible, written document capable of being read by all. Its ambiguity may only be clarified through judicial review when it becomes apparent through the existence of an actual situation. The mere existence of subordinate norms – in the form of a statute, treaty or administrative rule – is not enough. There has to be parties who tend to be directly and substantially injured under a specific concrete set of facts. x x x Petitions for certiorari as provided in Rule 65 are available only to correct acts done in a judicial or quasi-judicial procedure. This ensures that the power of judicial review can only be exercised when there is an actual controversy. No judicial action can happen without interested parties, who suffer injury and therefore ready to plead the facts that give actual rise to their real injury. This is the same with quasi-judicial actions. Ministerial or administrative actions, which will cause or threaten to cause injury can be corrected through a Writ of Prohibition, not a Writ of Certiorari. In both cases, the requirement of the absence of a plain, speedy, and adequate remedy in the ordinary course of the law conforms with the deferential nature of judicial review in constitutional cases. The requirement in both cases that there be a clear finding of grave abuse of discretion amounting to lack of jurisdiction is sufficient to meet the scope of all our powers of judicial review.

APPEARANCES OF COUNSEL

Amora Del Valle & Associates Law Offices for petitioner in G.R. No. 207132.

The Solicitor General for the Secretary of Health.

Navarro Jumamil Escolin & Martinez Law Offices for respondents in G.R. No. 207205.

D E C I S I O N

BRION, *J.*:

In these consolidated **petitions for review on *certiorari***[1] filed under Rule 45 of the Rules of Court, by the Association of Medical Clinics for Overseas Workers, Inc. (*AMCOW*) in **GR No. 207132**, and by Secretary Enrique T. Ona (*Secretary Ona*) of the Department of Health (*DOH*) in **GR No. 207205**, we resolve the challenge to the **August 10, 2012** decision[2] and the **April 12, 2013** order[3] of the Regional Trial Court (*RTC*) of Pasay City, Branch 108, in Sp. Civil Action No. R-PSY-10-04391-CV.[4]

The August 10, 2012 decision and April 12, 2013 order declared null and void *ab initio* the **August 23, 2010** and **November 2, 2010** orders issued by the DOH directing respondent GCC Approved Medical Centers Association, Inc. (*GAMCA*) to cease and desist from implementing the referral decking system (these orders shall be alternately referred to as *DOH CDO letters*).

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[1] G.R. No. 207132, *rollo*, pp. 13-55; G.R. No. 207205, *id.* at 8-37. G.R. No. 207132 is entitled *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) represented herein by its President, Dr. Rolando Villote v. GCC Approved Medical Centers Assodation. Inc., et al.*; while G.R. No. 207205 is entitled *Hon. Enrique T. Ona, in his capacity as Secretary of the Department of Health v. GCC Approved Medical Centers Association, Inc. and Christian E. Cangco*.

[2] Penned by Judge Maria Rosario B. Ragasa, *id.* at 56-66 (G.R. No. 207132) and at 38-48 (G.R. No. 207205).

[3] *Id.* at 68 (G.R. No. 207132) and at 49 (G.R. No. 207205).

[4] The case was originally rallled to RTC, Branch 110 under Judge Petronilo A. Sulla, Jr.; it was reraffled to Branch 108 after Judge Sulla inhibited himself from the case on GAMCA's petition for inhibition (per the Republic's petition in G.R. No. 207205), *rollo*, p. 14. See G.R. No. 207132, *id.* at 223-228 for copy of the resolution on the motion for inhibition (dated June 2011) issued by Judge Sulla.

I. The Antecedents

On **March 8, 2001**, the DOH issued **Administrative Order No. 5, Series of 2001**[5] **(*AO 5-01*)** which ***directed the decking or equal distribution of migrant workers among the several clinics who are members of GAMCA***.

AO 5-01 was issued to comply with the Gulf Cooperative Countries (*GCC*) States' requirement that only GCC-accredited medical clinics/hospitals' examination results will be honored by the GCC States' respective embassies. It required an OFW applicant to first go to a GAMCA Center which, in turn, will refer the applicant to a GAMCA clinic or hospital.

Subsequently, the DOH issued **AO No. 106, Series of 2002**[6] ***holding in abeyance the implementation of the referral decking system. The DOH reiterated its directive suspending the referral decking system*** in **AO No. 159, Series of 2004**.[7]

In **2004**, the DOH issued **AO No. 167, Series of 2004**[8] ***repealing AO 5-01***, reasoning that the *referral decking system did not guarantee the migrant workers' right to safe and quality health service*. AO 167-04 pertinently reads:

> WHEREAS, after a meticulous and deliberate study, examination, and consultation about the GAMCA referral decking system, the DOH believes that its mandate is to protect and promote the health of the Filipino people by ensuring the rights to safe and quality health service and reliable medical examination results through the stricter regulation of medical clinics and other health facilities, which the referral decking system neither assures nor guarantees.
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> NOW, THEREFORE, for and in consideration of the foregoing, the DOH hereby withdraws, repeals and/or revokes Administrative Order No. 5, series of 2001, concerning the referral decking system. Hence, all other administrative issuances, bureau circulars and memoranda related to A.O. No. 5, series of 2001, are hereby withdrawn, repealed and/revoked accordingly.

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[5] *Id.* at 50 (G.R. No. 207205).

[6] Dated April 26, 2002, G.R. No. 207205, *rollo*, p. 52.

[7] Dated July 16, 2004, G.R. No. 207205, *id.* at 53.

[8] Dated August 30, 2004, G.R. No. 207205, *id.* at 54-55.

In **Department Memorandum No. 2008-0210**,[9] dated **September 26, 2008**, then DOH Secretary Francisco T. Duque III expressed his concern about the continued implementation of the referral decking system despite the DOH's prior suspension directives. The DOH directed the "OFW clinics, duly accredited/ licensed by the DOH and/or by the Philippine Health Insurance Corporation (PHILHEALTH) belonging to and identified with GAMCA x x x to ***forthwith stop, terminate, withdraw or otherwise end the x x x 'referral decking system.'***"[10]

GAMCA questioned the DOH's Memorandum No. 2008-0210 before the Office of the President (*OP*). In a decision[11] dated **January 14, 2010, *the OP nullified Memorandum No. 2008-0210***.

On **March 8, 2010**, **Republic Act (*RA*) No. 10022**[12] **lapsed into law** without the President's signature. Section 16 of RA No. 10022 amended Section 23 of RA No. 8042, adding two new paragraphs – paragraphs (c) and (d). The pertinent portions of the amendatory provisions read:

Section 16. Under Section 23 of Republic Act No. 8042, as amended, add new paragraphs (c) and (d) with their corresponding subparagraphs to read as follows:

(c) Department of Health. – **The Department of Health (DOH) shall regulate the activities and operations of all clinics which conduct medical, physical, optical, dental, psychological and other similar examinations, hereinafter referred to as health examinations, on Filipino migrant workers as requirement for their overseas employment.** Pursuant to this, the DOH shall ensure that:

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[9] *Id.* at 349-350 (G.R. No. 207132) and at 56-57 (G.R. No. 207205).

[10] *Id.* at 349.

[11] *Id.* at 363-367 (G.R. No. 207132) and at 58-62 (G.R. No. 207205).

[12] An Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995, as Amended, Further Improving the Standard of Protection and Promotion of the welfare of Migrant Workers, Their Families and Overseas Filipinos in Distress, and for Other Purpose.

(c.1) The fees for the health examinations are regulated, regularly monitored and duly published to ensure that the said fees are reasonable and not exorbitant;

(c.2) The Filipino migrant worker shall only be required to undergo health examinations when there is reasonable certainty that he or she will be hired and deployed to the jobsite and only those health examinations which are absolutely necessary for the type of job applied for or those specifically required by the foreign employer shall be conducted;

(c.3) **No group or groups of medical clinics shall have a monopoly of exclusively conducting health examinations on migrant workers for certain receiving countries;**

(c.4) **Every Filipino migrant worker shall have the freedom to choose any of the DOH-accredited or DOH-operated clinics** that will conduct his/her health examinations and that his or her rights as a patient are respected. **The *decking practice*, which requires an overseas Filipino worker to go first to an office for registration and then farmed out to a medical clinic located elsewhere, *shall not be allowed*;**

(c.5) Within a period of three (3) years from the effectivity of this Act, all DOH regional and/or provincial hospitals shall establish and operate clinics that can serve the health examination requirements of Filipino migrant workers to provide them easy access to such clinics all over the country and lessen their transportation and lodging expenses; and

(c.6) All DOH-accredited medical clinics, including the DOH-operated clinics, conducting health examinations for Filipino migrant workers shall observe the same standard operating procedures and shall comply with internationally accepted standards in their operations to conform with the requirements of receiving countries or of foreign employers/principals.

Any Foreign employer who does not honor the results of valid health examinations conducted by a DOH-accredited or DOH-operated clinic shall be temporarily disqualified from participating in the overseas employment program, pursuant to POEA rules and regulations.

In case an overseas Filipino worker is found to be not medically fit upon his/her immediate arrival in the country of destination, the medical clinic that conducted the health examination/s of such overseas Filipino

worker shall pay for his or her repatriation back to the Philippines and the cost of deployment of such worker.

Any government official or employee who violates any provision of this subsection shall be removed or dismissed from service with disqualification to hold any appointive public office for five (5) years. Such penalty is without prejudice to any other liability which he or she may have incurred under existing laws, rules or regulations. [emphases and underscoring supplied]

On **August 13, 2010**, the Implementing Rules and Regulations[13] (*IRR*) of RA No. 8042, as amended by **RA No. 10022, took effect**.

Pursuant to Section 16 of RA No. 10022, **the DOH, through its August 23, 2010 letter-order**,[14] directed GAMCA to ***cease and desist from implementing the referral decking system*** and to wrap up their operations within three (3) days from receipt thereof. GAMCA received its copy of the August 23, 2010 letter-order on August 25, 2010.

On August 26, 2010, GAMCA filed with the RTC of Pasig City a petition for *certiorari* and prohibition with prayer for a writ of preliminary injunction and/or temporary restraining order (*GAMCA's petition*).[15] It assailed: (1) the DOH's August 23, 2010 letter-order on the ground of **grave abuse of discretion**; and (2) paragraphs c.3 and c.4, Section 16 of RA No. 10022, as well as Section 1(c) and (d), Rule XI of the IRR, as **unconstitutional**.

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[13] Omnibus Rules and Regulations Implementing the Migrant Workers And Overseas Filipino Act of 1995. As Amended by Republic Act No. 10022.

[14] Signed by Alexander A. Padilla, Undersecretary of Health, Head of Health Regulation Cluster, *id.* at 139-140 (G.R. No. 207132) and at 63-64 (G.R. No. 207205).

[15] *Id.* at 141-173 (G.R. No. 207132).

The case was originally raffled to RTC, Branch 110 (*RTC Br. 110*) whose presiding judge was Judge Petronilo A. Sulla, Jr. On GAMCA's motion for inhibition, the case was subsequently re-raffled to RTC, Branch 108 under Judge Maria Rosario B. Ragasa.

Meanwhile, the DOH reiterated – through its **November 2, 2010 order** – its directive that GAMCA cease and desist from implementing the referral decking system.[16]

On November 23, 2010, AMCOW filed an urgent motion for leave to intervene and to file an opposition-in-intervention, attaching its opposition-in-intervention to its motion.[17] In the hearing conducted the following day, November 24, 2010, the RTC granted AMCOW's intervention; DOH and GAMCA did not oppose AMCOW's motion.[18] AMCOW subsequently paid the docket fees and submitted its memorandum.[19]

In an order[20] dated August 1, 2011, the RTC issued a writ of preliminary injunction[21] directing the DOH to cease and desist

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[16] Signed by Alexander A. Padilla, Undersecretary of Health, Head of Health Regulation Cluster, *id.* at 192 (GR. No. 207132) and at 65 (G.R. No. 207205).

[17] *Id.* at 193-204 (G.R. No. 207132).

[18] *Id.* at 214 (G.R. No. 207132).

The November 24, 2010 order reads in full:

There being no opposition from the opposing Counsels to the 'Urgent Motion For Leave to Intervene and File Opposition-in-Intervention', movant's Counsel or Intervenor is hereby allowed to file said Opposition or Comment to the Application for Temporary Restraining Order and as a matter of fact, the Court takes notice that said Comment/Opposition is already attached to the said Urgent Motion, and since the petitioner and the respondent's [*sic*] Counsels, respectively, are no longer adducing further arguments in support of their respective positions relative to the Application for TRO, let the said application together with the respective opposition thereto of the respondents and intervenor be submitted for resolution. Let the hearing on the Application for Preliminary Injunction be tentatively scheduled on February 16, 2011 at 8:30 a.m.

[19] In an order dated March 14, 2011 (*rollo*, p. 215 [G.R. No. 207132]), the RTC, Branch 110 ordered AMCOW to pay the docket fees within ten days from receipt of the order, and to file a memorandum until March 17, 2011. AMCOW complied with the order to submit memorandum and the directive to pay the docket fees (*id.* at 216-218 [G.R. No. 207132]).

[20] *Id.* at 229-232 (G.R. No. 207132) and at 66-69 (G.R. No. 207205).

[21] Dated August 2, 2011, *id.* at 233-234 (G.R. No. 207132) and at 70-71 (G.R. No. 207205).

from implementing its August 23, 2010 and November 2, 2010 orders. The RTC likewise issued an order denying the motion for inhibition/disqualification filed by AMCOW.

On August 18, 2011, the DOH sought reconsideration of the RTC's August 1, 2011 order.

The assailed RTC rulings

In its August 10, 2012 decision,[22] the RTC granted GAMCA's *certiorari* petition and declared null and void *ab initio* the DOH CDO letters. It also issued a writ of prohibition directing "the DOH Secretary and all persons acting on his behalf to cease and desist from implementing the assailed Orders against the [GAMCA]."

The RTC upheld the constitutionality of Section 16 of RA No. 10022, amending Section 23 of RA No. 8042, **but ruled that Section 16 of RA No. 10022 does not apply to GAMCA**.

The RTC reasoned out that the prohibition against the referral decking system under Section 16 of RA No. 10022 must be interpreted as applying only to clinics that conduct health examination on migrant workers bound for countries that do not require the referral decking system for the issuance of visas to job applicants.

It noted that the referral decking system is part of the application procedure in obtaining visas to enter the GCC States, a procedure made in the exercise of the sovereign power of the GCC States to protect their nationals from health hazards, and of their diplomatic power to regulate and screen entrants to their territories. Under the principle of sovereign equality and independence of States, the Philippines cannot interfere with this system and, in fact, must respect the visa-granting procedures of foreign states in the same way that they respect our immigration procedures.

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[22] *Supra* note 2.

Moreover, to restrain GAMCA which is a mere adjunct of HMC, the agent of GCC States, is to restrain the GCC States themselves. To the RTC, the Congress was aware of this limitation, pursuant to the generally accepted principles of international law under Article II, Section 2 of the 1987 Constitution, when it enacted Section 16 of RA No. 10022.

The DOH and AMCOW separately sought reconsideration of the RTC's August 10, 2012 decision, which motions the RTC denied.[23] The DOH and AMCOW separately filed the present Rule 45 petitions.

On August 24, 2013, AMCOW filed a motion for consolidation[24] of the two petitions; the Court granted this motion and ordered the consolidation of the two petitions in a resolution dated September 17, 2013.[25]

In the resolution[26] of April 14, 2015, the Court denied: (1) GAMCA's most urgent motion for issuance of temporary restraining order/writ of preliminary injunction/status quo ante order (with request for immediate inclusion in the Honorable Court's agenda of March 3, 2015, its motion dated March 2, 2015);[27] and (2) the most urgent reiterating motion for issuance of temporary restraining order/writ of preliminary injunction/ status quo ante order dated March 11, 2015.[28]

The Court also suspended the implementation of the permanent injunction issued by the RTC of Pasay City, Branch 108 in its August 10, 2012 decision.

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[23] *Supra* note 3.

[24] *Rollo*, pp. 312-314 (G.R. No. 207132) and pp. 72-74 (G.R. No. 207205).

[25] *Id.* at 95-96 (G.R. No. 207205).

[26] *Id.* at 472-479 (G.R. No. 207132).

[27] *Id.* at 442-446 (G.R. No. 207132).

[28] *Id.* at 451-453 (G.R. No. 207132).

II. The Issues

The consolidated cases before us present the following issues:

First, whether the Regional Trial Court legally erred in giving due course to the petition for *certiorari* and prohibition against the DOH CDO letters;

Second, whether the DOH CDO letters prohibiting GAMCA from implementing the referral decking system embodied under Section 16 of Republic Act No. 10022 violates Section 3, Article II of the 1987 Constitution for being an undue taking of property;

Third, whether the application of Section 16 of Republic Act No.10022 to the GAMCA violates the international customary principles of sovereign independence and equality.

III. Our Ruling

A. The RTC legally erred when it gave due course to GAMCA's petition for certiorari and prohibition.

The present case reached us through an appeal by *certiorari* (pursuant to Rule 45) of an RTC ruling, assailing the decision based solely on questions of law. The RTC decision, on the other hand, involves the grant of the petitions for *certiorari* and prohibition (pursuant to Rule 65) assailing the DOH CDO letters for grave abuse of discretion.

The question before us asks whether the RTC made a reversible error of law when it issued writs of *certiorari* and prohibition against the DOH CDO letters.

AMCOW questions the means by which GAMCA raised the issue of the legality of RA No. 10022 before the RTC. AMCOW posits that GAMCA availed of an improper remedy, as *certiorari* and prohibition lie only against quasi-judicial acts, and quasi-judicial and ministerial acts, respectively. Since the disputed cease and desist order is neither, the RTC should have dismissed the petition outright for being an improper remedy.

We **agree with the petitioners'** assertion that the RTC erred when it gave due course to GAMCA's petition for *certiorari* and prohibition, but we do so **for different reasons**.

1. Certiorari under Rules of Court and under the courts' expanded jurisdiction under Art. VIII, Section 1 of the Constitution, as recognized by jurisprudence.

A.1.a. The Current Certiorari Situation

The use of petitions for *certiorari* and prohibition under Rule 65 is a remedy that judiciaries have used long before our Rules of Court existed.[29] As footnoted below, these writs — now recognized and regulated as remedies under Rule 65 of our Rules of Court – have been characterized as "supervisory writs" used by superior courts to keep lower courts within the confines of their granted jurisdictions, thereby ensuring orderliness in lower courts' rulings.

We confirmed this characterization in *Madrigal Transport v. Lapanday Holdings Corporation*,[30] when we held that a writ is founded on the supervisory jurisdiction of appellate courts over inferior courts, and is issued to keep the latter within the bounds of their jurisdiction. Thus, the writ corrects only errors of jurisdiction of judicial and quasi-judicial bodies, and cannot

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[29] *See: Landbank of the Philippines v. Court of Appeals*, G.R. No. 129368, August 25, 2003, 409 SCRA 455 where the Court held:

A writ of *certiorari* has been called a "supervisory or superintending" writ. It was a common law writ of ancient origin. Its earliest use was in the crown or criminal side of the Court of King's Bench. Its use on the civil side later came into general use. *Certiorari* is a remedy narrow in scope and inflexible in character. It is not a general utility tool in the legal workshop.

See also: *Barangay Blue Ridge "A" of QC v. Court of Appeals*, 377 Phil. 49, 53 (1999); *Lalican v. Vergara*, 342 Phil. 485 (1997); *Silverio v. Court of Appeals*, G.R. No. L-39861, March 17, 1986, 141 SCRA 527.

[30] 479 Phil. 768 (2004).

be used to correct errors of law or fact. For these mistakes of judgment, the appropriate remedy is an appeal.[31]

This situation changed after 1987 when the new Constitution "expanded" the scope of judicial power by providing that –

> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine ***whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government***. (italics supplied)[32]

In *Francisco v. The House of Representatives*,[33] we recognized that this expanded jurisdiction was meant "to ensure the potency of the power of judicial review to curb grave abuse of discretion by 'any branch or instrumentalities of government.'" Thus, the second paragraph of Article VIII, Section 1 engraves, for the first time in its history, into black letter law the "expanded certiorari jurisdiction" of this Court, whose nature and purpose had been provided in the sponsorship speech of its proponent, former Chief Justice Constitutional Commissioner Roberto Concepcion.

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> The first section starts with a sentence copied from former Constitutions. It says:
>
> The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> I suppose nobody can question it.
>
> The next provision is new in our constitutional law. I will read it first and explain.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable

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[31] *Id.* at 779-780.

[32] CONSTITUTION, Art. VIII, Sec. 1.

[33] 460 Phil. 830 (2003).

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.

Fellow Members of this Commission, this is actually a product of our experience during martial law. As a matter of fact, it has some antecedents in the past, but the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political question and got away with it. As a consequence, certain principles concerning particularly the writ of habeas corpus, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime. x x x

x x x x x x x x x

Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question.[34] (italics in the original; emphasis and underscoring supplied)

Meanwhile that no specific procedural rule has been promulgated to enforce this "expanded" constitutional definition

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[34] *Id.* at 883, 909-910, *citing* I Record of the Constitutional Commission 434-436 (1986).

of judicial power and because of the commonality of "grave abuse of discretion" as a ground for review under Rule 65 and the courts expanded jurisdiction, the Supreme Court – *based on its power to relax its rules*[35] – allowed Rule 65 to be used as the medium for petitions invoking the courts' expanded jurisdiction based on its power to relax its Rules.[36] This is however an *ad hoc* approach that does not fully consider the accompanying implications, among them, that Rule 65 is an essentially distinct remedy that cannot simply be bodily lifted for application under the judicial power's expanded mode. The terms of Rule 65, too, are not fully aligned with what the Court's expanded jurisdiction signifies and requires.[37]

On the basis of almost thirty years' experience with the courts' expanded jurisdiction, the Court should now fully recognize

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[35] *Tiangco v. Land Bank of the Philippines*, G.R. No. 153998, October 6, 2010, 632 SCRA 256, 271, *Villanueva v. People*, G.R. No. 188630, February 23, 2011, 644 SCRA 358, 368.

[36] *See*, for instance, the following cases where the Court gave due course to *certiorari* petitions that question, at the first instance, the constitutionality of governmental acts that are not quasi-judicial or judicial in nature: *Belgica v. Executive Secretary*, 721 Phil. 416 (2013), questioning the constitutionality of the Disbursement Acceleration Progam; *Disini v. Secretary of Justice*, questioning the constitutionality of the Cybercrime Prevention Act; *Imbong v. Ochoa*, 732 Phil. 1 (2014) questioning the constitutionality of the Reproductive Health Law; *Araullo v. Aquino*, 737 Phil. 457 (2014), questioning the constitutionality of the Priority Development Assistance Fund; *Diocese of Bacolod v. Comelec*, 747 SCRA 1 (2015), questioning the Commission on Election's administrative actions against the Diocese of Bacolod; and *Saguisag v. Executive Secretary*, available at sc.judiciary.gov.ph/jurisprudence/2016/toc/January.php, questioning the constitutionality of the Philippine government's Enhanced Defense Cooperation Agreement with the United States.

[37] *Cf* **Section 1 of Rule 65 of the Rules of Court**, which provides a remedy "When **any tribunal, board or officer exercising judicial or quasi-judicial functions** has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction" with the more general grant of jurisdiction "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" in Article VIII, Section 1 of the 1987 Constitution.

the attendant distinctions and should be aware that the continued use of Rule 65 on an *ad hoc* basis as the operational remedy in implementing its expanded jurisdiction may, in the longer term, result in problems of uneven, misguided, or even incorrect application of the courts' expanded mandate.

The present case is a prime example of the misguided reading that may take place in constitutional litigation: the procedural issues raised apparently spring from the lack of proper understanding of what a petition for *certiorari* assails under the traditional and expanded modes, and the impact of these distinctions in complying with the procedural requirements for a valid petition.

2. *The Basic Distinctions*

A.2.a. Actual Case or Controversy

Basic in the exercise of judicial power — whether under the traditional or in the expanded setting – is the presence of an actual case or controversy. For a dispute to be justiciable, a legally demandable and enforceable right must exist as basis, and must be shown to have been violated.[38]

Whether a case actually exists depends on the pleaded allegations, as affected by the elements of ***standing (translated in civil actions as the status of being a "real-party-in-interest," in criminal actions as "offended party" and in special proceedings as "interested party"),***[39]

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[38] This requirement is reflected from the text of the 1987 Constitution, from its definition of judicial power in Article VIII, Section 1, which requires "actual controversies" and its enumeration of the Supreme Court's jurisdiction in Article Vlll, Section 5, which pertains to "cases."

See also Justice Arturo Brion's Separate Concurring Opinion in *Villanueva v. JBC*, G.R. No. 211833, April 7, 2015, sc.judiciary.gov.ph.

[39] Note the pattern in our Rules of Civil Procedure requiring a party to be a "real party in interest" to lodge an action, and for parties to have "a legal interest" in order to intervene.

Thus, Rule 3, Section 2 provides:

ripeness,[40] ***prematurity,*** and the ***moot and academic principle*** that likewise interact with one another. These elements and their interactions are discussed in greater detail below.

The Court's expanded jurisdiction – ***itself an exercise of judicial power*** – does not do away with the actual case or controversy requirement in presenting a constitutional issue, but effectively simplifies this requirement by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act.

Section 2. Parties in interest. – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)

Rule 19, Section 1, provides

Section 1. Who may intervene. – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding. (2[a], [b]a, R12)

Note, too, that criminal actions initiated against the accused, the People of the Philippines has been recognized as "the offended party." *People of the Philippines v. Santiago*, 255 Phil. 851 (1989).

Lastly, the Rules of Court on Special Proceedings require that parties have an interest in the proceeding they initiate to establish a status, a right, or a particular fact.

[40] While "ripeness" is a concept found in constitutional litigation, it is not without counterparts in other proceedings. In civil proceedings, for instance, the failure to exhaust administrative remedies before availing of judicial relief renders a civil action immediately dismissible for being premature. *Laguna CATV Network, Inc. v. Maraan (DOLE)*, 440 Phil. 734 (2002). Too, the failure to comply with the requisite barangay mediation prior to initiating certain cases also renders the action premature and dismissible. LOCAL GOVERNMENT CODE, Chapter VII.

A.2.b. Actions Correctable by Certiorari

A basic feature of the expanded jurisdiction under the constitutional definition of judicial power, is the authority and command for the courts to act on petitions involving the commission by *any branch or instrumentality of government of grave abuse of discretion amounting to lack or excess of jurisdiction.*

This command distinctly contrasts with the terms of Rule 65 which confines court *certiorari* action solely to the review of *judicial* and *quasi-judicial* acts.[41] These differing features create very basic distinctions that must necessarily result in differences in the application of remedies.

While actions by lower courts do not pose a significant problem because they are necessarily acting judicially when they adjudicate, a critical question comes up for the court acting on *certiorari* petitions when governmental agencies are involved – ***under what capacity does the agency act?***

This is a critical question as the circumstances of the present case show. When the government entity acts quasi-judicially, the petition for *certiorari* challenging the action falls under Rule 65; in other instances, the petition must be filed based on the courts' expanded jurisdiction.

A.2.c. Grave Abuse of Discretion

Another distinction, a seeming one as explained below, relates to the cited ground of a *certiorari* petition under Rule 65 which speaks of *lack or excess of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction,* as against the remedy under the courts' expanded jurisdiction which expressly only mentions *grave abuse of discretion amounting to lack or excess of jurisdiction.*

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[41] The writ of prohibition can be sought when the tribunal, board or body exercises judicial, quasi-judicial or ministerial functions. RULES OF COURT, Rule 65, Sec. 1.

This distinction is apparently not legally significant when it is considered that action outside of or in excess of the granted authority necessarily involves action with grave abuse of discretion: no discretion is allowed in areas outside of an agency's granted authority so that any such action would be a gravely abusive exercise of power. The constitutional grant of power, too, pointedly addresses grave abuse of discretion *when it amounts to lack or excess of jurisdiction*,[42] thus establishing that the presence of jurisdiction is the critical element; failure to comply with this requirement necessarily leads to the *certiorari* petition's immediate dismissal.[43]

As an added observation on a point that our jurisprudence has not fully explored, the result of the action by a governmental entity (*e.g.*, a law or an executive order) can be distinguished from the perspective of its legality as tested against the terms of the Constitution or of another law (where subordinate action like an executive order is involved), *vis-a-vis* the legality of the resulting action where grave abuse of discretion attended the governmental action or the exercise of the governmental function.

In the former, the conclusion may be plain illegality or legal error that characterized the law or exec order (as tested, for example, under the established rules of interpretation); no consideration is made of how the governmental entity exercised its function. In the latter case, on the other hand, it is the governmental entity's exercise of its function that is examined and adjudged independently of the result, with impact on the legality of the result of the gravely abusive action.

Where the dispute in a case relates to plain legal error, ordinary court action and traditional mode are called for and this must be filed in the lower courts based on rules of jurisdiction while observing the hierarchy of courts.

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[42] *Ysidro v. Leonardo-de Castro*, 681 Phil. 1, 14-17 (2012).

[43] RULES OF COURT, Rule 65, Sec. 6.

Where grave abuse of discretion is alleged to be involved, the expanded jurisdiction is brought into play based on the express wording of the Constitution and constitutional implications may be involved (such as grave abuse of discretion because of plain oppression or discrimination), but this must likewise be filed with the lowest court of concurrent jurisdiction, unless the court highest in the hierarchy grants exemption. Note that in the absence of express rules, it is only the highest court, the Supreme Court, that can only grant exemptions.

From these perspectives, the use of grave abuse of discretion can spell the difference in deciding whether a case filed **directly** with the Supreme Court has been properly filed.

A.2.d. Exhaustion of Available Remedies

A basic requirement under Rule 65 is that there be "*no other plain, speedy and adequate remedy found in law*,"[44] which requirement the expanded jurisdiction provision does not expressly carry. Nevertheless, this requirement is not a significant distinction in using the remedy of *certiorari* under the traditional and the expanded modes. The doctrine of exhaustion of administrative remedies applies to a petition for *certiorari*, regardless of the act of the administrative agency concerned, *i.e.*, whether the act concerns a quasi-judicial, or quasi-legislative function, or is purely regulatory.[45]

Consider in this regard that once an administrative agency has been empowered by Congress to undertake a sovereign function, the agency should be allowed to perform its function

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[44] RULES OF COURT, Rule 65, Sec. 1.

[45] The doctrine of exhaustion of administrative remedies ***applies regardless of the kind of suit initiated*** before the courts. Courts, for reasons of law, comity and convenience, ***should not entertain suits unless the available administrative remedies have first been resorted to*** and the proper authorities have been given an appropriate opportunity to act and correct their alleged errors, if any, committed in the administrative forum. *Factoran, Jr. v. Court of Appeals*, G.R. No. 93540, December 13, 1999, 320 SCRA 530, 539, *citing University of the Philippines v. Catungal, Jr.*, G.R. No. 121863, May 5, 1997, 272 SCRA 221, 240; *Carale v. Abarintos*, 336 Phil. 126, 137 (1997).

to the full extent that the law grants. This full extent covers the authority of superior officers in the administrative agencies to correct the actions of subordinates, or for collegial bodies to reconsider their own decisions on a motion for reconsideration. Premature judicial intervention would interfere with this administrative mandate, leaving administrative action incomplete; if allowed, such premature judicial action through a writ of *certiorari*, would be a usurpation that violates the separation of powers principle that underlies our Constitution.[46]

In every case, remedies within the agency's administrative process must be exhausted before external remedies can be applied. Thus, even if a governmental entity may have committed a grave abuse of discretion, litigants should, as a rule, first ask reconsideration from the body itself, or a review thereof before the agency concerned. This step ensures that by the time the grave abuse of discretion issue reaches the court, the administrative agency concerned would have fully exercised its jurisdiction and the court can focus its attention on the questions of law presented before it.

Additionally, ***the failure to exhaust administrative remedies affects the ripeness to adjudicate the constitutionality of a governmental act, which in turn affects the existence of the need for an actual case or controversy for the courts to exercise their power of judicial review***.[47] The need for ripeness – an

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[46] *Merida Water District, et al. v. Bacarro, et al.*, G.R. No. 165993, September 30, 2008, sc.judiciary.gov.ph, citing *Sunville Timber Products, Inc. v. Abad*, G.R. No. 85502, February 24, 1992, 206 SCRA 482, 486-487.

[47] *See* the Court's discussion in *Abakada Guro Partylist v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251, *viz*:

> An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial adjudication. A closely related requirement is ripeness, that is, the question must be ripe for adjudication. ***A constitutional question is ripe for adjudication when the challenged governmental act has a direct and existing adverse effect on the individual challenging it.*** Thus, to be ripe for judicial adjudication, the petitioner must show an existing personal stake in the outcome of the case or an existing or imminent injury to himself that can be redressed by a favorable decision of the Court.

aspect of the timing of a case or controversy—does not change regardless of whether the issue of constitutionality reaches the Court through the traditional means, or through the Court's expanded jurisdiction. In fact, separately from ripeness, one other concept pertaining to judicial review is intrinsically connected to it; the concept of a case being moot and academic.[48]

Both these concepts relate to the timing of the presentation of a controversy before the Court—ripeness relates to its prematurity, while mootness relates to a belated or unnecessary judgment on the issues. The Court cannot preempt the actions of the parties, and neither should it (as a rule) render judgment after the issue has already been resolved by or through external developments.

The importance of timing in the exercise of judicial review highlights and reinforces the need for an actual case or controversy—an act that may violate a party's right. Without any completed action or a concrete threat of injury to the petitioning party, the act is not yet ripe for adjudication. It is merely a hypothetical problem. The challenged act must have been accomplished or performed by either branch or instrumentality of government before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action.

In these lights, a constitutional challenge, whether presented through the traditional route or through the Court's expanded jurisdiction, requires compliance with the ripeness requirement. In the case of administrative acts, ripeness manifests itself through

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[48] A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. *Carpio v. CA*, G.R. No. 183102, February 27, 2013, 692 SCRA 162, 174, citing *Osmeña III v. Social Security System of the Philippines*, 559 Phil. 723, 735 (2007).

compliance with the doctrine of exhaustion of administrative remedies.

In like manner, an issue that was once ripe for resolution but whose resolution, since then, has been rendered unnecessary, needs no resolution from the Court, as it presents no actual case or controversy and likewise merely presents a hypothetical problem. In simpler terms, a case is moot and academic when an event supervenes to render a judgment over the issues unnecessary and superfluous.

Without the element of ripeness or a showing that the presented issue is moot and academic, petitions challenging the constitutionality of a law or governmental act are vulnerable to dismissal.

Not to be forgotten is that jurisprudence also prohibits litigants from immediately seeking judicial relief without first exhausting the available administrative remedies for practical reasons.[49]

From the perspective of practicality, immediate resort to the courts on issues that are within the competence of administrative agencies to resolve, would unnecessarily clog the courts' dockets. These issues, too, usually involve technical considerations that are within the agency's specific competence and which, for the courts, would require additional time and resources to study and consider.[50] Of course, the Supreme Court cannot really avoid the issues that a petition for *certiorari*, filed with the lower courts may present; the case may be bound ultimately to reach the Court, *albeit* as an appeal from the rulings of the lower courts.

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[49] *ACWS, Ltd. v. Dumlao*, 440 Phil. 787, 801-802 (2002); *Zabat v. Court of Appeals*, 393 Phil. 195, 206 (2000).

[50] *See Antipolo Realty Corporation v. National Housing Authority*, G.R. No. 50444, August 31, 1987, 153 SCRA 399; *University of the Philippines v. Catungal, supra* note 45.

3. *Situations Where a Petition for Certiorari May Be Used*

There are two distinct situations where a writ of *certiorari* or prohibition may be sought. Each situation carries requirements, peculiar to the nature of each situation, that lead to distinctions that should be recognized in the use of *certiorari* under Rule 65 and under the courts' expanded jurisdiction.

The two situations differ in the type of questions raised. The first is the **constitutional situation** where the constitutionality of acts are questioned. The second is the **non-constitutional situation** where acts amounting to grave abuse of discretion are challenged without raising constitutional questions or violations.

The process of questioning the constitutionality of a governmental action provides a notable area of comparison between the use of *certiorari* in the traditional and the expanded modes.

Under the traditional mode, plaintiffs question the constitutionality of a governmental action through the cases they file before the lower courts; the defendants may likewise do so when they interpose the defense of unconstitutionality of the law under which they are being sued. A petition for declaratory relief may also be used to question the constitutionality or application of a legislative (or quasi-legislative) act before the court.[51]

For quasi-judicial actions, on the other hand, *certiorari* is an available remedy, as acts or exercise of functions that violate the Constitution are necessarily committed with grave abuse of discretion for being acts undertaken outside the contemplation of the Constitution. Under both remedies, the petitioners should comply with the traditional requirements of judicial review, discussed below.[52] In both cases, the decisions of these courts reach the Court through an appeal by *certiorari* under Rule 45.

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[51] See Rules of Court, Rule 63.

[52] See Rules of Court, Rule 65.

In contrast, existing Court rulings in the **exercise of its expanded jurisdiction** have allowed the direct filing of petitions for *certiorari* and prohibition with the Court to question, for grave abuse of discretion, actions or the exercise of a function that violate the Constitution.[53] The governmental action may be questioned regardless of whether it is quasi-judicial, quasi-legislative, or administrative in nature. The Court's expanded jurisdiction does not do away with the actual case or controversy requirement for presenting a constitutional issue, but effectively simplifies this requirement by merely requiring a *prima facie* showing of grave abuse of discretion in the exercise of the governmental act.[54]

To return to judicial review heretofore mentioned, in constitutional cases where the question of constitutionality of a governmental action is raised, the judicial power the courts exercise is likewise identified as the ***power of judicial review*** – the power to review the constitutionality of the actions of other branches of government.[55] As a rule, as required by the

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[53] *Supra* note 36.

[54] See Justice Arturo Brion's discussion on the expanded jurisdiction of the Court in *Imbong v. Ochoa, supra* note 36 at 279, 281-294; *Araullo v. Aquino, supra* note 36, at 641, 681-696; and *Saguisag v. Executive Secretary, supra* note 36, at 5-12.

In *Imbong*, Justice Brion pointed out:

> Under the expanded judicial power, justiciability expressly depends only on the presence or absence of grave abuse of discretion, as distinguished from a situation where the issue of constitutional validity is raised within a traditionally justiciable case where the elements of actual controversy based on specific legal rights must exist. In fact, even if the requirements for strict justiciability are applied, these requisites can already be taken to be present once grave abuse of discretion is *prima facie* shown to be present. *Supra* note 36, at 286.

[55] *Congressman Enriquez v. Executive Secretary*, 602 Phil. 64 (2009).

Judicial review was introduced as part of the colonial control of legislation in the Philippines. The Organic Acts (Philippine Bill of 1902 and Jones Law of 1916) defined the authority and limit of the powers of the government in the Philippines. In this sense they were like constitutions, *albeit* they did not proceed from the sovereign will of the Filipino people, but were statutes enacted by the US Congress.

hierarchy of courts principle, these cases are filed with the lowest court with jurisdiction over the matter. The judicial review that the courts undertake requires:

These organic acts provided for the review by the US Supreme Court of decisions of the Philippine Supreme Court "in all actions, cases, causes and proceedings ... in which the Constitution or any statute, treaty, title, right or privilege of the United States is involved."

On this basis, in *Casanovas v. Hord* (8 Phil. 125), the Court declared Section 134 of Internal Revenue Act No. 1189 void for violating Section 5 of the Philippine Bill of 1902, which in turn provided that "no law impairing the obligation of contracts shall be enacted."

The Commonwealth of the Philippines, in adopting the 1935 Constitution, impliedly recognized judicial review as part of judicial power, Article VIII, Section 2, *viz*:

> SEC. 2. x x x the Supreme Court of its original jurisdiction over cases affecting ambassadors, other public ministers, and consuls, nor of its jurisdiction to review, revise, reverse, modify, or affirm on appeal, *certiorari*, or writ of error, as the law or the rules of court may provide, final judgments and decrees of inferior courts in –
>
> (1) All cases in which the ***constitutionality*** or validity of any treaty, law, ordinance, or executive order or regulation is in question.
>
> x x x x x x x x x (emphasis supplied)

Similar language has been used in Section 5, Article X of the 1973 Constitution on the jurisdiction of the Supreme Court, and in Section 4, Article VIII of the 1987 Constitution.

To this day, judicial review has been part of the Philippine legal system, and *Angara v. Electoral Commission's* (63 Phil. 139) exposition on the power of judicial review still holds doctrinal value, *viz*:

> The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution **to determine conflicting claims of authority under the Constitution** and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. **This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.**

1) there be an actual case or controversy calling for the exercise of judicial power;

(2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

(3) the question of constitutionality must be raised at the earliest possible opportunity; and

(4) the issue of constitutionality must be the very *lis mota* of the case.[56]

The lower court's decision under the constitutional situation reaches the Supreme Court through the appeal process, interestingly, through a petition for review on *certiorari* under Rule 45 of the Rules of Court.

In the **non-constitutional situation**, the same requirements essentially apply, less the requirements specific to the constitutional issues. In particular, there must be an actual case or controversy and the compliance with requirements of standing, as affected by the hierarchy of courts, exhaustion of remedies, ripeness, prematurity, and the moot and academic principles.

A.3.a. The "Standing" Requirement

Under both situations, the party bringing suit must have the necessary "standing." This means that this party has, in its favor, the demandable and enforceable right or interest giving rise to a justiciable controversy after the right is violated by the offending party.

The necessity of a person's standing to sue derives from the very definition of judicial power. Judicial power includes the duty of the courts to settle actual controversies involving rights which are legally demandable and enforceable. *Necessarily, the person availing of a judicial remedy must show that he*

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[56] *Id.* at 73 citing *Francisco, Jr. v. House of Representatives, supra* note 33, at 892-893, citing *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

possesses a legal interest or right to it, otherwise, the issue presented would be purely hypothetical and academic. This concept has been translated into the requirement to have "standing" in judicial review,[57] or to be considered as a "real-party-in-interest" in civil actions,[58] as the "offended party" in criminal actions[59] and the "interested party" in special proceedings.[60]

While the Court follows these terms closely in both non-constitutional cases and constitutional cases under the traditional mode, it has relaxed the rule in constitutional cases handled under the expanded jurisdiction mode. In the latter case, a *prima facie* showing that the questioned governmental act violated the Constitution, effectively disputably shows an injury to the sovereign Filipino nation who approved the Constitution and endowed it with authority, such that the challenged act may be questioned by any Philippine citizen before the Supreme Court.[61] In this manner, the "standing" requirement is relaxed compared with the standard of personal stake or injury that the traditional petition requires.

The relaxation of the standing requirement has likewise been achieved through the application of the "transcendental importance doctrine" under the traditional mode for constitutional

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[57] As established by jurisprudence, standing involves a personal and substantial interest in the case such that the petitioner has sustained, or will sustain, direct injury as a result of the violation of its rights. *Kilosbayan, Inc. v. Morato*, G.R. No. 118910, July 17, 1995, 246 SCRA 540, 562-563, citing *Baker v. Carr*, 369 U.S. 186, 7 L. Ed. 633 (1962); *Bayan v. Zamora*, G.R. No. 138570, October 10, 2000, 342 SCRA 449, 478; *Galicto v. Aquino*, 683 Phil. 141, 170-174 (2012).

[58] RULES OF COURT, Rule 3, Sec. 2.

[59] *People of the Philippines v. Santiago, supra* note 39.

[60] See the following provisions of the Rules of Court on Special Proceedings: Rule 74, Sec. 2; Rule 76, Sec. 1; Rule 79, Sec.1; Rule 89, Sec. 1; Rule 90, Sec. 1; Rule 93, Sec. 4; Rule 107, Sec. 1; Rule 108, Section 1; and Rule 109, Sec. 1.

[61] *Supra* note 54.

cases.[62] (Under the traditional mode, "transcendental importance" not only relaxes the standing requirement, but also allows immediate access to this Court, thus exempting the petitioner from complying with the hierarchy of courts requirement.)[63]

More importantly perhaps, the *prima facie* showing of grave abuse of discretion in constitutional cases also implies that the injury alleged is actual or imminent, and not merely hypothetical.

Through this approach, the Court's attention is directed towards the existence of an actual case or controversy – that is, whether the government indeed violated the Constitution to the detriment of the Filipino people without the distractions of determining the existence of transcendental importance indicators unrelated to the dispute and which do not at all determine whether the Court properly exercises its power of judicial review.

Parenthetically, in the traditional mode, the determination of the transcendental importance of the issue presented,[64] aside

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[62] *David v. Gloria Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, sc.judiciary.gov.ph.

[63] Notably, Justice Arturo Brion's Separate Opinion in *Araullo v. Aquino, supra* note 36 at 661, 684 pointed out that "The traditional rules on hierarchy of courts and transcendental importance, far from being grounds for the dismissal of the petition raising the question of unconstitutionality, are necessarily reduced to rules relating to the level of court that should handle the controversy, as directed by the Supreme Court."

[64] The Court has yet to detennine what falls within the general description of "transcendental importance." Note that despite the vagueness of this concept, its application has resulted in the relaxation of recognized rules in constitutional litigation and has led to a non-uniform approach in exercising judicial review.

In other words, no element of predictability definitively exists in applying the transcendental importance doctrine. The Court has merely been using "determinants" of transcendental importance in place of a clear definition of the term. These "determinants" include:

(1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised. *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 39-40; and *Francisco v.*

from simply relaxing the standing requirement, may result in the dilution of the actual case or controversy element because of the inextricable link between standing and the existence of an actual case or controversy.

Consider, in this regard, that an actual case or controversy that calls for the exercise of judicial power necessarily requires that the party presenting it possesses the standing to mount a challenge to a governmental act. A case or controversy exists when there is an actual dispute between parties over their legal rights, which remains in conflict at the time the dispute is

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Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc., G.R. No. 160261, November 10, 2003, 415 SCRA 44, 139, *citing Kilosbayan v. Guingona*, G.R. No. 113375, May 5, 1994, 232 SCRA 110, 155-157.

These determinants, however, are largely irrelevant to the existence of an actual case or controversy and as such should not be made the basis of relaxing the standing requirement.

That the funds or assets involved in the case has a "character" – presumably public or that which the public has an interest in – does not have any connection to whether the petition presents an actual controversy. That there is no other party with a more direct and specific interest in raising the questions raised is an even more bothersome determinant: the fact that there is no party with a direct and specific interest necessarily implies that there is no dispute to begin with.

Concededly, there may be incidents where a governmental agency's disregard of clear constitutional and statutory prohibitions imply the existence of a dispute. The determinant, however, is too vague and does not require that the disregard relate to the issues raised in the petition.

The standing requirement may seem innocuous at first glance, but it is inextricably linked to the presence of an actual case or controversy so that it should not be relaxed on grounds that are outside of the issues presented before the Court. By relaxing the standing requirement, we also relax the case or controversy requirement. Without a showing of direct injury on the part of the petitioner, his legal right in the dispute is also questionable. How could there be a legal right subject of a dispute, when the party putting it forward failed to show that he has been injured, or is about to be injured by the governmental act? When we use determinants outside of and irrelevant to the existence of an actual case or controversy, we run the risk of deciding cases that may not have a justiciable issue to begin with, and thus go outside the bounds of judicial review.

presented before the court.[65] Standing, on the other hand, involves a personal and substantial interest in the case because the petitioner has sustained, or will sustain, direct injury as a result of the violation of its right.[66]

With the element of "standing" (or the petitioner's personal or substantial stake or interest in the case) relaxed, the practical effect is to dilute the need to show that an immediate actual dispute over legal rights did indeed take place and is now the subject of the action before the court.[67]

In both the traditional and the expanded modes, this relaxation carries a ripple effect under established jurisprudential rulings,[68]

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[65] *Supra* note 55.

[66] *Kilosbayan, Inc. v. Morato, supra* note 57; *Bayan v. Zamora*, G.R. No. 138570, *supra* note 57; *Galicto v. Aquino, supra* note 57.

[67] See also Justice Arturo D. Brion's Dissenting Opinion in *Diocese of Bacolod v. Comelec, supra* note 36, pointing out that:

> Failure to meet any of these requirements [for judicial review] justifies the Court's refusal to exercise its power of judicial review under the Court's traditional power. The Court, however, has, in several instances, opted to relax one or more of these requirements to give due course to a petition presenting issues of transcendental importance to the nation.
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> In these cases, the doctrine of transcendental importance relaxes the standing requirement, and thereby indirectly relaxes the injury embodied in the actual case or controversy requirement. Note at this point that an actual case or controversy is present when the issues the case poses are ripe for adjudication, that is, when the act being challenged has had a direct adverse effect on the individual challenging it. Standing, on the other hand, requires a personal and substantial interest manifested through a direct injury that the petitioner has or will sustain as a result of the questioned act.
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> Thus, when the standing is relaxed because of the transcendental importance doctrine, the character of the injury presented to fulfill the actual case or controversy requirements likewise tempered. When we, for instance, say that the petitioners have no standing as citizens or as taxpayers but we nevertheless give the petition due course, we indirectly acknowledge that the injury that they had or will sustain is not personally directed towards them, but to the more general and abstract Filipino public.

[68] See, for example, Justice Arturo D. Brion's Opinion in *Cawad v. Abad*, G.R. No. 207145, July 28, 2015, 764 SCRA 32, noting problems when the Court relaxes the rules on *certiorari* to accommodate quasi-legislative acts, because of the "paramount importance" of the case, *viz*:

affecting not only the actual case or controversy requirement, but compliance with the doctrine of hierarchy of courts, discussed in greater detail below.

A.3.b. The Hierarchy of Courts Principle

Another requirement that a *certiorari* petition carries, springs from the principle of "hierarchy of courts" which recognizes the various levels of courts in the country as they are established under the Constitution and by law, their ranking and effect of their rulings in relation with one another, and how these different levels of court interact with one another.[69] Since courts are established and given their defined jurisdictions by law, the hierarchy of the different levels of courts should leave very little opening for flexibility (and potential legal questions), but for the fact that the law creates courts at different and defined levels but with concurrent jurisdictions.

In several cases, however, we reversed the decision of the Court of Appeals denying a petition for *certiorari* against a quasi-legislative act based on the terms of the Rules of Court. In these reversals, we significantly noted the paramount importance of resolving the case on appeal and, on this basis, relaxed the requirements of the petition for *certiorari* filed in the lower court.

This kind of approach, to my mind, leads to an absurd situation where we effectively hold that the CA committed an error of law when it applied the rules as provided in the Rules of Court.

To be sure, when we so act, we send mixed and confusing signals to the lower courts, which cannot be expected to know when a *certiorari* petition may or should be allowed despite being the improper remedy.

Additionally, this kind of approach reflects badly on the Court as an institution, as it applies the highly arbitrary standard of 'paramount importance' in place of what is written in the Rules. A suspicious mind may even attribute malicious motives when the Court invokes a highly subjective standard such as "paramount importance."

The public, no less, is left confused by the Court's uneven approach. Thus, it may not hesitate to file a petition that violates or skirts the margins of the Rules or its jurisprudence, in the hope that the Court would consider its presented issue to be of paramount importance and on this basis take cognizance of the petition.

[69] See *Rayos, et al. v. City of Manila*, 678 Phil. 952 (2011).

The Constitution itself has partially determined the judicial hierarchy in the Philippine legal system by designating the Supreme Court as the highest court with irreducible powers; its rulings serve as precedents that other courts must follow[70] because they form part of the law of the land.[71] As a rule, the Supreme Court is not a trial court and rules only on questions of law, in contrast with the Court of Appeals and other intermediate courts[72] which rule on both questions of law and of fact. At the lowest level of courts are the municipal and the regional trial courts which handle questions of fact and law at the first instance according to the jurisdiction granted to them by law.

Petitions for *certiorari* and prohibition fall under the concurrent jurisdiction of the regional trial courts and the higher courts, all the way up to the Supreme Court. As a general rule, under the hierarchy of courts principle, the petition must be brought to the lowest court with jurisdiction;[73] the petition brought to the higher courts may be dismissed based on the hierarchy principle. Cases, of course, may ultimately reach the Supreme Court through the medium of an appeal.

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[70] See Section 1, Article VIII of the 1987 Constitution, vesting judicial power in one Supreme Court and other courts as may be created by law. Presently, Batas Pambansa Blg. No. 129 established the courts of general jurisdiction in the Philippines, and provides for their hierarchy.

[71] See Section 4, paragraph 3 of the 1987 Constitution impliedly recognizing the binding effect of the doctrines created by the cases promulgated by the Court; note, too, Article 8 of the Civil Code providing that "Art. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

[72] *Far Eastern Surety and Insurance Co. Inc. v. People of the Philippines*, G.R. No. 170618, November 20, 2013, sc.judiciary.gov.ph.

[73] Thus, in *Rayos, et al. v. City of Manila, supra* note 69, at 957, the Court held:

Indeed, this Court, the Court of Appeals and the Regional Trial Courts exercise concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction. However, such concurrence in jurisdiction does not give petitioners unbridled freedom of choice of court forum. In *Heirs of Bertuldo Hinog v. Melicor*, citing *People v. Cuaresma*, the Court held:

The recognition of exceptions to the general rule is provided by the Supreme Court through jurisprudence, *i.e.*, through the cases that recognized the propriety of filing cases directly with the Supreme Court. This is possible as the Supreme Court has the authority to relax the application of its own rules.[74]

As observed above, this relaxation waters down other principles affecting the remedy of *certiorari*. While the relaxation may result in greater and closer supervision by the Court over the lower courts and quasi-judicial bodies under Rule 65, the

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> **This Court's original jurisdiction to issue writs of *certiorari* is not exclusive.** It is shared by this Court with Regional Trial Courts and with the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. **There is after all a hierarchy of courts.** That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. **A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition.** This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. (Emphasis supplied, citations omitted)

[74] Under the principle of hierarchy of courts, direct recourse to this Court is improper because the Supreme Court is a court of last resort and must remain to be so for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its docket. Nonetheless, the invocation of this Court's original jurisdiction to issue writs of *certiorari* has been allowed in certain instances on the ground of special and important reasons clearly stated in the petition, such as, ***(1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case.*** (emphasis supplied) *Dy v. Bibat-Palamos*, 717 Phil. 776, 782-783 (2013).

effect may not always be salutary in the long term when it is considered that this may affect the constitutional standards for the exercise of judicial power, particularly the existence of an actual case or controversy.

The "transcendental importance" standard, in particular, is vague, open-ended and value-laden, and should be limited in its use to exemptions from the application of the hierarchy of courts principle. It should not carry any ripple effect on the constitutional requirement for the presence of an actual case or controversy.

4. *The petition for certiorari and prohibition against the DOH Letter was filed before the wrong court.*

In the present case, the act alleged to be unconstitutional refers to the cease and desist order that the DOH issued against GAMCA's referral decking system. Its constitutionality was questioned through a petition for *certiorari* and prohibition before the RTC. The case reached this Court through a Rule 45 appeal by *certiorari* under the traditional route.

In using a petition for *certiorari* and prohibition to assail the DOH-CDO letters, GAMCA committed several ***procedural lapses*** that rendered its petition readily dismissible by the RTC. Not only did the petitioner present a ***premature challenge*** against an administrative act; it also committed the grave ***jurisdictional error*** of filing the petition ***before the wrong court***.

A.4.a. The DOH CDO letters were issued in the exercise of the DOH's quasi-judicial functions, and could be assailed through Rule 65 on certiorari and prohibition.

A cease and desist order is quasi-judicial in nature, as it applies a legislative policy to an individual or group within the coverage of the law containing the policy.

The Court, in *Municipal Council of Lemery, Batangas v. Provincial Board of Batangas*,[75] recognized the difficulty of defining the precise demarcation line between what are judicial and what are administrative or ministerial functions, as the exercise of judicial functions may involve the performance of legislative or administrative duties, and the performance of administrative or ministerial duties may, to some extent, involve the exercise of functions judicial in character. Thus, the Court held that the ***nature of the act to be performed, rather than of the office, board, or body which performs it***, should determine whether or not an action is in the discharge of a judicial or a quasi-judicial function.[76]

Generally, the exercise of judicial functions involves the determination of what the law is, and what the legal rights of parties are under this law with respect to a matter in controversy. Whenever an officer is clothed with this authority and undertakes to determine those questions, he acts judicially.[77]

In the administrative realm, a government officer or body exercises a quasi-judicial function when it hears and determines questions of fact to which the legislative policy is to apply,

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[75] 56 Phil. 260 (1931).

[76] *Id.* at 268. This statement finds full support from the current wording of the Rule on *Certiorari*, Rule 65 whose Section 1 provides:

> Section 1. Petition for *certiorari*. - When any **tribunal, board or officer exercising judicial or quasi-judicial functions** has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[77] *Santiago, Jr. v. Bautista*, G.R. No. L-25024, March 30, 1970, 32 SCRA 188, 198, citing *In State ex rel. Board of Commrs. v. Dunn* (86 Minn. 301, 304).

and decide, based on the law's standards, matters relating to the enforcement and administration of the law.[78]

The DOH CDO letter directed GAMCA to cease and desist from engaging in the referral decking system practice within three days from receipt of the letter. By issuing this CDO letter implementing Section 16 of RA No. 10022, the DOH (1) made the finding of fact that GAMCA implements the referral decking system, and (2) applied Section 16 of RA No. 10022, to conclude that GAMCA's practice is prohibited by law and should be stopped.

From this perspective, the DOH acted in a quasi-judicial capacity: its CDO letter determined a question of fact, and applied the legislative policy prohibiting the referral decking system practice.

Notably, cease and desist orders have been described and treated as quasi-judicial acts in past cases, and had even been described as similar to the remedy of injunction granted by the courts.[79]

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[78] *Bedol v. Comelec*, G.R. No. 179830, December 3, 2009, 606 SCRA 554.

[79] The Court has consistently recognized the grant of the power to issue a cease and desist order as an exercise of a government agency's quasi-judicial function. *See: The Honorable Monetary Board v. Philippine Veterans Bank*, G.R. No. 189571, January 21, 2015, sc.judiciary.gov.ph; *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas*. G.R. No. 191424, August 7, 2013, 703 SCRA 290, 304; *Bank of Commerce v. Planters Development Bank And Bangko Sentral Ng Pilipinas*, G.R. Nos. 154470-71, September 24, 2012, 681 SCRA 521, 555 *citing United Coconut Planters Bank v. E. Ganzon, Inc.*, G.R. No. 168859, June 30,2009, 591 SCRA 321, 338-341; *Freedom from Debt Coalition, et al. v. Energy Regulatory Commission, et al.*, G.R. No. 161113, June 15, 2004, 432 SCRA 157; *and Laguna Lake Development Authority v. Court of Appeals*, G.R. No. 110120, March 16, 1994, 231 SCRA 292.

A.4.b. The petitions for certiorari and prohibition against the DOH CDO letters fall within the jurisdiction of the Court of Appeals.

Since the CDO Letter was a quasi-judicial act, the manner by which GAMCA assailed it before the courts of law had been erroneous; the RTC should not have entertained GAMCA's petition.

First, acts or omissions by quasi-judicial agencies, regardless of whether the remedy involves a Rule 43 appeal or a Rule 65 petition for *certiorari*, is cognizable by the Court of Appeals. In particular, Section 4, Rule 65 of the Rules of Court provides:

> Section 4. When and where petition filed. The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
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> The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. ***If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.*** (emphasis, italics, and underscoring supplied)

Since the DOH is part of the Executive Department and has acted in its quasi-judicial capacity, the petition challenging its CDO letter should have been filed before the Court of Appeals. The RTC thus *did not have jurisdiction over the subject matter of the petitions* and erred in giving due course to the petition for *certiorari* and prohibition against the DOH CDO letters. In procedural terms, petitions for *certiorari* and prohibition against a government agency are remedies available to assail its quasi-judicial acts, and should thus have been filed before the CA.

The provision in Section 4, Rule 65 requiring that *certiorari* petitions challenging quasi-judicial acts to be filed with the CA is in full accord with Section 9 of Batas Pambansa Blg. 129[80] on the same point. Section 9 provides:

> Section 9. Jurisdiction. – The Court of Appeals shall exercise:
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> 1. ***Original jurisdiction*** to issue writs of mandamus, ***prohibition, certiorari***, habeas corpus, and quo warranto, and auxiliary writs or processes, ***whether or not in aid of its appellate jurisdiction***;
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> x x x x x x x x x x x x
>
> 3. ***Exclusive appellate jurisdiction over all final judgments, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies***, instrumentalities, boards or commission, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph 4 of the fourth paragraph of Section 17 of the Judiciary Act of 1948.
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> x x x x x x x x x x x x
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> (emphases, italics, and underscoring supplied)

Thus, by law and by Supreme Court Rules, the CA is the court with the exclusive original jurisdiction to entertain petitions for *certiorari* and prohibition against quasi-judicial agencies. In short, GAMCA filed its remedy with the wrong court.

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[80] The Judiciary Reorganization Act of 1980.

A.4.c The petitions for certiorari and prohibition against the DOH CDO letters were premature challenges - they failed to comply with the requirement that there be "no other plain, speedy and adequate remedy" and with the doctrine of exhaustion of administrative remedies.

Second, the Regional Trial Court of Pasay City unduly disregarded the requirements that there be "*no other plain, speedy and adequate remedy at law*" and the doctrine of exhaustion of administrative remedies, when it gave due course to the *certiorari* and prohibition petition against the DOH's CDO.

Under Chapter 8, Book IV of Executive Order (*EO*) No. 292,[81] series of 1987, the DOH Secretary "*shall have supervision and control over the bureaus, offices, and agencies under him*"[82] and "*shall have authority over and responsibility for x x x operation*" of the Department.

Section 1, Chapter 1, Title I, Book III of EO No. 292 in relation with Article VII, Sections 1 and 17 of the Constitution,[83] on the other hand, provides that the "*President shall have control of all the executive departments, bureaus, and offices*."

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[81] Administrative Code of 1987, enacted on July 25, 1987.

[82] Section 38, Chapter 7, Book IV of Executive Order No. 292 defines supervision and control in this wise:

> Supervision and Control. — Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs. Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "control" shall encompass supervision and control as defined in this paragraph.

[83] Article VII, Section 1 of the Constitution states that:

These provisions both signify that remedies internal to the Executive Branch exist before resorting to judicial remedies: GAMCA could ask the DOH Secretary to reconsider or clarify its letter-order, after which it could appeal, should the ruling be unfavorable, to the Office of the President.

Significantly, *this was what GAMCA did in the past when the DOH issued Memorandum Order No. 2008-0210 that prohibited the referral decking system*. GAMCA then asked for the DOH Secretary's reconsideration, and subsequently appealed the DOH's unfavorable decision with the Office of the President. The OP then reversed Memorandum Order No. 2008-0210 and allowed the referral decking system to continue.

That GAMCA had earlier taken this course indicates that it was not unaware of the administrative remedies available to it; it simply opted to disregard the doctrine of exhaustion of administrative remedies and the requirement that there be no other plain, speedy, and adequate remedy in law when it immediately filed its petition for *certiorari* with the RTC.

This blatant disregard of the Rule 65 requirements clearly places GAMCA's petition outside the exceptions that we recognized in the past in relaxing strict compliance with the exhaustion of administrative remedies requirement.

Jurisprudence[84] shows that this Court never hesitated in the past in relaxing the application of the rules of procedure to accommodate exceptional circumstances when their strict

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Section 1. The executive power shall be vested in the President of the Philippines.

Article VII, Section 17, on the other hand, 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.

[84] See, among others, *Cipriano v. Marcelino*, 150 Phil. 336 (1972); *Republic v. Lacap*, G.R. No. 158253, March 2, 2007, 517 SCRA 255; *Buston-Arendain v. Gil*, G.R. No. 172585, June 26, 2008, 555 SCRA 561; *Vigilar v. Aquino*, G.R. No. 180388, January 18, 2011, 639 SCRA 77.

application would result in injustice. These instances, founded as they are on equitable considerations, do not include the undue disregard of administrative remedies, particularly when they are readily available.[85]

A.4.d. The petitions for certiorari and prohibition against the DOH CDO letters should have been dismissed outright, as Rule 65 Petitions for Certiorari and Prohibition are extraordinary remedies given due course only upon compliance with the formal and substantive requirements.

Note, at this point, that Rule 65 petitions for *certiorari* and prohibition are discretionary writs, and that the handling court possesses the authority to dismiss them outright for failure to comply with the form and substance requirements. Section 6, Rule 65 of the Rules of Court in this regard provides:

> Section 6. Order to comment. – ***If the petition is sufficient in form and substance to justify such process***, the court shall issue an order requiring the respondent or respondents to comment on the petition within ten (10) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct together with a copy of the petition and any annexes thereto. (emphasis, italics, and underscoring supplied)

Thus, even before requiring the DOH to comment, the RTC could have assessed the petition for *certiorari* and prohibition for its compliance with the Rule 65 requirements. At that point,

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[85] *See Abe-abe, et al. v. Manta*, G.R. No. L-4827, May 31, 1979, 90 SCRA 524; *Sandoval v. Caneba*, G.R. No. 90503, September 27, 1990, 190 SCRA 77; *Merida Water District, et al. v. Bacarro, et al., supra* note 46; *Cabungcal, et al. v. Lorenzo, et al.*, 623 Phil. 329 (2009); *Addition Hills v. Megaworld Properties*, 686 Phil. 76 (2012), *Samar II Electric Cooperative v. Seludo*, 686 Phil. 786 (2012).

the petition for *certiorari* and prohibition should have been dismissed outright, for failing to comply with Section 1 and Section 4 of Rule 65. *When the court instead took cognizance of the petition, it acted on a matter outside its jurisdiction.*

Consequently, the RTC's resulting judgment is void and carries no legal effect. The decision exempting GAMCA from the application of the referral decking system should equally have no legal effect.

Noncompliance with the Section 1, Rule 65 requirement that there be no other plain, speedy, and adequate remedy in law, on the other hand, is more than just a pro-forma requirement in the present case. Since the petitions for *certiorari* and prohibition challenge a governmental act – *i.e.* action under the DOH CDO letters, as well as the validity of the instruments under which these letters were issued – compliance with Section 1, Rule 65 and the doctrine of exhaustion of administrative remedies that judicial review requires is also mandatory. To recall a previous discussion, the exhaustion of administrative remedies is also an aspect of ripeness in deciding a constitutional issue.

Thus, GAMCA's disregard of the Rules of Court not only renders the petition dismissible for failure to first exhaust administrative remedies; the constitutional issues GAMCA posed before the RTC were not also ripe for adjudication.

5. *The Regional Trial Court erred in finding grave abuse of discretion on the part of the DOH's issuance of the DOH CDO letters.*

On the merits, we find that the RTC of Pasay reversibly erred in law when it held that the DOH acted with grave abuse of discretion m prohibiting GAMCA from implementing the referral decking system.

In exempting GAMCA from the referral decking system that RA No. 10022 prohibits, the RTC of Pasay City noted that the regulation *per se* was not unconstitutional, but its application to GAMCA would violate the principle of sovereign equality and independence.

While we agree with the RTC's ultimate conclusion upholding the constitutionality of the prohibition against the referral decking system under RA No. 10022, our agreement proceeds from another reason; we disagree that the prohibition does not apply to GAMCA and with the consequent ruling nullifying the DOH's CDO Letter.

A.5.a. The prohibition against the referral decking system under Section 16, RA No. 10022, is a valid exercise of police power.

In its comment, GAMCA asserts that implementing the prohibition against the referral decking system would amount to an undue taking of property that violates Article II, Section 2 of the 1987 Constitution.

It submits that the Securities and Exchange Commission had in fact approved its Articles of Incorporation and Bylaws that embody the referral decking system; thus, the DOH cannot validly prohibit the implementation of this system.

GAMCA further claims that its members made substantial investments to upgrade their facilities and equipment. From this perspective, the August 23, 2010 order constitutes taking of property without due process of law as its implementation would deprive GAMCA members of their property.

AMCOW responded to these claims with the argument that the DOH CDO letters implementing RA No. 10022 are consistent with the State's exercise of the police power to prescribe regulations to promote the health, safety, and general welfare of the people. Public interest justifies the State's interference in health matters, since the welfare of migrant workers is a legitimate public concern. The DOH thus merely performed its duty of upholding the migrant workers' freedom to consult their chosen clinics for the conduct of health examinations.

We agree with AMCOW.

The State's police power[86] is vast and plenary[87] and the operation of a business,[88] especially one that is imbued with public interest (such as healthcare services),[89] falls within the scope of governmental exercise of police power through regulation.

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[86] Police power is the inherent power of the State to regulate or to restrain the use of liberty and property for public welfare *Gerochi v. Department of Energy*, 554 Phil. 563, 579 (2007); *Didipio Earth-Savers' Multi-Purpose Association, Inc. (DESAMA) v. Gozun*, G.R. No. 157882, March 30, 2006, 485 SCRA 586, 604, citing *U.S. v. Torribio*, 15 Phil. 85, 93 (1910) and *Rubi v. The Provincial Board of Mindoro*, 39 Phil. 660, 708 (1919). Under the police power of the State, property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government *Social Justice Society (SJS) v. Atienza, Jr.*, G.R. No. 156052, February 13, 2008, 545 SCRA 92, 139. The only limitation is that the restriction imposed should be reasonable, not oppressive *Mirasol v. Department of Public Works and Highways*, 523 Phil. 713, 747 (2006).

[87] It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin maxims *salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic utere tuo ut alienum non laedas* (so use your property as not to injure the property of others). As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as *parens patriae*, gives effect to a host of its regulatory powers *JMM Promotion and Management, Inc. v. Court of Appeals*, G.R. No. 120095, August 5, 1996, 260 SCRA 319, 324.

[88] The State may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare [as long as] the interference [is] reasonable and not arbitrary. *Social Justice Society (SJS) v. Atienza, Jr., supra* note 86, at 139-140; *Patalinghug v. Court of Appeals*, G.R. No. 104786, January 27, 1994, 229 SCRA 554, 559, citing *Sangalang v. Intermediate Court*, G.R. Nos. 71169, 76394, 74376 and 82281, December 22, 1988, 168 SCRA 634; *Ortigas & Co. Ltd. Partnership v. Feati Bank and Trust Co.*, No. L-24670, December 14, 1989, 94 SCRA 533.

[89] See *Pharmaceutical and Health Care Association of the Philippines v. Duque, et al.*, G.R. No. 173034, October 9, 2007, 535 SCRA 265; *St. Lukes's Medical Center Employees Association-AFW v. National Labor Relations Commission*, G.R. No. 162053, March 7, 2007, 517 SCRA 677; *Beltran v. Secretary of Health*, G.R. No. 133640, November 25, 2005, 476 SCRA 168, 196; *Pollution Adjudication Board v. Court of Appeals*, G.R. No. 93891, March 11, 1991, 195 SCRA 112, 123-124; *Tablarin v. Gutierrez*, G.R.

As defined, police power includes (1) the imposition of restraint on liberty or property, (2) in order to foster the common good.[90] The exercise of police power involves the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare."[91]

By its very nature, the exercise of the State's police power limits individual rights and liberties, and subjects them to the "far more overriding demands and requirements of the greater number."[92] Though vast and plenary, this State power also carries limitations, specifically, it may not be exercised arbitrarily or unreasonably. Otherwise, it defeats the purpose for which it is exercised, that is, the advancement of the public good.[93]

To be considered reasonable, the government's exercise of police power must satisfy the "valid object and valid means" method of analysis: ***first***, the interest of the public generally, as distinguished from those of a particular class, requires interference; and ***second***, the means employed are reasonably necessary to attain the objective sought and not unduly oppressive upon individuals.[94]

These two elements of reasonableness are undeniably present in Section 16 of RA No. 10022. The prohibition against the referral decking system is consistent with the State's exercise of the police power to prescribe regulations to promote the health,

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No. 78164, July 31, 1987, 152 SCRA 730, 741; *Lorenzo v. Director of Health*, 50 Phil. 595, 597 (1927); and *Rivera v. Campbell*, 34 Phil. 348, 353-354 (1916).

[90] *Basco, et al. v. Philippine Amusement and Gaming Corporation*, 274 Phil. 323 (1991).

[91] *Id.*

[92] *Philippine Association of Service Exporters v. Drilon*, 246 Phil. 393, 399 (1988).

[93] *Id.*

[94] *U.S. v. Toribio*, 15 Phil. 85; *Fabie v. City of Manila*, 21 Phil. 486; *Case v. Board of Health*, 24 Phil. 256; *Bautista v. Juinio*, 127 SCRA 329; *Ynot v. IAC*, 148 SCRA 659.

safety, and general welfare of the people. Public interest demands State interference on health matters, since the welfare of migrant workers is a legitimate public concern.

We note that RA No. 10022 expressly reflects the declared State policies to "*uphold the dignity of its citizens whether in the country or overseas, in general, and Filipino migrant workers,*" *and to "afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers*." The prohibition against the referral decking system in Section 16 of RA No. 10022 is an expression and implementation of these state policies.

The guarantee under Section 16 for OFWs to be given the option to choose a quality healthcare service provider – as expressed in Section 16 (c)[95] of RA No. 10022 – is guaranteed

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[95] Section 16. Under Section 23 of Republic Act No. 8042, as amended, add new paragraphs (c) and (d) with their corresponding subparagraphs to read as follows:

(c) Department of Health. - The Department of Health (DOH) shall regulate the activities and operations of all clinics which conduct medical, physical, optical, dental, psychological and other similar examinations, hereinafter referred to as health examinations, on Filipino migrant workers as requirement for their overseas employment. Pursuant to this, the DOH shall ensure that:

(c.1) The fees for the health examinations are regulated, regularly monitored and duly published to ensure that the said fees are reasonable and not exorbitant;

(c.2) The Filipino migrant worker shall only be required to undergo health examinations when there is reasonable certainty that he or she will be hired and deployed to the jobsite and only those health examinations which are absolutely necessary for the type of job applied for or those specifically required by the foreign employer shall be conducted;

(c.3) ***No group or groups of medical clinics shall have a monopoly of exclusively conducting health examinations*** on migrant workers for certain receiving countries;

by the prohibition against the decking practice and against monopoly practices in OFW health examinations.[96]

Section 16 likewise requires employers to accept health examinations from any DOH-accredited health facility; a refusal could lead to their temporary disqualification under pertinent rules to be formulated by the Philippine Overseas Employment Authority (POEA).[97]

These rules are part of the larger legal framework to ensure the Overseas Filipino Workers' (OFW) access to quality healthcare services, and to curb existing practices that limit their choices to specific clinics and facilities.

Separately from the Section 16 prohibition against the referral decking system, RA No. 10022 also prohibits and penalizes the imposition of a compulsory exclusive arrangement requiring OFWs to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons. Section 5, in relation to Section 6 of RA No. 10022, penalizes compulsory, exclusive arrangements[98] by imprisonment and fine and by the automatic revocation of the participating medical clinic's license.

(c.4) ***Every Filipino migrant worker shall have the freedom to choose any of the DOH-accredited or DOH-operated clinics that will conduct his/her health examinations and that his or her right as a patient are respected. The decking practice, which requires an overseas Filipino worker to go first to an office for registration and then farmed out to a medical clinic located elsewhere, shall not be allowed;*** x x x (Emphasis supplied)

[96] *Supra* note 95.

[97] The pertinent part of the provision reads: Any Foreign employer who does not honor the results of valid health examinations conducted by a DOH-accredited or DOH-operated clinic shall be temporarily disqualified from the participating in the overseas employment program, pursuant to POEA rules and regulations.

[98] Section 5 of Republic Act No. 8042, as amended by Republic Act 1022 now includes:

In addition to the acts enumerated above, it shall also be unlawful for any person or entity to commit the following prohibited acts:

The DOH's role under this framework is to regulate the activities and operations of all clinics conducting health examinations on Filipino migrant workers as a requirement for their overseas employment. The DOH is tasked to ensure that:

(c.3) No group or groups of medical clinics shall have a monopoly of exclusively conducting health examinations on migrant workers for certain receiving countries;

(c.4) Every Filipino migrant worker shall have the freedom to choose any of the DOH-accredited or DOH-operated clinics that will conduct his/her health examinations and that his or her rights as a patient are respected. The decking practice, which requires an overseas Filipino worker to go first to an office for registration and then farmed out to a medical clinic located elsewhere, shall not be allowed;[99]

While Section 16 of RA No. 10022 does not specifically define the consequences of violating the prohibition against the referral decking system, Republic Act No. 4226 (Hospital Licensure Act), which governs the licensure and regulation of hospitals and health facilities, authorizes the DOH to suspend, revoke, or refuse to renew the license of hospitals and clinics violating the law.[100]

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x x x x x x x x x

(4) Impose a compulsory and exclusive arrangement whereby an overseas Filipino worker is required to undergo health examinations only from specifically designated medical clinics, institutions, entities or persons, except in the case of a seafarer whose medical examination cost is shouldered by the principal/shipowner;

x x x x x x x x x

[99] *Supra* note 95.

[100] Section 11 of Republic Act No. 4226 provides:

Section 11. Revocation of License. — The licensing agency may suspend or revoke a license already issued for any of the following grounds: (a) repeated violation by the licensee of any provision of this Act or of any other existing law; (b) repeated violation of rules and regulations prescribed in the implementation of this Act; or (c) repeated failure to make necessary corrections or adjustments required by the licensing agency in the improvement of facilities and services.

These consequences cannot but apply to the violation of the prohibition against the referral decking system under RA No. 10022. If, under the law, the DOH can suspend, revoke, or refuse to renew the license of these hospitals upon the finding that they violated any provision of law (whether those found in RA No. 4226 or in RA No. 10022), it follows – as a necessarily included lesser power – that the DOH can likewise order these clinics and their association to cease and desist from practices that the law deems to be undesirable.

A.5.b. The DOH did not gravely abuse its discretion in issuing the assailed DOH CDO letters.

As discussed above, the letter-order implementing the prohibition against the referral decking system is quasi-judicial in nature. This characteristic requires that procedural due process be observed – that is, that the clinics concerned be given the opportunity to be heard before the standard found in the law can be applied to them.

Thus, prior to the issuance of the disputed CDO letter, the DOH should have given GAMCA the opportunity to be heard on whether the prohibition applies to it. Lest this opportunity to be heard be misunderstood, this DOH obligation raises an issue different from the question of whether Congress can, under the exercise of police power, prohibit the referral decking system; this latter issue lies outside the scope of the DOH to pass upon. The required hearing before the DOH relates solely to whether it properly implemented, based on the given standards under the law, the prohibition that Congress decreed under RA No. 10022.

Under normal circumstances, the issuance of a CDO without a prior hearing would violate GAMCA's procedural due process rights, and would amount to more than a legal error, *i.e.*, an error equivalent to action without jurisdiction. Rendering a decision quasi-judicial in nature without providing the opportunity to be heard amounts to a grave abuse of discretion that divests a quasi-judicial agency of its jurisdiction.

Factual circumstances unique to the present case, however, lead us to conclude that while it was an error of law for the DOH to issue a CDO without complying with the requirements of procedural due process, its action did not amount to a grave abuse of discretion.

Grave abuse of discretion amounts to more than an error of law; it refers to an act that is so capricious, arbitrary, and whimsical that it amounts to a clear evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[101]

Prior to the issuance of its CDO Letter, the DOH had more than sufficient basis to determine that GAMCA practices the prohibited referral decking system under RA No. 10022. Notably, the DOH had earlier allowed and recognized the referral decking system that GAMCA practiced through AO 5-01. This recognition was made with GAMCA's practice in mind. The subsequent administrative orders and department memorandum suspending and terminating the referral decking system, respectively, all pertain to the practice that the DOH had authorized under AO 5-01. Even the subject matter of these issuances do not just pertain to any other referral decking system, but to the "GAMCA referral decking system."

GAMCA likewise had more than several opportunities to contest the suspension and eventual revocation of the referral decking system initially permitted under AO 5-01. Its appeal

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[101] *Office of the Ombudsman v. Magno*, G.R. No. 178923, November 27, 2008, 572 SCRA 272, 286-287 citing *Microsoft Corporation v. Best Deal Computer Center Corporation*, 438 Phil. 408, 414 (2002); *Suliguin v. Commission on Elections*, G.R. No. 166046, March 23, 2006, 485 SCRA 219, 233; *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 19-20 (2002); *Philippine Rabbit Bus Lines, Inc. v. Goimco, Sr.*, 512 Phil. 729, 733-734 (2005) *citing Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 786 (2003); *Duero v. Court of Appeals*, 424 Phil. 12, 20 (2002), citing *Cuison v. Court of Appeals*, G.R. No. 128540, April 15, 1998, 289 SCRA 159, 171.

even reached the Office of the President, which overturned the DOH Memorandum Order terminating the referral decking system.

That the referral decking system had been subsequently prohibited by law shows the intent of Congress to prevent and prohibit the practice that GAMCA initiated and which the President had allowed. The President's duty under our political system is to implement the law; hence, when Congress subsequently prohibited the practice that GAMCA initiated, the Executive – including the President – has no choice but to implement it.

Based on these circumstances, while the DOH erred when it issued its CDO letters without first giving GAMCA the opportunity to prove whether the practice conducted by GAMCA is the same practice prohibited under RA No. 10022, the DOH conclusion to so act, in our view, did not constitute grave abuse of discretion that would have divested it of jurisdiction.

We note that the DOH had sufficient basis when it determined that the referral decking system prohibited under RA No. 10022 was the same decking system practiced by GAMCA. To reiterate, the referral decking system was not something new; it was an old system that GAMCA practiced and was known to all in its scope and operating details. That GAMCA had previously questioned the DOH prohibition and had been given ample opportunity to be heard when it filed an appeal before the OP, negate the conclusion that GAMCA had been aggrieved by precipitate and unfair DOH action.

To be sure, these factual circumstances do not make the CDO letter compliant with procedural due process. They mitigate, however, the error committed and render it less than the capricious, arbitrary, and patent refusal to comply with a positive legal duty that characterizes an act committed with grave abuse of discretion.

The Court furthermore, in several instances,[102] has recognized that an administrative agency may issue an *ex parte* cease and desist order, where vital public interests outweigh the need for procedural due process." In these instances, the Court noted that the affected establishment may contest the *ex parte* order, upon which the administrative agency concerned must conduct a hearing and allow the establishment to be heard. While jurisprudence has so far used the "vital public interests" standard to pollution cases, it had not been a grave abuse of discretion on the part of the DOH to consider that GAMCA's referral decking practice falls within this category. The DOH has long made the factual finding that the referral decking system hinders our Filipino seafarers' access to quality and affordable healthcare in its A.O. No. 106, series of 2002.

These circumstances further mitigate whatever legal error the DOH has committed and render the conclusion that grave abuse of discretion had taken place misplaced.

Since the writs of *certiorari* and prohibition do not issue against legal errors, but to acts of grave abuse of discretion, the RTC erred in issuing these writs against the DOH CDO letters.

6. *The prohibition against the referral decking system against GAMCA does not violate the principle of sovereign equality and independence.*

The RTC based its decision to grant the writs of *certiorari* and prohibition against the DOH letter-order on the principle of sovereign equality and independence; applying the referral decking system prohibition against GAMCA violates this principle.

The RTC reasoned out that the prohibition against the referral decking system under Section 16 of RA No. 10022 must be

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[102] *Laguna Lake Development Authority v. Court of Appeals*, G.R. No. 110120, March 16, 1994, 231 SCRA 292, *Pollution Adjudication Board v. Court of Appeals*, 272-A Phil. 66 (1991).

interpreted to apply only to clinics conducting health examinations on migrant workers bound for countries that do not require the referral decking system for the issuance of visas to job applicants.

The RTC observed, too, that the referral decking system is part of the application procedure in obtaining visas to enter the GCC States, a procedure made in the exercise of the sovereign power of the GCC States to protect their nationals from health hazards, and of their diplomatic power to regulate and screen entrants to their territories.

It also reasoned out that under the principle of sovereign equality and independence of States, the Philippines cannot interfere with this system and in fact must respect the visa-granting procedures of foreign states in the same way that they respect our immigration procedures. Moreover, to restrain GAMCA which is a mere adjunct of HMC (an agent of GCC States) is to restrain the GCC States themselves.

AMCOW contests the RTC's conclusion, arguing that the principles of sovereign equality and independence of States do not apply to the present case. According to AMCOW, the subject matter of this case pertains to a domestic concern as the law and the regulations that GAMCA assails relate to the operation of medical clinics in the Philippines.

It points out that the Philippines gave GAMCA and its members the privilege of conducting their businesses domestically; hence, their operations are governed by Philippine laws, specifically by RA No. 10022 which serves as one of the limitations on the privilege granted to them. GAMCA's right to engage in business should yield to the State's exercise of police power. In legal contemplation, therefore, the DOH CDO letters did not prejudice GAMCA's right to engage in business; nor did they hamper the GAMCA members' business operations.

AMCOW further insists that the August 23, 2010 and November 2, 2010 orders are consistent with the State's exercise of the police power to prescribe regulations to promote the health, safety, and general welfare of the people. Public interest demands

State interference on health matters, since the welfare of migrant workers is a legitimate public concern. The DOH thus merely performed its duty of upholding the migrant workers' freedom to choose any of its accredited or operated clinics that will conduct health examinations.

The DOH, for its part, adds that the implementation of RA No. 10022 cannot be defeated by agreements entered into by GAMCA with the GCC States. The GCC States, the DOH points out, are not empowered to determine the Philippines' courses of action with respect to the operation, within Philippine territory, of medical clinics; the conduct of health examinations; and the freedom of choice of Filipino migrant workers.

GAMCA responds to these arguments by asserting that the referral decking system is a part of the application procedure for obtaining visas to enter the GCC States. Hence, it is an exercise of the sovereign power of the GCC States to protect their nationals from health hazards, and their diplomatic power to regulate and screen entrants to their territories. To restrain an agent of the GCC States under the control and acting in accordance with the direction of these GCC States, restrains the GCC States.

GAMCA also points out that the OFWs would suffer grave and irreparable damage and injury if the DOH CDO letters would be implemented as the GCC States would not issue working visas without the GAMCA seal attesting that the OFWs had been medically examined by GAMCA member clinics.

After considering all these arguments, we find that the RTC's decision misapplied the principle of sovereign independence and equality to the present case. While the principles of sovereign independence and equality have been recognized in Philippine jurisprudence, our recognition of this principle does not extend to the exemption of States and their affiliates from compliance with Philippine regulatory laws.

A.6. The principle of sovereign equality and independence of states does not exempt GAMCA from the referral decking system prohibition under RA No. 10022.

In *Republic of Indonesia v. Vinzon*,[103] we recognized the principle of sovereign independence and equality as part of the law of the land. We used this principle to justify the recognition of the principle of sovereign immunity which exempts the State – both our Government and foreign governments – from suit. We held:

> International law is founded largely upon the principles of reciprocity, comity, independence, and equality of States which were adopted as part of the law of our land under Article II, Section 2 of the 1987 Constitution. The rule that a State may not be sued without its consent is a necessary consequence of the principles of independence and equality of States. As enunciated in *Sanders v. Veridiano II*, the practical justification for the doctrine of sovereign immunity is that there can be no legal right against the authority that makes the law on which the right depends. In the case of foreign States, the rule is derived from the principle of the sovereign equality of States, as expressed in the maxim *par in parem non habet imperium*. All states are sovereign equals and cannot assert jurisdiction over one another. A contrary attitude would "unduly vex the peace of nations."

Our recognition of sovereign immunity, however, has never been unqualified. While we recognized the principles of independence and equality of States to justify a State's sovereign immunity from suit, we also restricted state immunity to acts *jus imperii*, or public acts. We said that once a State enters into commercial transactions (*jus gestionis*), then it descends to the level of a private individual, and is thus not immune from the resulting liability and consequences of its actions.[104]

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[103] G.R. No. 154705, June 26, 2003, 405 SCRA 126.

[104] *China National Machinery & Equipment Corp. v. Santamaria, et al.*, G.R. No. 185572, February 7, 2012, sc.judiciary.gov.ph; *Holy See v. Rosario*, G.R. No. 101949, December 1, 1994, 238 SCRA 524, 535; *JUSMAG v.*

By this recognition, we acknowledge that a foreign government acting in its *jus imperii* function cannot be held liable in a Philippine court. Philippine courts, as part of the Philippine government, cannot and should not take jurisdiction over cases involving the public acts of a foreign government. Taking jurisdiction would amount to authority over a foreign government, and would thus violate the principle of sovereign independence and equality.[105]

This recognition is altogether different from exempting governments whose agents are in the Philippines from complying with our domestic laws.[106] We have yet to declare in a case that the principle of sovereign independence and equality exempts agents of foreign governments from compliance with the application of Philippine domestic law.

In the present case, GAMCA has not adduced any evidence in the court below, nor has it presented any argument before us showing that the principle of sovereign equality and independence has developed into an international custom shielding state agents from compliance with another state's domestic laws. Under this situation, the Court is in no position to determine whether the practice that GAMCA alleges has indeed crystallized into an international custom.

GAMCA has never proven in this case, too, that the GCC has extended its sovereign immunity to GAMCA. Sovereign immunity belongs to the State, and it must first be extended to its agents before the latter may be considered to possess sovereign immunity.

Significantly, the Court has even adopted a restrictive approach in recognizing state immunity, by distinguishing between a

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National Labor Relations Commission, G.R. No. 108813, December 15, 1994, 239 SCRA 224, 231-232.

[105] *Arigo v. Swift*, G.R. No. 206510, September 16, 2014, 735 SCRA 208, citing *Minucher v. Court of Appeals*, 445 Phil. 250 (2003).

[106] x x x the privilege is not an immunity from the observance of the law of the territorial sovereign or from ensuing legal liability; it is, rather, an immunity from the exercise of territorial jurisdiction. *Id.* at 132.

State's *jus imperii* and *jus gestionis*. It is only when a State acts in its *jus imperii* function that we recognize state immunity.[107]

We point out furthermore that the prohibition against the referral decking system applies to hospitals and clinics, as well as to OFW employers, and does not seek to interfere with the GCC's visa requirement processes. RA 10022 prohibits hospitals and clinics in the Philippines from practicing the referral decking system, and employers from requiring OFWs to procure their medical examinations from hospitals and clinics practicing the referral decking system.

The regulation applies to Philippine hospitals and clinics, as well as to employers of OFWs. It does not apply to the GCCs and their visa processes. That the regulation could affect the OFWs' compliance with the visa requirements imposed by GCCs does not place it outside the regulatory powers of the Philippine government.

In the same manner, GCC states continue to possess the prerogative to apply their visa requirements to any foreign national, including our OFWs, who seeks to enter their territory; they may refuse to grant them entry for failure to comply with the referral decking system, or they may adjust to the prohibition against the referral decking system that we have imposed. These prerogatives lie with the GCC member-states and do not affect at all the legality of the prohibition against the referral decking system.

Lastly, the effect of the prohibition against the referral decking system is beyond the authority of this Court to consider. The wisdom of this prohibition has been decided by Congress, through the enactment of RA No. 10022. Our role in this case is merely to determine whether our government has the authority to enact the law's prohibition against the referral decking system, and whether this prohibition is being implemented legally. Beyond these lies the realm of policy that, under our Constitution's separation of powers, this Court cannot cross.

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[107] *United States of America v. Ruiz*, 221 Phil. 179, 182-183 & 184 (1985).

WHEREFORE, in the light of these considerations, we hereby **GRANT** the petitions. Accordingly, we **REVERSE** and **SET ASIDE** the orders dated August 10, 2012 and April 12, 2013 of the Regional Trial Court of Pasay City, Branch 108, in Sp. Civil Action No. R-PSY-10-04391-CV.

Costs against respondent GAMCA.

SO ORDERED.

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

Leonen, J., concurs in the result, see separate opinion.

Jardeleza, J., no part, prior OSG action.

Caguioa, J., on leave.

CONCURRING AND DISSENTING OPINION

LEONEN, *J.*:

I concur in the result.

I.

The special civil actions filed with the Regional Trial Court were both for the issuance of a writ of certiorari and a writ of prohibition. Thus, in the very opening paragraph of the discussion of the Regional Trial Court in question:

> The present Petition for Certiorari and Prohibition seeks: a) the issuance of a writ of prohibition to enjoin and prohibit respondent Secretary from enforcing and implementing Department of Health (DOH) Order dated August 23, 2010 on the ground that it was issued with grave abuse of discretion amounting to lack or excess of jurisdiction; and b) the declaration of Paragraphs c.3 and c.4, Section 16, of Republic Act (R.A.) No. 10022 and Section 1(c) and 1(d), Rule XI of the Implementing Rules and Regulations (IRR) as unconstitutional for being contrary to the generally accepted principles

of international law, *i.e.*, the principle of sovereign equality and independence of states.[1]

The dispositive portion of the Regional Trial Court's questioned Decision[2] reads:

> WHEREFORE, the petition is hereby granted. Accordingly, the writ of CERTIORARI is hereby issued declaring null and void ab initio the August 23, 2010 Order and November 2, 2010 reiterating Order of the respondent DOH secretary. A writ of Prohibition is likewise issued directing the respondent DOH Secretary and all persons acting on his behalf to cease and desist from implementing the assailed Orders against the petitioners. The August 1, 2011 writ of preliminary injunction is hereby made permanent. Civil Case No. 04-0670 is hereby dismissed for being moot and academic.[3] (Emphasis supplied)

Section 21 of Batas Pambansa No. 129 provides:

> Section 21. *Original jurisdiction in other cases*. – Regional Trial Courts shall exercise original jurisdiction:
>
> (1) In the issuance of writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction which may be enforced in any part of their respective regions[.] (Emphasis supplied)

The Regional Trial Court of Pasay had jurisdiction over the remedies invoked, which were petitions for a writ of certiorari and a writ of prohibition. However, it did not have jurisdiction to enjoin to issue the writs for its intended scope.

The Order of the Department of Health dated August 23, 2010[4] and its reiterative Order dated November 2, 2010[5] was

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[1] *Rollo*, p. 56.

[2] *Id*. at 56-66. The Regional Trial Court Decision was promulgated on August 10, 2012 and penned by Judge Maria Rosario B. Ragasa of Branch 108 of the Regional Trial Court of Pasay City.

[3] *Id*. at 66.

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

[5] *Id*. at 20.

nationwide in its scope. After all, the Department of Health is a nationwide agency. The respondent GCC Approved Medical Centers Association, Inc. did not clearly and convincingly show that all its members were located only within the territorial jurisdiction of the Regional Trial Court of Pasay City.

For these reasons alone, the decision of the court *a quo* is null and void for having been issued without jurisdiction. Thus, the Petitions should be granted.

II.

In my view, it is not necessary to bifurcate the Special Civil Action for certiorari into a "traditional" track and an "expanded" mode. The present rules are already sufficient for this Court to exercise its fundamental power of judicial review described in part in Article VIII, Section 1.[6]

Neither would it be correct to limit any of our certiorari powers, even on an "expanded" basis, to questions, which only raise constitutional issues. An act of any government branch, agency, or instrumentality that violates a statute or a treaty is grave abuse of discretion. The Constitution does not distinguish the cause for grave abuse.[7] Neither should this Court, unless, in the guise of promulgating rules of procedure, we wish to effect an amendment of the Constitution.

Finally, I express my reservations relating to the absolute necessity for a decision of this Court before any other organ of government can act on its rational belief in the bending nature

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[6] CONST., Art. VIII, Sec. 1 states:

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.

[7] CONST., Art. VIII, Sec. 1.

of any customary international norms or a general principle of international law. Our constitutional adherence to international law is by virtue of incorporation through Article II, Section 2[8] or Article VII, Section 21 of the Constitution.[9] Judicial action is not required for these norms to be binding. Neither of these modes of incorporation require it.

III.

Fundamental to constitutional litigation is the assurance that judicial review should only happen when there is an actual case or controversy. That is, the judiciary is not an advisory body to the President, Congress, or any other branch, instrumentality, or agency of the government. Thus, absent any actual or sufficiently imminent breach, which will cause an injury to a fundamental right, a provision of law or an administrative regulation cannot be challenged. This Court is co-equal with the other branches of government.[10] The Constitution is a legible, written document capable of being read by all. Its ambiguity may only be clarified through judicial review when it becomes apparent through the existence of an actual situation. The mere existence of subordinate norms – in the form of a statute, treaty or administrative rule – is not enough. There has to be parties

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[8] CONST., Art. VIII, Sec. 1 states:

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.

[9] CONST., Art. VII, Sec. 21 states:

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] *Jose Alejandrino v. Manuel L. Quezon, et al.*, 46 Phil. 83 (1924) [Per J. Malcolm, *En Banc*].

who tend to be directly and substantially injured under a specific concrete set of facts.[11]

The confusion with certiorari in my view, is brought about by instances in the recent past where actions, which should have been considered as ones for declaratory relief, were acted upon by this Court as if they were certiorari actions. For example, in *James M. Imbong, et al. v. Hon. Paquito N. Ochoa, Jr., et al.*[12] or the Reproductive Health (RH) cases, this Court took cognizance of the Petitions even if there were still no Implementing Rules, no doctor or health practitioner threatened with sanctions, no couple or spouse whose prerogatives were to be curtailed. In my dissent, I pointed to the dangers of speculative arguments, mainly, that our imagination substituted for actual facts. Imagination took precedence over actual controversy.

The same with the case of *Jose Jesus M. Disini, et al. v. The Secretary of Justice, et al*.[13] In that case, there was no cybercrime committed. There was no cybercrime threatened to be committed, no social media part removed, no advertising in cyberspace prohibited. Again, although denominated as certiorari actions, the petitions were in actuality actions for declaratory relief.

Petitions for certiorari as provided in Rule 65 are available only to correct acts done in a judicial or quasi-judicial procedure.[14]

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[11] *The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, 589 Phil. 387 (2008) [Per *J.* Carpio Morales, *En Banc*].

[12] 732 Phil. 1 (2014) [Per *J.* Mendoza, *En Banc*].

[13] 727 Phil. 28 (2014) [Per *J.* Abad, *En Banc*].

[14] RULES OF COURT, Rule 65, Sec. 1 states that:

Section 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby

This ensures that the power of judicial review can only be exercised when there is an actual controversy. No judicial action can happen without interested parties, who suffer injury and therefore ready to plead the facts that give actual rise to their real injury. This is the same with quasi-judicial actions.

Ministerial or administrative actions, which will cause or threaten to cause injury can be corrected through a Writ of Prohibition, not a Writ of Certiorari. In both cases, the requirement of the absence of a plain, speedy, and adequate remedy in the ordinary course of the law conforms with the deferential nature of judicial review in constitutional cases. The requirement in both cases that there be a clear finding of grave abuse of discretion amounting to lack of jurisdiction is sufficient to meet the scope of all our powers of judicial review.

The suggestion to expand the present rules on Petitions for Certiorari opens a very dangerous road towards changing our place in the Constitutional order. It will transform this Court to a virtual overload that will review legislative and executive acts, even without the presence of an actual controversy, simply because in our collective and subjective view, there may be some amorphous and undefined but gut feeling transcendental interest involved.

It is in this respect that I wage this Court to tread with an abundance of all caution even as I respect the erudite observations of Justice Arturo Brion. This Court must clothe itself with humility as it reviews its past cases in the light of a full understanding of our constitutional role if and when we do exercise our power to amend the rules.

In my view, discussions are thus premature.

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may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

IV.

In *Restituto Ynot v. Intermediate Appellate Court, et al.*,[15] this Court called a trial court to task when it hesitated to decide on the constitutionality of an Executive Order in the presence of a clearly pleaded actual case. After all, the plain text of Article VIII, Section 5 (2) (a) states:

> Section 5. The Supreme Court shall have the following powers:
>
> . . . . . .
>
> (2) Review, revise, reverse, modify or affirm an appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
> (a) All cases in which the constitutionality or the validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order instruction, ordinance, or regulation is in question. (Emphasis provided)

To limit constitutional questions only for the determination of this Court at first instance and even in its "expanded" mode is not consistent with this provision. It may also be inconsistent with Article VIII, Section 2 of the Constitution:

> Section 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.

As earlier pointed out, Section 21 of Batas Pambansa Bilang 129 grants jurisdiction to the Regional Trial Court in Petitions for Certiorari and Prohibition. The only qualification is that the writs "... may be enforced in any part of their respective jurisdictions."[16]

For this Court to reduce this jurisdiction further is to amend Batas Pambansa Bilang 129, therefore breaching our solemn

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[15] 232 Phil. 615 (1987) [Per *J.* Cruz, *En Banc*].

[16] Batas Blg. 129, Sec. 21.

commitment to a Constitution that removes from us the power to prescribe jurisdiction.

V.

I join Justice Lucas Bersamin's observations that the issuance of a Cease and Desist Order does not *per se* mean that the actions taken by the Department of Health is quasi-judicial in nature. In my view, the executive department in applying and implementing the law does not only do so by mere advice or persuasion to those who do not follow its provisions. The executive is not without its own set of legally mandated coercive powers short of any kind of adjudication. The issuance of an order to cease and desist in the Petitioners' continuing violation of the law is one of them. The type of cease and order in the case was therefore an administrative act. If at all, the proper action to question its constitutionality is a Petition for a Writ of Prohibition not a Writ of Certiorari. However, due to the scope of the writ requested, it should have been filed with the Court of Appeals, not the Regional Trial Court.

ACCORDINGLY, I vote to **DISMISS** the Petitions.

EN BANC

[G.R. Nos. 212014-15. December 6, 2016]

RICHARD A. CAMBE, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, NATIONAL BUREAU OF INVESTIGATION, LEVITO D. BALIGOD, AND FIELD INVESTIGATION OFFICE,** *respondents.*

[G.R. Nos. 212427-28. December 6, 2016]

SENATOR RAMON "BONG" REVILLA, JR., *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, THROUGH ITS**

SPECIAL PANEL OF INVESTIGATORS, NATIONAL BUREAU OF INVESTIGATION, LEVITO D. BALIGOD, AND FIELD INVESTIGATION OFFICE, OFFICE OF THE OMBUDSMAN, *respondents.*

[G.R. Nos. 212694-95. December 6, 2016]

SENATOR RAMON "BONG" REVILLA, JR., *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, NATIONAL BUREAU OF INVESTIGATION, LEVITO D. BALIGOD, FIELD INVESTIGATION OFFICE OF THE OMBUDSMAN, OFFICE OF THE SPECIAL PROSECUTOR, AND THE HONORABLE SANDIGANBAYAN,** *respondents.*

[G.R. Nos. 212794-95. December 6, 2016]

RICHARD A. CAMBE, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, NATIONAL BUREAU OF INVESTIGATION, LEVITO D. BALIGOD, AND FIELD INVESTIGATION OFFICE,** *respondents.*

[G.R. Nos. 213477-78. December 6, 2016]

JOHN RAYMUND DE ASIS, *petitioner, vs.* **CONCHITA CARPIO MORALES IN HER OFFICIAL CAPACITY AS OMBUDSMAN, PEOPLE OF THE PHILIPPINES AND SANDIGANBAYAN, FIRST DIVISION,** *respondents.*

[G.R. Nos. 213532-33. December 6, 2016]

RONALD JOHN LIM, *petitioner, vs.* **CONCHITA CARPIO MORALES IN HER OFFICIAL CAPACITY AS OMBUDSMAN, PEOPLE OF THE PHILIPPINES AND SANDIGANBAYAN, FIRST DIVISION,** *respondents.*

[G.R. Nos. 213536-37. December 6, 2016]

JANET LIM NAPOLES, *petitioner, vs.* **CONCHITA CARPIO MORALES IN HER OFFICIAL CAPACITY AS OMBUDSMAN, PEOPLE OF THE PHILIPPINES AND SANDIGANBAYAN, FIRST DIVISION,** *respondents.*

[G.R. Nos. 218744-59. December 6, 2016]

MARIO L. RELAMPAGOS, ROSARIO SALAMIDA NUÑEZ, LALAINE NARAG PAULE, AND MARILOU DIALINO BARE, *petitioners, vs.* **SANDIGANBAYAN, (FIRST DIVISION) AND PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE ASPECT OF CASE IN RELATION TO COA AUDIT IS SEPARATE AND DISTINCT FROM THE CRIMINAL ASPECT COVERING THE CHARGES AGAINST PLUNDER AND VIOLATION OF RA 3019; INCIDENTS RELATED TO THE FORMER SHOULD HAVE NO EFFECT ON THE FILING OF THE LATTER.— The administrative aspect of the cases against Cambe and Sen. Revilla in relation to the COA's audit is clearly separate and distinct from the criminal aspect covering the charges of Plunder and/or of violation of Section 3 (e) of RA 3019 against them. Hence, the incidents related to it should have no effect on the filing of the latter. In *Villaseñor v. Sandiganbayan*, this Court explained that: [T]here are three kinds of remedies that are available against a public officer for impropriety in the performance of his powers and the discharge of his duties: (1) civil, (2) criminal, and (3) administrative **[and that] [t]hese remedies may be invoked separately, alternately, simultaneously or successively**. Sometimes, the same offense may be the subject of all three kinds of remedies. x x x x It is clear, then, that criminal and administrative cases are distinct from each other. The settled rule is that criminal and civil cases

are altogether different from administrative matters, such that the first two will not inevitably govern or affect the third and vice versa. **Verily, administrative cases may proceed independently of criminal proceedings.** In *Reyna v. COA* (*Reyna*), this Court particularly declared that "[t]he criminal case filed before the Office of the Ombudsman is distinct and separate from the proceedings on the disallowance before the COA."

2. ID.; OFFICE OF THE OMBUDSMAN; DETERMINATION OF PROBABLE CAUSE; RESPECTED PROVIDED THERE IS NO GRAVE ABUSE OF DISCRETION.— Time and again, this Court's consistent policy has been to maintain non-interference in the Ombudsman's determination of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. This observed policy is based not only in respect for the investigatory and prosecutory powers granted by the 1987 Constitution to the Office of the Ombudsman, but upon practicality as well. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

3. ID.; ID.; ID.; IN FINDING PROBABLE CAUSE, ONLY FACTS SUFFICIENT TO SUPPORT A *PRIMA FACIE* CASE ARE REQUIRED.— Probable cause simply means "such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The term does not mean 'actual and positive cause' nor does it import absolute certainty. **It is merely based on opinion and reasonable belief.**" "[T]hus, a finding based on more than bare suspicion but less than evidence that would justify a conviction would suffice." In determining the elements of the crime charged for purposes of arriving at a finding of probable cause, "**only facts sufficient to support a *prima facie* case against the [accused] are required, not absolute certainty**."

4. CRIMINAL LAW; PLUNDER LAW (RA 7080); PLUNDER; ELEMENTS.— Plunder, defined and penalized under Section

2 of RA 7080, as amended, has the following elements: (*a*) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (*b*) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1 (d) thereof; and (*c*) that the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least Fifty Million Pesos (₱50,000,000.00).

5. ID.; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); SECTION 3(e) ON CORRUPT PRACTICES OF PUBLIC OFFICERS; ELEMENTS.— [T]he elements of violation of Section 3 (e) of RA 3019 are: (*a*) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (*b*) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (*c*) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

6. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; DETERMINATION OF PROBABLE CAUSE; IN THE PROCEEDINGS OF PRELIMINARY INVESTIGATION, TECHNICAL RULES OF EVIDENCE SHOULD NOT BE APPLIED.— It should be borne in mind that probable cause is determined during the context of a preliminary investigation **which is "merely an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it."** It "is not the occasion for the full and exhaustive display of the prosecution's evidence." Therefore, "the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level." Accordingly, "owing to the initiatory nature of preliminary investigations, **the technical rules of evidence should not be applied in the course of its proceedings**."

7. ID.; ID.; ID.; ID.; PROBABLE CAUSE CAN BE ESTABLISHED WITH HEARSAY EVIDENCE, AS LONG

AS THERE IS SUBSTANTIAL BASIS FOR CREDITING THE HEARSAY.— [E]ven if it is assumed that the rule on *res inter alios acta* were to apply during preliminary investigation, the treatment of the whistleblowers' statements as hearsay is bound by the exception on **independently relevant statements**. "Under the doctrine of independently relevant statements, regardless of their truth or falsity, the fact that such statements have been made is relevant. The hearsay rule does not apply, and the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact." x x x In any case, this Court has resolved that "**probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay**."

8. CRIMINAL LAW; PLUNDER AND VIOLATIONS OF SECTION 3(e) OF RA 3019; PRIVATE INDIVIDUAL MAY BE CHARGED THEREOF IF FOUND TO HAVE CONSPIRED WITH THE PUBLIC OFFICER.— That a private individual, such as Napoles, could not be charged for Plunder and violations of Section 3 (e) of RA 3019 because the offenders in those crimes are public officers is a complete misconception. It has been long-settled that while the primary offender in the aforesaid crimes are public officers, private individuals may also be held liable for the same **if they are found to have conspired with said officers in committing the same**. This proceeds from the fundamental principle that in cases of conspiracy, the act of one is the act of all. In this case, since it appears that Napoles has acted in concert with public officers in the systematic pillaging of Sen. Revilla's PDAF, the Ombudsman correctly indicted her as a co-conspirator for the aforementioned crimes.

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

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; DETERMINATION OF PROBABLE CAUSE; WHERE THE OMBUDSMAN FINDS PROBABLE CAUSE DESPITE ABSENCE OF EVIDENCE ON THE CRIMES CHARGED, IT IS THE DUTY OF THIS COURT TO REVERSE SUCH FINDINGS.— As the *ponencia* points out, the courts do not

usually interfere with the Ombudsman in the determination as to the existence of probable cause. In other words, the Ombudsman possesses ample latitude to determine the propriety of filing a criminal charge against a person. Nonetheless, it must be emphasized that the Ombudsman's broad authority is circumscribed by the need of an upright conduct of a preliminary investigation. This balancing rule is intended to guarantee the right of every person from "the inconvenience, expense, ignominy and stress of defending himself/herself in the course of a formal trial, until the reasonable probability of his or her guilt has been passed" and to guard the State against the "burden of unnecessary expense and effort in prosecuting alleged offenses and in holding trials arising from false, frivolous or groundless charges." x x x Where the Ombudsman finds probable cause despite the palpable absence of any competent and relevant evidence of the elements of the crimes charged, I deem it the duty of this Court to reverse her findings on account of such grave abuse of discretion x x x Certainly, **the finding of probable cause to indict a person for plunder cannot be based on *admittedly* falsified documents**. While probable cause falls below proof beyond reasonable doubt in the hierarchy of quanta of evidence, it must nonetheless be supported by sufficient, credible and competent evidence, *i.e.*, **there should be facts and circumstances sufficiently strong in themselves to warrant a prudent and cautious man to believe that the accused is guilty of the crime with which he is charged**.

2. REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; EXTRAJUDICIAL CONFESSION BINDS ONLY THE CONFESSANT AND IS INADMISSIBLE AGAINST HIS OR HER CO-ACCUSED.— It is basic **that an extrajudicial confession binds only the confessant or declarant and is inadmissible against his or her co-accused**. This basic postulate, an extension of the *res inter alios acta* rule, is embodied in Section 28, Rule 130 of the Rules of Court x x x Under the rule, the testimony made by the confessant is hearsay and inadmissible as against his co-accused even during the preliminary investigation stage. x x x The exception to the above rule, the succeeding Section 30 of Rule 130, requires foremost, the existence of an independent and conclusive proof of the conspiracy and that the person concerned has **performed an overt act** in pursuance

> or furtherance of the complicity. x x x The reliance on these previously suppressed testimonies of Revilla's co-respondents to conjure up probable cause against him is not only violative of the *res inter alios acta* rule, worse, it desecrates the basic rule of due process. x x x In sum, the Ombudsman should have closely scrutinized the testimonies of the alleged participants in the supposed conspiracy. This holds especially true for testimonies that not only try to relieve the affiant from responsibility but also seek to pass the blame to others. The Ombudsman, however, utterly failed to do so and simply accepted the co-respondents' declarations as the gospel truth, unmindful that a neglect to closely sift through the affidavits of the parties can still force the unnecessary prosecution of frivolous cases. By itself, this neglect constitutes a grave abuse of discretion, which should be reversed by this Court.

APPEARANCES OF COUNSEL

De Guzman Dionido Caga Jacuban and Associates Law Offices for petitioners Relampagos and Bare in G.R. Nos. 218744-59.

Alfredo C. Cabeza for petitioners Nuñez and Paule in G.R. No. 218744-59.

David Cui-David Buenaventura and Ang Law Offices for petitioners in G.R. Nos. 213477-78, 213532-33 and 213536-37.

Ancheta and Associates for petitioner in G.R. Nos. 212014-15 and 212794-95.

Esguerra and Blanco Law Firm, et al. counsels in G.R. Nos. 212427-28 and 212694-95.

The Solicitor General for public respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before this Court are consolidated petitions[1] filed by petitioners Senator Ramon "Bong" Revilla, Jr. (Sen. Revilla),

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[1] Pertains to the following petitions: (*a*) petition in **G.R. Nos. 212694-95** filed by Revilla; (*b*) petition in **G.R. Nos. 212794-95** filed by Cambe;

Richard A. Cambe (Cambe), Janet Lim Napoles (Napoles or Janet Napoles), John Raymund De Asis (De Asis), and Ronald John Lim (Lim), which commonly assail the Joint Resolution[2] dated March 28, 2014 and the Joint Order[3] dated June 4, 2014 of the Office of the Ombudsman (Ombudsman) in OMB-C-C-13-0316 and OMB-C-C-13-0395 finding probable cause to indict them, along with several others, for the crimes of Plunder, defined and penalized under Section 2 in relation to Section 1 (d) (1), (2), and (6) of Republic Act No. (RA) 7080,[4] as amended (one [1] count) and/or of violation of Section 3 (e) of RA 3019[5] (sixteen [16] counts).

Further assailed are: (1) by Cambe,[6] the Ombudsman's Joint Order[7] dated March 14, 2014, which denied Cambe's Supplemental Counter-Affidavit with Second Motion to Suspend Proceedings;[8] (2) by Sen. Revilla,[9] the Ombudsman's Order[10]

(*c*) petition in **G.R. Nos. 213477-78** filed by De Asis; (*d*) petition in **G.R. Nos. 213532-33** filed by Ronald John Lim; (*e*) petition in **G.R. Nos. 213536-37** filed by Napoles.

[2] *Rollo* (G.R. Nos. 212694-95), Vol. I, pp. 84-223.

[3] *Id.* at 224-278.

[4] Entitled "AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER," approved on July 12, 1991, as amended by, among others, Section 12 of RA 7659, entitled "AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES," approved on December 13, 1993.

[5] Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT," approved on August 17, 1960.

[6] Pertains to the petition in **G.R. Nos. 212014-15**.

[7] *Rollo* (G.R. Nos. 212014-15), Vol. I, pp. 32-36.

[8] See Supplemental Counter-Affidavit with Second Motion to Suspend Proceedings dated March 12, 2014; *rollo* (G.R. Nos. 212794-95), Vol. VIII, pp. 4486-4494.

[9] Pertains to the petition in **G.R. Nos. 212427-28**.

[10] *Rollo* (G.R. Nos. 212427-28), Vol. I, pp. 42-44.

dated May 15, 2014 which denied Sen. Revilla's Omnibus Motion[11] to re-conduct the preliminary investigation, among others; and (3) by petitioners Mario L. Relampagos (Relampagos), Rosario Salamida Nuñez (Nuñez), Lalaine Narag Paule (Paule), and Marilou Dialino Bare (Bare),[12] the Resolutions dated November 13, 2014[13] and May 13, 2015[14] of the *Sandiganbayan* which affirmed the finding of probable cause against them in Criminal Case Nos. SB-14-CRM-0268, 0269, 0272, 0273, 0275, 0276, 0279, and 0280.

The Facts

Petitioners are all charged as co-conspirators for their respective participations in the illegal pillaging of public funds sourced from the Priority Development Assistance Fund (PDAF) of Sen. Revilla for the years 2006 to 2010,[15] in the total amount of ₱517,000,000.00.[16] The charges are contained in two (2) complaints, namely: (1) a Complaint for Plunder[17] filed by the National Bureau of Investigation (NBI) and Atty. Levito D. Baligod on September 16, 2013, docketed as OMB-C-C-13-0316; and (2) a Complaint for Plunder and violation of Section 3 (e) of RA 3019[18] filed by the Field Investigation Office of the Ombudsman (FIO) on November 18, 2013, docketed as OMB-C-C-13-0395, both before the Ombudsman. Briefly stated, petitioners were implicated for the following acts:

(*a*) **Sen. Revilla**, as Senator of the Republic of the Philippines, for authorizing the illegal utilization, diversion, and disbursement

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[11] *Id.* at 45-60.

[12] Pertains to the petition in G.R. Nos. 218744-59.

[13] *Rollo* (G.R. Nos. 218744-59), Vol. I, pp. 49-54.

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

[15] See *rollo* (G.R. Nos. 212694-95), Vol. I, p. 89.

[16] *Id.* at 97.

[17] *Rollo* (G.R. Nos. 212427-28), Vol. I, pp. 201-220.

[18] *Id.* at 222-371.

of his allocated PDAF through his endorsement of fraudulent Non-Governmental Organizations (NGOs) created and controlled by Napoles's JLN (Janet Lim Napoles) Corporation[19] in relation to "ghost" PDAF-funded projects,[20] and for receiving significant portions of the diverted PDAF funds as his "commission" or "kickback";[21]

(*b*) **Cambe**, as Chief of Staff of Sen. Revilla during the times material to this case, for processing the utilization, diversion, and disbursement of Sen. Revilla's PDAF,[22] and for personally receiving his own "commission" or "kickback" from the diverted funds;[23]

(*c*) **Napoles**, as the mastermind of the entire PDAF scam, for facilitating the illegal utilization, diversion, and disbursement of Sen. Revilla's PDAF through: (1) the commencement *via* "business propositions" with the legislator regarding his allocated PDAF; (2) the creation and operation of JLN-controlled NGOs to serve as "conduits" for "ghost" PDAF-funded projects; (3) the use of spurious receipts and liquidation documents to make it appear that the projects were implemented by her NGOs; (4) the falsification and machinations used in securing funds from the various implementing agencies (IAs) and in liquidating disbursements; and (5) the remittance of Sen. Revilla's PDAF for misappropriation;[24]

(*d*) **Lim** and **De Asis**, as staff employees of Napoles, for assisting in the fraudulent processing and releasing of the PDAF

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[19] See *rollo* (G.R. Nos. 212694-95), Vol. I, pp. 96-97.

[20] See *id.* at 113 and 115.

[21] *Id.* at 117, 186 and 188-189. See also *rollo* (G.R. Nos. 212427-28), Vol. I, pp. 352 and 356.

[22] *Id.* at 177 and 188-189.

[23] See *rollo* (G.R. Nos. 212427-28), Vol. I, pp. 352 and 356-357.

[24] See *rollo* (G.R. Nos. 212694-95), Vol. I, pp. 93-96 and 148-152. See also *Reyes v. Ombudsman*, G.R. Nos. 212593-94, G.R. Nos. 213163-78, G.R. Nos. 213540-41, *et al.*, March 15, 2016.

funds to the JLN-controlled NGOs[25] through, among others, their designation as Presidents/Incorporators[26] of JLN-controlled NGOs, namely, *Kaupdanan Para sa Mangunguma Foundation, Inc.* (KPMFI)[27] and *Ginintuang Alay sa Magsasaka Foundation, Inc.* (GAMFI),[28] respectively, and for eventually remitting the PDAF funds to Napoles's control;[29] and

(*e*) **Relampagos, Nuñez, Paule**, and **Bare** (Relampagos, *et al.*), as employees of the Department of Budget and Management (DBM), for participating in the misuse or diversion of Sen. Revilla's PDAF, by acting as "contacts" of Napoles within the DBM, and thereby, assisting in the release of the Special Allotment Release Orders (SAROs) and Notices of Cash Allocation (NCAs) covering Sen. Revilla's PDAF.[30]

As alleged, the PDAF scheme commences with Napoles meeting with a legislator – in this case, Sen. Revilla - with the former giving an offer to "acquire" his PDAF allocation in exchange for a "commission" or "kickback" amounting to a certain percentage of the PDAF.[31] Upon their agreement on the conditions of the PDAF acquisition, including the project for which the PDAF will be utilized, the corresponding IA tasked to implement the same, and the legislator's "commission" or "kickback" ranging from 40-60% of either the project cost or the amount stated in the SARO,[32] the legislator would then write a letter addressed to the Senate President for the immediate release of his PDAF, who in turn, will endorse such request to

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[25] See *id.* at 188-189 and 192.

[26] See *rollo* (G.R. Nos. 212794-95), Vol. VII, pp. 4191 and 4167.

[27] See *rollo* (G.R. Nos. 2I2427-28), Vol. I, p. 202.

[28] See *id.*

[29] See *id.* at 213-214.

[30] See *rollo* (G.R. Nos. 212694-95), Vol. I, p. 191.

[31] *Id.* at 148.

[32] See *id.* at 94.

the DBM for the release of the SARO.[33] By this time, the initial advance portion of the "commission" would be remitted by Napoles to the legislator.[34] Upon release of the SARO, Napoles would then direct her staff — including whistleblowers Benhur Luy (Luy), Marina Sula (Sula), and Merlina Suñas (Suñas) — to prepare PDAF documents containing, *inter alia*, the preferred JLN-controlled NGO that will be used as a "conduit" for the implementation of the project, the project proposals of the identified NGO, and the endorsement letters to be signed by the legislator and/or his staff, all for the approval of the legislator;[35] and would remit the remaining portion or balance of the "commission" of the legislator, which is usually delivered by her staff, Lim and De Asis.[36] Once the documents are approved, the same would be transmitted to the IA which would handle the preparation of the Memorandum of Agreement (MOA) to be executed by the legislator's office, the IA, and the chosen NGO.[37] Thereafter, the DBM would release the NCA[38] to the

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[33] "A SARO x x x is "[a] specific authority issued to identified agencies to incur obligations not exceeding a given amount during a specified period for the purpose indicated. It shall cover expenditures the release of which is subject to compliance with specific laws or regulations, or is subject to separate approval or clearance by competent authority." (*Belgica v. Ochoa*, 721 Phil. 416, 577-578 [2013])

[34] See *rollo* (G.R. Nos. 212694-95), Vol. I, pp. 148-149. See also *id.* at 95.

[35] *Id.* at 150.

[36] *Id.* at 149-150 and 188.

[37] *Id.* at 150.

[38] Notice of Cash Allocation (NCA). Cash authority issued by the DBM to central, regional and provincial offices and operating units through the authorized government servicing banks of the MDS,* to cover the cash requirements of the agencies.

*MDS stands for Modified Disbursement Scheme. It is a procedure whereby disbursements by NG agencies chargeable against the account of the Treasurer of the Philippines are effected through GSBs.**

** GSB stands for Government Servicing Banks. (*Belgica v. Ochoa, supra* note 33, at 578.)

IA concerned, the head/official of which, in turn, would expedite the transaction and release of the corresponding check representing the PDAF disbursement, in exchange for a ten percent (10%) share in the project cost.[39] Among those tasked by Napoles to pick up the checks and deposit them to the bank accounts of the NGO concerned were Luy, Suñas, and De Asis.[40] Once the funds are in the account of the JLN-controlled NGO, Napoles would then call the bank to facilitate the withdrawal thereof.[41] Upon withdrawal of the said funds by Napoles's staff, the latter would bring the proceeds to the office of JLN Corporation for accounting.[42] Napoles would then decide how much will be left in the office and how much will be brought to her residence in Taguig City. De Asis, Lim, Luy, and Suñas were the ones instructed to deliver the money to Napoles's residence.[43] Finally, to liquidate the disbursements, Napoles and her staff would manufacture fictitious lists of beneficiaries, liquidation reports, inspection reports, project activity reports, and similar documents that would make it appear that the PDAF-funded projects were implemented when, in fact, they were not since they were actually inexistent or, in other words, "ghost" projects.[44] Under this *modus operandi*, Sen. Revilla, with the help of petitioners, among others, allegedly funneled his PDAF amounting to around ₱517,000,000.00[45] to the JLN-controlled NGOs and, in return, received "commissions" or "kickbacks" amounting to at least ₱224,512,500.00.[46]

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[39] See *rollo* (G.R. Nos. 212694-95) pp. 96 and 151.

[40] *Id.* at 151.

[41] *Id.*

[42] See *id.*

[43] See *rollo* (G.R. Nos. 212427-28), Vol. I, pp. 214 and 354.

[44] See *rollo* (G.R. Nos. 212694-95), Vol. I, pp. 151-152.

[45] See *id.* at 167.

[46] See *id.* at 187.

In the Orders dated November 19, 2013[47] and November 29, 2013,[48] the Ombudsman directed petitioners, along with several others, to submit their respective counter-affidavits, to which petitioners complied with, except for Napoles and Lim.[49]

In his defense, Revilla filed his Counter-Affidavit dated January 16, 2014, contending that: (*a*) his and Cambe's signatures in the PDAF documents were forgeries; (*b*) the utilization of his PDAF had "always been regular and above-board"; (*c*) his involvement in the release of his PDAF is limited; and (*d*) there is "no credible proof" to show that he committed said illegal acts and that conspiracy exists between him and all the other persons involved in the PDAF scam.[50]

Cambe, on the other hand, filed his Counter-Affidavit dated January 20, 2014 and Supplemental Counter-Affidavit dated March 12, 2014, maintaining that: (*a*) his signatures in the PDAF documents were all forgeries; and (*b*) he did not receive any money from Sen. Revilla's PDAF nor connive with any of the alleged co-conspirators to acquire ill-gotten wealth.[51]

For his part, De Asis filed his Counter-Affidavit dated January 16, 2014, admitting that: (*a*) he was an employee of the JLN Corporation; (*b*) he did pick up checks for JLN-controlled NGOs; and (*c*) he was an incorporator in one of the JLN-controlled NGOs; but denying that he personally benefited from the supposed misuse of Sen. Revilla's PDAF.[52]

Meanwhile, Relampagos, *et al.*, in their separate Counter-Affidavits dated December 13, 2013, contended that: (*a*) there is no probable cause and factual or legal basis to indict them

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[47] Not attached to the *rollos*.

[48] Not attached to the *rollos*.

[49] See *rollo* (G.R. Nos. 212694-95), Vol. I, p. 119.

[50] *Id.* at 120.

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

[52] *Id.* at 138.

for the offenses charged; and (*b*) the criminal complaints did not specifically mention their names as among those who allegedly participated in the misuse of Sen. Revilla's PDAF.[53]

Pending resolution of the Ombudsman cases, Sen. Revilla and Cambe separately moved for the suspension of the preliminary investigation[54] on the criminal complaints, which were, however, denied by the Ombudsman in a Joint Order[55] dated January 28, 2014, holding that no prejudicial question exists to warrant the suspension of the preliminary investigation proceedings.[56]

Cambe filed another motion[57] to suspend proceedings of the preliminary investigation, claiming that the filing of the criminal complaints was premature since the Commission on Audit (COA) had yet to issue an Order of Execution in relation to the Notices of Disallowance[58] (NDs) against Sen. Revilla's Office, docketed as Special Audits Office (SAO) ND Nos. NLDC-2014-013-PDAF(07-09) to 020-PDAF(07-09). The said motion was, again, denied by the Ombudsman in a Joint Order[59] dated March 14, 2014 (March 14, 2014 Joint Order). Thus, Cambe elevated the matter to this Court *via* a petition for *certiorari*, docketed as **G.R. Nos. 212014-15**.

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[53] *Id.* at 137-138.

[54] See Sen. Revilla's Motions to Suspend Preliminary Investigation both dated January 15, 2014 (*rollo* [G.R. Nos. 212694-95], Vol. II, pp. 595-612 and 614-631); and Cambe's Motion to Suspend Proceedings Based on Prejudicial Question with Counter-Affidavit (*rollo* [G.R. Nos. 212794-95], Vol. VIII, pp. 4338-4362), respectively.

[55] *Rollo* (G.R. Nos. 212694-95), Vol. II, pp. 748-760.

[56] See *rollo* (G.R. Nos. 212694-95), Vol. I, p. 121.

[57] See Supplemental Counter-Affidavit with Second Motion to Suspend Proceedings dated March 12, 2014; *rollo* (G.R. Nos. 212794-95), Vol. VIII, pp. 4486-4494.

[58] *Id.* at 4495-4543.

[59] *Rollo* (G.R. Nos. 212014-15), Vol. I, pp. 32-36.

Meantime, Sen. Revilla filed a Motion to be Furnished Copies of Motions, Pleadings, and Other Submissions (Motion to be Furnished),[60] praying that he be furnished with copies of all the counter-affidavits filed by the parties in this case, which was denied by the Ombudsman in an Order[61] dated March 11, 2014. His motion for reconsideration[62] thereof was likewise denied by the Ombudsman in an Order[63] dated March 27, 2014.

Sen. Revilla likewise filed a Motion for Voluntary Inhibition (Of the Special Panel of Investigators),[64] which was also denied by the Ombudsman in an Order[65] dated March 7, 2014. His motion for reconsideration[66] thereof was further denied in an Order[67] dated May 9, 2014.

In a Joint Resolution[68] dated March 28, 2014 (March 28, 2014 Joint Resolution), the Ombudsman found probable cause to indict, among others, petitioners Sen. Revilla, Cambe, Napoles, De Asis, and Lim of one (1) count of Plunder,[69] and all the petitioners (along with several others), except Lim, of sixteen (16) counts of violation of Section3 (e) of RA 3019.[70]

The Ombudsman found that the diversion and/or misuse of Sen. Revilla's PDAF was coursed through a complex scheme involving various participants from Sen. Revilla's Office, the DBM, the IAs, and the JLN-controlled NGOs. The Ombudsman

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[60] *Rollo* (G.R. Nos. 212427-28), Vol. II, pp. 687-691.

[61] *Id.* at 693-694.

[62] *Id.* at 695-699.

[63] *Id.* at 701-703.

[64] *Id.* at 786-799.

[65] *Id.* at 801-808.

[66] *Id.* at 809-818.

[67] *Id.* at 820-823.

[68] *Rollo* (G.R. Nos. 212694-95), Vol. I, pp. 84-223.

[69] *Id.* at 211-212.

[70] *Id.* at 212-217.

then went on to conclude that through the said scheme, they were able to siphon out government funds in the aggregate amount of ₱517,000,000.00, with at least ₱224,512,500.00 received by Sen. Revilla.[71]

Thus, the Ombudsman held that probable cause exists against Sen. Revilla, Cambe, Napoles, De Asis, and Lim for Plunder, considering that: (*a*) Sen. Revilla was a public officer at the time material to the charges; (*b*) with the help of his co-accused, who are public officers and private individuals, Sen. Revilla amassed, accumulated, or acquired ill-gotten wealth through their intricate *modus operandi* as described above; and (*c*) such ill-gotten wealth amounted to at least ₱224,512,500.00,[72] way more than the threshold amount of ₱50,000,000.00 required in the crime of Plunder.[73]

In the same manner, the Ombudsman established probable cause to indict all the petitioners (along with several others), except Lim, for violation of Section 3 (e) of RA 3019 in light of the following: (*a*) Sen. Revilla, Cambe, and Relampagos, *et al.* are all public officers, while private individuals Napoles and De Asis all conspired with these public officers; (*b*) said public officers exhibited manifest partiality to Napoles and her cohorts by favoring her controlled NGOs without the benefit of public bidding and without having been authorized by an appropriation law or ordinance, as legally mandated; (*c*) said public officers likewise exhibited their bad faith by unduly benefiting from the "ghost" PDAF-funded projects through the receipt of "commissions," "kickbacks," and the like; and (*d*) their collective acts caused undue injury to the government in the aggregate amount of ₱517,000,000.00.[74]

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[71] See *id.* at 148-155, 167, and 187.

[72] Erroneously mentioned as "₱242,512,500.00." This was modified in the Joint Order dated June 4, 2014 (see *id.* at 212).

[73] See *id.* at 173-189.

[74] See *id.* at 155-173.

Aggrieved, all the petitioners separately moved for the reconsideration[75] of the March 28, 2014 Joint Resolution. Specifically, Sen. Revilla, in his motion for reconsideration,[76] pointed out that the Ombudsman's use of the counter-affidavits, which documents he prayed to be furnished with in his denied Motion to be Furnished, was a grave violation of his constitutionally guaranteed right to due process.

Pending resolution of the aforesaid motions for reconsideration, the Ombudsman issued a Joint Order[77] dated May 7, 2014 granting Sen. Revilla's Motion to be Furnished, but only with respect to the counter-affidavits of his six (6) co-respondents.[78] He was also directed to file his comment thereon. Dissatisfied, Sen. Revilla then filed an Omnibus Motion[79] dated May 13,2014 praying for the: (*a*) partial reconsideration of the May 7, 2014 Joint Order; (*b*) recall of the March 28, 2014 Joint Resolution; and (*c*) re-conduct of the preliminary investigation and reconstitution of another special panel of investigators.[80] The said Omnibus Motion having been denied by the Ombudsman in an Order[81] dated May 15, 2014, Sen. Revilla elevated the matter to this Court *via* a petition for *certiorari*, docketed as **G.R. Nos. 212427-28**.

On June 4, 2014, the Ombudsman issued a Joint Order[82] (June 4, 2014 Joint Order) denying petitioners' motions for

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[75] See *id.* at 224-225.

[76] See Motion for Reconsideration (Of the Joint Resolution dated 28 January 2014 [sic]) dated April 7, 2014; *rollo* (G.R. Nos. 212427-28), Vol. II, pp. 707-758.

[77] *Rollo* (G.R. No. 212427-28), Vol. I, pp. 62-63.

[78] See *id.* at 12. See also *rollo* (G.R. Nos. 212694-95), Vol. I, pp. 250. Namely: Dennis L. Cunanan, Francisco B. Figura, Gondelina G. Amata, Gregoria G. Buenaventura, Emmanuel Alexis G. Sevidal, and Ofelia E. Ordoñez.

[79] *Rollo* (G.R. Nos. 212427-28), Vol. I, pp. 45-60.

[80] *Id.* at 57.

[81] *Id.* at 42-44.

[82] *Rollo* (G.R. Nos. 212694-95), Vol. I, pp. 224-278.

reconsideration for lack of merit and, thereby, affirming the March 28, 2014 Joint Resolution with minor modifications to correct clerical errors.[83] These Ombudsman's issuances led to the filing of *certiorari* petitions before this Court, docketed as **G.R. Nos. 212694-95, G.R. Nos. 212794-95, G.R. Nos. 213477-78, G.R. Nos. 213532-33**, and **G.R. Nos. 213536-37**.

Consequently, on June 6 and 9, 2014, Informations were filed by the Ombudsman before the *Sandiganbayan*, charging: (*a*) Sen. Revilla, Cambe, Napoles, De Asis, and Lim of one (1) count of Plunder, docketed as Criminal Case No. SB-14-CRM-0240;[84] and (*b*) all the petitioners (along with several others), except Lim, of sixteen (16) counts of violation of Section 3 (e) of RA 3019, docketed as Criminal Case Nos. SB-14-CRM-0267 to 0282.[85]

To forestall the service of the warrant of arrest against him, Sen. Revilla filed on June 13, 2014, a Motion for Judicial Determination of Probable Cause and Deferment and/or Suspension of Proceedings.[86] Likewise, Relampagos, *et al.* moved that the *Sandiganbayan* declare lack of probable cause against them and suspend proceedings.[87]

On June 19, 2014, the *Sandiganbayan* issued a Resolution, finding probable cause against petitioners and their co-accused and, thereby, issued the corresponding warrants of arrest against them.[88]

Thereafter, Relampagos, *et al*. filed an Omnibus Motion for Reconsideration of the Resolution Dated 19 June 2014 with Motion to Recall Warrants of Arrest and to Defer Arraignment.[89]

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[83] See *id.* at 272-275.

[84] Not attached to the *rollos*.

[85] See *rollo* (G.R. Nos. 218744-59), Vol. I, pp. 251-298.

[86] Not attached to the *rollos*.

[87] See *rollo* (G.R. Nos. 218744-59), Vol. I, pp. 299-305 and 306-314.

[88] *Id.* at 349-352.

[89] *Id.* at 353-394.

In a Resolution[90] dated August 28, 2014, the *Sandiganbayan* partially granted the said motion, and dismissed Criminal Case Nos. SB-14-CRM-0267, 0270, 0271, 0274, 0277, 0278, 0281, and 0282 in so far as Relampagos, *et al*. were concerned for the reason that the SAROs pertinent to these criminal cases were not issued or signed by Relampagos, *et al*., but by then DBM Secretary Rolando Andaya. However, the *Sandiganbayan* ordered the prosecution to present additional evidence to establish the existence of probable cause against them in Criminal Case Nos. SB-14-CRM-0268, 0269, 0272, 0273, 0275, 0276, 0279, and 0280.

The dismissal of Criminal Case Nos. SB-14-CRM-0267, 0270, 0271, 0274, 0277, 0278, 0281, and 0282 against Relampagos, *et al*. was appealed[91] by the prosecution, but was denied by the *Sandiganbayan* in a Resolution[92] dated November 13, 2014. In the same Resolution, the *Sandiganbayan* affirmed the finding of probable cause against Relampagos, *et al*. in Criminal Case Nos. SB-14-CRM-0268, 0269, 0272, 0273, 0275, 0276, 0279, and 0280 on the ground that the defenses they raised were evidentiary in character.[93] In particular, the *Sandiganbayan* held that the issue of whether the IA's endorsement was indispensable before the SARO can be issued is a matter of evidence to be threshed out during trial.[94]

Hence, Relampagos, *et al*. filed a motion for partial reconsideration[95] citing DBM Circular Letter No. 2015-1, s. of 2015,[96] which supposedly clarified that the IAs' endorsements

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[90] *Id.* at 480-487.

[91] See Motion for Partial Reconsideration (RE: Resolution promulgated on August 28, 2014) dated September 1, 2014; *id.* at 488-499.

[92] *Id.* at 49-54.

[93] See *id.* at 51-53.

[94] *Id.* at 52.

[95] See Motion for Partial Reconsideration (Re: Resolution dated 13 November 2014) dated February 4, 2015; *rollo* (G.R. Nos. 218744-59), Vol. II, pp. 650-668.

[96] See *id.* at 655-659.

are no longer required before the issuance of the corresponding SARO. The said motion was denied by the *Sandiganbayan* in a Resolution[97] dated May 13, 2015, pointing out that said DBM Circular was issued only after the Ombudsman's issuance of the March 28, 2014 Joint Resolution.[98] Thus, Relampagos, *et al*. elevated the issue before the Court *via* a petition for *certiorari*, docketed as **G.R. Nos. 218744-59**.

The Issue Before This Court

The core issue in this case is whether or not the findings of probable cause against all petitioners should be upheld.

The Court's Ruling

All petitions are bereft of merit.

I. Cambe's Motion to Suspend Proceedings.

At the outset, the Court traverses the procedural issue raised by Cambe in his petition in **G.R. Nos. 212014-15**. In particular, Cambe seeks to annul and set aside the Ombudsman's March 14, 2014 Joint Order which denied his motion to suspend proceedings, arguing that the COA's issuance of an Order of Execution is a condition precedent to the filing of the criminal complaints against him. This relates to the twelve (12) NDs received by the Office of Sen. Revilla on January 14, 2014 and February 4, 2014 pertaining to expenditures charged against his PDAF during the period 2007 to 2009, docketed as SAO ND Nos. TRC-2013-016-PDAF(07-09) to 019-PDAF(07-09)[99] and NLDC-2014-013-PDAF(07-09) to 020-PDAF(07-09),[100] respectively, which Cambe claims should first attain finality; otherwise, the filing of the criminal complaints would be

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[97] *Rollo* (G.R. Nos. 218744-59), Vol. I, pp. 55-59.

[98] See *id.* at 57-59.

[99] *Rollo* (G.R. Nos. 212794-95), Vol. VIII, pp. 4357-4358.

[100] *Id.* at 4495-4543.

premature pursuant to the COA's 2009 Revised Rules of Procedure.[101]

The Court disagrees.

The administrative aspect of the cases against Cambe and Sen. Revilla in relation to the COA's audit is clearly separate and distinct from the criminal aspect covering the charges of Plunder and/or of violation of Section 3 (e) of RA 3019 against them. Hence, the incidents related to it should have no effect on the filing of the latter. In *Villaseñor v. Sandiganbayan*,[102] this Court explained that:

> [T]here are three kinds of remedies that are available against a public officer for impropriety in the performance of his powers and the discharge of his duties: (1) civil, (2) criminal, and (3) administrative **[and that] [t]hese remedies may be invoked separately, alternately, simultaneously or successively**. Sometimes, the same offense may be the subject of all three kinds of remedies.
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> It is clear, then, that criminal and administrative cases are distinct from each other. The settled rule is that criminal and civil cases are altogether different from administrative matters, such that the first two will not inevitably govern or affect the third and vice versa. **Verily, administrative cases may proceed independently of criminal proceedings.**[103]

In *Reyna v. COA* (*Reyna*),[104] this Court particularly declared that "[t]he criminal case filed before the Office of the Ombudsman is distinct and separate from the proceedings on the disallowance before the COA."[105]

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[101] *Id.* at 4357 and 4489-4491.

[102] 571 Phil. 373 (2008).

[103] *Id.* at 381-382; emphases and underscoring supplied, citations omitted.

[104] 657 Phil. 209 (2011).

[105] *Id.* at 235.

Cambe's reliance on Section 6, Rule XIII of the 2009 Revised Rules of Procedure of the COA is misplaced. As worded, the provision only accounts for the possibility of the filing of criminal charges upon referral of the audit findings to the Ombudsman:

> Section 6. *Referral to the Ombudsman*. – The Auditor shall report to his Director all instances of failure or refusal to comply with the decisions or orders of the Commission contemplated in the preceding sections. The COA Director shall see to it that the report is supported by the sworn statement of the Auditor concerned, identifying among others, the persons liable and describing the participation of each. He shall then refer the matter to the Legal Services Sector who shall refer the matter to the Office of the Ombudsman or other appropriate office for the possible filing of appropriate administrative or criminal action.

Nowhere does the provision state any delimitation or precondition to the filing of such criminal charges. As correctly pointed out by the Ombudsman, "an audit disallowance may not necessarily result in the imposition of disciplinary sanctions or criminal prosecution of the responsible persons. Conversely, therefore, an administrative or criminal case may prosper even without an audit disallowance. Verily, Rule XIII, Section 6 is consistent with the ruling in [*Reyna*] that a proceeding involving an audit disallowance is distinct and separate from a preliminary investigation or a disciplinary complaint."[106]

In fine, the Ombudsman did not gravely abuse its discretion in promulgating its March 14, 2014 Joint Order which denied Cambe's motion to suspend proceedings. Perforce, Cambe's petition in **G.R. Nos. 212014-15** is dismissed. That being said, the Court now proceeds to resolve the main substantive issue anent the presence of probable cause against all petitioners.

II. Parameters of Review.

Time and again, this Court's consistent policy has been to maintain non-interference in the Ombudsman's determination

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[106] *Rollo* (G.R. No. 212014-15), Vol. I, p. 35.

of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. This observed policy is based not only in respect for the investigatory and prosecutory powers granted by the 1987 Constitution to the Office of the Ombudsman, but upon practicality as well.[107]

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[108]

Probable cause simply means "such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The term does not mean 'actual and positive cause' nor does it import absolute certainty. **It is merely based on opinion and reasonable belief.**"[109] "[T]hus, a finding based on more than bare suspicion but less than evidence that would justify a conviction would suffice."[110]

In determining the elements of the crime charged for purposes of arriving at a finding of probable cause, "**only facts sufficient to support a *prima facie* case against the [accused] are required, not absolute certainty**."[111] In this case, the petitioners were charged with the crimes of Plunder and/or violations of Section 3 (e) of RA 3019. Plunder, defined and penalized under

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[107] *Ciron v. Gutierrez*, G.R. Nos. 194339-41, April 20, 2015, 756 SCRA 110, 119, citing *Tetangco v. Ombudsman*, 515 Phil. 230, 234-235 (2006).

[108] *Id.* at 118-119.

[109] See *Reyes v. Ombudsman*, *supra* note 24, citing *Fenequito v. Vergara, Jr.*, 691 Phil. 335, 345 (2012); emphasis and underscoring supplied.

[110] See *id.*

[111] *Shu v. Dee*, 734 Phil. 204, 215 (2014); emphasis and underscoring supplied.

Section 2[112] of RA 7080, as amended, has the following elements: (*a*) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (*b*) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1 (d)[113] thereof; and (*c*) that the aggregate

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[112] Section 2 of RA 7080, as amended, reads in full:

Section 2. *Definition of the Crime of Plunder; Penalties*. – Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

[113] Section 1 (d) of RA 7080, as amended, provides:

Section 1. *Definition of Terms*. – As used in this Act, the term –

x x x x x x x x x

d) "*Ill-gotten wealth*" means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least Fifty Million Pesos (₱50,000,000.00).[114] On the other hand, the elements of violation of Section 3 (e)[115] of RA 3019 are: (*a*) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (*b*) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (*c*) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage,

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3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;

4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

[114] *Enrile v. People*, G.R. No. 213455, August 11, 2015, 766 SCRA 1, 50-51.

[115] Section 3 (e) of RA 3019 reads:

Section 3. *Corrupt practices of public officers*. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(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.

or preference in the discharge of his functions.[116] In determining probable cause therefor, only a showing of the ostensible presence of these elements is required.

It should be borne in mind that probable cause is determined during the context of a preliminary investigation **which is "merely an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it."**[117] It "is not the occasion for the full and exhaustive display of the prosecution's evidence."[118] Therefore, "the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level."[119] Accordingly, "owing to the initiatory nature of preliminary investigations, **the technical rules of evidence should not be applied in the course of its proceedings**."[120] In this light, and as will be elaborated upon below, this Court has ruled that "probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay,"[121] and that even an invocation of the rule on *res inter alios acta* at this stage of the proceedings is improper.[122]

Guided by these considerations, the Court finds that the Ombudsman did not gravely abuse its discretion in finding probable cause to indict Sen. Revilla, Cambe, Napoles, De Asis, and Lim of one (1) count of Plunder, and all the petitioners,

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[116] *Presidential Commission on Good Government v. Navarro-Gutierrez*, G.R. No. 194159, October 21, 2015, 773 SCRA 434, 446.

[117] *Id.* at 445; emphasis and underscoring supplied.

[118] *Id.* at 446.

[119] *Id.*, citing *Lee v. KBC Bank N.V.*, 624 Phil. 115, 126-127 (2010).

[120] *Id.* at 449.

[121] *Id.*, citing *Estrada v. Ombudsman*, G.R. Nos. 212140-41, January 21, 2015, 748 SCRA 1, 51.

[122] See *Reyes v. Ombudsman*, *supra* note 24.

except Lim, of sixteen (16) counts of violation of Section 3 (e) of RA 3019.

III. Probable Cause Against Sen. Revilla.

First, in **G.R. Nos. 212694-95**, Sen. Revilla seeks to annul the March 28, 2014 Joint Resolution and the June 4, 2014 Joint Order of the Ombudsman finding probable cause against him for the crimes charged, Among others, Sen. Revilla faults the Ombudsman for allegedly disregarding his defense of forgery, and further contends that in the absence of other competent testimony, the Ombudsman cannot consider the whistleblowers' testimonies who purportedly were his co-conspirators in the PDAF scam, pursuant to the *res inter alios acta* rule.

The petition holds no water.

The finding of probable cause against Sen. Revilla is amply supported by the evidence on record. At the forefront are the **PDAF documents**, consisting of the written endorsements signed by Sen. Revilla[123] himself requesting the IAs to release his PDAF funds to the identified JLN-controlled NGOs, as well as other documents that made possible the processing of his PDAF, *e.g.*, the MOAs executed by the legislator's office, the IA, and the chosen NGO. All these documents – even those not actually signed by Sen. Revilla – directly implicate him for the crimes

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[123] The following are some of the PDAF documents (bearing the signature of Sen. Revilla) attached to the records of these cases: (1) letters dated April 10, 2007 and November 27, 2007 addressed to Director General Antonio Y. Ortiz (Dir. Gen. Ortiz), Technology and Livelihood Resource Center (TLRC or TRC) (see *rollo* [G.R. Nos. 212014-15], Vol. II, pp. 525 and 660); (2) letter dated October 23,2009 addressed to President Gondelina G. Amata (Pres. Amata), National Livelihood Development Corporation (see *rollo* [G.R. Nos. 212014-15], Vol. III, p. 1760); (3) letter dated November 27, 2007 addressed to then Secretary Arthur C. Yap, Department of Agriculture (see *rollo* [G.R. Nos. 212794-95], Vol. III, p. 1114); (4) letter dated December 16, 2008 addressed to Dir. General Ortiz (see *rollo* [G.R. Nos. 212794-95], Vol. III, p. 1512); (5) letter dated April 28, 2009 addressed to Pres. Amata (see *rollo* [G.R. Nos. 212794-95], Vol. IV, p. 1916); and (6) letters dated February 27, 2009 and August 17, 2009 addressed to Pres. Amata (see *rollo* [G.R. Nos. 212794-95], Vol. V, pp. 2502 and 2842).

charged, as they were nonetheless, all issued under the authority of his Office as Senator of the Republic of the Philippines. In *Belgica v. Ochoa* (*Belgica*),[124] this Court observed that "the defining feature of all forms of Congressional Pork Barrel would be the authority of legislators to participate in the post-enactment phases of project implementation."[125] "At its core, legislators – may it be through project lists, prior consultations or program menus – have been consistently accorded post-enactment authority to identify the projects they desire to be funded through various Congressional Pork Barrel allocations."[126] It is through this mechanism that individual legislators, such as Sen. Revilla, were able to practically dictate the entire expenditure of the PDAF allocated to their offices throughout the years.

In particular, the Ombudsman details that "the NGO endorsed by the legislator would be among those organized and controlled by Napoles. In fact, these NGOs were specifically set by Napoles for the x x x purpose [of having the PDAF funds released]."[127] Napoles's staff would then "prepare the PDAF documents for the approval of the legislator and reflecting the preferred NGO to implement the undertaking."[128] These documents "are transmitted to the IA which, in turn, handles the preparation of the MOA relating to the project, to be executed by the legislator's office, the IA[,] and the NGO concerned." "The projects are authorized as eligible under the DBM's menu for pork barrel allocations. **[However,] [i]t bears noting that the NGO is directly endorsed by the legislator [and that] [n]o public bidding or negotiated procurement [took] place.**"[129] As such, there was a defiance of Government Procurement Policy Board (GPPB) Resolution No. 012-2007 which states that:

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[124] *Supra* note 33.

[125] *Id.* at 538.

[126] *Id.* at 539.

[127] See *rollo* (G.R. Nos. 212694-95), Vol. I, pp. 149-150.

[128] *Id.* at 150.

[129] *Id.*; emphasis and underscoring supplied.

4.1 When an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs, ***the procuring entity may select an NGO through competitive bidding or negotiated procurement under Section 53[(j)] of the [IRR-A]***. (Emphasis and underscoring supplied)

Anent Sen. Revilla's claim that his signatures in the documentary evidence presented were forged, it must be emphasized that "**the findings of the x x x prosecutor [on the issue of forgery] should be ventilated in a full-blown trial**[.] [This] is highlighted by the reality that the authenticity of a questioned signature cannot be determined solely upon its general characteristics, or its similarities or dissimilarities with the genuine signature. **The duty to determine the authenticity of a signature rests on the judge who must conduct an independent examination of the signature itself in order to arrive at a reasonable conclusion as to its authenticity.** [As such], Section 22 of Rule 132 of the Rules of Court explicitly authorizes the court, by itself, to make a comparison of the disputed handwriting 'with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine.'"[130] Accordingly, Sen. Revilla's evidence of forgery, including the findings of his purported handwriting experts, Rogelio G. Azores (Azores)[131] and Forensic Document Examiner Atty. Desiderio A. Pagui, (Pagui)[132] cannot be readily credited at this stage of the proceedings.

Besides, the Ombudsman aptly observed that Azores and Pagui admittedly used mere photocopies of the PDAF documents in their handwriting analyses.[133] In *Heirs of Gregorio v. Court of Appeals*,[134] this Court ruled that "[w]ithout the original

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[130] *Shu v. Dee*, *supra* note 111, at 526; emphases and underscoring supplied.

[131] See Examination Report dated October 7, 2013; *rollo* (G.R. Nos. 212694-95), Vol. II, pp. 370-374.

[132] See Item (Q) in Report No. 09-10/2013; *id.* at 397-419.

[133] *Rollo* (G.R. Nos. 212694-95), Vol. I, p. 196.

[134] 360 Phil. 753 (1998).

document containing the alleged forged signature, one cannot make a definitive comparison which would establish forgery," and that "[a] comparison based on a mere [photo] copy or reproduction of the document under controversy cannot produce reliable results."[135] Furthermore, it may not be amiss to state that the credibility of Azores and Pagui as handwriting experts has yet to be tested. They still have to authenticate their findings and be subjected to cross-examination. Without a doubt, the prosecution should also be given a chance to properly contest Azores and Pagui's findings with evidence of its own. It could all too well present its own handwriting experts during trial to rebut such findings.

It is significant to emphasize that the Ombudsman had thoroughly passed upon the veracity of Sen. Revilla's signatures on the PDAF documents. As explicitly stated in the March 28, 2014 Joint Resolution: "[a]t all events, the Special Panel members, **after a *prima facie* comparison with their naked eyes of the questioned signatures appearing in the PDAF documents and the original signatures of [Sen.] Revilla and Cambe in their respective counter-affidavits**, opine that **both sets of signatures, which bear the same style and flourish, were written by one and the same hands**."[136] Verily, the Ombudsman's own factual finding on the absence of forgery, at least for the purpose of determining probable cause, should be regarded with utmost respect. "**[F]indings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence**,"[137] as in this case.

The Ombudsman's finding on the absence of forgery further gains credence in light of the **July 20, 2011 Letter**[138] **signed**

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[135] *Id.* at 763. See also *rollo* (G.R. Nos. 212694-95), Vol. I, p. 196.

[136] *Rollo* (G.R. Nos. 212694-95), Vol. I, p. 201; emphasis and underscoring supplied.

[137] *Miro v. Vda. de Erederos*, 721 Phil. 772, 784 (2013); emphasis supplied.

[138] *Rollo* (G.R. Nos. 212794-95), Vol. III, p. 1552. (Dated as March 21, 2012 in the March 28, 2014 Joint Resolution; *rollo* [G.R. Nos. 212694-95], Vol. I, p. 194.)

by Sen. Revilla submitted to the COA (Confirmation Letter). The letter evinces on its face that Sen. Revilla had confirmed the authenticity of his and Cambe's signatures appearing on the PDAF documents:

> After going through these documents and initial examination, it appears that **the signatures and/or initials on these documents are my signatures or that of my authorized representative**.[139]

The Ombudsman further noted that the Confirmation Letter appeared to have originated from Sen. Revilla's Office because it was issued Bar code/Reference No. 0-2011-13079.[140]

At this juncture, it deserves mentioning that while Luy indeed admitted that there were times that the whistleblowers would forge the signatures of the legislators in the PDAF documents, he, however, **explicitly qualified** that such forgeries were made "***[w]ith the approval of Ms. Napoles kasi sila po ang nag-uusap***":

> Sen. Escudero: ***Ang tanong ko, finorge or may finorge na ba kayong pirma ng senador o congressman dahil pinepeke nga 'yong beneficiary, 'di ba****, galing sa listahan ng kung sino.* x x x.
>
> Mr. Luy: ***With the approval of Ms. Napoles kasi sila po ang nag-uusap, may pagkakataon po na fino-forge po.***
>
> Sen. Escudero: *May pagkakataong fino-forge [ninyo] ang pirma ng mambabatas*?
>
> Mr. Luy: Opo.[141]

Luy's testimony therefore explicates that although the whistleblowers would sometimes forge the legislators' signatures, such were made with the approval of Napoles **based on her prior agreement with the said legislators**. It is not difficult to discern that this authorization allows for a more expedient

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[139] See *id.*; emphasis and underscoring supplied.

[140] *Rollo* (G.R. Nos. 212694-95), Vol. I, pp. 194-195.

[141] See *id.* at 43.

processing of PDAF funds since the documents required for their release need not pass through the legislator's respective offices. It is also apparent that this grant of authority gives the legislators room for plausible deniability: the forging of signatures may serve as a security measure for legislators to disclaim their participation in the event of discovery. Therefore, Luy's testimony completely makes sense as to why the legislators would agree to authorize Napoles and her staff to forge their signatures. As such, even if it is assumed that the signatures were forged, it does not mean that the legislators did not authorize such forgery.

The **testimonies of the whistleblowers** which the prosecution submitted before the Ombudsman — are, in fact, the most integral evidence against Sen. Revilla, since they provide a detailed account on the inner workings of the PDAF scam to which Sen. Revilla was directly involved. It should be pointed out that, of all the Senators, only the Offices of Sen. Revilla, Sen. Juan Ponce Enrile (Sen. Enrile), and Sen. Jinggoy, Estrada (Sen. Estrada) were explicitly implicated[142] to have dealt with Napoles in the plunder of their PDAF. Also, it is apparent that whistleblowers Suñas, Sula, and Luy had personal knowledge of the conspiracy since they were employees of JLN Corporation — the epicenter of the entire PDAF operation and in their respective capacities, were individually tasked by Napoles to prepare the pertinent documents, liquidate the financial transactions, follow up the release of the NCAs with the DBM, and/or facilitate the withdrawal of PDAF funds deposited in the NGOs' accounts.[143]

Among others, it is interesting to note that, as per Luy's testimony, Sen. Revilla was given his own codename, same as

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[142] See portions of the following testimonies of the whistleblowers: (1) *Karagdagang Sinumpaang Salaysay* of Suñas (*rollo* [G.R. Nos. 212794-95], Vol. VII, pp. 3930 and 3933-3936); (2) *Karagdagang Sinumpaang Salaysay* of Luy (*rollo* [G.R. Nos. 212794-95], Vol. VII, pp. 3996 and 3998); and (3) *Karagdagang Sinumpaang Salaysay* of Sula (*rollo* [G.R. Nos. 212794-95], Vol. VI, p. 3309).

[143] See *rollo* (G.R. Nos. 212694-95), Vol. I, pp. 150-151.

the other involved legislators with whom Napoles transacted with:

58. T: *Maaari mo bang linawin itong sinasabi mong* "codename"?

S: *Ang pangalan pong taong* [*tumanggap*] *ng pera ang nilalagay ko sa voucher pero minsan po ay codename ang nilalagay ko.*

59. T: *Sino ang nagbigay ng* "codename"?

S: *Si* Madame JANET LIM NAPOLES *po ang nagbigay ng codename kasi daw po ay sa gobyerno kami nagta*-transact.

60. T: *Maaari mo bang sabihin kung anu-ano ang mga* "codenames" *ng mga ka*-transact *ni* JANET LIM NAPOLES *na pulitiko o kanilang* [Chief of Staff]?

S: *Opo.* "TANDA" *kay* Senator Juan Ponce Enrile, "SEXY/ ANAK/KUYA" *kay* Senator Jinggoy Estrada, **"POGI" *kay* Senator Bong Revilla**, "GUERERA" *kay* Congressman Rizalina Seachon-Lanete, "BONJING" *kay* Congressman RODOLFO PLAZA, "BULAKLAK" *kay* Congressman SAMUEL DANGWA, "SUHA" *kay* Congressman ARTHUR PINGOY, *at* "KURYENTE" *kay* Congressman EDGAR VALDEZ. *Mayroon pa po ibang* codename *nasa* records *ko. Sa ngayon po ay sila lang po ang aking naalala.*[144]

As observed by this Court in the *Reyes* case, "the names of the legislators to whom the PDAF shares were disbursed x x x were identified by the use of 'codenames.' These 'codenames,' which were obviously devised to hide the identities of the legislators involved in the scheme, were known by a select few in the JLN Corporation,"[145] such as the whistleblowers. The level of detail of the whistleblowers' narration of facts would surely impress upon a reasonable and prudent mind that their statements were not merely contrived. In addition, the fact that they had no apparent motive as to why Sen. Revilla, among all

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[144] *Rollo* (G.R. Nos. 212794-95), Vol. VII, p. 3998; emphasis and underscoring supplied.

[145] See *Reyes v. Ombudsman, supra* note 24.

others, would be drawn by the whistleblowers, into such a high-profile case of plunder should likewise be taken into account. Further, in *Reyes*, this Court observed that:

> [W]histleblower testimonies — especially in corruption cases, such as this - should not be condemned, but rather, be welcomed as these whistleblowers risk incriminating themselves in order to expose the perpetrators and bring them to justice. In *Re: Letter of Presiding Justice Conrado M. Vasquez, Jr. on CA-G.R. SP No. 103692* (*Antonio Rosete, et al. v. Securities and Exchange Commission, et al.*) [590 Phil. 8, 49-50 (2008)], the Court gave recognition and appreciation to whistleblowers in corruption cases, considering that corruption is often done in secrecy and it is almost inevitable to resort to their testimonies in order to pin down the crooked public officers.[146]

Sen. Revilla opposes the admission of the whistleblowers' testimonies based on the *res inter alios acta* rule. However, in *Reyes*, citing *Estrada v. Ombudsman*,[147] this Court had unanimously ruled that the testimonies of the same whistleblowers against Jo Christine and John Christopher Napoles, children of Janet Napoles who were also charged with the embezzlement of the PDAF, are admissible in evidence, considering that technical rules of evidence are not binding on the fiscal during preliminary investigation. This Court was unequivocal in declaring that the objection on *res inter alios acta* should falter:

> Neither can the Napoles siblings discount the testimonies of the whistleblowers based on their invocation of the *res inter alios acta* rule under Section 28, Rule 130 of the Rules on Evidence, which states that the rights of a party cannot be prejudiced by an act, declaration, or omission of another, unless the admission is by a conspirator under the parameters of Section 30 of the same Rule. To be sure, **the foregoing rule constitutes a technical rule on evidence which should not be rigidly applied in the course of preliminary investigation proceedings**. In *Estrada*, the Court sanctioned the Ombudsman's appreciation of hearsay evidence, which would

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[146] See *id.*, citations omitted.

[147] *Supra* note 121.

otherwise be inadmissible under technical rules on evidence, during the preliminary investigation "as long as there is substantial basis for crediting the hearsay." This is because "such investigation is merely preliminary, and does not finally adjudicate rights and obligations of parties." Applying the same logic, and with the similar observation that there lies substantial basis for crediting the testimonies of the whistleblowers herein, **the objection interposed by the Napoles siblings under the evidentiary *res inter alios acta* rule should falter**. Ultimately, as case law edifies, "[t]he technical rules on evidence are not binding on the fiscal who has jurisdiction and control over the conduct of a preliminary investigation," as in this case.[148] (Emphases and underscoring supplied)

Absent any countervailing reason, the rule on *stare decisis*[149] mandates a similar application of the foregoing ruling to this case.

In any event, even if it is assumed that the rule on *res inter alios acta* were to apply during preliminary investigation, the treatment of the whistleblowers' statements as hearsay is bound by the exception on **independently relevant statements**. "Under the doctrine of independently relevant statements, regardless of their truth or falsity, the fact that such statements have been made is relevant. The hearsay rule does not apply, and the

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[148] See *Reyes v. Ombudsman*, *supra* note 24, citations omitted.

[149] *Stare decisis non quieta et movere* (or simply, *stare decisis*) which means "follow past precedents and do not disturb what has been settled" is a general procedural law principle which deals with the effects of previous but factually similar dispositions to subsequent cases. The focal point of *stare decisis* is the doctrine created. The principle, entrenched under Article 8 of the Civil Code, evokes the general rule that, for the sake of certainty, a conclusion reached in one case should be doctrinally applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the frrst principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by competent court, the rule of *stare decisis* is a bar to any attempt to re-litigate the same issue. (See *Belgica v. Ochoa*, 721 Phil. 416, 528-530 [2013].)

statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact."[150] Undoubtedly, the testimonies of the whistleblowers are independently relevant to prove the involvement of Sen. Revilla and his co-accused in the present controversy, considering their respective participations in the entire PDAF scam. Therefore, the statements made by whistleblowers Suñas, Sula, and Luy, who were employees of JLN Corporation and privy to the financial transactions of Napoles concerning, among others, Sen. Revilla's PDAF, should be given consideration as they are directly, if not circumstantially, relevant to the issue at hand.

To add, the prosecution also presented **Luy's ledger entries** which corroborate his testimony that Sen. Revilla dealt with Napoles and received PDAF kickbacks. Luy's records disclose that the kickbacks amounted to "at least ₱224,512,500.00: ₱10,000,000.00 for 2006; ₱61,000,000.00 for 2007; ₱80,000,000.00 for 2008; ₱40,000,000.00 for 2009; and ₱33,512,500.00 for 2010."[151]

Relatedly, it should be clarified that **the fact that Luy did not personally know Sen. Revilla or that none of the whistleblowers personally saw anyone handing/delivering money to Sen. Revilla does not mean that they did not personally know of his involvement**. Because of their functions in JLN Corporation as above-stated, it is evident that they had personal knowledge of the fact that Napoles named Sen. Revilla as one of the select-legislators she transacted with. More significantly, they personally processed the PDAF funds and documents connected with Sen. Revilla's Office, which lasted for a considerable amount of time, *i.e.*, four (4) years [2006-2010 as charged]. As such, their testimonies should not be completely disregarded as hearsay.

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[150] *People v. Estibal*, G.R. No. 208749, November 26, 2014, 743 SCRA 215, 240, citing *People v. Velasquez*, 405 Phil. 74, 99-100 (2001).

[151] See *rollo* (G.R. Nos. 212694-95), Vol. I, p. 117.

In any case, this Court has resolved that "**probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay**."[152] The substantial basis for crediting the whistleblowers' testimonies, even if so regarded as hearsay, rests on their key functions in JLN Corporation as above-mentioned, as well as the collective evidence gathered by the prosecution tending to support the same conclusion that Sen. Revilla and his alleged co-conspirators acted in concert to pillage his PDAF funds.

The prosecution further submitted the **affidavits of Sen. Revilla's co-respondents** which constitute direct evidence that provide an account of Sen. Revilla's involvement, this time from the perspective of certain IA officials.

Among others, National Livelihood Development Corporation Director IV Emmanuel Alexis G. Sevidal, echoed the Ombudsman's finding that "[Sen.] Revilla, through Cambe, [was] responsible for '*identifying the projects, determining the project costs and choosing the NGOs*' which was manifested in the letters of [Sen.] Revilla[.]"[153]

For his part, Technology Resource Center (TRC) Deputy Director General Dennis L. Cunanan (Cunanan) narrated that he met Janet Napoles sometime in 2006 or 2007. According to him, Napoles introduced herself as "the representative of certain legislators who supposedly picked TRC as a conduit for PDAF-funded projects"; at the same occasion, Napoles told him that "***her principals were then Senate President [Enrile], [Sen. Revilla], [and] [Sen. Estrada.]***" Cunanan further averred that he "often ended up taking and/or making telephone verifications and follow-ups and receiving legislators or their staff members," all in connection with PDAF projects. In addition, Cunanan even conveyed that Luy would occasionally go to his office to

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[152] See *Reyes v. Ombudsman*, *supra* note 24, citing *Estrada v. Ombudsman*, *supra* note 121, at 51.

[153] *Rollo* (G.R. Nos. 212694-95), Vol. I, pp. 124-125.

pressure him to expedite the release of the PDAF funds by calling the offices of the legislators concerned.[154]

Cunanan's statements were further corroborated by TRC Department Manager III Francisco B. Figura (Figura), who averred that legislators would "highly recommend" NGOs/ foundations as conduit implementors and that if TRC disagreed with their recommendations, said legislators would feel insulted and take away their PDAF from TRC, resulting in the latter losing the chance to earn service fees.[155] According to Figura, this set up rendered TRC officials powerless to disregard the wishes of Sen. Revilla especially on the matter of public bidding for the PDAF projects.[156]

At this juncture, this Court would like to dispel the notion. that due process rights were violated when Sen. Revilla was denied copies of the counter-affidavits of his co-respondents in the preliminary investigation proceedings before the Ombudsman as he argues in **G.R. Nos. 212427-28**. This matter was already resolved in the similar case of *Estrada*, where this Court said:

> Both the Revised Rules of Criminal Procedure and the Rules of Procedure of the Office of the Ombudsman require the investigating officer to furnish the respondent with copies of the affidavits of the complainant and affidavits of his supporting witnesses. Neither of these Rules require the investigating officer to furnish the respondent with copies of the affidavits of his [co-respondents]. **The right of the respondent is only "to examine the evidence *submitted by the complainant,"*** as expressly stated in Section 3 (b), Rule 112 of the Revised Rules of Criminal Procedure. This Court has unequivocally ruled in *Paderanga* that "Section 3, Rule 112 of the Revised Rules of Criminal Procedure expressly provides that the respondent shall only have the right to submit a counter-affidavit, to examine all other evidence submitted by the complainant and, where the fiscal sets a hearing to propound clarificatory questions to the parties or their

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[154] See *id.* at 132-133.

[155] *Id.* at 134.

[156] *Id.* at 135.

witnesses, to be afforded an opportunity to be present but without the right to examine or cross-examine." Moreover, Section 4 (**a, b and c**), of Rule II of the Ombudsman's Rule of Procedure, **read together**, only require the investigating officer to furnish the respondent with copies of the affidavits of the complainant and his supporting witnesses. **There is no law or rule requiring the investigating officer to furnish the respondent with copies of the affidavits of his co-respondents.**[157]

In any event, the Ombudsman in this case went beyond its legal duty and eventually granted Sen. Revilla's requests to be furnished with said counter-affidavits, and even afforded him the opportunity to comment thereto.[158] Thus, there is more reason to decline his flawed claims of denial of due process. Case law states that the touchstone of due process is the opportunity to be heard,[159] which was undeniably afforded to Sen. Revilla in this case.

The findings of the COA in its SAO Report No. 2012-2013 (COA report)[160] also buttress the finding of probable cause against Sen.Revilla. This report presents in detail the various irregularities in the disbursement of the PDAF allocations of several legislators in the years 2007 to 2009, such as: (*a*) the IAs not actually implementing the purported projects, and instead, directly releasing the funds to the NGOs after deducting a "management fee," **which were done at the behest of the sponsoring legislator, including Sen. Revilla**; (*b*) the involved NGOs did not have any track record in the implementation of government projects, provided fictitious addresses, submitted false documents, and were selected without any public bidding

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[157] See *Estrada v. Ombudsman*, *supra* note 121, at 67; emphasis and underscoring supplied.

[158] See May 7, 2014 Joint Order; *rollo* (G.R. Nos. 212427-28), Vol. I, pp. 62-62a.

[159] See *Reyes v. Ombudsman*, *supra* note 24, citing *Republic v. Transunion Corporation*, G.R. No. 191590, April 21, 2014, 722 SCRA 273, 286.

[160] Referred to as "COA Report 2007-2009" in the March 28, 2014 Joint Resolution; see *rollo* (G.R. Nos. 212694-95), Vol. I, pp. 113-114.

and complying with COA Circular No. 2007-001 and GPPB Resolution No. 12-2007; and (*c*) the suppliers who purportedly provided supplies to the NGOs denied ever dealing with the latter. Resultantly, the COA Report concluded that the PDAF-funded projects of Sen. Revilla were "ghost" or inexistent.[161]

The findings in the COA report were further corroborated by the field verifications conducted by the **Field Investigation Office — Office of the Ombudsman (FIO)** to determine whether or not Sen. Revilla's PDAF was indeed utilized for its intended livelihood projects. In the course of investigation, it was revealed that the mayors and municipal agriculturists, who had reportedly received livelihood assistance kits/packages, purportedly procured through Sen. Revilla's PDAF, actually denied receiving the same and worse, were not even aware of any PDAF-funded projects intended for their benefit. Moreover, the signatures on the certificates of acceptance and delivery reports were forged, and in fact, the supposed beneficiaries listed therein were neither residents of the place where they were named as such; had jumbled surnames; deceased; or even downright fictitious. The foregoing led the FIO to similarly conclude that the purported livelihood projects were "ghost" projects, and that its proceeds amounting to ₱517,000,000.00 were never used for the same.[162]

Taking together all of the above-stated pieces of evidence, the COA and FIO reports tend to *prima facie* establish that irregularities had indeed attended the disbursement of Sen. Revilla's PDAF and that he had a hand in such anomalous releases, being the head of Office which unquestionably exercised operational control thereof. As the Ombudsman correctly observed, "[t]he PDAF was allocated to him by virtue of his position as a Senator, and therefore he exercise[d] control in the selection of his priority projects and programs. He indorsed [Napoles's] NGOs in consideration for the remittance of kickbacks and commissions from Napoles. Compounded by the fact that the PDAF-funded projects turned out to be 'ghost

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[161] See *rollo* (G.R. Nos. 212694-95), Vol. I, pp. 113-115.

[162] *Id.* at 112-113.

projects', and that the rest of the PDAF allocation went into the pockets of Napoles and her cohorts, [there is probable cause to show that] Revilla thus unjustly enriched himself at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines."[163] Hence, he should stand trial for violation of Section 3 (e) of RA 3019. For the same reasons, it is apparent that ill-gotten wealth in the amount of at least ₱50,000,000.00 (*i.e.*, ₱224,512,500.00) were amassed, accumulated or acquired through a combination or series of overt acts stated in Section 1 of the Plunder Law. Therefore, Sen. Revilla should likewise stand trial for Plunder.

Besides, case law holds[164] that once the trial court finds probable cause, which results in the issuance of a warrant of arrest (as the *Sandiganbayan* in this case, with respect to Sen. Revilla and his co-petitioners[165]), any question on the prosecution's conduct of preliminary investigation becomes moot.

In fine, Sen. Revilla's petitions in **G.R. Nos. 212427-28** and **G.R. Nos. 212694-95** are dismissed for lack of merit.

IV. Probable Cause Against Cambe.

The same conclusion obtains with respect to the petition of Cambe in **G.R. Nos. 212794-95** assailing the Ombudsman's finding of probable cause against him, as well as its failure to furnish him copies of his co-respondents' counter-affidavits.

The above-discussed pieces of evidence are all equally significant to establish probable cause against Cambe. There is no dispute that Cambe was Sen. Revilla's trusted aide, being his Chief of Staff. By such authority, he also exercised operational control over the affairs of Sen. Revilla's office, including the allocation of his PDAF. In fact, Cambe's signatures explicitly

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[163] *Id.* at 186.

[164] See *De Lima v. Reyes*, G.R. No. 209330, January 11, 2016.

[165] See *rollo* (G.R. Nos. 218744-59), Vol. I, pp. 349-352.

appear on several PDAF documents, such as the MOAs allowing the IAs to transfer Sen. Revilla's PDAF funds allocated for certain projects to various JLN-controlled NGOs.[166]

Moreover, Cambe was personally identified by the whistleblowers to have received PDAF money for himself and for Sen. Revilla. As recounted by Luy, Cambe was the one who would go to Napoles's office and receive cash from the latter in the aggregate amount of ₱224,512,500.00 representing Sen. Revilla's "commissions" or "kickbacks" coming from the PDAF scam. The cash would come either from Luy's vault or from Napoles herself.[167] In simple terms, Cambe allegedly acted as a liaison between Sen. Revilla and Napoles.

For the same reasons above-discussed, there should be no valid objection against the appreciation of the PDAF documents and whistleblowers' testimonies as evidence to establish probable cause against Cambe at this stage of the proceedings. He also has no right to be furnished copies of the counter-affidavits of his co-respondents. Thus, this Court holds that Cambe should likewise stand trial for the crimes charged, and his petition in **G.R. Nos. 212014-15** be dismissed.

V. Probable Cause Against Napoles.

In **G.R. Nos. 213536-37**, Janet Napoles similarly seeks to nullify the Ombudsman's March 28, 2014 Joint Resolution and June 4, 2014 Joint Order finding probable cause against her for Plunder and for violation of Section 3 (e) of RA 3019. Essentially, she argues that the complaints did not establish the specific acts of the crimes she supposedly committed. She likewise contends that since she is not a public officer, she cannot be subjected to prosecution by the Ombudsman before the Sandiganbayan.

Napoles's arguments are untenable.

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[166] *Rollo* (G.R. Nos. 212694-95), Vol. I, pp. 103-104.

[167] See *rollo* (G.R. Nos. 212427-28), Vol. I, pp. 352 and 356-357. See also *rollo* (G.R. Nos. 212794-95), Vol. VII, p. 4000.

Records clearly show that Napoles, in all reasonable likelihood, played an integral role in the illegal utilization, diversion, and disbursement of Sen. Revilla's PDAF. In fact, she was tagged as the mastermind of the entire PDAF scam. As outlined by the Ombudsman, Napoles would approach legislators, such as Sen. Revilla, and "offer to 'acquire' his x x x PDAF allocation in exchange for a 'commission' or kickback amounting to a certain percentage of the PDAF."[168] Once Napoles was informed of the availability of Sen Revilla's PDAF, she and/or her staff would prepare listings of the available projects specifically indicating the IAs which would carry out the same. After the listings are released by Sen. Revilla's Office, Napoles would then give a down payment from her own pockets for delivery to Sen. Revilla, or in case of his unavailability, to Cambe who would receive the same on Sen. Revilla's behalf. Once the SARO and/or the NCA regarding said project is released, Napoles would then deliver the promised "kickbacks" to Sen. Revilla. Thereafter, Sen. Revilla and/or Cambe would endorse Napoles's NGOs to undertake the PDAF-funded projects, all of which turned out to be "ghost" or "inexistent;" thus, allowing Napoles and her cohorts to pocket the PDAF allocation.[169]

Based on the evidence in support thereof such as the PDAF documents, whistleblowers' testimonies, the accounts of the IA officials, and the COA report, as well as the field verifications of the FIO, Ombudsman, this Court is convinced that there lies probable cause against Janet Napoles for the charge of Plunder as it has been *prima facie* established that she, in conspiracy with Sen. Revilla, Cambe, and other personalities, was significantly involved in the afore-described *modus operandi* to obtain Sen. Revilla's PDAF amounting to at least ₱50,000,000.00 in "kickbacks." In the same manner, there is probable cause against Napoles for violations of Section 3 (e) of RA 3019, as it is ostensible that their conspiracy to illegally divert PDAF Funds to "ghost" projects caused undue prejudice to the government.

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[168] See *rollo* (G.R. Nos. 212694-95), Vol. I, p. 148.

[169] See *Modus Operandi*, *id.* at 148-152.

That a private individual, such as Napoles, could not be charged for Plunder and violations of Section 3 (e) of RA 3019 because the offenders in those crimes are public officers is a complete misconception. It has been long-settled that while the primary offender in the aforesaid crimes are public officers, private individuals may also be held liable for the same **if they are found to have conspired with said officers in committing the same**. This proceeds from the fundamental principle that in cases of conspiracy, the act of one is the act of all.[170] In this case, since it appears that Napoles has acted in concert with public officers in the systematic pillaging of Sen. Revilla's PDAF, the Ombudsman correctly indicted her as a co-conspirator for the aforementioned crimes.

Thus, Napoles's petition in **G.R. Nos. 213536-37** is dismissed.

VI. Probable Cause Against De Asis.

In **G.R. Nos. 213477-78**, De Asis accuses the Ombudsman of gravely abusing its discretion in finding probable cause against him for Plunder and violations of Section 3 (e) of RA 3019, contending, *inter alia*, that the performance of his functions as driver and messenger of Napoles hardly constitutes overt acts of the aforesaid crimes or a willful participation thereof. In this regard, he asserts that as a mere high school graduate and former security guard, it is highly unimaginable for him to conspire with his employer and other high-ranking government officials to commit the aforesaid crimes.

The petition has no merit.

Records show that De Asis was designated as the President/Incorporator[171] of KPMFI which was one of the many NGOs controlled by Napoles that was used in the embezzlement of

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[170] *Reyes v. Ombudsman*, *supra* note 24, citing *People v. Nazareno*, 698 Phil. 187, 193 (2012).

[171] *Rollo* (G.R. Nos. 212427-28), Vol. I, p. 209. See also *rollo* (G.R. Nos. 212794-95), Vol. VII, p. 4191.

Sen. Revilla's PDAF allocations.[172] Moreover, whistleblowers Luy and Suñas explicitly named De Asis as one of those who prepared money to be given to the lawmaker.[173] Said whistleblowers even declared that De Asis, among others, received the checks issued by the IAs to the NGOs and deposited the same in the bank; and that, after the money is withdrawn from the bank, he was also one of those tasked to bring the money to Janet Napoles's house.[174] Indeed, the foregoing prove to be well-grounded bases to believe that, in all probability, De Asis conspired with the other co-accused to commit the crimes charged.

To refute the foregoing allegations, De Asis presented defenses which heavily centered on his perceived want of criminal intent, as well as the alleged absence of the elements of the crimes charged. However, such defenses are evidentiary in nature, and thus, are better ventilated during trial and not during preliminary investigation. To stress, a preliminary investigation is not the occasion for the full and exhaustive display of the prosecution's evidence; and the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon only after a full-blown trial on the merits.[175]

In sum, the Ombudsman did not gravely abuse its discretion in finding probable cause to indict De Asis for the crimes charged. Consequently, his petition in **G.R. Nos. 213477-78** is dismissed.

VII. Probable Cause Against Lim.

In **G.R. Nos. 213532-33**, Lim argues that the Ombudsman. gravely abused its discretion in finding probable cause against him for Plunder. According to him, the criminal complaints do not allege a specific action he committed that would demonstrate his involvement for the crime charged.

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[172] See *id.* at 209.

[173] See *rollo* (G.R. No. 212794-95), Vol. VI, pp. 3292-3294 and 3326.

[174] *Id.* at 3294-3295.

[175] See *Lee v. KBC Bank N.V., supra* note 119, at 126.

Lim's contention is without merit.

As correctly pointed out by the Ombudsman, whistleblowers Luy and Suñas narrated that over the course of the perpetuation of the PDAF scam, they, along with the other staff of Napoles — which includes Lim — would prepare, and thereafter deliver, the kickbacks intended for Sen. Revilla.[176] The preparation and delivery of kickbacks to the legislator and/or his trusted staff are indeed overt acts that relate to his involvement in the PDAF scheme. To note, even if it is assumed that Lim only prepared the money and did not deliver the same as he claims,[177] the act of preparation is still connected to the common objective of the conspiracy. Accordingly, this establishes the existence of probable cause against him for the crime charged. Hence, his petition in **G.R. Nos. 213532-33** is likewise dismissed.

VIII. Probable Cause Against Relampagos, *et al*.

Meanwhile, in **G.R. Nos. 218744-59**, DBM employees Relampagos, Nuñez, Paule, and Bare assail the Sandiganbayan Resolutions dated November 13, 2014[178] and May 13, 2015[179] which judicially found probable cause against them for eight (8) counts of violation of Section 3 (e) of RA 3019, thereby affirming the Ombudsman's earlier finding of probable cause

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[176] See Joint Resolution dated March 28, 2014 (*rollo* [G.R. Nos. 212694-95], Vol. I, pp. 105-106). See also paragraph 4.1 of Luy and Suñas's *Pinagsamang Salaysay* dated September 11, 2013 (*rollo* [G.R. No. 212794-95], Vol. VI, p. 3292), which reads:

4.1. *Kakausapin ni Gng. Napoles ang lawmaker na makakapag-bigay ng pondo, at pagkakasunduan nila ang komisyon o kickback na dapat matanggap ng kausap niya. Alam namin ito dahil sinasama niya kami noon sa ilang meetings niya sa mga lawmakers, at ito rin ang kinagawian na sa mga sumunod niyang mga transaksyon. At nakokompirma namin ito tuwing nag-uutos si Gng. Napoles sa amin na maglianda o magpadala ng pera para sa mga nakausap niya. Ang kasama namin na laging naghahanda ng pera ay sina* Ronald John Lim x x x.

[177] *Rollo* (G.R. No. 213532-33) Vol. I, pp. 19-20.

[178] *Rollo* (G.R. Nos. 218744-59), Vol. I, pp. 49-54.

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

against them (at least for the said eight [8] counts that were affirmed). In particular, they argue that: (*a*) they cannot be faulted for issuing the SAROs without prior IA endorsement as it was authorized under the General Appropriations Acts (GAAs) for the years 2007 to 2009; and (*b*) there was no "undue haste" in the issuance of the said SAROs as the DBM itself prescribes shorter periods in the processing of the same.[180]

Relampagos, *et al.*'s arguments fail to persuade.

As pointed out by the Ombudsman and the *Sandiganbayan*, some of the SAROs and NCAs issued in the perpetuation of the PDAF scam were issued by the Office of Relampagos as DBM Undersecretary, where Nuñez, Paule, and Bare are all working – a finding that they themselves did not dispute.[181] More significantly: (*a*) **whistleblower Luy positively identified Relampagos, *et al*. as Napoles's "contact persons" in the DBM**; and (*b*) the COA Report found irregularities in their issuances of the aforesaid SAROs and NCAs.[182] Ostensibly, these circumstances show Relampagos *et al.*'s manifest partiality and bad faith in favor of Napoles and her cohorts that evidently caused undue prejudice to the Government. Thus, they must stand trial for violation of Section 3 (e) of RA 3019.

As to their contentions that there was no "undue haste" in the issuance of the said SAROs as the GAAs for the years 2007 to 2009 authorized such issuances even without prior IA endorsement and that the DBM itself prescribes a shorter processing time for the same, suffice it to say that these are matters of defense that are better ventilated in a full-blown trial. The timing of the SARO releases by these DBM officials, as well as any deviations from legal procedure are but part of a multitude of factors to be threshed out during trial in order to determine their exact culpability. Verily, the confines of a

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[180] See *id.* at 12-15.

[181] See *rollo* (G.R. Nos. 212694-95), Vol. I, p. 107. See also *rollo* (G.R. Nos. 218744-59), Vol. I, p. 53.

[182] See *rollo* (G.R. Nos. 218744-59), Vol. I, p. 53.

preliminary investigation do not yet allow a full exposition of the parties' claims. Relampagos, *et al.*'s petition in **G.R. Nos. 218744-59** is therefore dismissed.

Conclusion

Case law states that "the Ombudsman's finding of probable cause does not touch on the issue of guilt or innocence of the accused. It is not the function of the Office of the Ombudsman to rule on such issue. All that the Office of the Ombudsman did was to weigh the evidence presented together with the counter-allegations of the accused and determine if there was enough reason to believe that a crime has been committed and that the accused are probably guilty thereof."[183] In the review of the Ombudsman's determination of probable cause, we are guided by this Court's pronouncement in *Vergara v. Ombudsman*,[184] where it was ruled that:

> [C]ourts do not interfere in the Ombudsman's exercise of discretion in determining probable cause unless there are compelling reasons. The Ombudsman's finding of probable cause, or lack of it, is entitled to great respect absent a showing of grave abuse of discretion. Besides, to justify the issuance of the writ of *certiorari* on the ground of abuse of discretion, the abuse must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[185]

Meanwhile, with respect to the *Sandiganbayan*'s judicial determination of probable cause, this Court, in *Delos-Santos Dio v. Court of Appeals*,[186] enlightens that:

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[183] *Ganaden v. Ombudsman*, 665 Phil. 224, 232 (2011).

[184] 600 Phil. 26 (2009).

[185] *Id.* at 45.

[186] 712 Phil. 288 (2013).

> [A] judge's discretion to dismiss a case immediately after the filing of the information in court is appropriate only when the failure to establish probable cause can be clearly inferred from the evidence presented and not when its existence is simply doubtful. After all, it cannot be expected that upon the filing of the information in court the prosecutor would have already presented all the evidence necessary to secure a conviction of the accused, the objective of a previously-conducted preliminary investigation being merely to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial.[187]

In this case, the Ombudsman (and the *Sandiganbayan* as to Relampagos, *et al*.) did not err in finding probable cause against all the petitioners. Their findings are fully supported by the evidence on record and no semblance of misapprehension taints the same. Moreover, this Court cannot tag key documentary evidence as forgeries and bar testimonies as hearsay at this stage of the proceedings; otherwise, it would defy established principles and norms followed during preliminary investigation. Jurisprudence teaches us that "[i]n dealing with probable cause[,] as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved."[188] Overall, based on the foregoing disquisitions, the standard of probable cause was adequately hurdled by the prosecution in this case. As such, no grave abuse of discretion was committed by the Ombudsman and the *Sandiganbayan* in the proceedings *a quo*. All the petitioners should therefore stand trial for the crimes they were charged.

WHEREFORE, the petitions are **DISMISSED** for lack of merit. The findings of probable cause against all petitioners

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[187] *Id.* at 309.

[188] See *Reyes v. Ombudsman*, *supra* note 24, citing *Brinegar v. United States*, 338 U.S. 160 (1949).

are hereby **AFFIRMED** and the *Sandiganbayan*, as trial court, is **DIRECTED** to commence/continue with the necessary proceedings in these cases with deliberate dispatch.

SO ORDERED.

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

Velasco, Jr., J., dissents, see concurring and dissenting opinion.

Jardeleza, J., no part, prior OSG action.

Caguioa, J., on leave but left his vote.

CONCURRING AND DISSENTING OPINION

VELASCO, JR., *J.*:

I concur with the majority in sustaining the finding of probable cause against Janet Lim Napoles (Napoles), Ronald John Lim (Lim) and John Raymund de Asis (De Asis).

I, however, dissent from the majority's conclusion that there is probable cause to indict Sen. Ramon "Bong" Revilla, Jr. (Revilla), Richard A. Cambe (Cambe), Mario L. Relampagos (Relampagos), Rosario S. Nuñez (Nuñez), Lalaine N. Paule (Paule) and Marilou D. Bare (Bare).

FACTUAL ANTECEDENTS

As culled from the Joint Resolution dated March 28, 2014 issued by the Ombudsman in OMB-C-C13-0316 and OMB-C-C-13-0395, the issuance that has invariably spawned the consolidated special civil actions at bar, the relevant factual antecedents are as follows:

On March 22, 2013, National Bureau of Investigation (NBI) agents rescued Benhur Luy (Luy) who would claim having been illegally detained in connection with the discharge of his

responsibilities as the "lead employee" of the Janet Lim Napoles Corporation (JLN). JLN was supposedly involved in overseeing the anomalous implementation of several projects funded from the Priority Development Assistance Fund (PDAF).

The NBI's investigation that followed focused on the adverted irregularities surrounding the PDAF of certain lawmakers, acting in connivance with individuals in and out of govermnent and non-govermnental organizations (NGOs). Interviewed during the probe,were Luy and other JLN employees, Marina Sula (Sula) and Merlina Suñas (Suñas).

After its investigation, the NBI filed with the Office of the Ombudsman (OOMB) a complaint, docketed as OMB-C-C-13-0316 (the NBI complaint), charging, *inter alia*, the herein petitioners, namely: 1) Sen. Ramon "Bong" Revilla, Jr. (Revilla); 2) Richard A. Cambe, a member of his Senate staff; 3) Janet Lim Napoles (Napoles); 4) Ronald John B. Lim (Lim); 5) John Raymund S. De Asis (De Asis); and 6) Mario L. Relampagos (Relampagos), Rosario S. Nuñez (Nuñez), Lalaine N. Paule (Paule) and Marilou D. Bare (Bare) with Plunder. Thereat, the NBI alleged that Revilla, through Cambe, received a total of ₱224,512,500.00 from Napoles for supposedly allowing the latter to divert Revilla's PDAF from 2006 to 2010 to her controlled non-governmental organizations (NGOs) with the help of the other respondents therein.

Based on similar allegations, the Field Investigation Office (FIO) of the OOMB thereafter filed another complaint for violation of Sec. 3(e) of the Anti-Graft and Corrupt Practices Act against, among other individuals, Revilla, Napoles, Cambe, and De Asis (FIO Complaint).

Docketed as OMB-C-C-13-0395, the FIO Complaint cites COA (Commission on Audit) SAO (Special Audits Office) Report No. 2012-03, on PDAF allocations and disbursements covering 2007-2009. Mentioned in the FIO Complaint are supposed letters from COA to Revilla and vice versa, bearing on the authenticity of his signature or Cambe's appearing on the documents appended to the letter, *i.e.*, letters to the head of Implementing Agencies (IAs), memoranda of agreement (MOA),

and project proposals, inspection/acceptance/disbursement papers relating to his PDAF. ("PDAF Documents").

In separate or joint counter-affidavits submitted in compliance with the OOMB orders, the above-named respondents, proferred the following defenses or inculpatory statements, the gist of which are as summarized below. Other related incidents are as indicated.

1. Relampagos, Nuñez, Paule, and Bare, who were identified by Luy as Napoles' "*contacts*" in the Department of Budget and Management (DBM) who helped expedite the release of the Special Allotment Release Orders (SAROs) relating to the PDAF, alleged they are not mentioned in the NBI Complaint as participants in the PDAF misuse.

2. De Asis admits that, as employee of JLN Group from 2006-2010, serving as driver/bodyguard/messenger for Napoles he used, per her instructions, to pick up checks for Napoles-affiliated government organizations. But he denies having any knowledge in setting-up or managing firms that supposedly received PDAF.

3. As in his later pleadings and submissions, Revilla alleged that his or Cambe's signatures in the PDAF Documents thus submitted by the NBI and the FIO are all forgeries as shown in the independent and separate reports of two handwriting experts, Atty. Desiderio Pagui and Mr. Rogelio Azores. Sen. Revilla drew attention to the fact that not one of complainants' witnesses testified about his receipt of money as kickback or commission from Napoles. He stressed that the complainants have neither identified the "overt act" of the crimes he committed nor the so-called ill-gotten wealth he has allegedly accumulated. Revilla rued the lack of admissible proof to support the contentions that he conspired with Napoles and her employees.

Revilla would stress too that his limited involvement in the PDAF release started and ended with his letter to the Senate President and a Senate committee identifying the projects for his PDAF.

4. Cambe denies, as he would later deny, any involvement in the PDAF scam or in the conspiracy involving the PDAF. He tagged as forgeries his purported signature appearing in certain PDAF documents. He would echo Revilla's line on the absence in the complaints of averments of the "overt or criminal acts" constitutive of Plunder case filed against him.

Napoles, Lim, and five others opted not to file their counter-affidavits.

In related moves, Revilla and Cambe sought the suspension of the preliminary investigation on the NBI and FIO complaints, pleading that a civil case previously filed to nullify the PDAF Documents presents a prejudicial question to the criminal proceedings. In the **Joint Order dated *January 28, 2014***, as later reiterated, however, the Ombudsman denied the motions holding that the desired suspension is unwarranted, falsification not being an essential element of either crime involved, besides which there are other pieces of evidence in support of the complaints thus filed.

Raising an entirely distinct issue, Cambe filed a second motion to suspend proceedings on the ground that the filing of the criminal cases is premature. He argued that non-compliance with the COA Order of Execution (COE) is a pre-condition or a condition precedent to the filing of the charges against him. However, the Ombudsman denied this second motion in its **Joint Order dated March 14, 2014**, now being challenged in G.R. Nos. 212014-15.

On February 11, 2014, Revilla interposed a *Motion to be Furnished Copies of Motions, Pleadings, and other Submissions filed* in relation to the criminal complaints against him including the Counter-Affidavits of the other respondents ("Motion to be Furnished"). By Order of March 11, 2014, the Ombudsman denied the motion. Another Order of March 27, 2014 would deny Revilla's motion for reconsideration.

Revilla's subsequent *Motion for Voluntary Inhibition (Of the Special Panel of Investigators)* met the same adverse fate. So did his motion for motion for reconsideration of the denial order.

The Ombudsman's March 28, 2014 Joint Resolution

By Joint Resolution of **March 28, 2014**, the Ombudsman found probable cause to charge Revilla and the other petitioners, with plunder and violation of Sec. 3(e) of RA 3019, pertinently disposing in this wise –

WHEREFORE, this Office, through the undersigned:

(a) FINDS PROBABLE CAUSE to indict:

[PLUNDER - 1 Count]

i. Ramon Revilla, Jr., Richard A. Cambe, Janet Lim Napoles, Ronald John Lim and John Raymund de Asis, acting in concert, for PLUNDER (Section 2 in relation to Section 1(d)[d] [2] and [6] of R.A. No. 7080; as amended), in relation to Revilla's ill-gotten wealth in the sum of at least PHP[224],512,500.00, representing kickbacks or commissions received by him from Napoles in connection with [PDAF]-funded government projects and by reason of his office or position;

[VIOLATION OF SECTION 3 (E) OF R.A. 3019 - 16 Counts]

i. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP25,000,000.00 drawn from Revilla's PDAF and coursed through the [TRC] and Agri Economic Program for Farmers Foundation, Inc. (AEPFFI), as reflected in [DV] x x x;

ii. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x, Janet Lim Napoles, x x x John Raymund De Asis, Eulogio D. Rodriguez, and Laarni A. Uy, acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP38,500,000.00 drawn from Revilla's PDAF and coursed through the [TRC] and Philippine Social Development Foundation, Inc. (PSDFI), as reflected in DV No. x x x;

iii. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION 0F SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP11,640,000.00 drawn from Revilla's PDAF

and coursed through the [NABCOR] and Masaganang Ani Para sa Magsasaka Foundation, Inc. (MAMFI), as reflected in DV No. x x x;

iv. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x, Janet Lim Napoles x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP24,250,000.00 drawn from Revilla's PDAF and coursed through the NABCOR and MAMFI, as reflected x x x;

v. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare x x x, Janet Lim Napoles x x x, John Raymund De Asis, Eulogio D. Rodriguez, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP38,800,000.00 drawn from Revilla's PDAF and coursed through the NABCOR and x x x (SDPFFI), as reflected in DV No. x x x;

vi. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles x x x, John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP14,550,000.00 drawn from Revilla's PDAF and coursed through the NABCOR and MAMFI, as reflected in DV No. x x x

vii. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x, Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP44,000,000.00 drawn from Revilla's PDAF and coursed through the TRC and SDPFFI, as reflected in x x x;

viii. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, Eulogio D. Rodriguez, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP44,000,000.00 drawn from Revilla's PDAF and coursed through the TRC and SDPFFI, as reflected in DV Nos. x x x;

ix. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases

amounting to at least PHP[19,400,000.00] drawn from Revilla's PDAF and coursed through the [NLDC] and x x x (APMFI), as reflected in DV No. x x x;

x. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP30,000,000.00 drawn from Revilla's PDAF and coursed through the NLDC and MAMFI, as reflected in DV No. x x x;

xi. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP40,000,000.00 drawn from Revilla's PDAF and coursed through the NLDC and MAMFI, as reflected in DV Nos. x x x;

xii. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP44,000,000.00 drawn from Revilla's PDAF and coursed through the NLDC and AEPFFI, as reflected in DV No. x x x;

xiii. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP36,000,000.00 drawn from Revilla's PDAF and coursed through the NLDC and APMFI, as reflected in DV No. x x x;

xiv. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP20,000,000.00 drawn from Revilla's PDAF and coursed through the NLDC and SDPFFI, as reflected in x x x;

xv. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles,

x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP40,000,000.00 drawn from Revilla's PDAF and coursed through the NLDC and SDPFFI, as reflected in DV No. x x x; and

xvi. Ramon M. Revilla, Jr., Richard A. Cambe, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, x x x Janet Lim Napoles, x x x John Raymund De Asis, x x x acting in concert, for VIOLATION OF SECTION 3(E) OF R.A. NO. 3019 in relation to fund releases amounting to at least PHP45,000,000.00 drawn from Revilla's PDAF and coursed through the NLDC and SDPFFI, as reflected in DV No. x x x;

and accordingly RECOMMENDS the immediate filing of the corresponding Informations against them with the Sandiganbayan;

x x x x x x x x x

(d) DIRECTS the [FIO] to conduct further fact-finding on the criminal, civil and/or administrative liability of Javellana, Mendoza, Ortiz, Cunanan, Amata, Sevidal and other respondents who may have received commissions and/or kickbacks from Napoles in relation to their participation in the scheme subject of these proceedings.

In so holding, the Ombudsman found the existence of conspiracy between and among the petitioners, the officers of the IAs and the DBM to amass ill-gotten wealth, noting particularly in this regard that without Revilla's involvement, Napoles could not have had access to his PDAF allocation. Wrote the Ombudsman on the matter of conspiracy:

Based on the x x x evidence presented, the widespread misuse of the subject PDAF allotted to a legislator was coursed through a complex scheme basically involving "ghost" or inexistent projects allegedly funded by said PDAF. The funds intended for the implementation of the PDAF- funded projects are diverted to the possession and control of Napoles and her co-horts, as well as to the legislator to whom the funds were allotted and his staff, and other participants from the government agencies tasked to implement said inexistent projects.

x x x x x x x x x

Based on the records, the repeated diversions of PDAF allocated to Senator Revilla, during the period 2006 to 2010, were coursed through the above-described scheme.

In the case of Senator Revilla, the NGOs affiliated and/or controlled by Napoles that undertook to implement the projects to be funded by his PDAF were, among others, x x x. These organizations transacted through persons known to be employees, associates or relatives of Napoles, including witnesses Luy, Sula, and Suñas, as well as respondents x x x De Asis, x x x Lim x x x. Similarly, Cambe, acting on Senator Revilla's behalf, prepared and executed communications with the DBM and implementing agencies, as well as other PDAF-related papers such as MOA and project proposals.

During the time material x x x Senator Revilla issued several endorsement letters to NABCOR, TRC and NLDC, expressly naming the above-mentioned NGOs as his chosen contractor for his PDAF projects x x x.[1]

x x x x x x x x x

x x x [T]o repeatedly divert substantial funds from the PDAF, access thereto must be made available. This was made possible by x x x Revilla, who chose NGOs affiliated with or controlled by Napoles to implement his PDAF-related undertakings. Cambe then prepared the indorsement letters and similar documentation addressed to the DBM and the [IAs] x x x to ensure that the chosen NGO will, indeed, be awarded the project.

Relampagos, [*etc*.], as officers of the DBM, were in regular contact with Napoles and her staff. This familiarity between them x x x ensured that the requisite SAROs and NCAs were immediately released by the DBM to the concerned [IAs].

In turn, Ortiz, Cunanan, [et al.,] as officers of the [IAs] involved, prepared, reviewed, and executed the memoranda of agreement concerning the implementation of the projects. They also participated in the processing and approval of the PDAF disbursements to the questionable NGOs. The funds in question could not have been transferred to these entities if not for their certifications, signatures and approvals found in the corresponding disbursement vouchers and checks.

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[1] March 28, 2014 Joint Resolution, pp. 64-69.

Once the fund releases have been successfully processed by the implementing agencies, x x x De Asis x x x [and] Lim x x x in behalf of the NGOs in question and under the direction of Napoles, would pick up the corresponding checks and deposit them in bank accounts under the name of these entities and over which Napoles had complete and utter control. These sums would later be withdrawn from the banks and brought to the offices of Napoles x x x.

x x x De Asis, x x x again per the direction of Napoles, would prepare the fictitious beneficiaries list and other similar documents for liquidation purposes, that is, to make it appear that the projects were implemented, when, in fact, they were not.

For their participation, in the above-described scheme, Senator Revilla, Javellana, Cunanan, Amata, Buenaventura and Sevidal received portions of the subject PDAF disbursements from Napoles.[2]

x x x x x x x x x

As earlier discussed, the sworn statements of witnesses, the DVs, the indorsed/encashed checks, the MOAs with NGOs, the written requests, liquidation reports, confirmation letters and other evidence on record, indubitably indicate that Senator Revilla, Cambe, Relampagos, Nuñez, Paule, Bare, x x x as well as Napoles, x x x De Asis x x x, Lim x x x, conspired with one another to repeatedly raid the public treasury through what appears to be drawing funds from the PDAF allocated to Senator Revilla, albeit for fictitious projects. Consequently, they illegally conveyed public funds in the aggregate amount of PHP517,000,000.00, more or less, to the possession and control of questionable NGOs affiliated with Napoles, thus allowing Senator Revilla to acquire and amass ill-gotten part of the proceeds thereof through kickbacks x x x.[3]

From the March 28, 2014 Joint Resolution, the petitioners timely moved for reconsideration.

Via a Joint Order of May 7, 2014, the OOMB granted Revilla's motion to be furnished, but the grant covered only copies of the counter-affidavits of six (6) of co-respondents. A week later, however, Sen. Revilla filed, but the OOMB via its **May 15,**

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[2] *Id.* at 108-110.

[3] *Id.* at 128.

2014 Order denied, an *Omnibus Motion* wherein he prayed for: (1) the reconsideration of the May 7, 2014 Joint Order; (2) the recall of the March 28, 2014 Joint Resolution; (3) the reconduct of the preliminary investigation; and (4) the reconstitution of another special panel of investigators.

The May 15, 2014 order is now assailed in G.R. No. 212427-28.

In its **June 4, 2014 Joint Order**, the OOMB denied the petitioners' motions for reconsideration. On June 6 and 9, 2014, the Ombudsman filed before the Sandiganbayan the Informations against Revilla for one (1) count of Plunder and sixteen (16) counts of violation of Sec. 3(e) of RA 3019, which were docketed as Criminal Case Nos. SB 14 CRM 0240 (for Plunder) and SB 14 CRM 0267 to 0282 (for Violation of Sec. 3[e] of RA 3019).

On June 13, 2014, Revilla interposed a *Motion for Judicial Determination of Probable Cause and Deferment and/or Suspension of Proceedings*. The Sandiganbayan, however, denied the motion and then issued warrants of arrest against Revilla, *et al*.

In its August 28, 2014 Resolution, the Sandiganbayan dismissed Crim. Case Nos. SB-14-CRM-0267, 0270, 0271, 0274, 0277, 0278, 0281, and 0282 as against the four respondents from the DBM. In the same resolution, however, the anti-graft court ordered the prosecution to present additional evidence to establish the existence of probable cause against them in Crim. Case Nos. SB-14-CRM-0268, 0269, 0272,0273, 0275,0276, 0279 and 0280 (where Relampagos signed the SAROs involved). The prosecution moved for partial reconsideration of the August 28, 2014 Resolution insofar as the dismissal aspect of the issuance is concerned; but the Sandiganbayan denied the motion in its **Resolution of November 13, 2014**. The Sandiganbayan, however, affirmed the probable cause finding against the four DBM employees in Crim. Case Nos. SB-14-CRM-0268, 0269, 0272, 0273, 0275, 0276, 0279 and 0280 on the ground that the defenses they raised were evidentiary in character. In particular, the graft court held that the issue of whether the IAs' endorsement was indispensable before a SARO can be issued is a matter of

evidence to be threshed out during trial. So too, the court added, is the issue of whether there was actual undue haste in the issuance of the SAROs involved.

Relampagos, *et al*. moved for the reconsideration of the November 13, 2014 Resolution citing DBM Circular Letter No. 2015-1, s. of 2015, which supposedly clarified that the IAs' endorsements are no longer required before the issuance of the corresponding SARO. But in its **May 13, 2015** Resolution, the Sandiganbayan denied the motion pointing out the circular was issued only after the Ombudsman's probable-cause finding resolution.

The above November 13, 2004 Resolution, as reiterated in the May 13, 2015 Resolution, is sought to be invalidated in G.R. Nos. 213534-35.

It is against the foregoing factual backdrop that the petitioners, save those in G.R. Nos. 212014-15 and G.R. Nos. 2187744-59, presently seek cognate reliefs, each one basically seeking to annul, as having been issued in grave abuse of discretion, the March 28, 2014 Joint Resolution, as effectively affirmed in the June 4, 2014 Joint Order of the Ombudsman and other related issuances she and the Sandiganbayan rendered.

For ease of reference, the assailed Joint Resolution found probable cause to indict the petitioners for plunder and violation of Sec. 3(e) of RA 3019, while the June 4, 2014 Joint Order denied reconsideration of the said joint resolution.

The Petitions

G.R. Nos. 212014-15
Atty. Richard A. Cambe, petitioner

This is a petition for *certiorari* and prohibition to annul and, set aside the March 14, 2014 Joint Order of the Office of the Ombudsman on the Motion to Suspend Proceedings and to command the Ombudsman from further proceedings in the criminal complaints against Cambe.

To Cambe, the Ombudsman gravely abused her discretion by refusing to dismiss the criminal complaints or at least suspend

the proceedings despite non-compliance with a precondition or condition precedent to the filing thereof. According to Cambe, the COE, which should have been preceded by a Notice of Finality of Decision, is a precondition or condition precedent to the filing of the NBl and FIO complaints. However, since the Notices of Disallowance (ND) have not become final and executory at the time of filing of the complaints, the Ombudsman should have dismissed the criminal complaints, or at least, suspended the proceedings for non-compliance of said precondition or condition precedent.

G.R. Nos. 212427-28
Sen. Ramon "Bong" Revilla, Jr., petitioner

Senator Revilla assails in this recourse the OOMB's refusal, via its May 15, 2014 Order, (a) to provide him with the requested counter-affidavits and other submissions subject of his motion to furnish, (b) to re-conduct the preliminary investigation, recall and set aside the March 28, 2014 Joint Resolution and (c) to constitute a different panel of investigators.

Pushing his point, Revilla alleges that the Ombudsman violated his right to due process when, in her March 28, 2014 Joint Resolution, she used nineteen (19) counter-affidavits[4] of his co-respondents that he had not been previously furnished with, thereby depriving him the opportunity to respond to the allegations therein. Revilla further argues that the Ombudsman's May 7, 2014 Order, belatedly furnishing him six out of the 19

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[4] Revilla alleges that, despite the denial of his Motion to be Furnished, the Ombudsman used the affidavits of the following respondents in finding probable cause to indict him: [1] Gondelina G. Amata (Amata); [2] Gregoria G. Buenaventura (Buenaventura); [3] Alexis G. Sevidal (Sevidal); [4] Sofia D. Cruz (Cruz); [5] Ofelia E. Ordoñez (Ordoñez); [6] Evelyn B. Sugcang (Sugcang); [7] Allan Javellana (Javellana); [8] Victor Roman Cacal (Cacal); [9] Julie A. Villaralvo-Johnson (Villaralvo-Johnson); [10] Rhodora B. Mendoza (Mendoza); [11] Ninez P. Guañizo (Guañizo); [12] Marivic V. Jover (Jover); [13] Dennia L. Cunanan (Cunanan); [14] Francisco B. Figura (Figura); [15] Consuelo Lilian R. Espiritu (Espiritu); [16] Encarnita Christina P. Munsod; [17] Nuñez, Paule and Bare; [18] Relampagos; and [19] De Asis.

counter-affidavits, with a right to submit a reply, does not cure the underlying fatal infirmity of the proceedings. As the preliminary investigation is a nullity, Revilla adds, the Ombudsman should have recalled its March 28, 2014 Joint Resolution and conducted another preliminary investigation. The senator takes the Ombudsman's refusal to take the twin courses, like her refusal to replace the biased members of the investigating panel as indicia of grave abuse of discretion.

Disputing the senator's posture on denial of due process, the OOMB, the FIO and the NBI, in their Comment, alleged that he was in fact eventually furnished copies of the counter-affidavits of his co-respondents. Also, the Ombudsman denied the charge of bias hurled against the Special Panel of Investigators. The public respondents further aver that the fact that the Informations against Revilla have been filed with the Sandiganbayan has rendered this particular issue moot and academic.

G.R. Nos. 212694-95
Sen. Ramon "Bong" Revilla, Jr., petitioner

Sought to be nullified in this certiorari and prohibition actions are the adverted March 28, 2014 Joint Resolution and June 4, 2014 Joint Resolution of the OOMB. Revilla seeks to nullify the two issuances and eventually annul the Informations for plunder and corrupt practices thus filed with the Sandiganbayan, on the argument that the OOMB, in conducting the preliminary investigation on the NBI and FIO complaints, trampled upon the due process guarantee, particularly his right to be confronted with the accusations and allegations charging him with crime.

Furthermore, Revilla faults the Ombudsman for her finding despite the complete absence of credible inculpating evidence. He contends that there is absolutely no evidence to support allegations of his having PDAF dealings with Napoles. To him, the complainants have yet to establish the commission of the required overt acts and that all the allegations against him are hearsay, inadmissible evidence.

Revilla asserts that the only thing linking him to the supposed scam are the PDAF documents bearing his forged signatures, the forgery admitted by no less than the complainants' witnesses and affirmed by two independent handwriting experts. In this regard, Revilla maintains that in the absence of contrary competent testimony, the findings of the handwriting experts stand. Invoking the doctrine of *res inter alios acta*, he also argues that absent independent evidence to prove conspiracy, the Ombudsman cannot consider the testimonies of the whistleblowers, who are self-confessed co-conspirators, against Revilla.

In traversal of petitioner Revilla's allegation about being denied due process, respondents OOMB, NBI, FIO and the Office of the Special Prosecutors (OSP) adverted to the fact that the former was furnished with copies of the six incriminating counter-affidavits and given time to comment thereon. As a corollary point, respondents would argue that there were independent, credible and competent pieces of evidence that establish the finding of probable cause against petitioner. They emphasize that out of the 32 PDAF Documents shown to be signed by Revilla, he only contested 16 and the Ombudsman relied on 12 SAROs purportedly signed by Revilla to indict him for plunder and violation of Sec. 3(E), RA 3019.

In his Reply to Comment, Revilla countered that the OOMB should have provided him with all the documents he requested as a person charged of the crime is entitled to be furnished with all evidence, be inculpating or exculpating, obtaining in the case. Else the person so charged is deemed denied his constitutional right to due process.

As to the public respondents' assertion that he refuted only a portion of the total number of PDAF Documents as forgeries, Revilla cited a civil complaint he filed wherein he sought the nullification of all the PDAF Documents. Revilla also clarified that there is no question on the regularity of the SAROs as these were forwarded by the Senate to the DBM for the release of the funds. Rather, he emphasized that what he is contesting are the letters to the IAs supposedly containing his endorsements

of Napoles' NGOs and the MOAs with them. He reiterates his denial of ever signing any of these endorsement letters and MOAs without which, there is nothing to link him with Napoles.

On February 2, 2015, the Ombudsman herself, through the OSG, filed her Consolidated Comment on the petitions. Among other things, she particularly took stock of Revilla's acts indicating his manifest partiality and evident bad faith as shown by his repeated and direct endorsement of his PDAF-funded projects to Napoles' NGOs without the requisite public bidding and compliance with GPPB Resolution No. 012-200, IRR of R.A. 9184,[5] amended, and National Budget Circular (NBC) No. 476.

G.R. Nos. 212794-95
Atty. Richard A. Cambe

In this petition for *certiorari* and prohibition, petitioner Cambe also seeks to annul the March 28, 2014 Joint Resolution and the June 4, 2014 Joint Order, claiming the Ombudsman issued them in violation of his right to due process. For one, Cambe states, the Ombudsman totally ignored his counter-affidavits and countervailing evidence and even attributed to him statements and defenses which he did not make. Worse still, Cambe adds, the statements in the aforesaid Joint Resolution betray the Ombudsman's failure to even peruse what he submitted. For another, she used the counter-affidavits of other respondents against Cambe without so much as providing him copies thereof. To compound matters, the Ombudsman even used various memoranda which the whistleblowers admitted to have been falsified. For a third, Cambe, following Revilla's lead, parlayed the *res inter alios acta* line. He also laments the Ombudsman's disregard of handwriting experts' finding on the authenticity of his signatures on the PDAF Documents. He further raises the issue of his right, as part of due process, to be furnished with the counter-affidavits of his co-respondents like Revilla.

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[5] Entitled "An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purpose," January 10, 2003.

Finally, Cambe asserts that none of the elements for the successful prosecution of plunder or violation of Sec. 3 (e) of R.A. 3019 is present. As it were, Cambe claims, vis-a-vis the latter crime, he has nothing to do with the PDAF projects let alone acting with manifest partiality, evident bad faith, or inexcusable negligence. Most importantly, he did not, under the premises, cause undue injury to any party, or give any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

Public respondents, in their Consolidated Comment and training their sights on allegations of supposed denial of due process, argue in the main that Cambe failed to present any competent evidence to support his thesis. On the contrary, Cambe was furnished copies of the counter-affidavits that directly linked him to the crimes charged against him. They further argue that the issue on Cambe's pretense of being denied, under the premises, of due process has been rendered moot by the Ombudsman's issuance of the May 7, 2014 Joint Order wherein Cambe was furnished copies of the requested documents and was given a chance to comment thereon.

G.R. Nos. 213477-78
John Raymund De Asis, petitioner

In this petition to annul the March 28, 2014 Joint Resolution, De Asis contends at bottom as follows: (1) the basic complaints were devoid of any allegation or proof that would justify the charge of Plunder against him. At best, these allegations merely depicted him as exercising his duties as Napoles' driver, messenger, and janitor which can hardly be construed as overt criminal acts of Plunder or a willful participation on his part to commit the same. (2) He has no knowledge of the existence, let alone of being president, of *Kaupdanan Para sa Mangunguma Foundation, Inc.* (KPMFI). De Asis describes as unimaginable for a mere high school graduate and a former security guard, like him, to conspire with his employer and high-ranking government officials to perpetrate the crime. He emphasized that the Joint Resolution expressly stated that his employer,

Napoles, had "full control and possession of the funds." And, (3) KPMFI was not used as conduit in the PDAF scam.

Commenting on De Asis' declaration of good faith, the Ombudsman stated that the former's acts of receiving checks for Napoles' NGOs, depositing them in their bank accounts, delivering Napoles' share in the scam, and assisting in the delivery of the lawmakers' kickbacks are not part of his duties as driver, messenger, or janitor. Rather, for the Ombudsman, these are indispensable parts of the commission of Plunder and violation of Sec. 3(E), RA 3019 in conspiracy with his employer and other persons.

The Ombudsman also shoots down, as specious, De Asis' Claims of not knowing about the incorporation of KPMFI, with the fact that he does not effectively deny the authenticity of his signature on the incorporation papers. At any event, the Ombudsman concludes, De Asis' acts under the premises contextually show his participation in the conspiracy.

G.R. Nos. 213532-33
Ronald John Lim, petitioner

Lim prays in this *certiorari* action at bar for the annulment of the March 28, 2014 Joint Resolution, predicating his plea on the premise that the Ombudsman issued the same when both the NBl and FIO complaints do not even allege his specific action that constitutes a violation of Plunder. Lim asserts that the complaints failed to establish the elements of the crimes charged against him and that the OOMB's Joint Resolution itself shows that he was not one of those who received the checks issued to the NGOs. To stress, he points out that only the NBl complaint named him as respondent. But even then, the NBl Complaint only impleaded him for being the supposed president of *Ginintuang Alay sa Magsasaka Foundation, Inc.* (GAMFI), when GAMFI was not even identified as an NGO that transacted with Revilla. He rued the sweeping assumption taken that all Napoles' employees are involved in the subject scam.

To this key contention, the Ombudsman counters that Luy and Suñas explicitly identified Lim as having helped Napoles

deliver commissions and kickbacks money to the lawmakers, an actuality clearly indicating his involvement in the execution of the conspiracy to commit Plunder.

G.R. Nos. 218744-59
Mario Relampagos, Rosario Nuñez, Lalaine Paule, and Marilou Bare, petitioners

In G.R. Nos. 218744-59, Relampagos, Nuñez, Paule and Bare assail the November 13, 2014 and May 13, 2015 Resolutions of the Sandiganbayan, which sustained the Ombudsman's finding of probable cause to indict them in Criminal Case Nos. SB-14-CRM-0268, 0269, 0272, 0273, 0275, 0276, 0279 and 0280. Petitioners contend that the Sandiganbayan gravely abused its discretion in refusing to declare the lack of probable cause in the mentioned cases considering that the General Appropriations Acts (GAAs) for 2007, 2008 and 2009 already decreed the direct release of all PDAF allocations to the IAs without the need of the prior requirement for the IAs' indorsement. For the petitioners, they cannot be faulted for issuing the SAROs under that circumstance.

They also stress that the Sandiganbayan should have dismissed the prosecution's allegation that they released the SAROs with "undue haste" since the SAROs involved were released four (4) to nine (9) days, way beyond the 11 hours and 15 minutes processing period required under the DBM charter.

G.R. Nos. 213536-37
Janet Lim Napoles, petitioner

In this petition for *certiorari*, Napoles hooks her plea for the nullification of the March 28, 2014 Joint Resolution and the June 4, 2014 Joint Order on this claim: the Ombudsman arrived at its flawed finding on the existence of probable cause to charge her with Plunder notwithstanding the absence of the critical element of "amassing ill-gotten wealth for an accused public officer." She argues that the complaints did not establish the specific acts of the crime she supposedly committed nor the place and time of commission, and that the testimonies of

Luy, Sula and Suñas are conflicting, unreliable, and barred by relevant rules of evidence. Napoles also makes much of the fact that she is not a public officer, thus not subject in context to prosecution by the Ombudsman before the Sandiganbayan.

In her Comment, the Ombudsman urges the outright dismissal of the Napoles petition for being baseless. To a precise point, the Ombudsman alleged having acted within the scope of her jurisdictional authority in determining the existence of probable cause for the plunder and graft charges against Napoles, who, through her indispensable cooperation and conspiratorial acts, such as concocting non-existent projects and creating the bogus-NGOs, paved the way for Revilla to illegally divert his PDAF allocation and amass ill-gotten wealth. And in controvertion of Napoles' posture, the Ombudsman contends that the complaints and Information filed against the former are sufficient in form and substance since all the integral parts were explicitly indicated.

Issue

The crucial question underlying these consolidated petitions boils down to whether the Ombudsman acted with grave abuse of discretion in finding probable cause to indict the petitioners for Plunder and violation of Sec. 3(e) of RA 3019.

Discussion

As the *ponencia* points out, the courts do not usually interfere with the Ombudsman in the determination as to the existence of probable cause.[6] In other words, the Ombudsman possesses ample latitude to determine the propriety of filing a criminal charge against a person. Nonetheless, it must be emphasized that the Ombudsman's broad authority is circumscribed by the need of an upright conduct of a preliminary investigation.[7] This

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[6] *Dupasquier v. Court of Appeals*, G.R. No. 112737, January 24, 2001, 350 SCRA 146; *Ilusorio v. Ilusorio*, G.R. No. 171659, December 13, 2007; *Metrobank v. Tobias*, G.R. No. 177780, January 25, 2012.

[7] Section 1, Rule 112, Rules of Court.

balancing rule is intended to guarantee the right of every person from "the inconvenience, expense, ignominy and stress of defending himself/herself in the course of a formal trial, until the reasonable probability of his or her guilt has been passed"[8] and to guard the State against the "burden of unnecessary expense and effort in prosecuting alleged offenses and in holding trials arising from false, frivolous or groundless charges."[9]

In *Principio v. Barrientos*,[10] this Court elucidated that in striking a balance between ensuring that, on one hand, probable criminals are prosecuted and, on the other hand, the innocent are spared from baseless prosecution,[11] it is duty-bound to temper the authority of the Ombudsman where such authority may be used for persecution:

> x x x In *Cabahug v. People*, we took exception to the Ombudsman's determination of probable cause and accordingly dismissed the case against the accused before the Sandiganbayan. Therein, we observed:
>
> While it is the function of the Ombudsman to determine whether or not the petitioner should be subjected to the expense, rigors and embarrassment of trial, he cannot do so arbitrarily. This seemingly exclusive and unilateral authority of the Ombudsman must be tempered by the Court when powers of prosecution are in danger of being used for persecution. Dismissing the case against the accused for palpable want of probable cause not only spares her the expense, rigors and embarrassment of trial, but also prevents needless waste of the courts' time and saves the precious resources of the government.
>
> In *Venus v. Hon. Desierto*, where the case against the accused was also dismissed for want of probable cause, we clarified that:
>
> Agencies tasked with the preliminary investigation and prosecution of crimes must always be wary of undertones of political harassment. They should never forget that the purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive

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[8] *Ledesma v. Court of Appeals*, 344 Phil. 207, 226 (1997).

[9] *Id.*

[10] G.R. No. 167025, December 19, 2005.

[11] *Tan v. Matsuura*, G.R. No. 179003, January 9, 2013.

prosecution, and to protect one from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trials. It is, therefore, imperative upon such agencies to relieve any person from the trauma of going through a trial once it is ascertained that the evidence is insufficient to sustain a *prima facie* case or that no probable cause exists to form a sufficient belief as to the guilt of the accused.

On this account, especially in cases where the imposable statutory penalty is *reclusion perpetua* to death as in this case, I submit that the Ombudsman must take into consideration only such competent and relevant evidence in determining the probability of the existence of the elements of the crimes charged, for such determination may spell months, if not years, of incarceration and anxiety for the accused, and vast amounts of expenses by the State.

Where the Ombudsman finds probable cause despite the palpable absence of any competent and relevant evidence of the elements of the crimes charged, I deem it the duty of this Court to reverse her findings on account of such grave abuse of discretion, as had been previously discussed:

As a general rule, the Office of the Ombudsman is endowed with a wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints. However, such authoritx is not absolute; it cannot be exercised arbitrarily or capriciously. Verily, the Constitution has tasked this Court to determine whether or not there as been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government, including the Office of the Ombudsman. Specifically, **this Court is mandated to review and reverse the ombudsmans evaluation of the existence, of probable cause, if it has been made with grave abuse of discretion**.

x x x x x x x x x

Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law nd jurisprudence. It refers also to cases in which, for various reasons, there has been a gross misapprehension of facts. The present Petition

is one such exception, involving serious allegations of multimillion-dollar bribes and unlawful commissions.[12]

Prosecutors and the Ombudsman should verify the averments in the complaint and winnow all the documents and testimonies not only to build the case but also to spare the state the expenses of a frivolous trial and prevent the unnecessary prosecution of the innocent. In *Salapuddin v. Court of Appeals*,[13] the Court reminds, *viz*:

> Hence, **even at this stage, the investigating prosecutors are duty-bound to sift through all the documents, objects, and testimonies to determine what may serve as a relevant and competent evidentiary foundation of a possible case against the accused persons. They cannot defer and entirely leave this verification of all the various matters to the courts**. Otherwise, the conduct of a preliminary investigation would be rendered worthless; the State would still be forced to prosecute frivolous suits and innocent men would still be unnecessarily dragged to defend themselves in courts against groundless charges. Indeed, while prosecutors are not required to determine the rights and liabilities of the parties, **a preliminary investigation still constitutes a realistic judicial appraisal of the merits of the case** so that the investigating prosecutor is not excused from the duty to weigh the evidence submitted and ensure that what will be filed in court is only such criminal charge that the evidence and inferences can properly warrant.[14]

Guided by these postulates, the Ombudsman's basis for finding probable cause against each of herein petitioners vis-a-vis the elements of the crimes charged must be considered. For plunder, the following elements must concur:

1. The offender is a public officer acting by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons.

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[12] *PCGG v. Desierto*, G.R. No. 132120, February 10, 2003. Emphasis and underscoring supplied.

[13] G.R. No. 184681, February 25, 2013.

[14] *Id.*; citing *Villanueva v. Ople*, G.R. No. 165125, November 18, 2005, 475 SCRA 539, 557. Emphasis and underscoring supplied.

2. The offender amasses, accumulates or acquires ill-gotten wealth.

3. The aggregate amount or total value of the ill-gotten wealth so amassed, accumulated or acquired is at least fifty million pesos (₱50,000,000).

4. Such ill-gotten wealth — defined as any asset, property, business enterprise or material possession of any of the aforesaid persons (the persons within the purview of Section 2, RA 7080) - has been acquired directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

(i) through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

(ii) by receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

(iii) by the illegal or fraudulent conveyance or disposition of assets belonging to the national government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries;

(iv) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

(v) by establishing agricultural, industrial or commercial monopolies or other combination and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

(vi) by taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic.

Meanwhile, the elements of the crime of violation of Section 3 (e), RA 3019 are as follows: (a) the offender must be a public officer discharging administrative, judicial, or official functions;

(b) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[15]

Revilla

The majority sustained the Ombudsman's finding of probable cause to indict Revilla for Plunder and violation of Sec. 3(e) of RA 3019, for supposedly amassing ill-gotten wealth by allegedly misappropriating, or supposedly receiving commission for allowing the misappropriation of, the PDAF in conspiracy with and/or by giving unwarranted benefit to Napoles and her cohorts. As I have previously stated, I cannot concur with the majority opinion.

A look at the evidence that the complainants had presented demonstrates that **there is nary any competent and relevant evidence that can constitute as basis for the finding of probable cause against Revilla**.

Ruling in favor of the complainants, the Ombudsman sweepingly concluded that Revilla conspired with Napoles and her cohorts to amass ill-gotten wealth at the expense of the State, specifying Revilla's role in the alleged conspiracy as follows:

> During the time material to the charges, **Senator Revilla issued several endorsement letters** to NABCOR, TRC and NLDC, expressly naming them as his chosen contractor for his PDAF projects.[16]
>
> x x x x x x x x x
>
> **Senator Revilla endorsed, in writing, the Napoles-affiliated NGO** to implement projects funded by his PDAF. His trusted staff,

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[15] *Garcia v. Office of the Ombudsman*, G.R. No. 197567, November 19, 2014; citing *Lihaylihay v. People*, G.R. No. 191219, July 31, 2013, 702 SCRA 755, 762; emphases and underscoring supplied.

[16] March 28, 2014 Resolution, p. 70; emphasis supplied.

Cambe, then prepared indorsement letters and other communications relating to the PDAF disbursements addressed to the DBM and the IAs (NABCOR, TRC and NLDC). On occasion, he allowed Napoles' employees to prepare these documents and sign for him. x x x[17]

x x x x x x x x x

x x x **Senator Revilla, for one, *repeatedly* and *directly*, endorsed the NGOs to implement his projects** without the benefit of a public bidding and without having been authorized by an appropriation law or ordinances legally mandated.[18]

x x x x x x x x x

In order to repeatedly divert substantial funds from the PDAF, access thereto must be made available. **This was made possible by Senator Revilla, who chose NGOs affiliated with or controlled by Napoles** to implement his PDAF-related undertakings. x x x.[19]

x x x x x x x x x

For their participation, in the above-described scheme, Senator Revilla, Javellana, Cunanan, Amata, Buenaventura and Sevidal received portions of the subject PDAF disbursements from Napoles.[20]

To support such conclusion, the Ombudsman cited the, counter-affidavits of Revilla's co-respondents and the whistleblowers' bare testimonies, *viz*:

BUENAVENTURA, then a regular employee of the NLDC, avers in her Counter-affidavit dated 6 march 2014, that in her processing of documents relating to the PDAF projects, she... 'checked and verified the endorsement letters of Senator' Ramon Revilla, Jr., 'which designated the NGOs that would implement his PDAF projects and found them to be valid and authentic;' and she also confirmed the authenticity of the authorization given by Senator Revilla to his

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[17] *Id.* at 73; emphasis supplied.

[18] *Id.* at 77-78; emphasis supplied.

[19] *Id.* at 108; emphasis supplied.

[20] *Id.* at 110.

subordinates regarding the monitoring, supervision and implementation of PDAF projects.[21]

x x x x x x x x x

In his Counter-Affidavit dated 15 January 2014, SEVIDAL, NLDC Director IV x x x points to Senator Revilla and Napoles, not NLDC employees, as the parties responsible for the misuse of the PDAF. He insists that Senator Revilla, through Cambe, were responsible for 'identifying the projects, determining the projects costs and choosing the NGOs' which was 'manifested in the letters of Senator Revilla.'[22]

x x x x x x x x x

In his Counter-Affidavit dated 20 February 2014, CUNANAN, Deputy Director general of the TRC at the time material to the complaints x x x related he met Napoles sometime in 2006 or 2007, who introduced herself as the representative of certain legislators who supposedly picked TRC as a conduit for PDAF funded projects at the same occasion, Napoles told him that 'her principals were then Senate President Juan Ponce Enrile, Senators Ramon "Bong" Revilla, Jr., Sen. Jinggoy Ejercito Estrada;' in the course of his duties, he often ended up taking and/or making telephone verifications and follow-ups and receiving legislatos or their staff members;[23]

x x x x x x x x x

In his Counter-Affidavit dated 8 January 2014, FIGURA TRC Department Manager III, denies the charges against him x x x. Figura adds that x x x he and other low-ranking TRC officials had no power to 'simply disregard the wishes of Senator' Revilla especially on the matter of public bidding for the PDAF projects.[24]

x x x x x x x x x

Luy also confirmed in his Affidavit dated 12 September 2013 that Senator Revilla himself, indeed, transacted with Napoles:

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[21] *Id.* at 40.

[22] *Id.* at 41-42.

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

[24] *Id.* at 50, 52.

63. T: Nabanngiit mo na may mga chief of Staff ng mga Senador na ka-transact ni JANET LIM NAPOLES, maari mo bang pangalanan kung sinu-sino ang mga ito?

S: ... Kay Senador BONG REVILLA, kung hindi po siya mismo ang naka-usap ni Madame JANET LIM NAPOLES AY SI Atty. RICHARD A. CAMBE ang kinakausap...

Furthermore, Cunanan, in his Counter-Affidavit, claimed that Senator Revilla confirmed to him that he, indeed, chose the NGOs named in the aforementioned letters and even admonished him for supposedly delaying the release of PDAF allocations to his (Revilla) chosen NGOs':

> 17.1 In particular, I distinctly remember a certain occasion when we tried to verify a PDAF-funded project initiated by the Office of Senator Ramon "Bong" Revilla, Jr., by calling the officially listed telephone number of his office to check if a certain Atty. Richard A. Cambe is indeed an authorized signatory for and in behalf of Senator Revilla. Said verification turned out "positive" because not only was I able to talk to Atty. Cambe, Senator Revilla himself even took the call at that instance and confirmed to me that he authorized Atty. Richard A. Cambe to coordinate and facilitate the implementation of his PDAF-funded projects. He likewise confirmed to me the fact that he picked and endorsed the NGOs which will implement his PDAF-funded Projects, and he even admonished me that now that I have been able to talked to him, the PDAF-funded project of said NGO should not proceed expeditiously from then on. I did not expect the said admonition by Sen. Revilla, however, I merely replied to him that I am just doing my job.

Cunanan's testimony jibe with Luy, Sula and Suñas' assertion that Senator Revilla's office participated in the complex scheme to improperly divert PDAF disbursements from designated beneficiaries to NGOs affiliated with or controlled by Napoles.[25]

Luy, Sula and Suñas' version of events is supported by: (a) the business ledgers prepared by Luy, showing the amounts received by Senator Revilla as his "commission" from the so-called PDAF scam; (b) the 2007-2009 COA Report documenting the results of the special

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

audit undertaken on PDAF disbursements which found that there were serious irregularities relating to the implementation of PDAF-funded projects, including those sponsored by Senator Revilla; and (c) the results of the independent field verification conducted by the FIO in 2013, which were consistent with the COA's findings and showed that the projects supposedly funded by Senator Revilla's PDAF and implemented by NGOs affiliated with or controlled by Napoles were "ghost" or inexistent.[26]

x x x x x x x x x

Based on Luy's testimony, supported by his business ledgers prepared during his tenure at Napoles' organization, Senator Revilla received kickbacks from the scheme in the aggregate sum of PHP242,512,500.00, mostly coursed through his authorized staff, Cambe.[27]

Notably, the pieces of evidence relied upon by the Ombudsman do not provide sufficient basis for even a *prima facie* finding of probable cause to believe **that Revilla negotiated and agreed with Napoles** on: (i) the list of projects to be chosen by the lawmaker; (ii) the corresponding IA that would implement the project; (iii) the project cost; (iv) the Napoles-controlled NGO that would implement the project; and (v) the amount of commission or kickback which the lawmaker would receive in exchange for ehdorsing the NGO. Indeed, **the Ombudsman's affirmation of these allegations stands on mere inferences and presumptions**.

What is certain is that the Ombudsman surmised Revilla's involvement with the PDAF scam from the following: (1) his purported signatures appearing in several documents endorsing the NGOs affiliated with Napoles; (2) the testimonies of the so-called "whistleblowers" and (3) the Counter-Affidavits of some of Revilla's co-respondents. As will be discussed, these are neither relevant nor competent, and do not constitute sufficient bases to sustain the finding of probable cause to subject Revilla to continuous prosecution.

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[26] *Id.* at 70-72. Emphasis, underscoring and italics removed.

[27] *Id.* at 82-83.

The PDAF Documents

By the PDAF documents, Revilla supposedly coerced the IAs to choose the Napoles NGOs to implement the projects identified by Revilla. The Ombudsman should have been more than wary in accepting such allegations since Revilla, as a member of Congress, was without authority to compel officials or agencies of the executive branch to act at his bidding. The IAs, in fine, simply do not come under the jurisdiction of the Senate, let alone senators. In fact, free from the legislature's control, **the IAs are mandated by law to conduct a public bidding in selecting the NGOs that would implement the projects chosen by the legislator**.

The duty of the IAs to conduct a public bidding and oversee the implementation of PDAF projects is at once apparent in the National Budget Circulars (NBC) that the DBM issued. NBC No. 537[28] states:

> 2.0 GENERAL GUIDELINES
>
> x x x x x x x x x
>
> 2.1.2 **Funds shall be released directly to implementing agencies** enumerated in the PDAF Project Menu. x x x
>
> 2.6 All procurement shall comply with the provisions of the Government Procurement Reform Act (R.A. 9184).
>
> x x x x x x x x x
>
> 5.0 POSTING REQUIREMENTS
>
> 5.1 DBM shall post in its official website all releases and realignments under the PDAF. Implementing agencies shall likewise post in their respective official websites the (*i*) priority list, standard and design submitted to Congress; (*ii*) projects identified and names of concerned proponents; (*iii*) names of project beneficiaries and/or recipients; (*iv*) any realignment

[28] February 20, 2012.

authorized; (*v*) status of project implementation; and (*vi*) program/project evaluation and/or assessment reports in line with the Organizational Performance Indicator Framework (OPIF).

x x x x x x x x x

5.3 For any procurement to be undertaken under the PDAF, **the implementing agencies shall post in the Philippine Government Electronic Procurement System (PHILGEPS) or in a newspaper of general circulation all invitation to bid, names of participating bidders with their corresponding bids, and awards of contract in accordance with R.A. 9184**, its implementing rules and regulations and Administrative Order No. 17 dated 28 July 2011.

6.0 ACCOUNTABILITY

The implementing agencies shall be accountable for the implementation of the programs/projects, subject to existing budgeting, accounting and auditing rules and regulations.[29]

In a word, any endorsement made by Revilla does not bear any value that could have compelled the endorsee IA to benefit a Napoles-controlled NGO. The choice of the NGO made by the IA, without complying with RA 9184 and similar laws,

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[29] Emphasis supplied. See also NBC No. 547 issued on January 18, 2013, which similarly provides:

2.0 GUIDELINES

x x x x

2.1.3 **Funds shall be released directly to implementing agencies** as identified in the PDAF Project Menu (Annex A). x x x

xxxx

6.0 ACCOUNTABILITY

The implementing agencies shall be accountable for the implementation of the programs/projects, subject to existing budgeting, accounting and auditing rules and regulations.

falls on the IA alone. This is apparent from the very words of the NBI Complaint, which states:

> The COA Special Audit Office Report No. 2012-03 revealed that the livelihood projects were not undertaken by the Implementing Agencies themselves, but by the NGOs endorsed by the Lawmaker. Among the Implementing Agencies mentioned are NABCOR, NLDC, and TRC.
>
> The arrangement is a blatant disregard of the provisions of the IRR-A of RA 9184 and issuances of GPPB. As per GPPB Resolution No. 12-2007, funds may be transferred to NGOs for implementation when there is an appropriation law or ordinance earmarking an amount to be specifically contracted out to NGOs. **The Implementing Agencies to where funds were released should have implemented the projects as they are the Implementing Agencies defined in the GAA.** It is noted that, as per 2007-2009 GAA, NABCOR is not one of those mentioned Implementing Agencies of the Priority program /Projects of the Lawmakers.
>
> **The NGOs were not selected in accordance with the Guidelines on Participation of NGOs in Public Procurement prescribed under GPPB Resolution**, that is, the selection of NGOs shall either be through competitive bidding, prescribed under Section 21.2.4 of the IRR-A of RA No. 9184. Neither was it shown from available evidence that the NGOs were accredited to qualify to implement government projects of great magnitude.
>
> x x x x x x x x x
>
> The responsible officers of the Implementing Agencies, NABCOR, NLDC and TRC, deliberately or, at the very least, through gross inexcusable negligence failed to notice that the beneficiaries/recipients submitted by the NGOs appear around four (4) to fifteen (15) times in the same or similar seminars/trainings. Among others, the NGOs involved are NAPOLES' NGOs, SDPFFI, MAMFI, POPDFI, APMFI, AEPFFI, CARED, PSDFI.

As Revilla maintained all along, his involvement/participation in the release of his PDAF was limited only to the identification and selection of projects or programs listed in the GAA and communicating such selection to the Chair of the Senate Committee on Finance and the Senate President. Any endorsement made by him does not and cannot sway these IAs

to act per his will and contrary to legal requirements. It is, therefore, perplexing that Revilla's involvement in the PDAF scam is hinged on apparently worthless "endorsements" of Napoles-controlled NGOs.

Further, the Ombudsman ought to have exercised caution especially **since the "whistleblowers" no less admitted to forging the lawmakers' endorsements of Napoles' NGOs to the IAs along with all other PDAF Documents**. Suñas testified that they prepared these endorsement letters, upon which Revilla is now being indicted. In her *Sinumpaang Salaysay* dated September 12, 2013, she stated:

22. T: May nabanggit ka na endorsement letter mula sa mga politicians, ano ang nilalaman nito?

S: Ito ay naka-addres sa Head ng Agency. Nakasaad ang amount ng allocated na pondo, ang SARO Number, date, and napili nilang non-government organizations at mga bayan, na makikinabang.

23. T: Kayo rin ba ang gumagawa ng mga endorsement letter ng mga politicians?

S: Si BENHUR K. LUY ang gumagawa ng draft ng endorsement letter.

24. T: Sino ang nag-uutos kay BENHUR LUY na gumawa ng draft ng endorsement letter?

S: Si Madame JENNY po.[30]

The fact of having falsified or forged the signatures on the PDAF Documents was again mentioned by Suñas in her own *Sinumpaang Salaysay* dated November 5, 2013, thus:

15. Tanong: Paano at sino ang mga nagproseso at lumagda sa mga Certificates of Acceptance, Delivery Receipts, Acknowledgment Receipts at Lists of Beneficiaries?

*Sagot: Sa liquidation na po ginagawa ang mga papeles na ito. Sa utos ni Ma'am Jenny, **kami-kami na ring***

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[30] *Rollo* (G.R. Nos. 212794-95), p. 3930.

mga employees sa JLN Corp. ang pumipirma sa mga pangalan ng mga taong involved pati na ng mga beneficiaries sa liquidation papers. Kami-kami na rin ang nag-imbento o nag-fabricate ng mga pangalan tapos pinipirmahan na rin po namin opposite sa mga pangalan nila.

16. Tanong: Sino at paano ang proseso ng pagliliquidate ng mga proyekto na ipinatupad ng NGO gamit ang PDAF ni Sen. Revilla?

Sagot: Kami-kami na rin po ang gumagawa ng liquidation reports tapos pinapapirma na lang namin sa mga president ng mga NGOs.[31]

During the September 12, 2013 Senate Blue Ribbon Committee, Luy also admitted forging the signatures of lawmakers:

Sen. Escudero: *Ang tanong ko, finorge (forge) or may finorge na ba kayong pirma ng senador o congressman dahil pineke 'yung beneficiary, 'di ba, galing sa listahan ng kung sino.* ***Fino-forge niyo rin ba or nagkaroon ba ng okasyon na finorge (forge) ninyo ang pirma ng congressman o senador sa anumang dokumento?***

Mr. Luy: ***With the approval of Ms. Napoles kasi sila po ang nag-uusap, may pagkakataon po na pino-forge (forge) po.***

Sen. Escudero: *May pagkakataong pino-forge niyo ang pirma ng mambabatas?*

Mr. Luy: Opo.[32]

Luy restated his testimony in his *Karagdagang Sinumpaang Salaysay* dated September 12, 2013,[33] where he admitted falsifying documents and forging signatures of legislators and their chiefs of staff, *viz*:

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[31] *Rollo* (G.R. Nos. 212694-95), p. 44; (G.R. Nos. 212794-95), pp. 3368-3369.

[32] Emphasis and underscoring supplied.

[33] Annex ZZZZZZZZZZZZZZZ, FIO Complaint. *Rollo* (G.R. Nos. 212694-95), p. 43; (G.R. Nos. 212794-95), pp. 4009-4010.

116. T: May iba pa ba kayong gagawin maliban sa report of disbursement patungkol sa liquidation?

S: Mayroon pa po. Pini-prepare din yung list of beneficiaries, certificate of inspection and acceptance coming from the office ng proponent or legislators, certificate of project completion, delivery receipts, sales invoice, official receipts from the supplier, independent auditor's report, accomplishment report, at pictures ng implementation kung mayroong implementation. Kung wala pong implementation, wala po kaming i-attach na pictures. ***At sa mga nasabing mga dokumento na kailangan ang pirma ng legislators, may mga panahon po na kami na ang pumipirma sa mga pangalan ng mga Chief of Staff ng mga legislators o sa pangalan ng iilang Congressman*** *sa utos ni Madame Janet Lim Napoles.*

117. T: Nabanggit mo na may mga panahon na kayo ang pumipirma sa pangalan ng mga Chief of Staff ng mga legislators or sa pangalan ng iilang Congressman, ano ang ibig sabihin dito at sinu-sino ang mga kasama mong pumipirma?

S: Kapag kami ay nagli-liquidate at may mga dokumento na kailangan ang pirma ng Chief of Staff ng mga legislators o ng Congressman ay ***kami na po ang pumipirma para sa kanila*** *sa utos po ni Madame Janet Lim Napoles. Ang mga kasama ko po na pumipirma sa mga nasabing dokumento ay sila Evelyn de Leon, at Merlina Suñas.*[34]

Not to be overlooked are the findings of handwriting experts, Rogelio G. Azores and Atty. Desiderio A. Pagui. The two were one in saying that the signatures appearing above Revilla's name on the PDAF Documents were not his.[35] Mr. Azores, in particular, concluded:

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[34] Emphasis and underscoring supplied.

[35] Mr. Azores examined the signatures appearing on copies of the following documents: (1) Letter addressed to Ms. Gondelina G. Amata, President, [NLDC] dated August 17, 2009; (2) Letter addressed to Ms. Gondelina G. Amata, President, [NLDC], dated October 23, 2009; (3) Letter addressed Mr. Antonio Y. Ortiz, Director General, [TRC], dated December 16, 2008;

The questioned signatures above the printed name Hon. Ramon Revilla, Jr., Ramon "Bong" Revilla, Jr., Ramon Revilla, Jr., on one hand and the standard signatures above the printed name Ramon "Bong" Revilla, Jr., on the other hand, **were not written by one and the same person**.[36]

Atty. Pagui similarly found the signatures above Revilla's name on the PDAF Documents as not belonging to the latter. Atty. Pagui's conclusion after examining the signatures on the PDAF documents and comparing them with Revilla's standard signatures categorically declared that **the signatures on the questioned documents were not affixed by Revilla**, *viz:*

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(4) Work and Financial PDAF of Senator Revilla, Jr., Project Cost: Php. 10,000,000. Beneficiary: Farmers in the Mun. of Akbar, Sulu, in the year 2007; (5) Pangkabuhayan Foundation, Inc., List of Beneficiaries, Livelihood Project, Senator Revilla, Jr., dated in the year 2009; (6) Pangkabuhayan Foundation Inc., Accomplishment Report (Annex 142) dated in the year 2009; (7) Pangkabuhayan Foundation, Inc., Accomplishment Report (Annex 144) dated in the year 2009; (8) Pangkabuhayan Foundation, Inc., List of Beneficiaries Livelihood Project, Senator Revilla, Jr., Attendance Sheet conduct of training dated Oct. 3-5, 2009; (9) Pangkabuhayan Foundation, Inc., List of Beneficiaries Livelihood Project, Senator Revilla, Jr., dated in the year 2009; (10) Papgkabuhayan Foundation, Inc., List of Beneficiaries Livelihood Project, Senator Revilla, Jr. (Annex 146) dated in the year 2009; (11) Pangkabuhayan Foundation Inc., List of Beneficiaries Livelihood Project, Senator Revilla, Jr., dated in the year 2009; (12) Vegetable Growing Program and Planting Materials Distribution Project in the Mun. of Akbar, Sulu, Livelihood Project of Ramon Revilla, Jr., dated in the year 2009; (13) Pangkabuhayan Foundation, Inc., Accomplishment Report ROCS-09 02426 dated in the year 2009; (14) Project Title: Vegetable Growing Program Backyard Vegetable Farming, Office of Senator Revilla, Jr., Implementing Agency-Zamboanga Rubber Estate Corp. (Annex 147) dated in the year 2009; (15) Certificate of Acceptance (Annex 148) dated March 12, 2008; (16) SENATE Pasay City, Office of Senator Revilla, Jr., Certificate of Acceptance (Annex 143) dated in the year 2009; (17) SENATE Pasay City, Office of Senator Revilla, Jr., Certificate of Acceptance (Annex 145) dated September 16, 2009; (18) Letter addressed to Mr. Antonio Y. Ortiz, Director General, [TLRC] dated April 10, 2007. (*Rollo* (G.R. Nos. 212694-95), pp. 357 to 358.

[36] *Rollo* (G.R. Nos. 212694-95), pp. 355, 362. Emphasis and underscoring supplied.

(1) Between questioned signature marked
"Q" and standard signatures.

Questioned signature ("Q"), its upward bar stroke (arrow 1, photograph) is slowly written evidence by the irregular edges of both sides; at midsection downward stroke shows an added dot (arrow 2, photograph) to connect the preceding upward bar stroke as appeared to have written in one fast movement; and terminal of capital letter "B" shows uncertainty of writing movement; thus shows bold dot (arrow 3, photograph); while in the series of standard signatures, corresponding upward bar strokes were written in fast and careless gliding strokes as shown in their respective smooth lines at the edges. Terminal strokes in capital letter "B" show careless downward before terminating writing movement in short stab upward strokes.

Natural variation of handwriting characteristics do not persist to exist between the questioned and standard signatures. Natural variation of handwriting characteristics in normal or natural handwriting is unavoidable characteristics in said genuine writings.

There exist between questioned signatures similarities in form, but similarities in form alone have no probative value in the science of handwriting examination where authenticity of questioned signatures is at issue. General form of letter or design close to the model coupled with slow and drawn tremulous writing are symptoms of simulated forgery, to mention few of such defective writings.

(2) Between questioned signature marked
"Q-1" and standard signatures.

The upward long bar stroke (arrow 1, photograph) in the questioned signature ("Q-1") exhibit slow writing movement and pen lift at the midsection (arrow 2, photograph) as well as at terminal stroke (arrow 3, photograph); and presence of hidden pen lift between the v-shape stroke and terminal stroke (arrow 4, photograph).

In the standard signatures, long upward strokes are written in fast and unconscious writing movement, there are no pen-lifts at the midsection as well at terminal stroke of capital letter "B", except in S-1 but not deliberate addition. The v-shape forms and their terminal strokes are written in uninterrupted gliding writing movements.

(3) Between questioned signature marked
"Q-2" and standard signatures.

Questioned signature marked "Q-2" is generally written in slow writing movement evidenced by tremulous strokes. Unusual presence of two (2) pen lifts at the long upward bar stroke (arrows 1 & 2, photograph). [T]he standards, show fast and unconscious writing movement in [the] entire[ty] of each letter designs.

Characteristics in questioned signature do not fall or embrace the same natural variation of writing characteristics in standard signatures.

Similarities on forms or letter designs alone have no probative value in the science of handwriting identification as forgers can master or perfect copying of letter forms or styles but not the so called individual or personal writing characteristics that identify writer or owner.

x x x x x x x x x

C O N C L U S I O N S:

In view of the forgoing, the scientific conclusions arrived for **each** of above mentioned **questioned signatures marked as "Q", "Q-1", "Q-2", "Q-3", "Q-4", "Q-5", "Q-6", "Q-7", "Q-8", "Q-9", "Q-10", "Q-11", "Q-12", "Q-13", "Q-14", "Q-15", "Q-16", "Q-17", "Q-18", "Q-19", "Q-20", "Q-21", "Q-22", "Q-23", "Q-24", "Q-25", and "Q-26", for identification purposes, were NOT affixed or signed by the same person whose standard signatures are those used as bases for the present scientific comparative examinations.** In other words, the foregoing **specified questioned signatures are NOT authentic, which mean, said questioned signatures were NOT affixed by Ramon "Bong" Revilla, Jr.**, whose standard signatures admitted as genuine are those enumerated in item numbers B1 to B30, inclusive, above.[37]

In fact, even a cursory glance at some of the PDAF Uocuments questioned by Revilla reveals **a forgery so obvious as to be remarkably noticeable to the naked eye of an ordinary person**. A prime example is the "endorsement" letter addressed to Gondelina Amata of the NLDC dated October 23, 2009, supposedly signed by Revilla. Compared to the standard signatures submitted by Revilla, the signature contained therein lacks the cursive flourishes of his true signatures and instead

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[37] *Rollo* (G.R. Nos. 212694-95), pp. 401-403, 409. Underscoring supplied.

contains sharp and blunt strokes. Similarly noticeable is the variance of the letterheads used in these various endorsement letters, with some containing supposed bar codes of Revilla's office, others simply a number.

Respondent Ombudsman, however, makes much of the letter dated July 20, 2011 Letter addressed to COA Assistant Commissioner Cuenco, Jr., wherein Revilla supposedly confirmed the authenticity of his and Cambe's signatures on the PDAF documents. Upon closer examination of the said letter, however, Mr. Azores found that even the said letter is spurious. He noted, thus:

A Questioned signature above the printed name of one Ramon Bong Revilla, Jr. appearing in the letter (Xerox copy) addressed to Assistant Commissioner Arcadia B. Cuenco, Jr. Special Services Sector, Commission on Audit Commonwealth Avenue, Quezon City dated 20 July 2011.

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CONCLUSION:

The questioned signature above the printed name of one Ramon Bong Revilla, Jr., on one hand, and the standard signatures above the printed name of Ramon "Bong" Revilla, Jr., on the other hand, were no written by one and the same person.

The same finding was made by Atty. Pagui with respect to the same July 20, 2011 Letter. He observed:

A Questioned signatures "RAMON BONG REVILLA JR." appearing on the following machine/Xerox copies allegedly from the originals, to wit:

1. Letter dated 20 July 2011 addressed to Assistant Commissioner Arcadio B. Cuenco, Jr., Special Service Sector, Commission on Audit, Commonwealth Avenue, Quezon City from Office of Senator Ramon Bong Revilla, Jr., Senate, Republic of the Philippines (Q);

x x x x x x x x x

(1) Between questioned signature marked "Q" and standard signatures.

Questioned signature ("Q"), its upward bar stroke (arrow 1, photograph) is slowly written evidence by the irregular edges of both sides; at midsection downward stroke shows an added dot (arrow 2, photograph) to connect the preceding upward bar stroke as appeared to have written in one fast movement; and terminal of capital letter "B" shows uncertainty of writing movement; thus shows bold dot (arrow 3, photograph); while in the series of standard signatures, corresponding upward bar strokes were written in fast and careless gliding strokes as shown in their respective smooth lines at the edges. Terminal strokes in capital letter "B" show careless downward before terminating writing movement in short stab upward strokes.

Natural variation of handwriting characteristics do not persist to exist between the questioned and standard signatures. Natural variatiom of handwriting characteristics in normal or natural handwriting is unavoidable characteristics in said genuine writings.

There exist between questioned signatures similarities in form, but similarities in form alone have no probative value in the science of handwriting examination where authenticity of questioned signatures is at issue. General form of letter or design close to the model coupled with slow and drawn tremulous writing are symptoms of simulated forgery, to mention few of such defective writings.

x x x x x x x x x

CONCLUSIONS:

In view of the forgoing, the scientific conclusions arrived for **each** of above mentioned **questioned signatures marked as "Q,"** "Q-1," "Q-2," "Q-3," "Q-4," "Q-5," "Q-6," "Q-7," "Q-8," "Q-9," "Q-10," "Q-11," "Q-12," "Q-13," "Q-14," "Q-15," "Q-16," "Q-17," "Q-18," "Q-19," "Q-20," "Q-21," "Q-22," "Q-23," "Q-24," "Q-25," and "Q-26," for identification purposes, were NOT affixed or signed by the same person whose standard signatures are those used as bases for the present scientific comparative examinations. In other words, the foregoing **specified questioned signatures are NOT authentic, which mean, said questioned signatures were NOT affixed by Ramon "Bong" Revilla, Jr.**, whose standard signatures admitted as genuine are those enumerated in item numbers B1 to B30, inclusive, above.[38]

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[38] *Id.* at 401-403; 409. Underscoring supplied.

At the very least, the Azores and Pagui findings should have Impelled the Ombudsman to consider the veracity of the signatures on the PDAF documents given that these experts' findings uniformly detail discrepancies between the signatures in the PDAF documents and Revilla's dmitted genuine specimens of writing. **That the Ombudsman failed to even require NBI handwriting experts to study the questioned signatures renders the immediate dismissal of the two handwriting expert's certifications highly suspect.** Where the genuineness of the documents is crucial to the respondents' defense, it is more prudent, as stressed in *People v. Agresor*,[39] to allow the opinion of handwriting experts:

> **The task of determining the genuineness of the handwriting would have been made easier had an expert witness been employed to aid the court in carrying out this responsibility.** The records show that counsel for the accused did ask the court for time to file a motion so that the handwriting may be submitted to the National Bureau of Investigation (NBI) to ascertain its authenticity. Such motion was, however, denied by the court, ruling that "The Court itself can determine whether or not that handwriting is the handwriting of the private complainant."
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> x x x x x x x x x
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> It is true that the opinion of handwriting experts are not necessarily binding upon the courts, the expert's function being to place before the court data upon which the court can form its own opinion. Ultimately, the value of the expert testimony would still have to be weighed by the judge, upon whom the duty of determining the genuineness of the handwriting devolves. **Nevertheless, the handwriting expert may afford assistance in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer. There is no doubt that superior skills along these lines will often serve to direct the attention of the courts to facts, assent to which is yielded not because of persuasion or argument on the part of the expert, but by their own intrinsic merit and reasonableness.**

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[39] G.R. Nos. 119837-39, December 9, 1999.

As there was a dispute regarding the genuineness of the handwriting, it would have been more prudent if the trial court allowed the presentation of a handwriting expert by the defense. The denial of the request for time to file a motion to have the handwriting examined in effect rendered the right of the accused to have compulsory process to secure the production ofevidence in his behalf nugatory.[40]

Being uncontroverted and, in fact, confirmed by the complainants' witnesses, I submit that this forgery of Revilla's signatures and the falsification of the PDAF Documents should have dissuaded the Ombudsman from filing the Infonnations against Revilla.

Certainly, **the finding of probable cause to indict a person for plunder cannot be based on *admittedly* falsified documents**. While probable cause falls below proof beyond reasonable doubt in the hierarchy of quanta of evidence, it must nonetheless be supported by sufficient, credible and competent evidence, *i.e.*, **there should be facts and circumstances sufficiently strong in themselves to warrant a prudent and cautious man to believe that the accused is guilty of the crime with which he is charged**. Thus, this Court elucidated in *Allado v. Diokno*:[41]

But then, it appears in the instant case that the prosecutors have similarly misappropriated, if not abused, their discretion. **If they really believed that petitioners were probably guilty, they should have armed themselves with facts and circumstances in support of that belief; for mere belief is not enough. They should have presented sufficient and credible evidence to demonstrate the existence of probable cause.** For the prosecuting officer "is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor — indeed, he should do so. But, while he may strike hard blows,

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[40] Emphasis supplied.

[41] G.R. No. 113630, May 5, 1994.

he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

In the case at bench, **the undue haste in the filing of the information and the inordinate interest of the government cannot be ignored. From the gathering of evidence until the termination of the preliminary investigation, it appears that the state prosecutors were overly eager to file the case** and secure a warrant for the arrest of the accused without bail and their consequent detention.
x x x

Indeed, the task of ridding society of criminals and misfits and sending them to jail in the hope that they will in the future reform and be productive members of the community rests both on the judiciousness of judges and the prudence of prosecutors. And, whether it is preliminary investigation by the prosecutor, which ascertains if the respondent should be held for trial, or a preliminary inquiry by the trial judge which determines if an arrest warrant should issue, **the bottomline is that there is a standard in the determination of the existence of probable cause, i.e., there should be facts and circumstances sufficiently strong in themselves to warrant a prudent and cautious man to believe that the accused is guilty of the crime with which he is charged**. Judges and prosecutors are not off on a frolic of their own, but rather engaged in a delicate legal duty defined by law and jurisprudence.[42]

Testimonies of the Co-Respondents

Absent any credible proof of Revilla's actual link or participation in the alleged scheme to divert his PDAF to Napoles' NGOs, the Ombudsman should likewise not have accepted hook, line, and sinker any testimony of a participant in the supposed conspiracy.

It is basic **that an extrajudicial confession binds only the confessant or declarant and is inadmissible against his or her co-accused**.[43] This basic postulate, an extension of the *res*

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[42] Emphasis and uderscoring supplied.

[43] *PNB v. Pasimio*, G.R. No. 205590, September 2, 2015; *Mercado v. People*, G.R. No. 167510, July 8, 2015; *People v. Cachuela*, G.R. No. 191752, June 10, 2013.

inter alios acta rule, is embodied in Section 28, Rule 130 of the Rules of Court, which states:

SECTION 28. Admission by third party. – The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided.

Under the rule, the testimony made by the confessant is hearsay and inadmissible as against his co-accused even during the preliminary investigation stage.[44] We explained why so in *Tamargo v. Awingan*:[45]

Considering the paucity and inadmissibility of the evidence presented against the respondents, it would be unfair to hold them for trial. Once it is ascertained that no probable cause exists to form a sufficient belief as to the guilt of the accused, they should be relieved from the pain of going through a full blown court case. **When, at the outset, the evidence offered during the preliminary investigation is nothing more than an uncorroborated extrajudicial confession of an alleged conspirator, the criminal complaint should not prosper so that the system would be spared from the unnecessary expense of such useless and expensive litigation.** The rule is all the more significant here since respondent Licerio Antiporda remains in detention for the murder charges pursuant to the warrant of arrest issued by Judge Daguna.[46]

The exception to the above rule, the succeeding Section 30 of Rule 130, requires foremost, the existence of an independent and conclusive proof of the conspiracy[47] and that the person concerned has **performed an overt act** in pursuance or furtherance of the complicity.[48]

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[44] *Tamargo v. Awingan*, G.R. No. 177727, January 19, 2010, 610 SCRA 316, 331; *PNB v. Pasimio*, G.R. No. 205590, September 2, 2015; *Mercado v. People*, G.R. No. 167510, July 8, 2015; *People v. Cachuela*, G.R. No. 191752, June 10, 2013.

[45] *Id.*

[46] Emphasis and underscoring supplied.

[47] *People v. Argawanon*, G.R. No. 106538, March 30, 1994, 231 SCRA 614, 618.

[48] *People v. Elijorde*, G.R. No. 126531, April 21, 1999, 306 SCRA 188, 193-194.

As discussed above, besides the admittedly falsified and forged PDAF documents, **there is no concrete proof showing that Revilla pulled off any "overt act" in furtherance of the supposed conspiracy with Napoles**. Other than saying that without Revilla, the scheme would have supposedly failed, the Ombudsman has been unable to point to concrete set of facts to support her conclusion as to the complicity of Revilla to the conspiracy in question. Thus, **the conclusion reached by the Ombudsman falls short of the threshold requirement that conspiracy itself must be proved as positively as the commission of the felony itself**. The quantum of evidence required is as should be, as conspiracy is a "facile device by which an accused may be ensnared and kept within the penal fold."[49]

For this reason, I submit that the testimonies of Revilla's co-respondents cannot be taken against him. Yet, the Ombudsman repeatedly and freely cited the ***previously withheld*** counter-affidavits of Revilla's co-respondents in finding probable cause to indict him for Plunder and violation of Section 3(e) of RA 3019.

The reliance on these previously suppressed testimonies of Revilla's co-respondents to conjure up probable cause against him is not only violative of the *res inter alios acta* rule, worse, it desecrates the basic rule of due process.

To recall, the counter-affidavits of Revilla's co-respondents, in which the foregoing statements were contained, were not furnished to Revilla before the Ombudsman rendered the March 28, 2014 Resolution despite Revilla's Motion to be Furnished. In denying the Motion, the Ombudsman held that it had no basis to grant the motion and cited *Artillero v. Casimiro*.[50] But *Artillero* is not even applicable to the case. *First,* in *Artillero,* it was the *complainant* who claimed denial of due process when he was not furnished with a copy of the counter-affidavit of

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[49] *Quidet v. People*, G.R. No. 170289, April 8, 2010, 618 SCRA 1, 3.

[50] G.R. No. 190569, April 25, 2012.

the accused. Here, it is the petitioner, as *accused*, requesting for the counter-affidavits of his co-respondents. *Second*, the complainant in *Artillero* requested a copy of the counter-affidavit of the accused not because he wanted to answer the counter-charges against him, such as what petitioner intended to do, but because he wanted to file a reply lest his complaint is dismissed for insufficiency of evidence.

After denying Revilla's Motion to be Furnished and his Motion for Reconsideration, the Ombudsman would suddenly turn around, find Revilla's request in order, and allow him to be furnished copies of the counter-affidavits of some his co-respondents.

In a bid to justify her initial refusal to provide Revilla with subject affidavits, the Ombudsman stated that Revilla was anyway eventually furnished the desired documents before the rendition of the assailed June 4, 2014 Joint Order (albeit after the March 28, 2014 Joint Resolution) and yet chose not to submit his comment within the time given him. Upon this premise, Revilla cannot, as the Ombudsman posited citing *Ruivivar v. Office of the Ombudsman*,[51] be heard about being denied due process having, as it were, "been given ample opportunity to be heard but x x x did not take full advantage of the proffered chance."

I believe that that the Ombudsman has misread *Ruivivar*, which, at bottom, is not consistent with the essence of due process: **to be heard before a decision is rendered**. In *Ruivivar*, petitioner Ruivivar's motion for reconsideration that paved the way for his being furnished with copis of the affidavits of private respondent's witnesses came after the Ombudsman rendered a decision. In the present case, however, Revilla's request to be furnished with his co-respondents' counter-affidavits preceded the Ombudsman's issuance of her probable cause-finding resolution. Clearly, **the accommodation accorded Revilla was belated**, *i.e.*, after the denial of his motion for reconsideration and way after the issuance of the resolution finding probable cause against him. There lies the crucial difference.

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[51] 587 Phil. 100 (2008).

It appears that the Ombudsman issued the May 7, 2014 Joint Order only as an afterthought, as an attempt to address the defects of the preliminary investigation the OOMB conducted on petitioner. However, such Order is of little moment as any comment that Revilla would file would no longer have any bearing precisely because the Ombudsman already issued the Joint Resolution on March 28, 2014 finding probable cause against them.

Worse, the Court cannot see its way clear on why the Ombudsman limited the grant to few counter-affidavits when it could have allowed Revilla access to all counter-affidavits and other filings of his co-respondents. The Ombudsman conveniently justified the selective liberality on the notion that only these counter-affidavits contain allegations that tend to incriminate Revilla to the scam. Yet, as pointed out by Revilla, **due process does not only cover the right to know and respond to the inculpatory evidence, but also the concomitant right to secure exculpatory evidence. The mere fact of suppression of evidence, regardless of its nature, is enough to violate the due process rights of the respondent**.[52]

Indeed, *Morfe v. Mutuc*[53] teaches that **the due process requirement is met if official action is free from arbitrariness. But, the Ombudsman's denial and limitation of Revilla's Motion to be Furnished, were arbitrary and unreasonable for there was nothing improper or irregular in Revilla's request**. And it cannot be overemphasized in this regard that the requesting petitioners offered to have the requested documents photocopied at his expense. Verily, these limitations **coupled with her use of the counter-affidavits requested against Revilla, without giving him a prior opportunity to know each and every allegation against him, whether from the complainants and their witnesses or his co-respondents**, are random, unreasonable, and taint the Ombudsman's actions with grave abuse of discretion for violating the sacred rule of due

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[52] See *Brady v. Maryland*, 373 U.S. 83 (1963).

[53] No. L-20387, January 31, 1968, 22 SCRA 424.

process. As such, **the statements contained in the Counter-Affidavits of Revilla's co-respondents cannot be used to find probable cause to indict him**.

In *Duterte v. Sandiganbayan*[54] where the petitioners therein were not sufficiently apprised of the charges against them during preliminary investigation, this Court ordered the dismissal of the criminal case filed against them, *viz*:

> We have judiciously studied the case records and we find that the preliminary investigation of the charges against petitioners has been conducted not in the manner laid down in Administrative Order No. 07.
>
> In the 12 November 1991 Order of Graft Investigator Manriquez, petitioners were merely directed to submit a point-by-point comment under oath on the allegations in Civil Case No. 20,550-91 and on SAR No. 91-05. **The said order was not accompanied by a single affidavit of any person charging petitioners of any offense as required by law.** They were just required to comment upon the allegations in Civil Case No. 20,550-91 of the Regional Trial Court of Davao City which had earlier been dismissed and on the COA Special Audit Report. **Petitioners had no inkling that they were being subjected to a preliminary investigation as in fact there was no indication in the order that a preliminary investigation was being conducted.** If Graft Investigator Manriquez had intended merely to adopt the allegations of the plaintiffs in the civil case or the Special Audit Report (whose recommendation for the cancellation of the contract in question had been complied with) as his bases for criminal prosecution, then the procedure was plainly anomalous and highly irregular. **As a consequence, petitioners' constitutional right to due process was violated.**
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> WHEREFORE, premises considered, the petition is GRANTED and Criminal Case No. 23193 is hereby DISMISSED. The temporary restraining order issued on 4 September 1997 is made PERMANENT.[55]

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[54] G.R. No. 130191, April 27, 1998, 289 SCRA 721.

[55] *Id.* at 734, 738-739, 745. Emphasis supplied.

In like manner, in the present case, Revilla was not sufficiently apprised of the entirety of the allegations against him *before* the probable cause finding Resolution of March 28, 2014 was rendered by the Ombudsman. Consequently, his right to due process was denied and I believe that this Court is duty-bound to reverse the Ombudsman's action that was tainted with grave abuse of discretion.

Even assuming *arguendo* that the counter-affidavits of Revilla's co-respondents are admissible, the testimonies contained therein are inadequate to engender the probability that Revilla was a knowing participant in the alleged scheme to divert the PDAF. Buenaventura simply testified in general terms that that she confirmed the authenticity of the authorization given by Revilla[56] without specifying how she made such confirmation or providing the details of the documents and transactions involved. In like manner, Sevidal broadly claimed that Revilla, through Cambe, was responsible for "identifying the projects costs and choosing the NGOs"[57] but did not provide the factual details that justified her claim. Figura's declaration of having no power to "simply disregard the wishes of [Revilla]" is a clearly baseless assumption.

Meanwhile, a closer look of Cunanan's testimony, which was a critical part of the Ombudsman's Resolutions, bares the infirmity of his claim. While he could have easily asked for a written confirmation of the authorization given by Revilla to Cambe, Cunanan himself admitted that he, instead, supposedly sought verification over the telephone. Yet, an audio recording of the alleged telephone conversation was not presented or even mentioned. Not even a transcript of the alleged telephone conversation was attached to Cunanan's Counter-Affidavit.

Section 1, Rule 11 of the Rules on Electronic Evidence provides that an audio evidence, such as a telephone conversation, is admissible only if it is presented, explained, or authenticated, *viz*:

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[56] March 28, 2014 Resolution, p. 40.

[57] *Id.* at 41.

SECTION 1. *Audio, video and similar evidence*. – Audio, photographic and video evidence of events, acts or transactions shall be admissible provided is shall be shown, presented or displayed to the court and shall be identified, explained or authenticated by the person who made the recording or by some other person competent to testify on the accuracy thereof.

Given that no audio evidence of the telephone conversation was presented, much less "identified, explained or authenticated," the occurrence of the alleged telephone conversation is rendered highly suspect, if not improbable, and any testimony thereon is inadmissible and of no probative value.

But granting, *arguendo*, that Cunanan did call Revilla's office, it still begs the question of how he could have recognized or confirmed the identity of the person he was speaking with over the phone and not face-to-face. There is no indication, and Cunanan never even hinted, that he was closely familiar with Revilla's voice that he can easily recognize it over the phone in a single conversation.

This Court had previously declared that the person with whom the witness was conversing on the telephone **must first be reliably identified before the telephone conversation can be admitted in evidence and given probative value**. In *Sandoval v. House of Representatives Electoral Tribunal*,[58] the Court held, thus:

It must also be stressed that, **as a matter of reliability and trustworthiness, a telephone conversation must first be authenticated before it can even be received in evidence. To this end, it is critical that the person with whom the witness was conversing on the phone is first satisfactorily identified, by voice recognition or any other means**, as the Chief of Staff. In the instant case, there is no evidence to conclude that the person who called up the HRET Office of the Secretary was the Chief of Staff of petitioner Sandoval except for the unverified and hearsay identification allegedly made by the caller himself/herself. Worst, the record does not even

[58] G.R. No. 149380, July 3, 2002.

divulge the alleged employee at the HRET Office of the Secretary from whom the purported caller asked about the releyant matter.[59]

A similar conclusion was reached by this Court in *People v. Wagas*,[60] where it ruled, *viz*:

> Finally, Ligaray's declaration that it was Wagas who had transacted with him over the telephone was not reliable because **he did not explain how he determined that the person with whom he had the telephone conversation was really Wagas whom he had not yet met or known before then. We deem it essential for purposes of reliability and trustworthiness that a telephone conversation** like that one Ligaray supposedly had with the buyer of rice to **be first authenticated before it could be received in evidence**. Among others, the person with whom the witness conversed by telephone should be first satisfactorily identified by voice recognition or any other means. **Without the authentication, incriminating another person just by adverting to the telephone conversation with him would be all too easy.** In this respect, an identification based on familiarity with the voice of the caller, or because of clearly recognizable peculiarities of the caller would have sufficed. The identity of the caller could also be established by the caller's self-identification, coupled with additional evidence, like the context and timing of the telephone call, the contents of the statement challenged, internal patterns, and other distinctive characteristics, and disclosure of knowledge of facts known peculiarly to the caller.[61]
>
> Verily, it is only fair that the caller be **reliably identified first before a telephone communication is accorded probative weight**. The identity of the caller may be established by direct or circumstantial evidence. x x x[62]

In this case where there is no authentication or identification of the person with whom Cunanan was conversing on the telephone, Cunanan's testimony is inadmissible and of no probative value.

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[59] Emphasis supplied.

[60] G.R. No. 157943, September 4, 2013.

[61] Emphasis and underscoring supplied.

[62] Emphasis and underscoring supplied.

In sum, the Ombudsman should have closely scrutinized the testimonies of the alleged participants in the supposed conspiracy. This holds especially true for testimonies that not only try to relieve the affiant from responsibility but also seek to pass the blame to others. The Ombudsman, however, utterly failed to do so and simply accepted the co-respondents' declarations as the gospel truth, unmindful that a neglect to closely sift through the affidavits of the parties can still force the unhecessary prosecution of frivolous cases. By itself, this neglect constitutes a grave abuse of discretion, which should be reversed by this Court.

Whistleblowers' Testimonies

Anent the elements of the crimes charged, the gravamen of the crime of Plunder is the accumulation by the accused of ill-gotten wealth amounting to at least Fifty Million Pesos (₱50,000,000.00). In a bid to satisfy this element against Revilla, the Ombudsman heavily relied on the testimonies of the whistleblowers, Luy, Sula, and Suñas. Yet, **none of the witnesses stated that they deposited money representing the alleged commissions to any of Revilla's accounts. Not one of them testified that they personally handed money or saw anyone handing/delivering money to Revilla as commission/kickback**.

The closest thing passed as proof by the complainants is the private and personal records of Luy. But, even **Luy himself admitted his lack of personal knowledge of Revilla's involvement in the PDAF scam, much less of the former senator receiving money from it**. In his September 12, 2013 *Karagdagang Sinumpaang Salaysay*, Luy stated:

T: Mayroon bang pagkakataon na ikaw mismo ay nakapagbigay ng pera ng "rebates" ng transaction sa Senador o Congressman o sa kung sinomang representative ng pulitiko?

S: Opo. Sa mga Chief-of-Staff ng mga Senador at sa mga Congressman mismo ay nakapag-abot na po ako ng personal, **Pero sa mga Senador po ay *wala pong pagkakataon* na**

ako mismo ang nag-abot. ***Naririnig ko lang kay Madame Janet Lim Napoles na nagbibigay daw sa mga Senador***.[63]

The foregoing at once betrays **the *hearsay* nature of Luy's testimony** against Revilla. The hearsay nature of Luy's testimony regarding Revilla's receipt of money from his PDAF is again highlighted in Luy's Sworn Statement of November 8, 2013, *viz*:

Q: How can you tell that Janet Lim Napoles already gave the commissions or kickbacks to Sen. Ramon Revilla?

A: Pagbalik ni Mrs. Napoles sa office ng JLN Corporation, pinapa-record niya sa akin sa ledger ni Senator Revilla na natanggap na niya ang pera, or minsan itinatawag ni Mrs. Napoles sa akin na naibigay na niya ang pera kay Senator Bong Revilla at record ko na sa ledger.

Q: Do you personally know Sen. Ramon Revilla, Jr.?

A: Hindi po. . . .

Similarly, the testimony given by Suñas on September 12, 2013 regarding the supposed receipt by Revilla of a part of his PDAF is not based on her own personal knowledge. She stated:

51. T: Maaari mo bang ipaliwanag ang ibig mong sabihin na ang pondo na sa halip napunta sa dapat na beneficiaries ay napunta kay Madame JENNY at sa mga senador?

S: Dahil sa ang pondo na mula sa PDAF na dapat mapunta sa mga mambabatas ay pinaghahatian. Limampung porsyento (50%) sa mambabatas, limang porsyento (5%) sa Chief of Staff ng mambabatas, sampung porsyento (10%) sa implementing agency at ang natitirang tatlumput limang porsyento (35%) napupunta kay Madame JENNY.

52. T: Maari mo bang sabihin kung paano mo nalaman ang sistema ng hatian na iyong binanggit?

S: Sinasabi sa amin ni Madame JENNY.[64]

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[63] Benhur Luy's Affidavit dated September 12, 2013, p.19; *rollo* (G.R. Nos. 212794-95), p. 4000.

[64] *Rollo* (G.R. Nos. 212794-95), p. 3934.

Given the hearsay character of the whistleblowers' testimonies, these are devoid of any intrinsic merit, dismissible as without any probative value.[65]

At most, the whistleblowers claimed that money was handed to Cambe. Yet, **there is nothing to prove that Revilla received the said money from Cambe or that Cambe's alleged receipt of the said money was under his authority or instruction**.

For this and for the fact that there is absolutely nothing competent and relevant that can sway a reasonable man to believe that Revilla had participated in the PDAF scheme, I vote for the reversal of the Ombudsman's finding of probable cause to indict Revilla for plunder and violation of Section 3(e) of RA 3019 on account of grave abuse of discretion.

It must not be forgotten that the crimes involved in these clases are Plunder and violation of Section 3 (e), RA 3019—two grave charges that can strip a man of his good name and liberty, as in this case. The Ombudsman should not have found probable cause to indict Revilla given that there is nothing but falsified documents, hearsay testimonies and declarations barred by the *res inter alios acta* that support the complaints. Worse, the Ombudsman violated the due process protection of the Constitution in citing affidavits and testimonies not previously furnished Revilla. Without doubt, the Assailed Resolutions, insofar as it found probable cause against Revilla, were tainted with grave abuse of discretion.

Cambe

As to Cambe, the March 28, 2014 Joint Resolution of the respondent OOMB briefly outlines his alleged participation in the conspiracy, thus:

Senator Revilla x x x authorized in writing his Chief-of-Staff Cambe to act for, deal with, and sign documents necessary for the immediate and timely implementation of his PDAF-funded projects.

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[65] *Manotok, IV v. Heirs of Barque*, G.R. Nos. 162335 & 162605, March 6, 2012; *People v. Crispin*, G.R. No. 128360, March 2, 2000.

From 2006 to 2012, Senator Revilla, **through Cambe, issued several indorsement letters** to NABCOR, TRC, and NLDC, expressly naming the following NGOs to carry out his PDAF projects: AEPFFI, APMFI, MAMFI, PSDFI, and SDPFFI.

Once a PDAF allocation becomes available to Senator Revilla; his office or staffwould advise Napoles or her employees or cohorts about it. Napoles or witness Luy would then prepare a listing of the projects available indicating the IAs. This listing would be sent to **Cambe who would sign and indorse the same to the DBM under his authority as Chief-of-Staff of Senator Revilla**. After the listing is released to the DBM, the Office of Senator Revilla then formally requests the DBM to release his PDAF; Napoles, in the meantime, would advance to Revilla, through Cambe, a down payment representing a portion of his commission or kickback. After the SARO and/or NCA is released, Napoles would give the full payment for the delivery to Senator Revilla through Cambe.

x x x x x x x x x

Significantly, after the DBM issues the SARO, Senator Revilla, through Cambe, would then write another letter addressed to the IAs which would identify and indorse Napoles' NGOs as his preferred NGO to undertake the PDAF-funded project. x x x (emphasis added, citations omitted)

In fine, the Ombudsman, in its Joint Resolution, attempted to establish Cambe's liability by presenting an elaborate, complicated scheme wherein he purportedly conspired with Revilla, *et al.* and the whistleblowers to allegedly enable Revilla to illegally acquire and amass portions of the PDAF through kickbacks.

Cambe's participation in the alleged conspiracy scheme to amass wealth, therefore, hinges on his participation as staff member of Sen. Revilla, and his purported signatures on the PDAF documents. On this point, Cambe argued that all his signatures in the PDAF documents were forged, and, thus, his participation in the conspiracy scheme has not been adequately established.

To underscore his point, he presented the examination report dated December 5, 2013 of Atty. Pagui, the forensic document

examiner who examined the purported signatures of Cambe appearing on the PDAF documents, and compared them with various standard signatures presented by Cambe. In his report, Atty. Pagui concluded:

(1) Between questioned signature marked
"Q" and standard signatures:

Questioned signature reveals inner loop lying horizontally which shows uncertainty or writing direction coupled with unnecessary pen tops and pen lifts at wrong places, signs of uncertainty of direction of writing strokes, likewise presence of slow and tremulous strokes indicative of unfamiliarity of habitual writing movements that resulted to simulation from certain model genuine signature. In the larger loop, it shows evidence of two (2) pen stops: initial and terminal.

In the standard signatures, which are written in fast and continmous writing strokes, obviously there are no pen lifts and no presence of tremulous strokes. The construction of the inner loop is constant and with clear reflection of the true art or image it represent[s].

(2) Between questioned signature marked
"Q-1" and standard signatures:

Questioned signature is characterized with unusual tremulous strokes, pen lifts at wrong places in the signatures which should be in fast and unconscious writing movements. It exhibits evidences of absence of round horizontal design within the [larger] loop that encircled the latter, but letter form or design that lies laterally at its base.

In the standards, they constantly carry letter design written with almost circular letter form within the area encircled by the larger loop with consistent fast and unconscious continued writing movements, peculiar with all the standard signatures. There are no pen lifts and tremulous strokes while the writing process proceeds until the whole signature are accomplished.

x x x x x x x x x

SCIENTIFIC CONCLUSIONS:

IN VIEW OF THE FOREGOING, the scientific conclusions arrived at, all questioned signatures marked for identification purposes in the machine/xerox copies are as follows, to wit: **"Q", "Q-1", "Q-2", "Q-3", "Q-4", "Q-4A", "Q-5", "Q-6", "Q-7", "Q-8", "Q-9",**

"Q-10", "Q-11", "Q-12", "Q-13", "Q-14", "Q-15", "Q-15A", "Q-16", "Q-16A", "Q-17", "Q-18", "Q-19", "Q-20", "Q-21", "Q-22", "Q-23", "Q-24", "Q-25", "Q-26", "Q-27", "Q-28", "Q-29", "Q-30", "Q-31", "Q-32", "Q-33", "Q-34", "Q-35", "Q-36", "Q-37", "Q-38"' "Q-39", "Q-40", "Q-41", "Q-42", "Q-43", "Q-44", "Q-45", "Q-46", "Q-47", "Q-48", "Q-49", "Q-50", "Q-51", "Q-52", "Q-53", "Q-54", "Q-55", "Q-57", :"Q-58", "Q-59", "Q-60", "Q-61", "Q-62", "Q-63", "Q-64", "Q-65", "Q-66", "Q-67", "Q-68", "Q-69", "Q-69A", "Q-70", "Q-71", "Q-72", "Q-73", "Q-74", "Q-75", "Q-76", "Q-77", "Q-78", "Q-84", "Q-87", "Q-88", "Q-89", "Q-90", "Q-91", "Q-92", "Q-93", "Q-94", "Q-95", "Q-96", "Q-97", "Q-98", "Q-99", "Q-100", AND "Q-168", and standard signatures likewise marked for identification purposes are as follows to wit: **"S-5a", "S-6a", "S-7a", "S-7", "S-8", "S-9", "S-12", "S-22", "S-23", "S-24", "S-25", "S-26", "S-27", "S-28", "S-29", "S-30", "S-31", "S-32", "S-33", "S-34", "S-35", "S-36", "S-38", "S-39", "S-40", "S-41", "S-42", "S-43", and "S-44"**, were **NOT** written/affixed by one person. In other words, the questioned signatures assuming the machine/xerox copies are authentic reproductions of the original documents they purport to represent, the foregoing questioned signatures were **NOT** affixed by a certain Atty. Richard A. Cambe, whose standard signatures are those enumerated above, used as bases in the present scientific comparative examinations.

Interestingly, the March 28, 2014 Joint Resolution of the respondent Ombudsman did not once mention the examination report of Atty. Pagui, nor did it squarely address the allegation of forgery. It immediately dismissed the argument by saying:

> Forgery is not presumed; it must be proved by clear, positive, and convincing evidence and the burden of proof lies on the party alleging forgery.

Further, as gathered from the March 28, 2014 Joint Resolption, the fact of Cambe, acting on his own as a public officer, amassing or acquiring ill-gotten wealth amounting to at least Fifty Million Pesos (₱50,000,000.00) through any of the means provided under the plunder law or acting in violation of RA 3019 has not been demonstrated

The Ombudsman simply relied heavily on the statements of Luy, Sula, and Suñas, who confessed to having conspired with

Napoles in executing this scheme. From their statements, the Ombudsman pieced together the participation of Revilla, Cambe, and the other petitioners. Thus, Cambe asserts that the whistleblowers' statements cannot be used against him under the *res inter alios acta* rule.

Respondents, through the OSG, claim that the case against Cambe fall under the exception to such rule.

I am unable to agree. The exception to the *res inter alios acta* rule, as earlier indicated, in Section 30 of Rule 130 provides:

> Section. 30. Admission by conspirator. – The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

People v. Cachuela[66] succinctly dwells on the application the rule and its exception, thus:

> At any rate, Nabilgas' extrajudicial confession is inadmissible in evidence against the appellants in view of the *res inter alios acta* rule. This rule provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. Consequently, an extrajudicial confession is binding only on the confessant and is not admissible against his or her co-accused because it is considered as hearsay against them.
>
> An exception to the *res inter alios acta* rule is an admission made by a conspirator under Section 30, Rule 130 of the Rules of Court. This provision states that the act or declaration of a conspirator relating to the conspiracy, and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration. Thus, in order that the admission of a conspirator may be received against his or her co-conspirators, it is necessary that: (a) the conspiracy be first proved by evidence other than the admission itself; (b) the admission relates to the common object; and (c) it has been made while the declarant was engaged in carrying out the conspiracy.

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[66] G.R. No. 191752, June 10, 2013.

This exception, however, does not apply in the present case since there was no other piece of evidence presented, aside from the extrajudicial confession, to prove that Nabilgas conspired with the appellants in committing the crime charged. Conspiracy cannot be presumed and must be shown as distinctly and conclusively as the crime itself Nabilgas, in fact, was acquitted by the trial court due to insufficiency of evidence to prove his participation in the crime.

The requisites to bring a given set of facts under the exception to the *res inter alios acta* rule were not met in the present case. Consider:

First, the alleged conspiracy has yet to be established by competent evidence. Except for the whistleblowers' admissions/statements, no other evidence was adduced to show that Cambe agreed to commit plunder or any crime. In fact, these statements heavily relied upon do not even establish Cambe's participation in the scheme or imply any wrongdoing on his part. The PDAF documents made much of by respondents are tainted with falsehood, as the whistleblowers themselves admitted, and can hardly be viewed to be independent and credible evidence to establish said conspiracy.

The fact that some of the PDAF Documents Cambe purportedly signed were notarized is of no moment in light of the admissions made by the "whistle-blowers" that they themselves did the "notarization." In his *Karagdagang Sinumpaang Salaysay* dated September 12, 2013,[67] Luy admitted that Napoles' employees kept the dry seals and notarial registers of several notary publics and used them to "notarize" the PDAF Documents:

107. T: Nabanggit mo na ang ginagawaga ninyong report of disbursement ay notarized, saan ninyo ito dinadala para ipanotarize?

S: Doon din lang sa opisina ng JLN Corporation po.

108. T: Kilala mo ba kung sino ang nagno-notarize ng report of disbursement na ginagawa ninyo?

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[67] *See* FIO Complaint, Annex ZZZZZZZZZZZZZZZ.

*S: **Bale ipinipirma na naming iyon mga attorney. May dry seal at stamp siya sa amin at notarial logbook.***

109. T: Maaari mo bang linawin kung papaano nangyaring kayo na rin ang nagnotaryo sa opisina ninyo sa JLN Corporation?

S: Ang totoo po niyan ay ayon kay Madame JANET LIM NAPOLES ay kausap na niya ang mga abogadong nagnonotaryo. Mayroong dry seal, stamp, at notarial book ang mga attorney sa opisina para kami na ang pumirma at maglagay ng entry sa notarial logbook.

110. T: Maaari mo bang sabihin kung sinu-sino itong mga tinutukoy mong notary public na inyong ipinipirma at nagpapagamit ng dry seal sa JLN Corporation?

S: Opo, sina Atty. MARK OLIVEROS, Atty. EDITHA TALABOC, Atty. RAYMUND TANSIP, at Atty. JOSHUA LAPUZ.[68]

Hence, the PDAF Documents by themselves are not reliable evidence of Cambe's complicity in the conspiracy to funnel funds out of the PDAF.

Second, Luy, Sula, and Suñas' admissions pertain to their own acts in perpetrating the scheme Napoles designed. This includes the forging and falsification of official documents to make it appear their issuance was authorized by legislators and their staff. Any alleged participation of Cambe as related to by the whistleblowers is hearsay considering that their supposed knowledge as to Cambe's role has Napoles, as source.

Moreover, Cambe's alleged receipt of ₱224,512,500.00 for Revilla and 5% for himself from the years 2006 to 2010, which purportedly represent their commissions, "rebates," or "kickbacks" for endorsing Napoles' NGOs was never corroborated by any independent evidence aside from the whistleblowers' testimonies. The business ledgers Luy submitted cannot be considered as such independent evidence since they

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[68] Emphasis and underscoring supplied.

are still based on Luy's statement. The allegation made by Cunanan of the TRC in his counter-affidavit pertaining to his phone conversation with Cambe and Revilla, has not been corroborated and does not establish any wrongdoing on the part of Cambe or Revilla.

Finally, public respondents never refuted the fact that these statements were made after the purported conspiracy had ceased. Luy, Sula, and Suñas only executed their respective admissions/statements sometime in September 2013, long after they have completed the alleged scheme.

What may be taken as independent evidence gathered during the FIO and the NBI's investigations consisted of endorsement letters, MOAs, and other documentation. They are of little evidentiary value, however, as they have been shown to have been falsified and forged by Luy, Sula, and Suñas upon Napoles' instructions. The COA report which found PDAF projects to be inexistent or have never been implemented is also insufficient as to Cambe, as his alleged participation is predicated on the forged indorsement letters, MOAs, and other documents. Even the MOAs allegedly executed by the NGOs, the implementing agencies, and Cambe as representative of Revilla, were admitted to have been "*notarized*" by Napoles' cohorts, not by legitimate notaries. Owing to this aberration, the MOAs do not enjoy the presumption of regularity and cannot be considered to be credible evidence to establish probable cause against Cambe.

Aside from the whistleblowers' own admission of forgery, handwriting experts Azores and Pagui had evaluated the authenticity of the PDAF documents and had determined that the signatures on the PDAF documents were not made by one and the same person. The testimonies of these experts cannot simply be swept aside by mere resort to legal arguments, but must be addressed and refuted by superior contrary evidence. Until then, the shifted burden to establish the authenticity of the documents rests with public respondents. The evaluation by the Special Panel of Investigators as to such authenticity would not, in context, suffice to overturn the expert testimonies of Azores and Pagui since the Special Panel is not experts in the field of handwriting analysis.

The Ombudsman's selective appreciation of certain critical testimonial evidence is a badge of grave abuse of discretion. She, for instance, accepted as gospel truth the accusatory statements of Luy, Sula, and Suñas insofar as the alleged participation of Revilla and Cambe in the scam is concerned, but in the same breath disregarded their admission of forgery and fabrication of the PDAF documents. In fine, the Ombudsman viewed as true those portions of the whistleblowers' statements which would support the prosecution's version despite contrary evidence presented by petitioners.

Considering the apparent whimsical and capnctous approach thus taken by the Ombudsman, I submit that this Court should have exercised its power of judicial review. **Tolerating the practice of establishing probable cause based on forged or questionable documents would expose the criminal justice system to malicious prosecution.** It will create a dangerous precedent. It will encourage unscrupulous individuals to file trumped up charges based on fictitious, spurious, or manipulated documents. Malicious lawsuits designed to harass the innocent will proliferate in clear violation of their rights enshrined by no less than the Constitution. This, I cannot allow.

To repeat, a preliminary investigation serves to protect the innocent from hasty, and oppressive prosecution and the state from having to conduct useless, but expensive trials.[69] Wrote the Court in *Cabahug v. People*:

> We cannot overemphasize the admonition to agencies tasked with the preliminary investigation and prosecution of crimes that the very purpose of a preliminary investigation is to shield the innocent rom precipitate, spiteful and burdensome prosecution. They are duty-bound to avoid, unless absolutely necessary, open and public accusation of crime not only to spare the innocent the trouble, expense and torment of a public trial, but also to prevent unnecessary expense on the part of the State for useless and expensive trials. Thus, **when at the outset the evidence cannot sustain a *prima facie* case or that the existence**

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[69] *Victor Jose Tan Uy v. Office of the Ombudsman*, G.R. Nos. 156399-400, June 27, 2008.

of probable cause to form a sufficient belief as to the guilt of the accused cannot be ascertained, the prosecution must desist from inflicting on any person the trauma of going through a trial. (Emphasis supplied, citation omitted.)

Napoles

Like Revilla and Cambe, Napoles also attributes grave abuse of discretion on the Ombudsman for finding probable cause for plunder against her, it being her submission that the elements of the crime have not been alleged and established. The FIO and NBI complaints, as well as the Joint Resolution have, to her, failed to establish that the alleged conspiracy was for the common design or purpose of enriching a public officer or that the proceeds of the PDAF landed in the pockets of any public officer. She points out that the Joint Resolution repeatedly held that the alleged *modusi operandi* was geared towards helping her, a private individual, obtain personal gain. She argues that since it was supposedly her, Napoles, who was enriched in the alleged conspiracy, then the plunder case is improper.

Assuming, Napoles continues, that she advanced money to Revilla prior to the release of the SARO, then his monetary gain cannot be considered as coming from the public coffers. Aside from this, Napoles denies being affiliated with the NGOs involved in the implementation of the PDAF projects and that nowhere in the documentary evidence adduced was it shown that she received any check from the implementing agencies.

Napoles obviously misinterpreted the charges against her and the trajectory of the Joint Resolution. This resolution, far from driving home the idea, as Napoles posits, that the conspiracy in question intended to enrich her, a private individual, clearly stated that the conspiratorial acts were "plainly geared towards a common goal which was to amass, acquire and accumulate ill-gotten wealth amounting to at least PhP224,512,500.00."

While I submit that the Court can accord merit to Napoles' assertion respecting the undue reliance of the Ombudsman on inadmissible vidence, such as the statements and ledgers submitted by Luy, I concur with the majority that the

Ombudsman's finding as to the existence of probable cause to charge Napoles is substantiated. Her argument that no evidence was presented to show her affiliation to the NGOs and the implementation of the PDAF-financed projects holds no water. **Save for her bare denials, Napoles did not submit any contrary evidence which would support her claim.**

On the contrary, the Ombudsman, through the efforts of the FIO and the NBI, was able to secure **the statements of Napoles' former employees, to independently establish how she set-up NGOs**[70] **and colluded with people in and out of the government to acquire the proceeds of the PDAF of various legislators**. Notably, an employee, Mary Arlene Baltazar, categorically testified having been instructed by Napoles to forge the signatures of directors in her NGO, as well as the signatures of listed beneficiaries in the PDAF-funded projects, and to shred documents related to the PDAF scheme. Counter-affidavits of the public officers from the implementing agencies involved also admitted having coordinated with Napoles in processing the projects.

Napoles' claim that the NBI and FIO Complaints, purportedly lacking as they do certain data, *e.g.*, dates and places, are insufficient in form and in substance to support a criminal charge for plunder is specious. As correctly pointed out by the OOMB, all the integral parts of a valid complaint, as required by Section 6, Rule 110 of the Rules of Court, quoted below are explicitly indicated:

> Section 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
>
> When an offense is committed by more than one person, all of them shall be included in the complaint or information. (6a)

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[70] See *Sinumpaang Salaysay ni Nova Kay Macalintal*, September 12, 2013; *rollo* (G.R. No. 212794-95), pp. 3903-3912.

A cursory reading of the NBI and FIO complaints would show substantial compliance with the above provision. All the accused were specifically named, the designation of the offenses charged clearly indicated, and the acts allegedly constituting the offenses and where they were committed enumerated. Considering the offenses charged, it was correctly indicated that the State is the offended party. As for the date of when the offenses were committed, it is sufficient if, as here, the approximate period of commission, *i.e.*, span of four years starting from and ending on, is provided, the exact date of the commission of the crime not being an element in either Plunder or violation of Section 3(e) of RA 3019.

De Asis

The crux of De Asis' petition resembles that of Napoles.

The assailed joint resolution and order, De Asis asserts, did not find KPMFI—of which he is supposed to be president—as among the NGOs used as a conduit in the PDAF Scam. A finding of probable cause against him, in spite of KPMFI's alleged non-involvement, is, therefore, without factual and legal basis since the SARO itself controverted his alleged involvement.

Contrary to De Asis' posture, the NBI Complaint mentioned KPMFI as one of those NGOs that served as conduits in the implementation of Revilla's 2006-2012 PDAF. While the assailed joint resolution and order did not indeed mention KPMFI as one of the conduit NGOs, the COA Report alleged that verification is still ongoing as to it since its SARO was only released in March 2012.

Even assuming, as De Asis urges, that he had no participation in the incorporation of KPMFI, there remains the fact that his acts contributed to the furtherance of the illegal scheme. His admitted participatipn aided Napoles and her cahoots to illegally acquire ill-gotten wealth at the expense of the public. His acts alone in receiving and depositing checks in NGO bank accounts, albeit generally harmless, enabled Napoles to withdraw the money and funnel the funds from the PDAF.

It bears stressing that De Asis, in his counter-affidavit, admitted picking up checks for Napoles' NGOs as he was "instructed" to do so. Yet, De Asis avers that the performance of his duties as Napoles' driver and messenger does not establish criminal intent. He maintains that the mere act of performing his routine duties can hardly be construed as overt criminal acts of plunder or a willful participation on his part to commit the same. Moreover, he had no knowledge of the purpose for which he performed his duties and, as far as he was concerned, he merely did his job in good faith.

I am not persuaded.

The term *good faith* is commonly descriptive of that state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry.[71] Good faith is actually a matter of intention. Albeit internal, a person's intention is judged by relying not on his own protestations of good faith, which is self-serving, but on evidence of his conduct and outward acts.[72]

Applying the foregoing tenets, the Ombudsman aptly pointed out the inconsistency of De Asis' acts with the principle of good faith. Routinely withdrawing and delivering huge sums of cash for Napoles and producing fictitious list of beneficiaries and liquidation reports would make a reasonable person doubt the legitimacy of his employer's business. De Asis, as Napoles' employee, possesses knowledge of facts and circumstances, which can put one wary of his employer's nature of business. Possessing this knowledge while continuously participating in the illegal scheme, even if instructed by his employer, is tantamount to acquiescence in the illegal act, thus belying his *bona fide* claim.

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[71] *Blacks Law Dictionary*, sixth edition, 1990 at 693 (underscoring supplied), citing *Efron v. Kalmanovitz*, 249 Cal.App. 187, 57 Cal.Rptr. 248, 251; *Leung Yee v. Frank L. Strong Machinery Co.*, 37 Phil. 644 (1918); *Fule v. Legare*, 117 Phil. 368 (1963).

[72] *Gabriel v. Mabanta*, G.R. No. 142403, March 26, 2003, 399 SCRA 573.

Lim

In like manner, I concur with the majority that probable cause exists against petitioner Lim.

While he was not included as respondent in the FIO complaint, Lim's name, along with four others, was mentioned as one of those who would deliver the money from the office of JLN in Pasig City to Napoles' house.[73] The Ombudsman had, thus, a valid reason to assume Lim's likely involvement in criminal activities and to proceed against him.

Lim contends that Ombudsman, in charging him with Plunder, proceeded on the theory she erroneously deduced from the ensuing accounts of Luy and Suñas, that he prepares and delivers the kickbacks and commissions to the concerned lawmakers, thus:

> 4.1 Kakausapin ni Gng. Napoles ang lawmaker na makakapagbigay ng pondo, at pagkakasunduan nila ang komisyon o kickback na dapat matanggap ng kausap niya. Alam namin ito dahil sinasama niya kami noon sa mga ilang meetings niya sa mga lawmakers, at ito rin ang kinagawian na sa mga sumunod niyang mga transaksyon. At nakokompirma naming ito tuwing nag-uutos si Gng. Napoles sa amin na maghanda o magpadala ng pera para sa mga nakausap niya. Ang kasama naming na laging naghahanda ng pera ay sina Ronald John Lim at x x x De Asis.

According to Lim, there is no allegation that he delivered kickbacks and commissions to the lawmakers. Luy and Suñas merely stated that he (Lim) would usually prepare the money, a scenario different from the concept of being involved in the delivery of money.

This contention is bereft of merit.

While preparation or segregation and the actual delivery are separate acts, they are interconnected with a common objective. It is immaterial, thus, whether Lim only prepared or segregated

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[73] Page 133 of the FIO Complaint.

the money, actually delivered it or both. The fact is, there is probable cause to believe that he performed a role in the consummation of the crime of Plunder.

Further, evidence shows that there is probable cause to believe that Lim cooperated in order to divert the PDAF to their own pockets. By rendering assistance in the delivery of money, Lim is deemed to have conspired in the illegal transaction. Under these circumstances, Lim is as much liable as the principal because of his overt and indispensable cooperation in perpetuating the scam.

At this juncture, it is necessary to state that Revilla is not the only named public officer involved in this issue. There are others against whom the Ombudsman found probable cause. Thus, Lim, being a private individual, may be charged with Plunder, there being probable cause to believe that he acted in concert with some public officers.

Relampagos, Nuñez, Paule, Bare

Petitioners Relampagos, Nuñez, Paule and Bare assail the November 13, 2015 and May 13, 2015 Resolutions of the Sandiganbayan that sustained the finding of probable cause against them in Criminal Case Nos. SB-14-CRM-0268, 0269, 0272, 0273, 0275, 0276, 0279, and 0280. In particular, they maintain that, contrary to the graft court's affirmatory findings, undue haste did not characterize the issuance of the concerned SAROs,[74] which their office is not in charge of processing in the first place. Petitioners also argue that Luy himself admitted that he is not aware of any "kickbacks" given to DBM officers and employees. Thus, for the petitioners, the Sandiganbayan committed grave abuse of discretion in remaining adamant in its refusal to dismiss the foregoing criminal cases against them.

I submit that the issues raised by the parties are ripe for adjudication and easily verifiable by the submissions of the

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[74] SARO Nos. ROCS-07-08553; ROCS-07-08555; ROCS-08-5254; ROCS-09-04953; and ROCS-09-04973.

parties. To wait for trial will only unnecessarily prolong the disposition of the case. On this note, Sec. 6, Rule 112 of the Rules of Criminal Procedure provides that a judge "may immediately dismiss the case if the evidence on record clearly fails to establish probable cause."

As borne by the records, the Ombudsman initially found probable cause to charge petitioners Relampagos, *et al.* for sixteen (16) counts of violation of Sec. 3 (e), RA 3019 on account of Luy's testimony that petitioners are Napoles' contact in the DBM. Yet, even Luy himself twice admitted during the September 12, 2013 Senate Blue Ribbon Committee that petitioners did not receive any part of the PDAF, *viz*:

The Chairman: So, ang hatian — sa legislator, sa line agency na nagimplement. Mr. Luy: Yes, Po.

*The Chairman: **DBM mayroon ba**? Mr. Luy: '**Yan ang hindi ko po alam, ang DBM**.*

x x x x x x x x x

*Sen. Cayetano: So far ang sinabi mo, congressman, senador, head of agency. **Sa DBM, may ibinibigay din**? Mr. Luy: **Wala po akong maalala na—o wala po akong nakita na** –* [75]

The fact that DBM officers and employees did not partake in the PDAF is likewise shown by Suñas' testimony when she alleged the following breakdown of the supposed "kickbacks" on the PDAF Scam:

T: Maaari mo bang ipaliwanag ang ibig mong sabihin na ang pondo na sa halip napunta sa dapat na beneficiaries ay napunta kay Madame Jenny at sa mga senador?

S: Dahil sa ang pondo mula sa PDAF na dapat mapunta sa mga proyekto ay pinaghahatian. Limampung porsyento (50%) sa mambabatas, limang porsyento (5%) sa Chief of Staff ng mambabatas, sampung porsyento (10%) sa implementing

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[75] *Rollo* (G.R. Nos. 218744-59), pp. 34-35. Emphasis and underscoring supplied.

> *agency at ang natitirang tatlumpu't limang porsyento (35%) ay napupunta kay Madame Jenny.*[76]

The dearth of any allegation as to any DBM employee's share in the PDAF renders their participation in the scheme to divert the fund highly unlikely and improbable.

The absurdity of dragging Relampagos, *et al.* in the PDAF scam becomes all the more obvious if one considers what DBM Director Carmencita Delantar told the Senate Blue Ribbon Committee, *i.e.*, that it is her office, not petitioners', that processes the issuance of the SAROs. Some excerpts of that testimony:

Q: I have a PDAF processed flow chart. It's a processed flow for 2007 to 2009. This is one of the attachments of Relampagos submitted for probable cause. You read it and confirm if this is really the process. Go read it silently. Just tell us if that is really the process flow. x x x

A: x x x In the 5th step here mentioned, it read, ROCS BMBs, this refers to the Budget and Management Bureaus of the department concern[ed], forwards the SARO NCA letter to OSEC for signature and in the absence of the Secretary or the principal, it goes to the Office of the Undersecretary for Operations for signature and are hand carried by the Director. Your honor, this is true. Why?

x x x *x x x* *x x x*

Q: So, you confirm also that you hand carry the SARO? A: x x x yes x x x

*Q: **So when, you hand carried the SARO, it's a finished product, only waiting the signature [of the] Secretary or the Usec x x x?***

*A: **Yes, Your Honor.** Usually, Your Honor, even if the Secretary is around, we have a Supervising Senior Official. So, it is one of the [USEC]. So, we forward and submit it to the [USEC] in-charge of operations.*

*Q: You mean to say **that your bureau does everything. I mean, all the processing is under your bureau**?*

*A: **Your Honor. not for all because we handle the soft.***

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[76] *Karagdagang Sinumpaang Salaysay ni Merlina Suñas y Pablo*, September 12, 2013, pars. 51-52.

x x x *x x x* *x x x*

*Q: **For the soft projects, your bureau does everything and there is nothing more to do by any other office except the Office of the Secretary of the Office of Usec who signs?***

*A: **Yes**, in a sense, Your Honor.*

Q: What do you mean, yes, in a sense?

A: What we were trying to say, Your Honor, because it would also be at the discretion of the Secretary if he would want through a re-organization to transfer it to the other bureau.

Q: No, I mean, for these ten (10)? A: Yes, Your Honor.[77]

Petitioners Relampagos, *et al*. could, therefore, not be faulted let alone indicted for what the Ombudsman perceived to be hasty "processing" of the SAROs in question.

What is more, the allegation of "undue haste" was loosely hinged on the supposed lack of endorsement from the IAs before the issuance of the SAROs. However, the GAAs for FYs 2007, 2008, and 2009 already dispensed with this requirement, when they provided a menu of programs/projects as well as the list of IAs authorized to implement them. DBM Circular Letter No. 2015-1, s. 2015, in fact did away with the endorsement of the IA as a *sine qua non* requirement before a SARO issues. It provides:

1. This Circular is being issued to clarify the application of NBC No. 476 dated September 20, 2001 to PDAF releases for FY 2005 and years thereafter in view of the related disallowances and cases filed against DBM officials and employees.

2. In this regard, this Department hereby clarifies that beginning FY 2005 and in the succeeding fiscal years, all PDAF allocation were directly released to implementing agencies pursuant to the express provisions of Special Provision I of the FY 2005 [GAA] which already included a list of programs, projects and [IAs] (PDAF menu) upon which the requests for release of funds were evaluated as to consistency with the programs, projects and [IAs] listed in the PDAF menu, to wit:

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[77] Emphasis and underscoring supplied.

FY 2005 GAA and FY 2006 reenacted budget [FY 2007, 2008, 2009, 2010]

1. Use and Release of the Fund: The amount appropriated herein shall be used to fund priority programs and projects under the ten point agenda of the national government and **shall be released directly to the [IAs] as indicated hereunder**, to wit:

x x x x x x x x x

FY 2010 GAA

1. Use and Release of the Fund: The amount appropriated herein shall be used to fund priority programs and projects of the national government and **shall be released directly to the [IAs] as indicated hereunder**, to wit:

x x x x x x x x x

3. Consequently, the requirement for the submission of project profile and endorsement by the [IAs] previously required under NBC No. 476, is already effectively superseded by the enactment of the FY 2005 GAA. The submission of project profile and endorsement by the [IAs] were no longer necessary considering that the details required in the project profiles and endorsements under NBC No. 476 were already provided for in the PDAF menu under the GAA for FYs 2005 and succeeding fiscal years.[78]

As a related point, it bears to stress that the SAROs were issued and released only four (4) to nine (9) days following the DBM's receipt of the requests for their issuance. The DBM Citizens' Charter, however, provides that the total processing time of such request should be for less than 10 hours. Clearly then, if petitioners were to be censured, it shoud be for tardiness, not for acting with "undue haste."

Final Note

Without belaboring the obvious, the presumption of innocence, and all rights associated with it, remains even at the preliminary investigatlon stage. Thus, where the lack of competent evidence against the respondents is clear from the records, then complaints

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[78] Emphasis and underscoring supplied.

against them must be dismissed. Else, the protective purpose of a preliminary investigation becomes illusory.

With the foregoing disquisition, I find it unnecessary to discuss the other issues raised in the consolidated petitions.

IN LIGHT OF THE FOREGOING, I cast my vote, thus:

1. To **DISMISS** the petitions in G.R. Nos. 212014-15, 213477-78, 213532-33, and 213536-37 for lack of merit.

2. To **GRANT** the petitions in G.R. Nos. 212694-95, 212794-95 and 218744-59 and **REVERSE** and **SET ASIDE** the assailed Joint Resolution and Joint Order issued by the Ombudsman on March 28, 2014 and June 4, 2014, respectively insofar as they find probable cause to indict petitioners Sen. Ramon "Bong" Revilla, Jr., Atty. Richard A. Cambe, Mario L. Relampagos, Rosario Salameda Nuñez, Lalaine Narag Paule, and Marilou Dialino Bare for the crimes indicated therein.

   Accordingly, I vote to **DISMISS** Criminal Case Nos. SB-14CRM 0240 (for Plunder) and SB 14 CRM 0263 to 0282, inclusive, (for Violation of Section 3[e] of RA 3019) against Sen. Ramon "Bong" Revilla, Jr. and Atty. Richard A. Cambe before the Sandiganbayan.

   Moreover, I vote to **DISMISS** Criminal Case Nos. SB 14CRM-0268, 0269, 0272, 0273, 0275, 0276, 0279 and 0280 (for Violation of Section 3[e] of RA 3019) against accused Mario L. Relampagos, Rosario Salameda Nuñez, Lalaine Narag Paule and Marilou Dialino Bare before the Sandiganbayan.

3. In light of my vote for the nullification in G.R. Nos. 212694 95 of the assailed March 28, 2014 Joint Resolution and the affirmatory June 4, 2014 Joint Order of the Ombudsman, insofar it found probable cause to indict petitioner Sen. Ramon "Bong" Revilla, Jr. for Plunder (1 Count) and violation of Section 3 (e) of R.A. 3019 (16 Counts) and recommended the immediate filing of corresponding Informations with the Sandigabayan, I vote to **DISMISS** the petition in G.R. Nos. 212427-28.

EN BANC

[G.R. No. 216914. December 06, 2016]

SUBIDO PAGENTE CERTEZA MENDOZA AND BINAY LAW OFFICES, *petitioner, vs.* **THE COURT OF APPEALS, HON. ANDRES B. REYES, JR., IN HIS CAPACITY AS PRESIDING JUSTICE OF THE COURT OF APPEALS, AND THE ANTI-MONEY LAUNDERING COUNCIL, REPRESENTED BY ITS MEMBERS, HON. AMANDO M. TETANGCO, JR., GOVERNOR OF THE BANGKO SENTRAL NG PILIPINAS, HON. TERESITA J. HERBOSA, CHAIRPERSON OF THE SECURITIES AND EXCHANGE COMMISSION, AND HON. EMMANUEL F. DOOC, INSURANCE COMMISSIONER OF THE INSURANCE COMMISSION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; JUDICIAL REVIEW; REQUISITES; ALL CASES QUESTIONING THE CONSTITUTIONALITY OF A LAW DOES NOT REQUIRE THAT CONGRESS BE IMPLEADED FOR THEIR RESOLUTION.— On the sole procedural issue of whether SPCMB ought to have impleaded Congress, the contention of the OSG though novel is untenable. All cases questioning the constitutionality of a law does not require that Congress be impleaded for their resolution. The requisites of a judicial inquiry are elementary: 1. There must be an actual case or controversy; 2. The question of constitutionality must be raised by the proper party; 3. The constitutional question must be raised at the earliest possible opportunity; and 4. The decision of the constitutional question must be necessary to the determination of the case itself.

2. CRIMINAL LAW; ANTI-MONEY LAUNDERING ACT (AMLA) (R.A. NO. 9160); AN *EX-PARTE* APPLICATION AND INQUIRY BY THE ANTI-MONEY LAUNDERING COUNCIL (AMLC) INTO CERTAIN BANK DEPOSITS

AND INVESTMENTS DOES NOT VIOLATE SUBSTANTIVE DUE PROCESS, THERE BEING NO PHYSICAL SEIZURE OF PROPERTY INVOLVED AT THAT STAGE; IT IS THE PRELIMINARY AND ACTUAL SEIZURE OF THE BANK DEPOSITS OR INVESTMENTS IN QUESTION WHICH BRINGS THESE WITHIN REACH OF THE JUDICIAL PROCESS, SPECIFICALLY A DETERMINATION THAT THE SEIZURE VIOLATED DUE PROCESS. — Section 11 of the AMLA providing for *ex-parte* application and inquiry by the AMLC into certain bank deposits and investments does not violate substantive due process, there being no physical seizure of property involved at that stage. It is the preliminary and actual seizure of the bank deposits or investments in question which brings these within reach of the judicial process, specifically a determination that the seizure violated due process. In fact, *Eugenio* delineates a bank inquiry order under Section 11 from a freeze order under Section 10 on both remedies' effect on the direct objects, i.e. the bank deposits and investments: x x x. At the stage in which the petition was filed before us, the inquiry into certain bank deposits and investments by the AMLC still does not contemplate any form of physical seizure of the targeted corporeal property.

3. **ID.; ID.; JURISDICTIONS OVER MONEY LAUNDERING CASES; THE REGIONAL TRIAL COURTS SHALL HAVE THE JURISDICTION TO TRY ALL CASES ON MONEY LAUNDERING, WHILE THOSE COMMITTED BY PUBLIC OFFICERS AND PRIVATE PERSONS WHO ARE IN CONSPIRACY WITH SUCH PUBLIC OFFICERS SHALL BE UNDER THE JURISDICTION OF THE SANDIGANBAYAN; THE AMLC'S INVESTIGATION OF MONEY LAUNDERING OFFENSES AND ITS DETERMINATION OF POSSIBLE MONEY LAUNDERING OFFENSES, SPECIFICALLY ITS INQUIRY INTO CERTAIN BANK ACCOUNTS ALLOWED BY COURT ORDER, DOES NOT TRANSFORM IT INTO AN INVESTIGATIVE BODY EXERCISING QUASI-JUDICIAL POWERS.—** [T]he grant of jurisdiction over cases involving money laundering offences is bestowed on the Regional Trial Courts and the Sandiganbayan as the case may be. In fact, Rule 5 of the IRR is entitled **Jurisdiction of Money Laundering Cases and Money**

Laundering Investigation Procedures: x x x **Rule 5.a. Jurisdiction of Money Laundering Cases.** The Regional Trial Courts shall have the jurisdiction to try all cases on money laundering. Those committed by public officers and private persons who are in conspiracy with such public officers shall be under the jurisdiction of the Sandiganbayan. x x x. The enabling law itself, the AMLA, specifies the jurisdiction of the trial courts, RTC and Sandiganbayan, over money laundering cases, and delineates the investigative powers of the AMLC. xxx. Nowhere from the text of the law nor its Implementing Rules and Regulations can we glean that the AMLC exercises quasi-judicial functions whether the actual preliminary investigation is done simply at its behest or conducted by the Department of Justice and the Ombudsman. x x x. The AMLC's investigation of money laundering offenses and its determination of possible money laundering offenses, specifically its inquiry into certain bank accounts allowed by court order, does not transform it into an investigative body exercising quasi-judicial powers. Hence, Section 11 of the AMLA, authorizing a bank inquiry court order, cannot be said to violate SPCMB's constitutional right to procedural due process.

4. ID.; ID.; AUTHORITY TO INQUIRE INTO BANK DEPOSITS (SECTION 11 OF THE AMLA); ALLOWING AND AUTHORIZING THE AMLC TO UNDERTAKE AN INQUIRY INTO CERTAIN BANK ACCOUNTS OR DEPOSITS IS NOT ARBITRARY, AS SAFEGUARDS ARE PROVIDED BEFORE A BANK INQUIRY ORDER MAY BE ISSUED.— The warning in *Eugenio* that an ex-parte proceeding authorizing the government to inspect certain bank accounts or investments without notice to the depositor would have significant implications on the right to privacy still does not preclude such a bank inquiry order to be allowed by specific legislation as an exception to the general rule of absolute confidentiality of bank deposits. We thus subjected Section 11 of the AMLA to heightened scrutiny and found nothing arbitrary in the allowance and authorization to AMLC to undertake an inquiry into certain bank accounts or deposits. Instead, we found that it provides safeguards before a bank inquiry order is issued, ensuring adherence to the general state policy of preserving the absolutely confidential nature of Philippine bank accounts: (1) The AMLC is required to establish probable cause as basis

for its *ex-parte* application for bank inquiry order; (2) The CA, independent of the AMLC's demonstration of probable cause, itself makes a finding of probable cause that the deposits or investments are related to an unlawful activity under Section 3(i) or a money laundering offense under Section 4 of the AMLA; (3) A bank inquiry court order *ex-parte* for related accounts is preceded by a bank inquiry court order *ex-parte* for the principal account which court order *ex-parte* for related accounts is separately based on probable cause that such related account is materially linked to the principal account inquired into; and (4) The authority to inquire into or examine the main or principal account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the Constitution. The foregoing demonstrates that the inquiry and examination into the bank account are not undertaken whimsically and solely based on the investigative discretion of the AMLC. In particular, the requirement of demonstration by the AMLC, and determination by the CA, of probable cause emphasizes the limits of such governmental action.

5. ID.; ID.; THE BANK ACCOUNT OWNER MAY QUESTION, NOT JUST PROBABLE CAUSE FOR THE ISSUANCE OF THE FREEZE ORDER, BUT THE DETERMINATION OF PROBABLE CAUSE FOR AN *EX-PARTE* BANK INQUIRY ORDER INTO A PURPORTED RELATED ACCOUNT; THE ALLOWANCE TO THE OWNER OF THE BANK ACCOUNT TO QUESTION THE BANK INQUIRY ORDER IS GRANTED ONLY AFTER ISSUANCE OF THE FREEZE ORDER PHYSICALLY SEIZING THE SUBJECT BANK ACCOUNT; IT CANNOT BE UNDERTAKEN PRIOR TO THE ISSUANCE OF THE FREEZE ORDER.— Undeniably, there is probable and preliminary governmental action against SPCMB geared towards implementation of the AMLA directed at SPCMB's property, although there is none, as yet, physical seizure thereof, as in freezing of bank accounts under Section 10 of the AMLA. Note, however, that the allowance to question the bank inquiry order we carve herein is tied to the appellate court's issuance of a freeze order on the principal accounts. Even in *Eugenio*, while declaring that the bank inquiry order under Section II then required prior notice of such to the account owner, we recognized that the determination of probable cause by the appellate court to issue the bank inquiry order can be

contested. As presently worded and how AMLC functions are designed under the AMLA, the occasion for the issuance of the freeze order upon the actual physical seizure of the investigated and inquired into bank account, calls into motions the opportunity for the bank account owner to then question, not just probable cause for the issuance of the freeze order under Section 10, but, to begin with, the determination of probable cause for an *ex-parte* bank inquiry order into a purported related account under Section II. x x x. However, these very safe guards allow SPCMB, post issuance of the *ex-parte* bank inquiry order, legal bases to question the propriety of such issued order, if any. To emphasize, this allowance to the owner of the bank account to question the bank inquiry order is granted only after issuance of the freeze order physically seizing the subject bank account. It cannot be undertaken prior to the issuance of the freeze order.

6. ID.; ID.; THE OWNER OF THE BANK ACCOUNT WHICH MAY BE THE SUBJECT OF INQUIRY OF THE AMLC OUGHT TO HAVE A LEGAL REMEDY TO QUESTION THE VALIDITY AND PROPRIETY OF THE APPELLATE COURT'S ORDER EVEN IF SUBSEQUENT TO THE ISSUANCE OF A FREEZE ORDER.— While no grave abuse of discretion could be ascribed on the part of the appellate court when it explained in its letter that petitions of such nature "is strictly confidential in that **when processing the same**, not even the handling staff members of the Office of the Presiding Justice know or have any knowledge who the subject bank account holders are, as well as the bank accounts involved," it was incorrect when it declared that "under the rules, the Office of the Presiding Justice is strictly mandated not to disclose, divulge, or communicate to anyone directly or indirectly, in any manner or by any means, the fact of the filing of any petition brought before [the Court of Appeals] by the Anti-Money Laundering Council, its contents and even its entry in the logbook." As a result, the appellate court effectively precluded and prevented SPCMB of any recourse, amounting to a denial of SPCMB's letter request. We cannot overemphasize that SPCMB, as the owner of the bank account which may be the subject of inquiry of the AMLC, ought to have a legal remedy to question the validity and propriety of such an order by the appellate court under Section 11 of the AMLA even if subsequent to the issuance of a freeze order. Moreover, given the scope of

inquiry of the AMLC, reaching and including even related accounts, which inquiry into specifies a proviso that: "[t]hat the procedure for the *ex-parte* application of the *ex-parte* court order for the principal account shall be the same with that of the related accounts," SPCMB should be allowed to question the government intrusion. Plainly, by implication, SPCMB can demonstrate the absence of probable cause, *i.e*. that it is not a related account nor are its accounts materially linked to the principal account being investigated.

7. ID.; ID.; THE OWNER OF BANK ACCOUNTS THAT COULD BE POTENTIALLY AFFECTED HAS THE RIGHT TO CHALLENGE WHETHER THE REQUIREMENTS FOR ISSUANCE OF THE BANK INQUIRY ORDER WERE INDEED COMPLIED WITH.— In *BSB Group, Inc. v. Go*, we recounted the objective of the absolute confidentiality rule which is protection from unwarranted inquiry or investigation if the purpose of such inquiry or investigation is merely to determine the existence and nature, as well as the amount of the deposit in any given bank account: x x x. What is reflected by the x x x disquisition is that the law plainly prohibits a mere investigation into the existence and the amount of the deposit. We relate the principle to SPCMB's relationship to the reported principal account under investigation, one of its clients, former Vice President Binay. SPCMB as the owner of one of the bank accounts reported to be investigated by the AMLC for probable money laundering offenses should be allowed to pursue remedies therefrom where there are legal implications on the inquiry into its accounts as a law firm. While we do not lapse into conjecture and cannot take up the lance for SPCMB on probable violation of the attorney-client privilege based on pure speculation, the extent of information obtained by the AMLC concerning the clients of SPCMB has not been fully drawn and sufficiently demonstrated. At the same time, the owner of bank accounts that could be potentially affected has the right to challenge whether the requirements for issuance of the bank inquiry order were indeed complied with given that such has implications on its property rights. In this regard, SPCMB's obeisance to promulgated rules on the matter could have afforded it a remedy, even post issuance of the bank inquiry order.

8. ID.; ID.; THE ABSENCE OF SPECIFIC RULES GOVERNING THE BANK INQUIRY ORDER DOES NOT SIGNIFY THAT THE COURT OF APPEALS CANNOT CONFIRM TO THE ACTUAL OWNER OF THE BANK ACCOUNT REPORTEDLY BEING INVESTIGATED WHETHER IT HAD ISSUED A BANK INQUIRY ORDER FOR COVERING ITS ACCOUNTS.— To establish and demonstrate the required probable cause before issuance of the bank inquiry and the freeze orders is a screw on which the AMLC's intrusive functions turns. We are hard pressed to justify a disallowance to an aggrieved owner of a bank account to avail of remedies. That there are no specific rules governing the bank inquiry order does not signify that the CA cannot confirm to the actual owner of the bank account reportedly being investigated whether it had in fact issued a bank inquiry order for covering its accounts, of course after the issuance of the Freeze Order. Even in *Ligot*, we held that by implication, where the law did not specify, the owner of the "frozen" property may move to lift the freeze order issued under Section 10 of the AMLA if he can show that no probable cause exists or the 20-day period of the freeze order has already lapsed without any extension being requested from and granted by the CA. Drawing a parallel, such a showing of the absence of probable cause ought to be afforded SPCMB.

9. ID.; ID.; ALLOWING FOR NOTICE TO THE ACCOUNT HOLDER SHALL NOT COMPROMISE THE INTEGRITY OF THE BANK RECORDS SUBJECT OF THE INQUIRY WHICH REMAIN IN THE POSSESSION AND CONTROL OF THE BANK, AS THE ACCOUNT HOLDER SO NOTIFIED REMAINS UNABLE TO DO ANYTHING TO CONCEAL OR CLEANSE HIS BANK ACCOUNT RECORDS OF SUSPICIOUS OR ANOMALOUS TRANSACTIONS.— We cannot avoid the requirement-limitation nexus in Section 11. As it affords the government authority to pursue a legitimate state interest to investigate money laundering offenses, such likewise provides the limits for the authority given. Moreover, allowance to the owner of the bank account, post issuance of the bank inquiry order and the corresponding freeze order, of remedies to question the order, will not forestall and waylay the government's pursuit of money launderers. That the bank inquiry order is a separate from the freeze order does not denote that it cannot be questioned. The

opportunity is still rife for the owner of a bank account to question the basis for its very inclusion into the investigation and the corresponding freezing of its account in the process. As noted in *Eugenio*, such an allowance accorded the account holder who wants to contest the issuance of the order and the actual investigation by the AMLC, does not cast an unreasonable burden since the bank inquiry order has already been issued. Further, allowing for notice to the account holder should not, in any way, compromise the integrity of the bank records subject of the inquiry which remain in the possession and control of the bank. The account holder so notified remains unable to do anything to conceal or cleanse his bank account records of suspicious or anomalous transactions, at least not without the whole hearted cooperation of the bank, which inherently has no vested interest to aid the account holder in such manner.

10. ID.; ID.; THE AGGRIEVED PARTY MAY RAISE BEFORE THE SUPREME COURT BY PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT THE PROPRIETY OF THE ISSUANCE OF A BANK INQUIRY ORDER, BUT THE APPEAL SHALL NOT STAY THE ENFORCEMENT OF THE DECISION OR FINAL ORDER UNLESS THE SUPREME COURT DIRECTS OTHERWISE.— Section 11 of the AMLA providing for the *ex-parte* bank deposit inquiry is constitutionally firm x x x. The *ex-parte* inquiry shall be upon probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) of the law or a money laundering offense under Section 4 of the same law. To effect the limit on the *ex-parte* inquiry, the petition under oath for authority to inquire, must, akin to the requirement of a petition for freeze order enumerated in Title VIII of A.M. No. 05-11-04-SC, contain the name and address of the respondent; the grounds relied upon for the issuance of the order of inquiry; and the supporting evidence that the subject bank deposit are in any way related to or involved in an unlawful activity. If the CA finds no substantial merit in the petition, it shall dismiss the petition outright stating the specific reasons for such denial. If found meritorious and there is a subsequent petition for freeze order, the proceedings shall be governed by the existing Rules on Petitions for Freeze Order in the CA. From the issuance of a freeze order, the party aggrieved by the ruling of the court may

appeal to the Supreme Court by petition for review on *certiorari* under Rule 45 of the Rules of Court raising all pertinent questions of law and issues, including the propriety of the issuance of a bank inquiry order. The appeal shall not stay the enforcement of the subject decision or final order unless the Supreme Court directs otherwise.

LEONEN, *J., concurring opinion*:

1. POLTICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; THE PENUMBRA OF RIGHTS PROTECTED BY THE DUE PROCESS CLAUSE AND THE PROSCRIPTION AGAINST UNREASONABLE SEARCHES AND SEIZURES ALSO PERTAINS TO PROTECTING THE INTANGIBLES ESSENTIAL TO HUMAN LIFE.— The numbers on a bank's ledger corresponding to the amounts of money that a depositor has and its various transactions, especially when digitized, are definitely not physical. Yet, just because they are not physical does not necessarily mean that they do not partake of the kinds of "life, liberty, or property" protected by the due process clause of the Constitution. Neither should it mean that the numerical equivalent of the bank's debt to a depositor or the record of its various transactions have nothing to do with the "persons . . . papers, and effects" constitutionally protected against "unreasonable searches and seizures." The majority opinion's statement that the "inquiry by the [Anti-Money Laundering Council] into certain bank deposits and investments does not violate substantive due process, there being no physical seizure of property involved at that stage" may have been inadvertent. It does, however, neglect that the penumbra of rights protected by the due process clause and the proscription against unreasonable searches and seizures also pertains to protecting the intangibles essential to human life. Definitely, every liberal democratic constitutional order has outgrown the archaic concept that life is only that which can be tangible.

2. ID.; ID.; ID.; ID.; THERE IS A SPHERE OF INDIVIDUAL EXISTENCE OR A PENUMBRA OF INDIVIDUAL AUTONOMY THAT EXISTS PRIOR TO EVERY REGULATION THAT SHOULD PRIMORDIALLY BE LEFT UNTOUCHED; EVERY REGULATION THAT

LIMITS THE INDIVIDUAL'S PRIVACY MAY BE THE SUBJECT OF INQUIRY THAT IT DOES NOT "DEPRIVE" ONE OF THEIR "LIFE, LIBERTY OR PROPERTY" WITHOUT "DUE PROCESS OF LAW".— The due process clause is crafted as a proscription. Thus, it states that "[n]o person shall be deprived of life, liberty, or property without due process of law[.]" This means that there is a sphere of individual existence or a penumbra of individual autonomy that exists prior to every regulation that should primordially be left untouched. In other words, the existence of what Louis D. Brandeis and Samuel D. Warren once called "the right to be let alone" is now broadly, though at times awkwardly referred to roughly as the right to privacy, presumed. Every regulation therefore that limits this aspect of individuality may be the subject of inquiry that it does not "deprive" one of their "life, liberty or property" without "due process of law".

3. **ID.; ID.; ID.; ID.; THE DUE PROCESS CLAUSE DOES NOT LIMIT THE PROTECTED SPHERE OF INDIVIDUAL EXISTENCE OR AUTONOMY ONLY TO THE PHYSICAL OR CORPOREAL ASPECTS OF LIFE, AS LIFE IS NOT LIMITED ONLY TO PHYSICAL EXISTENCE.—** Nothing in the structure of the due process clause limits the protected sphere of individual existence or autonomy only to the physical or corporeal aspects of life. After all, as we have long held, life is not limited only to physical existence. Property can be incorporeal. Liberty denotes something more than just freedom from physical restraint.

4. **ID.; ID.; ID.; ID.; ANY STATE INTERFERENCE SHOULD NEITHER BE ARBITRARY NOR UNFAIR AND REGULATION SHOULD BOTH BE REASONABLE AND FAIR.—** More fundamentally, the reservation of a very broad sphere of individual privacy or individual autonomy is implied in the very concept of society governed under a constitutional and democratic order. The aspects of our humanity and the parts of our liberty surrendered to the government, in order to assure a functioning society, should only be as much as necessary for a just society and no more. While the extent of necessary surrender cannot be determined with precision, our existing doctrine is that any state interference should neither be arbitrary nor unfair. In many cases, we have held that due process of law simply means that regulation should both be reasonable and fair.

5. ID.; ID.; ID.; ID.; SUBSTANTIVE AND PROCEDURAL DUE PROCESS, CONCEPT THEREOF.— Reasonability and fairness is tentatively captured in the twin legal concepts of substantive and procedural due process respectively. Substantive due process is usually, though not in all cases, a nuanced means--to-end test. Basically, this means that the regulation which impinges on individual autonomy is necessary to meet a legitimate state interest to be protected through means that can logically relate to achieving that end. Procedural due process is succinctly and most descriptively captured in the idea that in the kinds of deprivation of rights where it would be relevant, there should be an opportunity to be heard.

6. ID.; ID.; ID.; ID.; THE DEPRIVATION THAT MAY TRIGGER A JUDICIAL INQUIRY SHOULD BE MORE THAN MOMENTARY; IT MUST BE FUNDAMENTALLY DISRUPTIVE OF A VALUE THAT WE PROTECT BECAUSE IT IS CONSTITUTIVE OF OUR CONCEPT OF INDIVIDUAL AUTONOMY; PEERING INTO ONE'S BANK ACCOUNTS AND RELATED TRANSACTIONS IS SUFFICIENTLY DISRUPTIVE AS TO BE CONSIDERED A "DEPRIVATION" WITHIN THE MEANING OF THE DUE PROCESS CLAUSE, WHICH MAY BE SUBJECT OF JUDICIAL REVIEW.— In the due process clause, there is the requirement of "deprivation" of one's right to "life, liberty or property." [T]his means more than the occasional and temporary discomforts we suffer, which is consistent with the natural workings of groups of human beings living within a society. *De minimis* discomfort is a part of group life, independent of the workings of the State. The deprivation that may trigger a judicial inquiry should be more than momentary. It must be fundamentally disruptive of a value that we protect because it is constitutive of our concept of individual autonomy. x x x Examining the petitioner's bank accounts is analogous to the situation involving the uninvited and unwelcome glance. For some, their financial worth contained in the bank's ledgers may not be physical, but it is constitutive of that part of their identity, which for their own reasons, they may not want to disclose. Peering into one's bank accounts and related transactions is sufficiently disruptive as to be considered a "deprivation" within the meaning of the due process clause. It may be short of the physical seizure of property but it should, in an actual controversy such as this case at bar, be subject of judicial review.

7. CRIMINAL LAW; ANTI-MONEY LAUNDERING ACT (AMLA) (REPUBLIC ACT NO. 9160); A BANK INQUIRY ORDER IS A PROVISIONAL RELIEF AVAILABLE TO THE ANTI-MONEY LAUNDERING COUNCIL IN AID OF ITS INVESTIGATIVE POWERS, WHICH PARTAKES OF THE CHARACTER OF A SEARCH WARRANT.— A bank inquiry order is a provisional relief available to the Anti-Money Laundering Council in aid of its investigative powers. It partakes of the character of a search warrant. x x x. In a search warrant proceeding, there is already a crime that has been committed and law enforcers apply for a search warrant to find evidence to support a case or to retrieve and preserve evidence already known to them. In the same way, a bank inquiry order is "a means for the government to ascertain whether there is sufficient evidence to sustain an intended prosecution of the account holder for violation of the [Anti-Money Laundering Act]." It is a preparatory tool for the discovery and procurement, and preservation — through the subsequent issuance of a freeze order — of relevant evidence of a money laundering transaction or activity.

8. ID.; ID.; ID.; THE INVESTIGATIONS FOR ANTI-MONEY LAUNDERING ACT OFFENSES, INCLUDING THE PROCEEDINGS FOR THE ISSUANCE OF BANK INQUIRY ORDERS, MUST BE KEPT *EX PARTE*, IN ORDER NOT TO FRUSTRATE THE STATE'S EFFORT IN BUILDING ITS CASE AND EVENTUALLY PROSECUTING MONEY LAUNDERING OFFENSES.— Considering its implications on the depositor's right to privacy, Section 11 of the Anti-Money Laundering Act explicitly mandates that "[t]he authority to inquire into or examine the main account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the 1987 Constitution[.]" x x x. "The phrase 'upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce' allows a determination of probable cause by the judge [or the Court of Appeals in Anti-Money Laundering Act cases] *ex parte*." In *People v. Delos Reyes*, the Court held that due to the *ex parte* and non-adversarial nature of the proceedings, "the [j]udge acting on an application for a search warrant is not bound to apply strictly the rules of evidence x x x "The

existence [of probable cause] depends to a large degree upon the finding or opinion of the judge [or magistrate] conducting the examination." "However, the findings of the judge [or magistrate] should not disregard the facts before him nor run counter to the clear dictates of reason." Search warrant proceedings are *ex parte* because of the necessities of the investigation. x x x Similarly, it is essential that investigations for Anti-Money Laundering Act offenses, including the proceedings for the issuance of bank inquiry orders, be kept *ex parte*, in order not to frustrate the State's effort in building its case and eventually prosecuting money laundering offenses.

9. ID.; ID.; ID.; THE ABSENCE OF NOTICE TO THE OWNER OF A BANK ACCOUNT THAT AN *EX PARTE* APPLICATION AS WELL AS AN ORDER TO INQUIRE HAS BEEN GRANTED BY THE COURT OF APPEALS IS NEITHER UNREASONABLE NOR ARBITRARY, NOR VIOLATIVE OF THE DUE PROCESS CLAUSE OF THE CONSTITUTION.— The absence of notice to the owner of a bank account that an *ex parte* application as well as an order to inquire has been granted by the Court of Appeals is not unreasonable nor arbitrary. The lack of notice does not violate the due process clause of the Constitution. It is reasonable for the State, through its law enforcers, to inquire *ex parte* and without notice because of the nature of a bank account at present. A bank deposit is an obligation. It is a debt owed by a bank to its client-depositor. It is understood that the bank will make use of the value of the money deposited to further create credit. This means that it may use the value to create loans with interest to another. Whoever takes out a loan likewise creates a deposit with another bank creating another obligation and empowering that other bank to create credit once more through providing other loans. Bank deposits are not isolated information similar to personal sets of preferences. Rather, bank deposits exist as economically essential social constructs. The inherent constitutionally protected private rights in bank deposits and other similar instruments are not absolute. These rights should, in proper cases, be weighed against the need to maintaining the integrity of our financial system. The integrity of our financial system on the other hand contributes to the viability of banks and financial intermediaries, and therefore the viability of keeping bank deposits.

APPEARANCES OF COUNSEL

The Solicitor General for public respondents.

D E C I S I O N

PEREZ, *J.*:

Challenged in this petition for *certiorari*[1] and prohibition under Rule 65 of the Rules of Court is the constitutionality of Section 11 of Republic Act (R.A.) No. 9160, the Anti-Money Laundering Act, as amended, specifically the Anti-Money Laundering Council's authority to file with the Court of Appeals (CA) in this case, an *ex-parte* application for inquiry into certain bank deposits and investments, including related accounts based on probable cause.

In 2015, a year before the 2016 presidential elections, reports abounded on the supposed disproportionate wealth of then Vice President Jejomar Binay and the rest of his family, some of whom were likewise elected public officers. The Office of the Ombudsman and the Senate conducted investigations[2] and inquiries[3] thereon ostensibly based on their respective powers delineated in the Constitution.

From various news reports announcing the inquiry into then Vice President Binay's bank accounts, including accounts of members of his family, petitioner Subido Pagente Certeza Mendoza & Binay Law Firm (SPCMB) was most concerned with the article published in the Manila Times on 25 February 2015 entitled "*Inspect Binay Bank Accounts*" which read, in pertinent part:

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[1] *Rollo*, pp. 3-46.

[2] Fact-finding as preliminary investigation based on administrative supervision and powers to investigate government officials, Section 5, Article XI of the Constitution, Ombudsman Act of 1990.

[3] In aid of legislation under Section 21, Article VI of the Constitution.

x x x The Anti-Money Laundering Council (AMLC) asked the Court of Appeals (CA) to allow the [C]ouncil to peek into the bank accounts of the Binays, their corporations, and **a law office where a family member was once a partner**.

x x x x x x x x x

Also the bank accounts of the law office linked to the family, **the Subido Pagente Certeza Mendoza & Binay Law Firm**, where the Vice President's daughter Abigail was a former partner.[4]

The following day, 26 February 2015, SPCMB wrote public respondent, Presiding Justice of the CA, Andres B. Reyes, Jr.:

The law firm of Subido Pagente Certeza Mendoza and Binay was surprised to receive a call from Manila Times requesting for a comment regarding a [supposed petition] filed by the Republic of the Philippines represented by the Anti-Money Laundering Council before the Court of Appeals seeking to examine the law office's bank accounts.

To verify the said matter, the law office is authorizing its associate Atty. Jose Julius R. Castro to inquire on the veracity of said report with the Court of Appeals. He is likewise authorized to secure copies of the relevant documents of the case, such as the petition and orders issued, if such a case exists.

As this is a matter demanding serious and immediate attention, the Firm respectfully manifests that if no written response is received within 24-hours from receipt of this letter, we shall be at liberty to assume that such a case exists and we shall act accordingly.

Hoping for your immediate action.

Respectfully yours,
For the Firm

CLARO F. CERTEZA[5]

Within twenty four (24) hours, Presiding Justice Reyes wrote SPCMB denying its request, thus:

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[4] *Rollo*, p. 10.

[5] *Id*. at 60.

Anent your request for a comment on a supposed petition to inquire into your law office's bank accounts, please be informed that a petition of this nature is strictly confidential in that when processing the same, not even the handling staff members of the Office of the Presiding Justice know or have any knowledge who the subject bank account holders are, as well as the bank accounts involved.

Please be informed further that clearly under the rules, the Office of the Presiding Justice is strictly mandated not to disclose, divulge, or communicate to anyone directly or indirectly, in any manner or by any means, the fact of the filing of any petition brought before this Court by the Anti-Money Laundering Council, its contents and even its entry in the logbook.

Trusting that you find satisfactory the foregoing explanation.[6]

By 8 March 2015, the Manila Times published another article entitled, "*CA orders probe of Binay's assets*" reporting that the appellate court had issued a Resolution granting the *ex-parte* application of the AMLC to examine the bank accounts of SPCMB:

The Court of Appeals (CA) has officially issued an order for examination of Vice President Jejomar Binay's bank accounts.

In granting the petition of the Anti-Money Laundering Council (AMLC), the CA also ordered the inspection of the bank deposits of Binay's wife, children, and a law office connected to him.

x x x x x x x x x

The bank accounts of the law office linked to Binay — **the Subido Pagente Certeza Mendoza & Binay —** where Binay's daughter, Makati City (Metro Manila) Rep. Mar-len Abigail Binay was a partner, are also included in the probe, the sources said.[7]

Forestalled in the CA thus alleging that it had no ordinary, plain, speedy, and adequate remedy to protect its rights and interests in the purported ongoing unconstitutional examination

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[6] *Id*. at 51.

[7] *Id*. at 11.

of its bank accounts by public respondent Anti-Money Laundering Council (AMLC), SPCMB undertook direct resort to this Court *via* this petition for *certiorari* and prohibition on the following grounds:

A. THE ANTI-MONEY LAUNDERING ACT IS UNCONSTITUTIONAL INSOFAR AS IT ALLOWS THE EXAMINATION OF A BANK ACCOUNT WITHOUT ANY NOTICE TO THE AFFECTED PARTY:

   1. IT VIOLATES THE PERSON'S RIGHT TO DUE PROCESS; AND

   2. IT VIOLATES THE PERSON'S RIGHT TO PRIVACY.

B. EVEN ASSUMING *ARGUENDO* THAT THE ANTI-MONEY LAUNDERING ACT IS CONSTITUTIONAL, THE RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION CONSIDERING THAT:

   1. THE REFUSAL OF RESPONDENT PRESIDING JUSTICE TO PROVIDE PETITIONER WITH A COPY OF THE *EX-PARTE* APPLICATION FOR BANK EXAMINATION FILED BY RESPONDENT AMLC AND ALL OTHER PLEADINGS, MOTIONS, ORDERS, RESOLUTIONS, AND PROCESSES ISSUED BY THE RESPONDENT COURT OF APPEALS IN RELATION THERETO VIOLATES PETITIONER'S RIGHT TO DUE PROCESS;

   2. A *CARTE BLANCHE* AUTHORITY TO EXAMINE ANY AND ALL TRANSACTIONS PERTAINING TO PETITIONER'S BANK ACCOUNTS VIOLATES THE ATTORNEY-CLIENT PRIVILEGE WHICH IS SACROSANCT IN THE LEGAL PROFESSION;

   3. A BLANKET AUTHORITY TO EXAMINE PETITIONER'S BANK ACCOUNTS, INCLUDING ANY AND ALL TRANSACTIONS THEREIN FROM ITS OPENING UP TO THE PRESENT, PARTAKES THE NATURE OF A GENERAL WARRANT THAT IS CLEARLY INTENDED TO AID A MERE FISHING

EXPEDITION;

4. THERE IS NOTHING IN THE ANTI-MONEY LAUNDERING ACT THAT ALLOWS OR JUSTIFIES THE WITHHOLDING OF INFORMATION AND/OR ANY COURT RECORDS OR PROCEEDINGS PERTAINING TO AN EXAMINATION OF A BANK ACCOUNT, ESPECIALLY IF THE COURT HAS ALREADY GRANTED THE AUTHORITY TO CONDUCT THE EXAMINATION;

5. THE PETITIONER DID NOT COMMIT, NOR HAS THE PETITIONER BEEN IMPLEADED IN ANY COMPLAINT INVOLVING ANY PREDICATE CRIME THAT WOULD JUSTIFY AN INQUIRY INTO ITS BANK ACCOUNTS; AND

7. THE EXAMINATION OF THE PETITIONER'S BANK ACCOUNTS IS A FORM OF POLITICAL PERSECUTION OR HARASSMENT.[8]

In their Comment, the AMLC, through the Office of the Solicitor General (OSG), points out a supposed jurisdictional defect of the instant petition, *i.e.*, SPCMB failed to implead the House of Representatives which enacted the AMLA and its amendments. In all, the OSG argues for the dismissal of the present petition, highlighting that the AMLC's inquiry into bank deposits does not violate due process nor the right to privacy:

1. Section 11's allowance for AMLC's *ex-parte* application for an inquiry into particular bank deposits and investments is investigative, not adjudicatory;

2. The text of Section 11 itself provides safeguards and limitations on the allowance to the AMLC to inquire into bank deposits: (a) issued by the CA based on probable cause; and (b) specific compliance to the requirements of Sections 2 and 3, Article III of the Constitution;

3. The *ex-parte* procedure for investigating bank accounts is necessary to achieve a legitimate state objective;

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

4. There is no legitimate expectation of privacy as to the bank records of a depositor;

5. The examination of, and inquiry, into SPCMB's bank accounts does not violate Attorney-Client Privilege; and

6. A criminal complaint is not a pre-requisite to a bank inquiry order.

In their Reply, SPCMB maintains that the *ex-parte* proceedings authorizing inquiry of the AMLC into certain bank deposits and investments is unconstitutional, violating its rights to due process and privacy.

Before anything else, we here have an original action turning on three crucial matters: (1) the petition reaches us from a letter of the Presiding Justice of the CA in response to a letter written by SPCMB; (2) SPCMB's bank account has been reported to be a related account to Vice President Binay's investigated by the AMLC for anti-money laundering activities; and (3) the constitutionality of Section 11 of the AMLA at its recent amendment has not been squarely raised and addressed.

To obviate confusion, we act on this petition given that SPCMB directly assails the constitutionality of Section 11 of the AMLA where it has been widely reported that Vice President Binay's bank accounts and all related accounts therewith are subject of an investigation by the AMLC. In fact, subsequent events from the filing of this petition have shown that these same bank accounts (including related accounts) were investigated by the Ombudsman and both Houses of the Legislature. However, at the time of the filing of this petition, SPCMB alleged that its accounts have been inquired into but not subjected to a freeze order under Section 10 of the AMLA. Thus, as previously noted, with its preclusion of legal remedies before the CA which under the AMLA issues the *ex-parte* bank inquiry and freeze orders, Sections 10 and 11, respectively, SPCMB establishes that it has no plain, speedy and adequate remedy in the ordinary course of law to protect its rights and interests from the purported unconstitutional intrusion by the AMLC into its bank accounts.

The foregoing shall be addressed specifically and bears directly on the disposition of the decision herein.

Additionally, we note that the OSG did not question how this petition reaches us from a letter of the appellate court's Presiding Justice, only that, procedurally, SPCMB should have impleaded Congress.

On the sole procedural issue of whether SPCMB ought to have impleaded Congress, the contention of the OSG though novel is untenable. All cases questioning the constitutionality of a law does not require that Congress be impleaded for their resolution. The requisites of a judicial inquiry are elementary:

1. There must be an actual case or controversy;

2. The question of constitutionality must be raised by the proper party;

3. The constitutional question must be raised at the earliest possible opportunity; and

4. The decision of the constitutional question must be necessary to the determination of the case itself.[9]

The complexity of the issues involved herein require us to examine the assailed provision *vis-a-vis* the constitutional proscription against violation of due process. The statute reads:

SEC. 11. *Authority to Inquire into Bank Deposits*. – Notwithstanding the provisions of Republic Act No. 1405, as amended; Republic Act No. 6426, as amended; Republic Act No. 8791; and other laws, the AMLC may inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution upon order of any competent court based on an *ex parte* application in cases of violations of this Act, when it has been established that there is probable cause that the deposits or investments, including related accounts involved, are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof; except that no court order

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[9] *Dumlao v. Commission on Elections*, 184 Phil. 369, 376-377 (1980).

shall be required in cases involving activities defined in Section 3(i)(1), (2), and (12) hereof, and felonies or offenses of a nature similar to those mentioned in Section 3(i)(1), (2), and (12), which are punishable under the penal laws of other countries, and terrorism and conspiracy to commit terrorism as defined and penalized under Republic Act No. 9372.

The Court of Appeals shall act on the application to inquire into or examine any deposit or investment with any banking institution or non-bank financial institution within twenty-four (24) hours from filing of the application.

To ensure compliance with this Act, the Bangko Sentral ng Pilipinas may, in the course of a periodic or special examination, check the compliance of a covered institution with the requirements of the AMLA and its implementing rules and regulations.

For purposes of this section, 'related accounts' shall refer to accounts, the funds and sources of which originated from and/or are materially linked to the monetary instrument(s) or property(ies) subject of the freeze order(s).

A court order *ex parte* must first be obtained before the AMLC can inquire into these related Accounts: *Provided*, That the procedure for the *ex parte* application of the *ex parte* court order for the principal account shall be the same with that of the related accounts.

The authority to inquire into or examine the main account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the 1987 Constitution, which are hereby incorporated by reference.[10]

The due process clause of the Constitution reads:

SECTION 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.[11]

The right to due process has two aspects: (1) substantive which deals with the extrinsic and intrinsic validity of the law;

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[10] Republic Act No. 9160 as amended by RA 10167.

[11] CONSTITUTION, Article III, Sec. 1.

and (2) procedural which delves into the rules government must follow before it deprives a person of its life, liberty or property.[12]

As presently worded, Section 11 of the AMLA has three elements: (1) *ex-parte* application by the AMLC; (2) determination of probable cause by the CA; and (3) exception of court order in cases involving unlawful activities defined in Sections 3(i)(1), (2), and (12).

As a brief backgrounder to the amendment to Section 11 of the AMLA, the text originally did not specify for an *ex-parte* application by the AMLC for authority to inquire into or examine certain bank accounts or investments. The extent of this authority was the topic of *Rep. of the Phils. v. Hon. Judge Eugenio, Jr., et al. (Eugenio)*[13] where the petitioner therein, Republic of the Philippines, asseverated that the application for that kind of order under the questioned section of the AMLA did not require notice and hearing. *Eugenio* schooled us on the AMLA, specifically on the provisional remedies provided therein to aid the AMLC in enforcing the law:

> It is evident that Section 11 does not specifically authorize, as a general rule, the issuance *ex-parte* of the bank inquiry order. We quote the provision in full:
>
> ***SEC. 11. Authority to Inquire into Bank Deposits.*** — Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non bank financial institution upon order of any competent court in cases of violation of this Act, **when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof, except that no court order shall be required in cases involving unlawful activities defined in Sections 3(i)1, (2) and (12)**.

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[12] *Perez, et al. v. Philippine Telegraph and Telephone Co., et al.*, 602 Phil. 522, 545 (2009).

[13] 569 Phil. 98, 120-124 (2008).

> To ensure compliance with this Act, the Bangko Sentral ng Pilipinas (BSP) may inquire into or examine any deposit of investment with any banking institution or non bank financial institution when the examination is made in the course of a periodic or special examination, in accordance with the rules of examination of the BSP. (Emphasis supplied)

Of course, Section 11 also allows the AMLC to inquire into bank accounts without having to obtain a judicial order in cases where there is probable cause that the deposits or investments are related to kidnapping for ransom, certain violations of the Comprehensive Dangerous Drugs Act of 2002, hijacking and other violations under R.A. No. 6235, destructive arson and murder. Since such special circumstances do not apply in this case, there is no need for us to pass comment on this proviso. Suffice it to say, the proviso contemplates a situation distinct from that which presently confronts us, and for purposes of the succeeding discussion, our reference to Section 11 of the AMLA excludes said proviso.

In the instances where a court order is required for the issuance of the bank inquiry order, nothing in Section 11 specifically authorizes that such court order may be issued *ex parte*. It might be argued that this silence does not preclude the *ex parte* issuance of the bank inquiry order since the same is not prohibited under Section 11. Yet this argument falls when the immediately preceding provision, Section 10, is examined.

> ***SEC 10. Freezing of Monetary Instrument or Property.*** — The Court of Appeals, upon **application *ex parte*** by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, may issue a **freeze order which shall be effective immediately**. The freeze order shall be for a period of twenty (20) days unless extended by the court.

Although oriented towards different purposes, the freeze order under Section 10 and the bank inquiry order under Section 11 are similar in that they are extraordinary provisional reliefs which the AMLC may avail of to effectively combat and prosecute money laundering offenses. Crucially, Section 10 uses specific language to authorize an *ex parte* application for the provisional relief therein, a circumstance absent in Section 11. If indeed the legislature had

intended to authorize *ex parte* proceedings for the issuance of the bank inquiry order, then it could have easily expressed such intent in the law, as it did with the freeze order under Section 10.

Even more tellingly, the current language of Sections 10 and 11 of the AMLA was crafted at the same time, through the passage of R.A. No. 9194. Prior to the amendatory law, it was the AMLC, not the Court of Appeals, which had authority to issue a freeze order, whereas a bank inquiry order always then required, without exception, an order from a competent court. It was through the same enactment that *ex parte* proceedings were introduced for the first time into the AMLA, in the case of the freeze order which now can only be issued by the Court of Appeals. It certainly would have been convenient, through the same amendatory law, to allow a similar *ex parte* procedure in the case of a bank inquiry order had Congress been so minded. Yet nothing in the provision itself, or even the available legislative record, explicitly points to an *ex parte* judicial procedure in the application for a bank inquiry order, unlike in the case of the freeze order.

That the AMLA does not contemplate *ex parte* proceedings in applications for bank inquiry orders is confirmed by the present implementing rules and regulations of the AMLA, promulgated upon the passage of R.A. No. 9194. With respect to freeze orders under Section 10, the implementing rules do expressly provide that the applications for freeze orders be filed *ex parte*, but no similar clearance is granted in the case of inquiry orders under Section 11. These implementing rules were promulgated by the Bangko Sentral ng Pilipinas, the Insurance Commission and the Securities and Exchange Commission, and if it was the true belief of these institutions that inquiry orders could be issued *ex parte* similar to freeze orders, language to that effect would have been incorporated in the said Rules. This is stressed not because the implementing rules could authorize *ex parte* applications for inquiry orders despite the absence of statutory basis, but rather because the framers of the law had no intention to allow such *ex parte* applications.

Even the Rules of Procedure adopted by this Court in A.M. No. 05-11-04-SC to enforce the provisions of the AMLA specifically authorize *ex parte* applications with respect to freeze orders under Section 10 but make no similar authorization with respect to bank inquiry orders under Section 11.

The Court could divine the sense in allowing *ex parte* proceedings under Section 10 and in proscribing the same under Section 11. A freeze order under Section 10 on the one hand is aimed at preserving monetary instruments or property in any way deemed related to unlawful activities as defined in Section 3(i) of the AMLA. The owner of such monetary instruments or property would thus be inhibited from utilizing the same for the duration of the freeze order. To make such freeze order anteceded by a judicial proceeding with notice to the account holder would allow for or lead to the dissipation of such funds even before the order could be issued. (Citations omitted.)

Quite apparent from the foregoing is that absent a specific wording in the AMLA allowing for *ex-parte* proceedings in orders authorizing inquiry and examination by the AMLC into certain bank deposits or investments, notice to the affected party is required.

Heeding the Court's observance in *Eugenio* that the remedy of the Republic then lay with the legislative, Congress enacted Republic Act No. 10167 amending Section 11 of the AMLA and specifically inserted the word *ex-parte* appositive of the nature of this provisional remedy available to the AMLC thereunder.

It is this current wording of Section 11 which SPCMB posits as unconstitutional and purportedly actually proscribed in *Eugenio*.

We do not subscribe to SPCMB's position.

Succinctly, Section 11 of the AMLA providing for *ex-parte* application and inquiry by the AMLC into certain bank deposits and investments does not violate substantive due process, there being no physical seizure of property involved at that stage. It is the preliminary and actual seizure of the bank deposits or investments in question which brings these within reach of the judicial process, specifically a determination that the seizure violated due process.[14] In fact, *Eugenio* delineates a bank inquiry

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[14] *Republic of the Phils. v. Glasgow Credit and Collection Services, Inc., et al.*, 566 Phil. 94, 106-107 (2008).

order under Section 11 from a freeze order under Section 10 on both remedies' effect on the direct objects, *i.e.* the bank deposits and investments:

> On the other hand, a bank inquiry order under Section 11 does not necessitate any form of physical seizure of property of the account holder. What the bank inquiry order authorizes is the examination of the particular deposits or investments in banking institutions or non-bank financial institutions. The monetary instruments or property deposited with such banks or financial institutions are not seized in a physical sense, but are examined on particular details such as the account holder's record of deposits and transactions. Unlike the assets subject of the freeze order, the records to be inspected under a bank inquiry order cannot be physically seized or hidden by the account holder. Said records are in the possession of the bank and therefore cannot be destroyed at the instance of the account holder alone as that would require the extraordinary cooperation and devotion of the bank.[15]

At the stage in which the petition was filed before us, the inquiry into certain bank deposits and investments by the AMLC still does not contemplate any form of physical seizure of the targeted corporeal property. From this cite, we proceed to examine whether Section 11 of the law violates procedural due process.

As previously stated, the AMLA now specifically provides for an *ex-parte* application for an order authorizing inquiry or examination into bank deposits or investments which continues to pass constitutional muster.

Procedural due process is essentially the opportunity to be heard.[16] In this case, at the investigation stage by the AMLC into possible money laundering offenses, SPCMB demands that it have notice and hearing of AMLC's investigation into its bank accounts.

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[15] *Supra* note 13 at 124-125.

[16] *Supra* note 11 & 12.

We are not unaware of the *obiter* in *Eugenio*[17] and cited by SPCMB, voicing misgivings on an interpretation of the former Section 11 of the AMLA allowing for *ex-parte* proceedings in bank inquiry orders, to wit:

> There certainly is fertile ground to contest the issuance of an *ex-parte* order. Section 11 itself requires that it be established that "there is probable cause that the deposits or investments are related to unlawful activities," and it obviously is the court which stands as arbiter whether there is indeed such probable cause. The process of inquiring into the existence of probable cause would involve the function of determination reposed on the trial court. Determination clearly implies a function of adjudication on the part of the trial court, and not a mechanical application of a standard pre-determination by some other body. The word "determination" implies deliberation and is, in normal legal contemplation, equivalent to "the decision of a court of justice."
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> The court receiving the application for inquiry order cannot simply take the AMLC's word that probable cause exists that the deposits or investments are related to an unlawful activity. It will have to exercise its own determinative function in order to be convinced of such fact. **The account holder would be certainly capable of contesting such probable cause if given the opportunity to be apprised of the pending application to inquire into his account; hence a notice requirement would not be an empty spectacle.** It may be so that the process of obtaining the inquiry order may become more cumbersome or prolonged because of the notice requirement, yet we fail to see any unreasonable burden cast by such circumstance. After all, as earlier stated, requiring notice to the account holder should not, in any way, compromise the integrity of the bank records subject of the inquiry which remain in the possession and control of the bank. (Emphasis supplied)

On that score, the SPCMB points out that the AMLC's bank inquiry is preliminary to the seizure and deprivation of its property as in a freeze order under Section 10 of the AMLA which peculiarity lends itself to a *sui generis* proceeding akin to the evaluation process in extradition proceedings pronounced in *Secretary of Justice v. Hon. Lantion*.[18] Under the extradition

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[17] *Supra* note 13 at 126.

[18] 379 Phil. 165 (2000).

law, the Secretary of Foreign Affairs is bound to make a finding that the extradition request and its supporting documents are sufficient and complete in form and substance before delivering the same to the Secretary of Justice. We ruled:

> [L]ooking at the factual milieu of the case before us, it would appear that there was failure to abide by the provisions of Presidential Decree No. 1069. For while it is true that the extradition request was delivered to the Department of Foreign Affairs on June 17, 1999, the following day or less than 24 hours later, the Department of Justice received the request, apparently without the Department of Foreign affairs discharging its duty thoroughly evaluating the same and its accompanying documents. xxx.
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> x x x x x x x x x
>
> [T]he record cannot support the presumption of regularity that the Department of Foreign Affairs thoroughly reviewed the extradition request and supporting documents and that it arrived at a well-founded judgment that the request and its annexed documents satisfy the requirements of law. x x x.

The evaluation process, just like the extradition proceedings, proper belongs to a class by itself. It is *sui generis*. It is not a criminal investigation, but it is also erroneous to say that it is purely an exercise of ministerial functions. At such stage, the executive authority has the power: (a) to make a technical assessment of the completeness and sufficiency of the extradition papers; (b) to outrightly deny the request if on its face and on the face of the supporting documents the crimes indicated are not extraditable; and (c) to make a determination whether or not the request is politically motivated, or that the offense is a military one which is not punishable under non-military penal legislation. Hence, said process may be characterized as an investigative or inquisitorial process in contrast to a proceeding conducted in the exercise of an administrative body's quasi-judicial power.

In administrative law, a quasi-judicial proceeding involves: (a) taking and evaluation of evidence; (b) determining facts based upon the evidence presented; and (c) rendering an order or decision supported by the facts proved. Inquisitorial power, which is also known as examining or investigatory power, is one of the determinative powers of an administrative body which better enables it to exercise

its quasi-judicial authority. This power allows the administrative body to inspect the records and premises, and investigate the activities, of persons or entities coming under its jurisdiction, or to require disclosure of information by means of accounts, records, reports, testimony of witnesses, production of documents, or otherwise.

The power of investigation consists in gathering, organizing, and analyzing evidence, which is a useful aid or tool in an administrative agency's performance of its rule-making or quasi-judicial functions. Notably, investigation is indispensable to prosecution.[19] (Emphasis supplied, citations omitted)

The submission of AMLC requires a determination whether the AMLC is an administrative body with quasi-judicial powers; corollary thereto, a determination of the jurisdiction of the AMLC.

Lim v. Gamosa[20] is enlightening on jurisdiction and the requirement of a specific grant thereof in the enabling law. We declared that the creation of the National Commission on Indigenous Peoples (NCIP) by the Indigenous Peoples Rights Act (IPRA) did not confer it exclusive and original, nor primary jurisdiction, in all claims and disputes involving rights of IPs and ICCs where no such specific grant is bestowed.

In this instance, the grant of jurisdiction over cases involving money laundering offences is bestowed on the Regional Trial Courts and the Sandiganbayan as the case may be. In fact, Rule 5 of the IRR is entitled **Jurisdiction of Money Laundering Cases and Money Laundering Investigation Procedures**:

Rule 5.a. Jurisdiction of Money Laundering Cases. The Regional Trial Courts shall have the jurisdiction to try all cases on money laundering. Those committed by public officers and private persons who are in conspiracy with such public officers shall be under the jurisdiction of the Sandiganbayan.

Rule 5.b. Investigation of Money Laundering Offenses. – The AMLC shall investigate:

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[19] *Id*. at 196-198.

[20] G. R. No. 193964, December 2, 2015.

(1) suspicious transactions;
(2) covered transactions deemed suspicious after an investigation conducted by the AMLC;
(3) money laundering activities; and
(4) other violations of the AMLA, as amended.

The confusion on the scope and parameters of the AMLC's investigatory powers and whether such seeps into and approximates a quasi-judicial agency's inquisitorial powers lies in the AMLC's investigation and consequent initial determination of whether certain activities are constitutive of anti-money laundering offenses.

The enabling law itself, the AMLA, specifies the jurisdiction of the trial courts, RTC and Sandiganbayan, over money laundering cases, and delineates the investigative powers of the AMLC.

Textually, the AMLA is the first line of defense against money laundering in compliance with our international obligation. There are three (3) stages of determination, two (2) levels of investigation, falling under three (3) jurisdictions:

1. The AMLC investigates possible money laundering offences and initially determines whether there is probable cause to charge any person with a money laundering offence under Section 4 of the AMLA, resulting in the filing of a complaint with the Department of Justice or the Office of the Ombudsman;[21]

2. The DOJ or the Ombudsman conducts the preliminary investigation proceeding and if after due notice and hearing finds probable cause for money laundering offences, shall file

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[21] Rule 6.b. When the AMLC finds, after investigation, that there is probable cause to charge any person with a money laundering offense under Section 4 of the AMLA, as amended, it shall cause a complaint to be filed, pursuant to Section 7 (4) of the AMLA, as amended, before the Department of Justice or the Office of the Ombudsman, which shall then conduct the preliminary investigation of the case.

the necessary information before the Regional Trial Courts or the Sandiganbayan;[22]

3. The RTCs or the Sandiganbayan shall try all cases on money laundering, as may be applicable.[23]

Nowhere from the text of the law nor its Implementing Rules and Regulations can we glean that the AMLC exercises quasi-judicial functions whether the actual preliminary investigation is done simply at its behest or conducted by the Department of Justice and the Ombudsman.

Again, we hark back to *Lantion* citing *Ruperto v. Torres*,[23-a] where the Court had occasion to rule on the functions of an investigatory body with the sole power of investigation:

> [Such a body] does not exercise judicial functions and its power is limited to investigating facts and making findings in respect thereto. The Court laid down the test of determining whether an administrative body is exercising judicial functions or merely investigatory functions: Adjudication signifies the exercise of power and authority to adjudicate upon the rights and obligations of the parties before it. Hence, if the only purpose for investigation is to evaluate evidence submitted before it based on the facts and circumstances presented to it, and if the agency is not authorized to make a final pronouncement affecting the parties, then there is an absence of judicial discretion and judgment.
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> adjudicate in regard to the rights and obligations of both the Requesting State and the prospective extraditee. Its only power is to determine whether the papers comply with the requirements of the law and the treaty and, therefore, sufficient to be the basis of an

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[22] Rule 6.c If after due notice and hearing in the preliminary investigation proceedings, the Department of Justice, or the Office of the Ombudsman, as the case may be, finds probable cause for a money laundering offense, it shall file the necessary information before the Regional Trial Courts or the Sandiganbayan.

[23] Rule 5.a. **Jurisdiction of Money Laundering Cases.** The Regional Trial Courts shall have the jurisdiction to try all cases on money laundering. Those committed by public officers and private persons who are in conspiracy with such public officers shall be under the jurisdiction of the Sandiganbayan.

[23-a] 100 Phil. 1098 (1957).

extradition petition. Such finding is thus merely initial and not final. The body has no power to determine whether or not the extradition should be effected. That is the role of the court. The body's power is limited to an initial finding of whether or not the extradition petition can be filed in court.

It is to be noted, however, that in contrast to ordinary investigations, the evaluation procedure is characterized by certain peculiarities. Primarily, it sets into motion the wheels of the extradition process. Ultimately, it may result in the deprivation of liberty of the prospective extraditee. This deprivation can be effected at two stages: *First*, the provisional arrest of the prospective extraditee pending the submission of the request. This is so because the Treaty provides that in case of urgency, a contracting party may request the provisional arrest of the person sought pending presentation of the request (Paragraph [1], Article 9, RP-US Extradition Treaty), but he shall be automatically discharged after 60 days if no request is submitted (Paragraph 4). Presidential Decree No. 1069 provides for a shorter period of 20 days after which the arrested person could be discharged (Section 20[d]). Logically, although the Extradition Law is silent on this respect, the provisions only mean that once a request is forwarded to the Requested State, the prospective extraditee may be continuously detained, or if not, subsequently rearrested (Paragraph [5], Article 9, RP-US Extradition Treaty), for he will only be discharged if no request is submitted. Practically, the purpose of this detention is to prevent his possible flight from the Requested State. *Second*, the temporary arrest of the prospective extraditee during the pendency of the extradition petition in court (Section 6, Presidential Decree No. 1069).

Clearly, there is an impending threat to a prospective extraditee's liberty as early as during the evaluation stage. It is not only an imagined threat to his liberty, but a very imminent one.

Because of these possible consequences, we conclude that the evaluation process is akin to an administrative agency conducting an investigative proceeding, the consequences of which are essentially criminal since such technical assessment sets off or commences the procedure for, and ultimately, the deprivation of liberty of a prospective extraditee, As described by petitioner himself, this is a "tool" for criminal law enforcement. In essence, therefore, the evaluation process partakes of the nature of a criminal investigation. In a number of cases, we had occasion to make available to a respondent in an administrative case or investigation certain constitutional rights that

are ordinarily available only in criminal prosecutions. Further, as pointed out by Mr. Justice Mendoza during the oral arguments, there are rights formerly available only at the trial stage that had been advanced to an earlier stage in the proceedings, such as the right to counsel and the right against self-incrimination.[24] (Citations omitted)

In contrast to the disposition in *Lantion* that the evaluation process before the Department of Foreign Affairs is akin to an administrative agency conducting investigative proceedings with implications on the consequences of criminal liability, *i.e.*, deprivation of liberty of a prospective extraditee, the sole investigative functions of the AMLC finds more resonance with the investigative functions of the National Bureau of Investigation (NBI).

That the AMLC does not exercise quasi-judicial powers and is simply an investigatory body finds support in our ruling in *Shu v. Dee*.[25] In that case, petitioner Shu had filed a complaint before the NBI charging respondents therein with falsification of two (2) deeds of real estate mortgage submitted to the Metropolitan Bank and Trust Company (*Metrobank*). After its investigation, the NBI came up with a Questioned Documents Report No. 746-1098 finding that the signatures of petitioner therein which appear on the questioned deeds are not the same as the standard sample signatures he submitted to the NBI. Ruling on the specific issue raised by respondent therein that they had been denied due process during the NBI investigation, we stressed that the functions of this agency are merely investigatory and informational in nature:

[The NBI] has no judicial or quasi-judicial powers and is incapable of granting any relief to any party. It cannot even determine probable cause. The NBI is an investigative agency whose findings are merely recommendatory. It undertakes investigation of crimes upon its own initiative or as public welfare may require in accordance with its mandate. It also renders assistance when requested in the investigation or detection of crimes in order to prosecute the persons responsible.

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[24] *Supra* note 18 at 198-200.

[25] G.R. No. 182573, April 23, 2014, 723 SCRA 512, 522-523.

Since the NBI's findings were merely recommendatory, we find that no denial of the respondent's due process right could have taken place; the NBI's findings were still subject to the prosecutor's and the Secretary of Justice's actions for purposes of finding the existence of probable cause. We find it significant that the specimen signatures in the possession of Metrobank were submitted by the respondents for the consideration of the city prosecutor and eventually of the Secretary of Justice during the preliminary investigation proceedings. Thus, these officers had the opportunity to examine these signatures.

The respondents were not likewise denied their right to due process when the NBI issued the questioned documents report. We note that this report merely stated that the signatures appearing on the two deeds and in the petitioner's submitted sample signatures were not written by one and the same person. Notably, there was no categorical finding in the questioned documents report that the respondents falsified the documents. This report, too, was procured during the conduct of the NBI's investigation at the petitioner's request for assistance in the investigation of the alleged crime of falsification. The report is inconclusive and does not prevent the respondents from securing a separate documents examination by handwriting experts based on their own evidence. On its own, the NBI's questioned documents report does not directly point to the respondents' involvement in the crime charged. Its significance is that, taken together with the other pieces of evidence submitted by the parties during the preliminary investigation, these evidence could be sufficient for purposes of finding probable cause — the action that the Secretary of Justice undertook in the present case.

As carved out in *Shu*, the AMLC functions solely as an investigative body in the instances mentioned in Rule 5.b.[26] Thereafter, the next step is for the AMLC to file a Complaint with either the DOJ or the Ombudsman pursuant to Rule 6.b.

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[26] Rule 5.b. Investigation of Money Laundering Offenses.– The AMLC shall investigate:

(1) suspicious transactions;
(2) covered transactions deemed suspicious after an investigation conducted by the AMLC;
(3) money laundering activities; and
(4) other violations of the AMLA, as amended.

Even in the case of *Estrada v. Office of the Ombudsman*,[27] where the conflict arose at the preliminary investigation stage by the Ombudsman, we ruled that the Ombudsman's denial of Senator Estrada's Request to be furnished copies of the counter-affidavits of his co-respondents did not violate Estrada's constitutional right to due process where the sole issue is the existence of probable cause for the purpose of determining whether an information should be filed and does not prevent Estrada from requesting a copy of the counter-affidavits of his co-respondents during the pre-trial or even during trial. We expounded on the nature of preliminary investigation proceedings, thus:

> It should be underscored that the conduct of a preliminary investigation is only for the determination of probable cause, and "probable cause merely implies probability of guilt and should be determined in a summary manner. A preliminary investigation is not a part of the trial and it is only in a trial where an accused can demand the full exercise of his rights, such as the right to confront and cross-examine his accusers to establish his innocence." Thus, the rights of a respondent in a preliminary investigation are limited to those granted by procedural law.
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> A preliminary investigation is defined as an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial. The quantum of evidence now required in preliminary investigation is such evidence sufficient to "engender a well founded belief" as to the fact of the commission of a crime and the respondent's probable guilt thereof. A preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. We are in accord with the state prosecutor's findings in the case at bar that there exists prima facie evidence of petitioner's involvement in the commission

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[27] G.R. Nos. 212140-41, January 21, 2015.

of the crime, it being sufficiently supported by the evidence presented and the facts obtaining therein.

Likewise devoid of cogency is petitioner's argument that the testimonies of Galarion and Hanopol are inadmissible as to him since he was not granted the opportunity of cross-examination.

It is a fundamental principle that the accused in a preliminary investigation has no right to cross-examine the witnesses which the complainant may present. Section 3, Rule 112 of the Rules of Court expressly provides that the respondent shall only have the right to submit a counter-affidavit, to examine all other evidence submitted by the complainant and, where the fiscal sets a hearing to propound clarificatory questions to the parties or their witnesses, to be afforded an opportunity to be present but without the right to examine or cross-examine. Thus, even if petitioner was not given the opportunity to cross-examine Galarion and Hanopol at the time they were presented to testify during the separate trial of the case against Galarion and Roxas, he cannot assert any legal right to cross-examine them at the preliminary investigation precisely because such right was never available to him. The admissibility or inadmissibility of said testimonies should be ventilated before the trial court during the trial proper and not in the preliminary investigation.

Furthermore, the technical rules on evidence are not binding on the fiscal who has jurisdiction and control over the conduct of a preliminary investigation. If by its very nature a preliminary investigation could be waived by the accused, we find no compelling justification for a strict application of the evidentiary rules. In addition, considering that under Section 8, Rule 112 of the Rules of Court, the record of the preliminary investigation does not form part of the record of the case in the Regional Trial Court, then the testimonies of Galarion and Hanopol may not be admitted by the trial court if not presented in evidence by the prosecuting fiscal. And, even if the prosecution does present such testimonies, petitioner can always object thereto and the trial court can rule on the admissibility thereof; or the petitioner can, during the trial, petition said court to compel the presentation of Galarion and Hanopol for purposes of cross-examination. (Citations and emphasis omitted)

Plainly, the AMLC's investigation of money laundering offenses and its determination of possible money laundering offenses, specifically its inquiry into certain bank accounts allowed by court order, does not transform it into an investigative body exercising quasi-judicial powers. Hence, Section 11 of the AMLA, authorizing a bank inquiry court order, cannot be said to violate SPCMB's constitutional right to procedural due process.

We now come to a determination of whether Section 11 is violative of the constitutional right to privacy enshrined in Section 2, Article III of the Constitution. SPCMB is adamant that the CA's denial of its request to be furnished copies of AMLC's *ex-parte* application for a bank inquiry order and all subsequent pleadings, documents and orders filed and issued in relation thereto, constitutes grave abuse of discretion where the purported blanket authority under Section 11: (1) partakes of a general warrant intended to aid a mere fishing expedition; (2) violates the attorney-client privilege; (3) is not preceded by predicate crime charging SPCMB of a money laundering offense; and (4) is a form of political harassment [of SPCMB's] clientele.

We shall discuss these issues jointly since the assailed Section 11 incorporates by reference that "[t]he authority to inquire into or examine the main and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the 1987 Constitution." On this point, SPCMB asseverates that "there is nothing in the AMLA that allows or justifies the withholding of information and/or any court records or proceedings pertaining to an examination of a bank account, especially if the court has already granted the authority to conduct the examination."

The theme of playing off privacy rights and interest against that of the state's interest in curbing money laundering offenses is recurring.[28]

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[28] Recommended Citation, Robert S. Pasley, *Privacy Rights v. Anti-Money Laundering Enforcement, 6 N.C. Banking Inst.* 147 (2002).

The invoked constitutional provisions read:

SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the person or things to be seized.

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

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

Once again, *Eugenio*[29] offers guidance:

The Court's construction of Section 11 of the AMLA is undoubtedly influenced by right to privacy considerations. If sustained, petitioner's argument that a bank account may be inspected by the government following an ex parte proceeding about which the depositor would know nothing would have significant implications on the right to privacy, a right innately cherished by all notwithstanding the legally recognized exceptions thereto. The notion that the government could be so empowered is cause for concern of any individual who values the right to privacy which, after all, embodies even the right to be "let alone," the most comprehensive of rights and the right most valued by civilized people.

One might assume that the constitutional dimension of the right to privacy, as applied to bank deposits, warrants our present inquiry. We decline to do so. Admittedly, that question has proved controversial in American jurisprudence. **Notably, the United States Supreme Court in *U.S. v. Miller* held that there was no legitimate expectation of privacy as to the bank records of a depositor. Moreover, the text of our Constitution has not bothered with the triviality of allocating specific rights peculiar to bank deposits.**

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[29] *Supra* note 13 at 127-132.

However, sufficient for our purposes, we can assert there is a right to privacy governing bank accounts in the Philippines, and that such right finds application to the case at bar. The source of such right is statutory, expressed as it is in R.A. No. 1405 otherwise known as the Bank Secrecy Act of 1955. The right to privacy is enshrined in Section 2 of that law, to wit:

SECTION 2. **All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature** and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.

Because of the Bank Secrecy Act, the confidentiality of bank deposits remains a basic state policy in the Philippines. Subsequent laws, including the AMLA, may have added exceptions to the Bank Secrecy Act, yet the secrecy of bank deposits still lies as the general rule. It falls within the zones of privacy recognized by our laws. The framers of the 1987 Constitution likewise recognized that bank accounts are not covered by either the right to information under Section 7, Article III or under the requirement of full public disclosure under Section 28, Article II. Unless the Bank Secrecy Act is repealed or amended, the legal order is obliged to conserve the absolutely confidential nature of Philippine bank deposits.

Any exception to the rule of absolute confidentiality must be specifically legislated. Section 2 of the Bank Secrecy Act itself prescribes exceptions whereby these bank accounts may be examined by "any person, government official, bureau or office"; namely when: (1) upon written permission of the depositor; (2) in cases of impeachment; (3) the examination of bank accounts is upon order of a competent court in cases of bribery or dereliction of duty of public officials; and (4) the money deposited or invested is the subject matter of the litigation. Section 8 of R.A. Act No. 3019, the Anti-Graft and Corrupt Practices Act, has been recognized by this Court as constituting an additional exception to the rule of absolute confidentiality, and there have been other similar recognitions as well.

The AMLA also provides exceptions to the Bank Secrecy Act. Under Section 11, the AMLC may inquire into a bank account upon order of any competent court in cases of violation of the AMLA, it having been established that there is probable cause that the deposits or investments are related to unlawful activities as defined in Section 3(i) of the law, or a money laundering offense under Section 4 thereof. Further, in instances where there is probable cause that the deposits or investments are related to kidnapping for ransom, certain violations of the Comprehensive Dangerous Drugs Act of 2002, hijacking and other violations under R.A. No. 6235, destructive arson and murder, then there is no need for the AMLC to obtain a court order before it could inquire into such accounts.

It cannot be successfully argued the proceedings relating to the bank inquiry order under Section 11 of the AMLA is a "litigation" encompassed in one of the exceptions to the Bank Secrecy Act which is when "the money deposited or invested is the subject matter of the litigation." The orientation of the bank inquiry order is simply to serve as a provisional relief or remedy. As earlier stated, the application for such does not entail a full-blown trial.

Nevertheless, just because the AMLA establishes additional exceptions to the Bank Secrecy Act it does not mean that the later law has dispensed with the general principle established in the older law that "[a]ll deposits of whatever nature with banks or banking institutions in the Philippines x x x are hereby considered as of an absolutely confidential nature." Indeed, by force of statute, all bank deposits are absolutely confidential, and that nature is unaltered even by the legislated exceptions referred to above. There is disfavor towards construing these exceptions in such a manner that would authorize unlimited discretion on the part of the government or of any party seeking to enforce those exceptions and inquire into bank deposits. If there are doubts in upholding the absolutely confidential nature of bank deposits against affirming the authority to inquire into such accounts, then such doubts must be resolved in favor of the former. Such a stance would persist unless Congress passes a law reversing the general state policy of preserving the absolutely confidential nature of Philippine bank accounts. (Citations omitted, emphasis supplied)

From the foregoing disquisition, we extract the following principles:

1. The Constitution did not allocate specific rights peculiar to bank deposits;

2. The general rule of absolute confidentiality is simply statutory,[30] *i.e.* not specified in the Constitution, which has been affirmed in jurisprudence;[31]

3. Exceptions to the general rule of absolute confidentiality have been carved out by the Legislature which legislation have been sustained, albeit subjected to heightened scrutiny by the courts;[32] and

4. One such legislated exception is Section 11 of the AMLA.

The warning in *Eugenio* that an *ex-parte* proceeding authorizing the government to inspect certain bank accounts or investments without notice to the depositor would have significant implications on the right to privacy still does not preclude such a bank inquiry order to be allowed by specific legislation as an exception to the general rule of absolute confidentiality of bank deposits.

We thus subjected Section 11 of the AMLA to heightened scrutiny and found nothing arbitrary in the allowance and authorization to AMLC to undertake an inquiry into certain bank accounts or deposits. Instead, we found that it provides safeguards before a bank inquiry order is issued, ensuring adherence to the general state policy of preserving the absolutely confidential nature of Philippine bank accounts:

(1) The AMLC is required to establish probable cause as basis for its *ex-parte* application for bank inquiry order;

(2) The CA, independent of the AMLC's demonstration of probable cause, itself makes a finding of probable cause that the deposits or investments are related to an unlawful activity under Section 3(i) or a money laundering offense under Section 4 of the AMLA;

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[30] Bank Secrecy Act (BSA) of 1955, RA No. 1405.

[31] *BSB Group, Inc. v. Go*, 626 Phil. 501 (2010).

[32] *Supra* note 30 at 513; Sec. 2 of the BSA.

(3) A bank inquiry court order *ex-parte* for related accounts is preceded by a bank inquiry court order *ex-parte* for the principal account which court order *ex-parte* for related accounts is separately based on probable cause that such related account is materially linked to the principal account inquired into; and

(4) The authority to inquire into or examine the main or principal account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the Constitution.

The foregoing demonstrates that the inquiry and examination into the bank account are not undertaken whimsically and solely based on the investigative discretion of the AMLC. In particular, the requirement of demonstration by the AMLC, and determination by the CA, of probable cause emphasizes the limits of such governmental action. We will revert to these safeguards under Section 11 as we specifically discuss the CA's denial of SPCMB's letter request for information concerning the purported issuance of a bank inquiry order involving its accounts.

First. The AMLC and the appellate court are respectively required to demonstrate and ascertain probable cause. *Ret. Lt. Gen. Ligot, et al. v. Republic of the Philippines*,[33] which dealt with the adjunct provisional remedy of freeze order under Section 10 of the AMLA, defined probable cause, thus:

> The probable cause required for the issuance of a freeze order differs from the probable cause required for the institution of a criminal action, x x x.
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> As defined in the law, the probable cause required for the issuance of a freeze order refers to "such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or money laundering offence is about to be, is being or has been committed and that **the account or any monetary instrument or property subject thereof sought to be frozen is in any way related to** said unlawful activity and/or money laundering offense."

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[33] 705 Phil. 477, 501-502 (2013).

In other words, in resolving the issue of whether probable cause exits, the CA's statutorily-guided determination's focus is not on the probable commissions of an unlawful activity (or money laundering) that the office of the Ombudsman has already determined to exist, but on whether the bank accounts, assets, or other monetary instruments sought to be frozen ***are in any way related*** to any of the illegal activities enumerated under R.A. 9160, as amended. Otherwise stated, probable cause refers to the sufficiency of the relation between an unlawful activity and the property or monetary instrument which is the focal point of Section 10 of RA No. 9160, as amended. xxx. (Emphasis supplied)

Second. As regards SPCMB's contention that the bank inquiry order is in the nature of a general warrant, *Eugenio* already declared that Section 11, even with the allowance of an *ex parte* application therefor, "is not a search warrant or warrant of arrest as it contemplates a direct object but not the seizure of persons or property."[34] It bears repeating that the "bank inquiry order" under Section 11 is a provisional remedy to aid the AMLC in the enforcement of the AMLA.

Third. Contrary to the stance of SPCMB, the bank inquiry order does not contemplate that SPCMB be first impleaded in a money laundering case already filed before the courts:

We are unconvinced by this proposition, and agree instead with the then Solicitor General who conceded that the use of the phrase "in cases of" was unfortunate, yet submitted that it should be interpreted to mean "in the event there are violations" of the AMLA, and not that there are already cases pending in court concerning such violations. If the contrary position is adopted, then the bank inquiry order would be limited in purpose as a tool in aid of litigation of live cases, and wholly inutile as a means for the government to ascertain whether there is sufficient evidence to sustain an intended prosecution of the account holder for violation of the AMLA. Should that be the situation, in all likelihood the AMLC would be virtually deprived of its character as a discovery tool, and thus would become less circumspect in filing complaints against suspect account holders. After all, under such set-up the preferred strategy would be to allow or even encourage

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[34] *Supra* note 13 at 127.

the indiscriminate filing of complaints under the AMLA with the hope or expectation that the evidence of money laundering would somehow surface during the trial. Since the AMLC could not make use of the bank inquiry order to determine whether there is evidentiary basis to prosecute the suspected malefactors, not filing any case at all would not be an alternative. Such unwholesome set-up should not come to pass. Thus Section 11 cannot be interpreted in a way that would emasculate the remedy it has established and encourage the unfounded initiation of complaints for money laundering.[35] (Citation omitted)

Guided as we are by prior holdings, and bound as we are by the requirements for issuance of a bank inquiry order under Section 11 of the AMLA, we are hard pressed to declare that it violates SPCMB's right to privacy.

Nonetheless, although the bank inquiry order *ex-parte* passes constitutional muster, there is nothing in Section 11 nor the implementing rules and regulations of the AMLA which prohibits the owner of the bank account, as in his instance SPCMB, to ascertain from the CA, post issuance of the bank inquiry order *ex-parte*, if his account is indeed the subject of an examination. Emphasized by our discussion of the safeguards under Section 11 preceding the issuance of such an order, we find that there is nothing therein which precludes the owner of the account from challenging the basis for the issuance thereof.

The present controversy revolves around the issue of whether or not the appellate court, through the Presiding Justice, gravely abused its discretion when it effectively denied SPCMB's letter-request for confirmation that the AMLC had applied (*ex-parte*) for, and was granted, a bank inquiry order to examine SPCMB's bank accounts relative to the investigation conducted on Vice-President Binay's accounts.

We recall the Presiding Justice's letter to SPCMB categorically stating that "under the rules, the Office of the Presiding Justice is strictly mandated not to disclose, divulge, or communicate to anyone directly or indirectly, in any manner or by any means,

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[35] *Id*. at 120.

the fact of the filing of the petition brought before [the Court of Appeals] by the [AMLC], its contents and even its entry in the logbook." Note that the letter did not cite the aforementioned rules that were supposedly crystal clear to foreclose ambiguity. Note further that Rules 10.c.3 and 10.d of the IRR on Authority to File Petitions for Freeze Order provides that:

Rule 10.c. Duty of Covered Institutions upon receipt thereof. —

Rule 10.c.1. Upon receipt of the notice of the freeze order, the covered institution concerned shall immediately freeze the monetary instrument or property and related accounts subject thereof.

Rule 10.c.2. The covered institution shall likewise immediately furnish a copy of the notice of the freeze order upon the owner or holder of the monetary instrument or property or related accounts subject thereof.

Rule 10.c.3. Within twenty-four (24) hours from receipt of the freeze order, the covered institution concerned shall submit to the Court of Appeals and the AMLC, by personal delivery, a detailed written return on the freeze order, specifying all the pertinent and relevant information which shall include the following:

(a) the account numbers;
(b) the names of the account owners or holders;
(c) the amount of the monetary instrument, property or related accounts as of the time they were frozen;
(d) all relevant information as to the nature of the monetary instrument or property;
(e) any information on the related accounts pertaining to the monetary instrument or property subject of the freeze order; and
(f) the time when the freeze thereon took effect.

Rule 10.d. Upon receipt of the freeze order issued by the Court of Appeals and upon verification by the covered institution that the related accounts originated from and/or are materially linked to the monetary instrument or property subject of the freeze order, the covered institution shall freeze these related accounts wherever these may be found.

The return of the covered institution as required under Rule 10.c.3 shall include the fact of such freezing and an explanation as to the grounds for the identification of the related accounts.

If the related accounts cannot be determined within twenty-four (24) hours from receipt of the freeze order due to the volume and/or complexity of the transactions or any other justifiable factor(s), the covered institution shall effect the freezing of the related accounts, monetary instruments and properties as soon as practicable and shall submit a supplemental return thereof to the Court of Appeals and the AMLC within twenty-four (24) hours from the freezing of said related accounts, monetary instruments and properties.

The foregoing rule, in relation to what Section 11 already provides, signifies that *ex-parte* bank inquiry orders on related accounts may be questioned alongside, albeit subsequent to, the issuance of the initial freeze order of the subject bank accounts. The requirements and procedure for the issuance of the order, including the return to be made thereon lay the grounds for judicial review thereof. We expound.

An act of a court or tribunal can only be considered tainted with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. It is well-settled that the abuse of discretion to be qualified as "grave" must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.[36] In this relation, case law states that not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion.[37] The degree of gravity, as above-described, must be met.

That the propriety of the issuance of the bank inquiry order is a justiciable issue brooks no argument. A justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory.[38]

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[36] *Republic of the Philippines v. Roque*, 718 Phil. 294, 303 (2013).

[37] *Villanueva v. Mayor Ople*, 512 Phil. 187 (2005).

[38] *Velarde v. Social Justice Society*, 472 Phil. 285, 302 (2004).

As previously adverted to in our discussion on the right to privacy, the clash of privacy rights and interest against that of the government's is readily apparent. However, the statutorily enshrined general rule on absolute confidentiality of bank accounts remains. Thus, the safeguards instituted in Section II of the AMLA and heretofore discussed provide for certain well-defined limits, as in the language of *Baker v. Carr*, "judicially discoverable standards" for determining the validity of the exercise of such discretion by the appellate court in denying the letter-request of SPCMB.[39] In short, Section II itself provides the basis for the judicial inquiry and which the owner of the bank accounts subject of the AMLC inquiry may invoke.

Undeniably, there is probable and preliminary governmental action against SPCMB geared towards implementation of the AMLA directed at SPCMB's property, although there is none, as yet, physical seizure thereof, as in freezing of bank accounts under Section 10 of the AMLA.[40] Note, however, that the allowance to question the bank inquiry order we carve herein is tied to the appellate court's issuance of a freeze order on the principal accounts. Even in *Eugenio*, while declaring that the bank inquiry order under Section II then required prior notice of such to the account owner, we recognized that the determination of probable cause by the appellate court to issue the bank inquiry order can be contested. As presently worded and how AMLC functions are designed under the AMLA, the occasion for the issuance of the freeze order upon the actual physical seizure of the investigated and inquired into bank account, calls into motions the opportunity for the bank account owner to then question, not just probable cause for the issuance of the freeze order under Section 10, but, to begin with, the determination of probable cause for an *ex-parte* bank inquiry order into a purported related account under Section II.

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[39] 369 U.S. 186 (1962), cited in *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 890- 891 (2003).

[40] *See* note 13 at 124-125.

In enacting the amendment to Section II of the AMLC, the legislature saw it fit to place requirements before a bank inquiry order may be issued. We discussed these requirements as basis for a valid exception to the general rule on absolute confidentiality of bank accounts. However, these very safe guards allow SPCMB, post issuance of the *ex-parte* bank inquiry order, legal bases to question the propriety of such issued order, if any. To emphasize, this allowance to the owner of the bank account to question the bank inquiry order is granted only after issuance of the freeze order physically seizing the subject bank account. It cannot be undertaken prior to the issuance of the freeze order.

While no grave abuse of discretion could be ascribed on the part of the appellate court when it explained in its letter that petitions of such nature "is strictly confidential in that **when processing the same**, not even the handling staff members of the Office of the Presiding Justice know or have any knowledge who the subject bank account holders are, as well as the bank accounts involved," it was incorrect when it declared that "under the rules, the Office of the Presiding Justice is strictly mandated not to disclose, divulge, or communicate to anyone directly or indirectly, in any manner or by any means, the fact of the filing of any petition brought before [the Court of Appeals] by the Anti-Money Laundering Council, its contents and even its entry in the logbook." As a result, the appellate court effectively precluded and prevented SPCMB of any recourse, amounting to a denial of SPCMB's letter request.

We cannot overemphasize that SPCMB, as the owner of the bank account which may be the subject of inquiry of the AMLC, ought to have a legal remedy to question the validity and propriety of such an order by the appellate court under Section 11 of the AMLA even if subsequent to the issuance of a freeze order. Moreover, given the scope of inquiry of the AMLC, reaching and including even related accounts, which inquiry into specifies a proviso that: "[t]hat the procedure for the *ex-parte* application of the *ex-parte* court order for the principal account shall be the same with that of the related accounts," SPCMB should be allowed to question the government intrusion. Plainly, by

implication, SPCMB can demonstrate the absence of probable cause, *i.e*. that it is not a related account nor are its accounts materially linked to the principal account being investigated.[41]

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[41] Implementing Rules and Regulations of RA 9160 as amended by RA 9194 and RA 10167;

Rule 3.e.3. "Related Accounts" are those accounts, the funds and sources of which originated from and/or are materially linked to the monetary instruments or properties subject of the freeze order.

Rule 3.e.3.a. Materially linked accounts include but are not limited to the following:

(1) All accounts or monetary instruments belonging to the same person whose accounts, monetary instruments or properties are the subject of the freeze order;
(2) All accounts or monetary instruments held, owned or controlled by the owner or holder of the accounts, monetary instruments or properties subject of the freeze order, whether such accounts are held, owned or controlled singly or jointly with another person;
(3) All accounts or monetary instruments the funds of which are transferred to the accounts, monetary instruments or properties subject of the freeze order without any legal or trade obligation, purpose or economic justification;
(4) All "In Trust For" (lTF) accounts where the person whose accounts, monetary instruments or properties are the subject of the freeze order is either the trustee or the trustor;
(5) All accounts held for the benefit or in the interest of the person whose accounts, monetary instruments or properties are the subject of the freeze order;
(6) All accounts or monetary instruments under the name of the immediate family or household members of the person whose accounts, monetary instruments or properties are the subject of the freeze order if the amount or value involved is not commensurate with the business or financial capacity of the said family or household member;
(7) All accounts of corporate and juridical entities that are substantially owned, controlled or effectively controlled by the person whose accounts, monetary instruments or properties are subject of the freeze order;
(8) All shares or units in any investment accounts and/or pooled funds of the person whose accounts, monetary instruments or properties are subject of the freeze order; and
(9) All other accounts, shares, units or monetary instruments that are similar, analogous or identical to any of the foregoing.

In *BSB Group, Inc. v. Go*,[42] we recounted the objective of the absolute confidentiality rule which is protection from unwarranted inquiry or investigation if the purpose of such inquiry or investigation is merely to determine the existence and nature, as well as the amount of the deposit in any given bank account:

> xxx. There is, in fact, much disfavor to construing these primary and supplemental exceptions in a manner that would authorize unbridled discretion, whether governmental or otherwise, in utilizing these exceptions as authority for unwarranted inquiry into bank accounts. It is then perceivable that the present legal order is obliged to conserve the absolutely confidential nature of bank deposits.
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> The measure of protection afforded by the law has been explained in *China Banking Corporation v. Ortega*. That case principally addressed the issue of whether the prohibition against an examination of bank deposits precludes garnishment in satisfaction of a judgment. Ruling on that issue in the negative, the Court found guidance in the relevant portions of the legislative deliberations on Senate Bill No. 351 and House Bill No. 3977, which later became the Bank Secrecy Act, and it held that the absolute confidentiality rule in R.A. No. 1405 actually aims at protection from unwarranted inquiry or investigation if the purpose of such inquiry or investigation is merely to determine the existence and nature, as well as the amount of the deposit in any given bank account. Thus,
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> > x x x The lower court did not order an examination of or inquiry into the deposit of B&B Forest Development Corporation, as contemplated in the law. It merely required Tan Kim Liong to inform the court whether or not the defendant B&B Forest Development Corporation had a deposit in the China Banking Corporation only for purposes of the garnishment issued by it, so that the bank would hold the same intact and not allow any withdrawal until further order. It will be noted from the discussion of the conference committee report on Senate Bill No. 351 and House Bill No. 3977 which later became Republic Act No. 1405, that it was not the intention of the lawmakers to place banks deposits beyond the reach of execution to satisfy a final judgment Thus:

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[42] *Supra* note 31 at 514-515.

> x x x Mr. Marcos: Now, for purposes of the record, I should like the Chairman of the Committee on Ways and Means to clarify this further. Suppose an individual has a tax case. He is being held liable by the Bureau of Internal Revenue [(BIR)] or, say, ₱1,000.00 worth of tax liability, and because of this the deposit of this individual [has been] attached by the [BIR].
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> Mr. Ramos: The attachment will only apply after the court has pronounced sentence declaring the liability of such person. But where the primary aim is to determine whether he has a bank deposit in order to bring about a proper assessment by the [BIR], such inquiry is not allowed by this proposed law.
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> Mr. Marcos: But under our rules of procedure and under the Civil Code, the attachment or garnishment of money deposited is allowed. Let us assume for instance that there is a preliminary attachment which is for garnishment or for holding liable all moneys deposited belonging to a certain individual, but such attachment or garnishment will bring out into the open the value of such deposit. Is that prohibited by... the law?
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> Mr. Ramos: It is only prohibited to the extent that the inquiry... is made only for the purpose of satisfying a tax liability already declared for the protection of the right in favor of the government; but when the object is merely to inquire whether he has a deposit or not for purposes of taxation, then this is fully covered by the law. x x x
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> Mr. Marcos: The law prohibits a mere investigation into the existence and the amount of the deposit.
>
> Mr. Ramos: Into the very nature of such deposit. x x x (Citations omitted)

What is reflected by the foregoing disquisition is that the law plainly prohibits a mere investigation into the existence and the amount of the deposit. We relate the principle to SPCMB's relationship to the reported principal account under investigation, one of its clients, former Vice- President Binay. SPCMB as the owner of one of the bank accounts reported to be investigated by the AMLC for probable money laundering offenses should be allowed to pursue remedies therefrom where there are legal implications on the inquiry into its accounts as

a law firm. While we do not lapse into conjecture and cannot take up the lance for SPCMB on probable violation of the attorney-client privilege based on pure speculation, the extent of information obtained by the AMLC concerning the clients of SPCMB has not been fully drawn and sufficiently demonstrated. At the same time, the owner of bank accounts that could be potentially affected has the right to challenge whether the requirements for issuance of the bank inquiry order were indeed complied with given that such has implications on its property rights. In this regard, SPCMB's obeisance to promulgated rules on the matter could have afforded it a remedy, even post issuance of the bank inquiry order.

Rule 10.b. of the IRR defines probable cause as "such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or a money laundering offense is about to be, is being or has been committed and that the account or any monetary instrument or property sought to be frozen is in any way related to said unlawful activity and/or money laundering offense." Evidently, the provision only refers to probable cause for freeze orders under Section 10 of the AMLA. From this we note that there is a glaring *lacunae* in our procedural rules concerning the bank inquiry order under Section 11. Despite the advent of RA No. 10167, amending Section 11 of the AMLA, we have yet to draft additional rules corresponding to the *ex-parte* bank inquiry order under Section 11. A.M. No. 05-11-04-SC entitled "Rule of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense Under Republic Act No. 9160, as Amended," only covers what is already provided in the title. As we have already noted, the bank inquiry order must likewise be governed by rules specific to its issuance where the AMLC regularly invokes this provision and which, expectedly clashes with the rights of bank account holders.

Apart from Section 2, Rule IV of the 2009 Internal Rules of the CA (IRCA) reads:

SEC. 2. Action by the Presiding Justice or Executive Justice. — When a petition involves an urgent matter, such as an application for writ of *habeas corpus*, ***amparo or habeas data*** or for temporary restraining order, and there is no way of convening the Raffle Committee or calling any of its members, the Presiding Justice or the Executive Justice, as the case may be, or in his/her absence, the most senior Justice present, may conduct the raffle or act on the petition, subject to raffle in the latter case on the next working day in accordance with Rule III hereof.

(AMLA cases are limited to the first three most senior Justices as stated in the law and are raffled by the Chairmen of the First, Second and Third Divisions to the members of their Divisions only.)

Nothing in the IRCA justifies the disallowance to SPCMB of information and/or court records or proceedings pertaining to the possible bank inquiry order covering its bank deposits or investment.

We note that the Presiding Justice's reply to the request for comment of SPCMB on the existence of a petition for bank inquiry order by the AMLC covering the latter's account only contemplates the provisions of Section 10 of the AMLA, its IRR and the promulgated rules thereon. Such immediate and definitive foreclosure left SPCMB with no recourse on how to proceed from what it perceived to be violation of its rights as owner of the bank account examined. The reply of the Presiding Justice failed to take into consideration Section 54 of A.M. No. 05-11-04-SC on Notice of Freeze Order which reads:

SEC. 54. *Notice of freeze order.*— The Court shall order that notice of the freeze order be served personally, in the same manner provided for the service of the asset preservation order in Section 14 of this Rule, upon the respondent or any person acting in his behalf and such covered institution or government agency. **The court shall notify also such party in interest as may have appeared before the court.** (Emphasis supplied)

We relate this Section 54 to the already cited Rule 10.d of the IRR

Rule 10.d. Upon receipt of the freeze order issued by the Court of Appeals and upon verification by the covered institution that the related accounts originated from and/or are materially linked to the monetary instrument or property subject of the freeze order, the covered institution shall freeze these related accounts wherever these may be found.

The return of the covered institution as required under Rule 10.c.3 shall include the fact of such freezing and an explanation as to the grounds for the identification of the related accounts.

If the related accounts cannot be determined within twenty-four (24) hours from receipt of the freeze order due to the volume and/or complexity of the transactions or any other justifiable factor(s), the covered institution shall effect the freezing of the related accounts, monetary instruments and properties as soon as practicable and shall submit a supplemental return thereof to the Court of Appeals and the AMLC within twenty-four (24) hours from the freezing of said related accounts, monetary instruments and properties. (Emphasis supplied)

demonstrating that the return of the Freeze Order must provide an explanation as to the grounds for the identification of the related accounts, or the requirement of notice to a party in interest affected thereby whose bank accounts were examined. This necessarily contemplates the procedure for a prior bank inquiry order which we ought to provide for.

For exact reference, we cite A.M. No. 05-11-04-SC, Title VIII on Petitions for Freeze Order in the CA which certain pertinent provisions we adopt and apply suppletorily as a separate Title on Petitions for Bank Inquiry Order:

TITLE VIII

PETITIONS FOR FREEZE ORDER IN THE COURT OF APPEALS

SEC. 43. *Applicability*. — This Rule shall apply to petitions for freeze order in the Court of Appeals. The 2002 Internal Rules of the Court of Appeals, as amended, shall apply suppletorily in all other aspects.

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SEC. 46. *Contents of the petition*. – The petition shall contain the following allegations:

(a) The name and address of the respondent;
(b) A specific description with particularity of the monetary instrument, property or proceeds, their location, the name of the owner, holder, lienholder or possessor, if known;
(c) The grounds relied upon for the issuance of a freeze order; and
(d) The supporting evidence showing that the subject monetary instrument, property, or proceeds are in any way related to or involved in an unlawful activity as defined under Section 3(i) of Republic Act No. 9160, as amended by Republic Act No. 9194.

The petition shall be filed in seven clearly legible copies and shall be accompanied by clearly legible copies of supporting documents duly subscribed under oath.

xxx x x x x x x

SEC. 49. *Confidentiality; prohibited disclosure.* – The logbook and the entries therein shall be kept strictly confidential and maintained under the responsibility of the Presiding Justice or the Executive Justices, as the case may be. No person, including Court personnel, shall disclose, divulge or communicate to anyone directly or indirectly, in any manner or by any means, the fact of the filing of the petition for freeze order, its contents and its entry in the logbook except to those authorized by the Court. Violation shall constitute contempt of court.

xxx x x x x x x

SEC. 51. *Action by the Court of Appeals.*– All members of the Division of the Court to which the assigned justice belongs shall act on the petition within twenty-four hours after its filing. However, if one member of the Division is not available, the assigned justice and the other justice present shall act on the petition. If only the assigned justice is present, he shall act alone. The action of the two justices or of the assigned justice alone, as the case may be, shall be forthwith promulgated and thereafter submitted on the next working day to the absent member or members of the Division for ratification, modification or recall.

If the Court is satisfied from the verified allegations of the petition that there exists probable cause that the monetary instrument, property,

or proceeds are in any way related to or involved in any unlawful activity as defined in Section 3(i) of Republic Act No. 9160, as amended by Republic Act No. 9194, it shall issue ex parte a freeze order as hereinafter provided.

If the Court finds no substantial merit in the petition, it shall dismiss the petition outright, stating the specific reasons for such dismissal.

When the unanimous vote of the three justices of the Division cannot be obtained, the Presiding Justice or the Executive Justice shall designate two justices by raffle from among the other justices of the first three divisions to sit temporarily with them forming a special division of five justices. The concurrence of a majority of such special division shall be required for the pronouncement of a judgment or resolution.

SEC. 52. *Issuance, form and contents of the freeze order* – The freeze order shall:

(a) issue in the name of the Republic of the Philippines represented by the Anti-Money Laundering Council;

(b) describe with particularity the monetary instrument, property or proceeds frozen, as well as the names of their owner or owners; and

(c) direct the person or covered institution to immediately freeze the subject monetary instrument, property or proceeds or its related web of accounts.

SEC. 53. *Freeze order*.

(a) *Effectivity; post issuance hearing*. - The freeze order shall be effective immediately for a period of twenty days. Within the twenty-day period, the court shall conduct a summary hearing, with notice to the parties, to determine whether or not to modify or lift the freeze order, or extend its effectivity as hereinafter provided.

(b) *Extension.* - On motion of the petitioner filed before the expiration of twenty days from issuance of a freeze order, the court may for good cause extend its effectivity for a period not exceeding six months.

SEC. 54. *Notice of freeze order*.– The Court shall order that notice of the freeze order be served personally, in the same manner provided for the service of the asset preservation order in Section 14 of this

Rule, upon the respondent or any person acting in his behalf and such covered institution or government agency. The court shall notify also such party in interest as may have appeared before the court.

SEC. 55. *Duty of respondent, covered institution or government agency upon receipt of freeze order*. – Upon receipt of a copy of the freeze order, the respondent, covered institution or government agency shall immediately desist from and not allow any transaction, withdrawal, deposit, transfer, removal, conversion, other movement or concealment the account representing, involving or relating to the subject monetary instrument, property, proceeds or its related web of accounts.

SEC. 56. *Consolidation with the pending civil forfeiture proceedings* – After the post-issuance hearing required in Section 53, the Court shall forthwith remand the case and transmit the records to the regional trial court for consolidation with the pending civil forfeiture proceeding.

SEC. 57. *Appeal*.– Any party aggrieved by the decision or ruling of the court may appeal to the Supreme Court by petition for review on certiorari under Rule 45 of the Rules of Court. The appeal shall not stay the enforcement of the subject decision or final order unless the Supreme Court directs otherwise.

A reverse situation affords us a clearer picture of the arbitrary and total preclusion of SPCMB to question the bank inquiry order of the appellate court. In particular, in an occasion where the appellate court denies the AMLC's *ex-parte* application for a bank inquiry order under Section 11, the AMLC can question this denial and assail such an order by the appellate court before us on grave abuse of discretion. Among others, the AMLC can demonstrate that it has established probable cause for its issuance, or if the situation contemplates a denial of an application for a bank inquiry order into a related account, the AMLC can establish that the account targeted is indeed a related account. The resolution on these factual and legal issues ought to be reviewable, albeit post issuance of the Freeze Order, akin to the provision of an Appeal to the Supreme Court under Section 57 of A.M. No. 05-11-04-SC.

Palpably, the requirement to establish probable cause is not a useless supposition. To establish and demonstrate the required probable cause before issuance of the bank inquiry and the freeze

orders is a screw on which the AMLC's intrusive functions turns. We are hard pressed to justify a disallowance to an aggrieved owner of a bank account to avail of remedies.

That there are no specific rules governing the bank inquiry order does not signify that the CA cannot confirm to the actual owner of the bank account reportedly being investigated whether it had in fact issued a bank inquiry order for covering its accounts, of course after the issuance of the Freeze Order. Even in *Ligot*,[43] we held that by implication, where the law did not specify, the owner of the "frozen" property may move to lift the freeze order issued under Section 10 of the AMLA if he can show that no probable cause exists or the 20-day period of the freeze order has already lapsed without any extension being requested from and granted by the CA. Drawing a parallel, such a showing of the absence of probable cause ought to be afforded SPCMB.

Ligot clarifies that "probable cause refers to the sufficiency of the relation between an unlawful activity and the property or monetary instrument which is the focal point of Section 10 of the AMLA, as amended." This same probable cause is likewise the focal point in a bank inquiry order to further determine whether the account under investigation is linked to unlawful activities and/or money laundering offense. Thus, the specific applicability of Sections 52, 53, 54 and 57 Title VIII of A.M. No. 05-11-04-SC covering the following: (1) Issuance, Form and Content of the Freeze Order; (2) Effectivity of the Freeze Order and Post Issuance Hearing thereon; (3) Notice of the Freeze Order; and (4) Appeal from the Freeze Order as separate Rules for Petitions to Question the Bank Inquiry Order. And as held in *Eugenio* which now applies to the present Section 11 of the AMLA:

> Although oriented towards different purposes, the freeze order under Section 10 and the bank inquiry order under Section 11 are similar in that they are extraordinary provisional reliefs which the AMLC may avail of to effectively combat and prosecute money laundering offenses. Crucially, Section 10 uses specific language to

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[43] *Supra* note 33 at 483.

authorize an *ex parte* application for the provisional relief therein, a circumstance absent in Section 11. xxx.[44]

The cited rules cover and approximate the distinction made by *Eugenio* in declaring that the bank inquiry order is not a search warrant, and yet there are instituted requirements for the issuance of these orders given that such is now allowed *ex-parte*:

> The Constitution and the Rules of Court prescribe particular requirements attaching to search warrants that are not imposed by the AMLA with respect to bank inquiry orders. A constitutional warrant requires that the judge personally examine under oath or affirmation the complainant and the witnesses he may produce, such examination being in the form of searching questions and answers. Those are impositions which the legislative did not specifically prescribe as to the bank inquiry order under the AMLA and we cannot find sufficient legal basis to apply them to Section 11 of the AMLA. Simply put, a bank inquiry order is not a search warrant or warrant of arrest as it contemplates a direct object but not the seizure of persons or property.
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> Even as the Constitution and the Rules of Court impose a high procedural standard for the determination of probable cause for the issuance of search warrants which Congress chose not to prescribe for the bank inquiry order under the AMLA, Congress nonetheless disallowed *ex parte* applications for the inquiry order. We can discern that in exchange for these procedural standards normally applied to search warrants, Congress chose instead to legislate a right to notice and a right to be heard — characteristics of judicial proceedings which are not *ex parte*. Absent any demonstrable constitutional infirmity, there is no reason for us to dispute such legislative policy choices.[45]

Thus, as an *ex-parte* bank inquiry order which Congress has now specifically allowed, the owner of a bank account post issuance of the freeze order has an opportunity under the Rules to contest the establishment of probable cause.

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[44] *Supra* note 13 at 122.

[45] *Id.* at 127.

Again, we cannot avoid the requirement-limitation nexus in Section 11. As it affords the government authority to pursue a legitimate state interest to investigate money laundering offenses, such likewise provides the limits for the authority given. Moreover, allowance to the owner of the bank account, post issuance of the bank inquiry order and the corresponding freeze order, of remedies to question the order, will not forestall and waylay the government's pursuit of money launderers. That the bank inquiry order is a separate from the freeze order does not denote that it cannot be questioned. The opportunity is still rife for the owner of a bank account to question the basis for its very inclusion into the investigation and the corresponding freezing of its account in the process.

As noted in *Eugenio*, such an allowance accorded the account holder who wants to contest the issuance of the order and the actual investigation by the AMLC, does not cast an unreasonable burden since the bank inquiry order has already been issued. Further, allowing for notice to the account holder should not, in any way, compromise the integrity of the bank records subject of the inquiry which remain in the possession and control of the bank. The account holder so notified remains unable to do anything to conceal or cleanse his bank account records of suspicious or anomalous transactions, at least not without the whole hearted cooperation of the bank, which inherently has no vested interest to aid the account holder in such manner. Rule 10.c.[46] of the IRR provides for Duty of the Covered

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[46] **Rule 10.c. Duty of Covered Institutions upon receipt thereof.** –

Rule 10.c.1. Upon receipt of the notice of the freeze order, the covered institution concerned shall immediately freeze the monetary instrument or property and related accounts subject thereof.

Rule 10.c.2. The covered institution shall likewise immediately furnish a copy of the notice of the freeze order upon the owner or holder of the monetary instrument or property or related accounts subject thereof.

Rule 10.c.3. Within twenty-four (24) hours from receipt of the freeze order, the covered institution concerned shall submit to the Court of Appeals and the AMLC, by personal delivery, a detailed written return on the freeze order, specifying all the pertinent and relevant information which shall include the following:

Institution receiving the Freeze Order. Such can likewise be made applicable to covered institutions notified of a bank inquiry order.

On the other hand, a scenario where SPCMB or any account holder under examination later shows that the bank inquiry order was without the required probable cause, the information obtained through the account reverts to, and maintains, its confidentiality. In short, any and all information obtained therein by the AMLC remains confidential, as if no examination or inquiry on the bank account or investments was undertaken. The foregoing consequence can be added as a Section in the Rules entitled "Effect of absence of probable cause."

All told, we affirm the constitutionality of Section 11 of the AMLA allowing the *ex-parte* application by the AMLC for authority to inquire into, and examine, certain bank deposits and investments.

Section 11 of the AMLA providing for the *ex-parte* bank deposit inquiry is constitutionally firm for the reasons already discussed. The *ex--parte* inquiry shall be upon probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) of the law or a money laundering offense under Section 4 of the same law. To effect the limit on the *ex-parte* inquiry, the petition under oath for authority to inquire, must, akin to the requirement of a petition for freeze order enumerated in Title VIII of A.M. No. 05-11-04-SC, contain the name and address of the respondent; the grounds relied upon for the issuance of the order of inquiry; and the supporting

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(a) the account numbers;
(b) the names of the account owners or holders;
(c) the amount of the monetary instrument, property or related accounts as of the time they were frozen;
(d) all relevant information as to the nature of the monetary instrument or property;
(e) any information on the related accounts pertaining to the monetary instrument or property subject of the freeze order; and
(f) the time when the freeze thereon took effect.

evidence that the subject bank deposit are in any way related to or involved in an unlawful activity.

If the CA finds no substantial merit in the petition, it shall dismiss the petition outright stating the specific reasons for such denial. If found meritorious and there is a subsequent petition for freeze order, the proceedings shall be governed by the existing Rules on Petitions for Freeze Order in the CA. From the issuance of a freeze order, the party aggrieved by the ruling of the court may appeal to the Supreme Court by petition for review on *certiorari* under Rule 45 of the Rules of Court raising all pertinent questions of law and issues, including the propriety of the issuance of a bank inquiry order. The appeal shall not stay the enforcement of the subject decision or final order unless the Supreme Court directs otherwise. The CA is directed to draft rules based on the foregoing discussions to complement the existing A.M. No. 05-11-04-SC Rule of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense under Republic Act No. 9160, as Amended for submission to the Committee on the Revision of the Rules of Court and eventual approval and promulgation of the Court *en banc*.

WHEREFORE, the petition is **DENIED**. Section 11 of Republic Act No. 9160, as amended, is declared **VALID** and **CONSTITUTIONAL**.

SO ORDERED.

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

Leonen, J., see separate concurring opinion.

Peralta, J., no part.

Caguioa, J., on leave.

CONCURRING OPINION

LEONEN, *J.*:

I concur in the result. It is my honor to do so considering that the majority opinion is the final *ponencia* for this Court *En Banc* of our esteemed colleague Justice Jose P. Perez.

I join the unanimous declaration that, based on the challenges posed by the present petitions and only within its ambient facts, Section 11 of Republic Act No. 9160 or the Anti-Money Laundering Act is not unconstitutional. Further, that we are unanimous in declaring that the depositor has no right to demand that it be notified of any application or issuance of an order to inquire into his or her bank deposit. The procedure in the Court of Appeals is *ex parte* but requires proof of probable cause of the occurrence of the predicate crime as well as the potential liability of the owner of the deposit.

After the inquiry of the bank deposits and related accounts within the limitations contained in the court order, it is still the option of the law enforcers or the Anti-Money Laundering Council, to proceed to request for a Freeze Order in accordance with Section 10 of the same law. The depositor is, thus, entitled to be informed only after the freeze order has been issued. In questioning the freeze order, the depositor may then raise defenses relating to the existence of sufficient evidence to lead the court to believe that there is probable cause that a covered crime has occurred, that the depositor is a participant in the crime, and that the stay of all transactions with respect to the bank account is essential in order to preserve evidence or to keep the proceeds of the crime intact for and on behalf of the victims.

I differ with the premises used to arrive at the same conclusion.

I

The numbers on a bank's ledger corresponding to the amounts of money that a depositor has and its various transactions, especially when digitized, are definitely not physical. Yet, just because they are not physical does not necessarily mean that

they do not partake of the kinds of "life, liberty, or property"[1] protected by the due process clause of the Constitution. Neither should it mean that the numerical equivalent of the bank's debt to a depositor or the record of its various transactions have nothing to do with the "persons . . . papers, and effects"[2] constitutionally protected against "unreasonable searches and seizures."[3] The majority opinion's statement that the "inquiry by the [Anti-Money Laundering Council] into certain bank deposits and investments does not violate substantive due process, there being no physical seizure of property involved at that stage"[4] may have been inadvertent. It does, however, neglect that the penumbra of rights protected by the due process clause and the proscription against unreasonable searches and seizures also pertains to protecting the intangibles essential to human life. Definitely, every liberal democratic constitutional order has outgrown the archaic concept that life is only that which can be tangible.

The due process clause is crafted as a proscription. Thus, it states that "[n]o person shall be deprived of life, liberty, or

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[1] CONST., Art III, Sec. I provides:

ARTICLE III. Bill of Rights

SECTION I. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[2] CONST., Art. III, Sec. 2 provides:

ARTICLE III. Bill of Rights

. . . . . .

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[3] CONST., Art. III, Sec. 2

[4] *Ponencia*, p. II.

property without due process of law[.]"[5] This means that there is a sphere of individual existence or a penumbra of individual autonomy that exists prior to every regulation that should primordially be left untouched. In other words, the existence of what Louis D. Brandeis and Samuel D. Warren once called "the right to be let alone"[6] is now broadly, though at times awkwardly referred to roughly as the right to privacy, presumed. Every regulation therefore that limits this aspect of individuality may be the subject of inquiry that it does not "deprive" one of their "life, liberty or property" without "due process of law."

Thus, in the often cited writings of Warren and Brandeis as early as 1890 on the right to privacy:

> That the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society. Thus, in very early times, the law gave a remedy only for physical interference with life and property, for trespasses *vi et armis*. Then the "right to life" served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint; and the right to property secured to the individual his lands and his cattle. Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life,— the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession — intangible, as well as tangible.
>
> Thus, with the recognition of the legal value of sensations, the protection against actual bodily injury was extended to prohibit mere attempts to do such injury; that is, the putting another in fear of such injury. From the action of battery grew that of assault. Much later

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[5] CONST., Art III, Sec. 1.

[6] Samuel D. Warren and Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890). *See also* Irwin R. Kramer, *The Birth of Privacy Law: A Century Since Warren & Brandeis*, 39 Cath. U.L. REV. 703 (1990).

there came a qualified protection of the individual against offensive noises and odors, against dust and smoke, and excessive vibration. The law of nuisance was developed. So regard for human emotions soon extended the scope of personal immunity beyond the body of the individual. His reputation, the standing among his fellow-men, was considered, and the law of slander and libel arose. Man's family relations became a part of the legal conception of his life, and the alienation of a wife's affections was held remediable. Occasionally the law halted,—as in its refusal to recognize the intrusion by seduction upon the honor of the family. But even here the demands of society were met. A mean fiction, the action *per quod servitium amisit*, was resorted to, and by allowing damages for injury to the parents' feelings, an adequate remedy was ordinarily afforded. Similar to the expansion of the right to life was the growth of the legal conception of property. From corporeal property arose the incorporeal rights issuing out of it; and then there opened the wide realm of intangible property, in the products and processes of the mind, as works of literature and art, goodwill, trade secrets, and trademarks.

This development of the law was inevitable.[7] (Citations omitted)

Nothing in the structure of the due process clause limits the protected sphere of individual existence or autonomy only to the physical or corporeal aspects of life. After all, as we have long held, life is not limited only to physical existence.[8] Property

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[7] Samuel D. Warren and Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 193-195 (1890).

[8] *Secretary of National Defense, et al. v. Manalo, et al.*, 589 Phil. 1, 50 (2008) [Per *C.J.* Puno, *En Banc*], explained the concept of right to life:

While the right to life under Article III, Section I guarantees essentially the right to be alive — upon which the enjoyment of all other rights is preconditioned — the right to security of person is a guarantee of the secure quality of this life, *viz.*: "The life to which each person has a right is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler. Rather, it is a life lived with the assurance that the government he established and consented to, will protect the security of his person and property. The ideal of security in life and property ... pervades the whole history of man. It touches every aspect of man's existence." In a broad sense, the right to security of person "emanates in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. It includes the right to exist, and the right to enjoyment of

can be incorporeal.[9] Liberty denotes something more than just freedom from physical restraint.

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life while existing, and it is invaded not only by a deprivation of life but also of those things which are necessary to the enjoyment of life according to the nature, temperament, and lawful desires of the individual." (Citations omitted)

See also J. Leonen, Separate Opinion in *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, G.R. No. 209271, December 8, 2015, 776 SCRA 434, 644 [Per *J.* Villarama, Jr., *En Banc*].

[9] CIVIL CODE, Arts. 415(10), 417, 519, 520, 521, 613, 721, and 722 provide:

Article 415. The following are immovable property:

. . . . . .

(10) Contracts for public works, and servitudes and other real rights over immovable property.

. . . . . .

Article 417. The following are also considered as personal property:

(1) Obligations and actions which have for their object movables or demandable sums; and

(2) Shares of stock of agricultural, commercial and industrial entities, although they may have real estate.

. . . . . .

Article 519. Mining claims and rights and other matters concerning minerals and mineral lands are governed by special laws.

Article 520. A trade-mark or trade-name duly registered in the proper government bureau or office is owned by and pertains to the person, corporation, or firm registering the same, subject to the provisions of special laws.

Article 521. The goodwill of a business is property, and may be transferred together with the right to use the name under which the business is conducted.

. . . . . .

Article 613. An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner.

The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate.

. . . . . .

Article 721. By intellectual creation, the following persons acquire ownership:

(1) The author with regard to his literary, dramatic, historical, legal, philosophical, scientific or other work;

More fundamentally, the reservation of a very broad sphere of individual privacy or individual autonomy is implied in the very concept of society governed under a constitutional and democratic order. The aspects of our humanity and the parts of

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(2) The composer, as to his musical composition;

(3) The painter, sculptor, or other artist, with respect to the product of his art;

(4) The scientist or technologist or any other person with regard to his discovery or invention.

Article 722. The author and the composer, mentioned in Nos. 1 and 2 of the preceding article, shall have the ownership of their creations even before the publication of the same. Once their works are published, their rights are governed by the Copyright laws.

The painter, sculptor or other artist shall have dominion over the product of his art even before it is copyrighted.

The scientist or technologist has the ownership of his discovery or invention even before it is patented.

INTELLECTUAL PROP. CODE, Secs. 28, 71, 103, 147.1, 165.1, 165.2, and 177 provide:

SECTION 28. Right to a Patent.— The right to a patent belongs to the inventor, his heirs, or assigns. When two (2) or more persons have jointly made an invention, the right to a patent shall belong to them jointly.

. . . . . .

SECTION 71. Rights Conferred by Patent.-

71.1. A patent shall confer on its owner the following exclusive rights:

a. Where the subject matter of a patent is a product, to restrain, prohibit and prevent any unauthorized person or entity from making, using, offering for sale, selling or importing that product;

b. Where the subject matter of a patent is a process, to restrain, prevent or prohibit any unauthorized person or entity from using the process, and from manufacturing, dealing in, using, selling or offering for sale, or importing any product obtained directly or indirectly from such process.

71.2. Patent owners shall also have the right to assign, or transfer by succession the patent, and to conclude licensing contracts for the same.

. . . . . .

SECTION 103. Transmission of Rights.

103.1. Patents or applications for patents and invention to which they relate, shall be protected in the same way as the rights of other property under the Civil Code.

our liberty surrendered to the government, in order to assure a functioning society, should only be as much as necessary for a just society and no more. While the extent of necessary

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103.2. Inventions and any right, title or interest in and to patents and inventions covered thereby, may be assigned or transmitted by inheritance or bequest or may be the subject of a license contract.

. . . . . .

SECTION 147. Rights Conferred.–

147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

. . . . . .

SECTION 165. Trade Names or Business Names.

165.1. A name or designation may not be used as a trade name if by its nature or the use to which such name or designation may be put, it is contrary to public order or morals and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

165.2

a. Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

b. In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

. . . . . .

SECTION 177. Copyright or Economic Rights. - Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

177.1. Reproduction of the work or substantial portion of the work;

177.2. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;

177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

surrender cannot be determined with precision, our existing doctrine is that any state interference should neither be arbitrary nor unfair. In many cases, we have held that due process of law simply means that regulation should both be reasonable and fair.

Reasonability and fairness is tentatively captured in the twin legal concepts of substantive and procedural due process respectively. Substantive due process is usually, though not in all cases, a nuanced means-to-end test. Basically, this means that the regulation which impinges on individual autonomy is necessary to meet a legitimate state interest to be protected through means that can logically relate to achieving that end.[10] Procedural due

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177.4. Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental;

177.5. Public display of the original or a copy of the work;

177.6. Public performance of the work; and

177.7. Other communication to the public of the work.

[10] *City of Manila v. Hon. Laguio, Jr.*, 495 Phil. 289, 311-312 [Per *J.* Tinga, *En Banc*], states, "[s]ubstantive due process, as that phrase connotes, asks whether the government has an adequate reason for taking away a person's life, liberty, or property. In other words, substantive due process looks to whether there is sufficient justification for the government's action. Case law in the United States (U.S.) tells us that whether there is such a justification depends very much on the level of scrutiny used. For example, if a law is in an area where only rational basis review is applied, substantive due process is met so long as the law is rationally related to a legitimate government purpose. But if it is an area where strict scrutiny is used, such as for protecting fundamental rights, then the government will meet substantive due process only if it can prove that the law is necessary to achieve a compelling government purpose."

Further, in *Mosqueda, et al. v. Pilipino Banana Growers & Exporters Association, Inc., et al.*, G.R. No. 189185, August 16, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/189185.pdf > 28 [Per *J.* Bersamin, *En Banc*], the Court referred to three levels of scrutiny in analysing the validity of governmental intrusion: the *rational basis test*, which inquires into the reasonable relation between the means and purpose of the law; the *intermediate or heightened review* where "the law must not only further an important governmental interest

process is succinctly and most descriptively captured in the idea that in the kinds of deprivation of rights where it would be relevant, there should be an opportunity to be heard.[11]

In the due process clause, there is the requirement of "deprivation" of one's right to "life, liberty or property." In my view, this means more than the occasional and temporary discomforts we suffer, which is consistent with the natural workings of groups of human beings living within a society. *De minimis* discomfort is a part of group life, independent of the workings of the State. The deprivation that may trigger a judicial inquiry should be more than momentary. It must be fundamentally disruptive of a value that we protect because it is constitutive of our concept of individual autonomy.

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and be substantially related to that interest, but ... the classification ... must not depend on broad generalizations[;]" (*Id*.) and the *strict scrutiny* review, where the Government must prove the necessity "to achieve a compelling state interest, and that [the law or ordinance] is the least restrictive means to protect such interest." (*Id*.) In *Mosqueda*, The Court declared unconstitutional Davao City Ordinance No. 0309-07, (*Id.* at 46) which imposed a ban in aerial spraying as an agricultural practice, for being "broad because the ordinance applies irrespective of the substance to be aerially applied and irrespective of the agricultural activity to be conducted[;]" (*Id*. at 34) and for being unreasonable and oppressive, "in light of the existence and availability of more permissible and practical alternatives that will not overburden . . . those who stand to be affected." (*Id*. at 36). See also *Serrano v. Gallant Maritime Services, Inc., et al.*, 601 Phil. 245 (2009) [Per J. Austria- Martinez, *En Banc*], *White Light Corporation, et al. v. City of Manila*, 596 Phil. 444, 461-464 (2009) [Per J. Tinga, *En Banc*]; *Blo Umpar Adiong v. Commission on Elections*, G.R. No. 103956, March 31, 1992, 207 SCRA 712 [Per J. Gutierrez, Jr., *En Banc*].

[11] *Gutierrez v. Commission on Audit*, G.R. No. 200628, January 13, 2015, 745 SCRA 435, 452-453 [Per J. Leonen, *En Banc*); *Montinola v. Philippine Airlines*, G.R. No. 198656, September 8, 2014, 734 SCRA 439, 459-460 [Per J. Leonen, Second Division); *Department of Agrarian Reform v. Samson, et al.*, 577 Phil. 370, 380 (2008) [Per J. Ynares-Santiago, Third Division]; *F/O Ledesma v. Court of Appeals*, 565 Phil. 731, 740 (2007) [Per J. Tinga, Second Division]; *Air Philippines Corporation v. International Business Aviation Services Philippines, Inc.*, 481 Phil. 366, 386 (2004) [Per J. Panganiban, Third Division]; *Macayayong v. Hon. Ople*, 281 Phil. 419, 423-424 (1991) [Per J. Bidin, Third Division]; *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 641-642 (1940) [Per J. Laurel, *En Banc*].

For instance, a person who chooses to walk down a public street cannot complain that a police officer glances or even stares at him or her. The discomfort of being the subject of the observation by others, under those circumstances, may be too fleeting and trivial that it should not cause any constitutional query. That we look at each other in public spaces is inherently a part of existing within a society. After all, one of the worst human indignities may be that we are rendered invisible to everyone for all time within public spaces.

On the other hand, the uninvited and unwelcome peering eyes of the State's agents as we reside in our most private spaces presumptively violates our right to life, liberty, and even our property. In such cases, even the most fleeting act of voyeurism can cause substantial disruption of our collective values. Certainly, there is reason to trigger judicial inquiry. If the intrusion is unreasonable, it violates the constitutional protection of the due process clause.

Examining the petitioner's bank accounts is analogous to the situation involving the uninvited and unwelcome glance. For some, their financial worth contained in the bank's ledgers may not be physical, but it is constitutive of that part of their identity, which for their own reasons, they may not want to disclose. Peering into one's bank accounts and related transactions is sufficiently disruptive as to be considered a "deprivation" within the meaning of the due process clause. It may be short of the physical seizure of property but it should, in an actual controversy such as this case at bar, be subject of judicial review.

I disagree with the majority's opinion that bank accounts do not have any "legitimate expectation of privacy[.]"[12] I believe that such opinion may be too broad a reading of *Republic v. Hon. Judge Eugenio, Jr., et al*.[13] It is true that no bank account or investment can be made without the cooperation of those

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[12] *Ponencia*, p. 11.

[13] 569 Phil. 98 (2008) [Per J. Tinga, Second Division].

who work with financial intermediaries. The possibility that there are those, who may come across personal financial information, should not be the measure of what may be "legitimate expectation" in a constitutional sense. We should start to distinguish between knowledge of the content of these accounts, storage of these information, exchange of data, and making public disclosures.

What we deal with when the Court of Appeals allows inquiry is simply providing the Anti-Money Laundering Council or the appropriate law enforcement agency with access to knowledge of the content of these accounts. The limits of its storage, how it is exchanged, and making public disclosures are another matter. Nothing in this decision should be used to imply the nature of the right to privacy or the factors to be considered to establish "legitimate expectation of privacy" as it applies to storage, exchange, and public disclosures of information.

The truth is that most of today's digital data is vulnerable to one who is curious enough, exceedingly determined, skillful, and willing to deploy the necessary time and resources to make discovery of our most private information. Ubiquitous surveillance systems that ensure the integrity as well as increase confidence in the security of the data kept in a system are ever present. Copying or transferring digital data occurs likewise with phenomenal speed. Data shared in cyberspace also tends to be resilient and difficult to completely delete. Users of various digital platforms, including bank accounts, are not necessarily aware of these vulnerabilities.

Therefore, the concept of "legitimate expectation of privacy" as the framework for assessing whether personal information fall within the constitutionally protected penumbra need to be carefully reconsidered. In my view, the protected spheres of privacy will make better sense when our jurisprudence in the appropriate cases make clear how specific types of information relate to personal identity and why this is valuable to assure human dignity and a robust democracy in the context of a constitutional order.

II

A bank inquiry order is a provisional relief available to the Anti--Money Laundering Council in aid of its investigative powers. It partakes of the character of a search warrant.

United Laboratories Inc. v. Isip[14] discussed the nature of a search warrant:

> On the first issue, we agree with the petitioner's contention that a search warrant proceeding is, in no sense, a criminal action or the commencement of a prosecution. *The proceeding is not one against any person, but is solely for the discovery and to get possession of personal property. It is a special and peculiar remedy, drastic in nature, and made necessary because of public necessity.* It resembles in some respect with what is commonly known as John Doe proceedings. While an application for a search warrant is entitled like a criminal action, it does not make it such an action.
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> *A search warrant is a legal process which has been likened to a writ of discovery employed by the State to procure relevant evidence of crime. It is in the nature of a criminal process, restricted to cases of public prosecutions.* A search warrant is a police weapon, issued under the police power. A search warrant must issue in the name of the State, namely, the People of the Philippines.
>
> A search warrant has no relation to a civil process. It is not a process for adjudicating civil rights or maintaining mere private rights. It concerns the public at large as distinguished from the ordinary civil action involving the rights of private persons. It may only be applied for in the furtherance of public prosecution.[15] (Emphasis supplied, citations omitted)

In a search warrant proceeding, there is already a crime that has been committed and law enforcers apply for a search warrant to find evidence to support a case or to retrieve and preserve evidence already known to them.

In the same way, a bank inquiry order is "a means for the government to ascertain whether there is sufficient evidence

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[14] 500 Phil. 342 (2005) [Per *J*. Callejo, Sr., Second Division].

[15] *Id*. at 357-358.

to sustain an intended prosecution of the account holder for violation of the [Anti-Money Laundering Act]."[16] It is a preparatory tool for the discovery and procurement, and preservation — through the subsequent issuance of a freeze order — of relevant evidence of a money laundering transaction or activity.

Considering its implications on the depositor's right to privacy, Section 11 of the Anti-Money Laundering Act explicitly mandates that "[t]he authority to inquire into or examine the main account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the 1987 Constitution[.]"

Article III, Section II of the Constitution states:

> SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

"The phrase 'upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce' allows a determination of probable cause by the judge [or the Court of Appeals in Anti-Money Laundering Act cases] *ex parte*." [17]

In *People v. Delos Reyes*,[18] the Court held that due to the *ex parte and non-adversarial* nature of the proceedings, "the [j]udge

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[16] *Republic v. Hon. Judge Eugenio, Jr., et al.*, 569 Phil. 98, 120 (2008) [Per *J.* Tinga, Second Division].

[17] *Mendoza v. People, et al.*, 733 Phil. 603, 613 (2014) [Per *J.* Leonen, Third Division].

[18] *People v. Delos Reyes*, 484 Phil. 271 (2004) [Per *J.* Callejo, Sr., Second Division].

acting on an application for a search warrant is not bound to apply strictly the rules of evidence."[19]

> The ordinary rules of evidence are generally not applied in *ex parte proceedings, partly because there is no opponent to invoke them, partly because the Judge's determination is usually discretionary, partly because it is seldom that, but mainly because the system of evidence rules was devised for the special control of trials by jury*.[20] (Emphasis supplied)

"The existence [of probable cause] depends to a large degree upon the finding or opinion of the judge [or magistrate] conducting the examination."[21] "However, the findings of the judge [or magistrate] should not disregard the facts before him nor run counter to the clear dictates of reason."[22]

Search warrant proceedings are *ex parte* because of the necessities of the investigation. *La Chemise Lacoste, S.A. v. Hon. Fernandez, etc. et al.*,[23] states:

> . . . an application for a search warrant is heard *ex parte*. *It is neither a trial nor a part of the trial. Action on these applications must be expedited for time is of the essence. Great reliance has to be accorded by the judge to the testimonies under oath of the complainant and the witnesses.*[24] (Emphasis supplied)

Similarly, it is essential that investigations for Anti-Money Laundering Act offenses, including the proceedings for the issuance of bank inquiry orders, be kept *ex parte*, in order not to frustrate the State's effort in building its case and eventually prosecuting money laundering offenses.

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[19] *Id.* at 285.

[20] *Id.*, citing *Brinegar v. United States*, 93 L.ed. 1879 (1949).

[21] *Santos v. Pryce Gases, Inc.*, 563 Phil. 781, 793 (2007) [Per *J.* Tinga, Second Division].

[22] *Id.*

[23] 214 Phil. 332 (1984) [Per *J.* Gutierrez, Jr., First Division].

[24] *Id.* at 350.

III

The absence of notice to the owner of a bank account that an *ex parte* application as well as an order to inquire has been granted by the Court of Appeals is not unreasonable nor arbitrary. The lack of notice does not violate the due process clause of the Constitution.

It is reasonable for the State, through its law enforcers, to inquire *ex parte* and without notice because of the nature of a bank account at present.

A bank deposit is an obligation. It is a debt owed by a bank to its client-depositor. It is understood that the bank will make use of the value of the money deposited to further create credit. This means that it may use the value to create loans with interest to another. Whoever takes out a loan likewise creates a deposit with another bank creating another obligation and empowering that other bank to create credit once mere through providing other loans.

Bank deposits are not isolated information similar to personal sets of preferences. Rather, bank deposits exist as economically essential social constructs. The inherent constitutionally protected private rights in bank deposits and other similar instruments are not absolute. These rights should, in proper cases, be weighed against the need to maintaining the integrity of our financial system. The integrity of our financial system on the other hand contributes to the viability of banks and financial intermediaries, and therefore the viability of keeping bank deposits.

Furthermore, we are at an age of instantaneous financial transactions. It would be practically impossible to locate, preserve, and later on present evidence of crimes covered by the Anti-Money Laundering Act if the theory of the petitioner is correct. After all, as correctly pointed out by the majority opinion, the right to information accrues only after a freeze order is issued. It is then that limitations on the ability to transact the value of the bank account will truly affect the depositor.

Accordingly, with these clarifications, I vote to DENY the Petition.

THIRD DIVISION

[G.R. No. 186976. December 7, 2016]

PRYCE PROPERTIES CORPORATION, *petitioner, vs.* **SPOUSES SOTERO OCTOBRE, JR. AND HENRISSA A. OCTOBRE, and CHINA BANKING CORPORATION,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; TO BE ENTITLED TO COMPENSATORY DAMAGES, THE AMOUNT OF LOSS MUST BE CAPABLE OF PROOF AND MUST BE ACTUALLY PROVEN WITH A REASONABLE DEGREE OF CERTAINTY, PREMISED UPON COMPETENT PROOF OR THE BEST EVIDENCE OBTAINABLE.— Article 2199 of the Civil Code defines actual or compensatory damages x x x. To be entitled to compensatory damages, the amount of loss must x x x be capable of proof and must be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable. The burden of proof of the damage suffered is imposed on the party claiming the same, who should adduce the best evidence available in support thereof. Its award must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and non-substantial proof.

2. ID.; ID.; ID.; ID.; NOMINAL DAMAGES; AN AWARD OF NOMINAL DAMAGES IS PROPER WHEN THERE IS A VIOLATION OF THE RIGHT OF THE PLAINTIFF, WHETHER BASED ON LAW, CONTRACT OR OTHER SOURCES OF OBLIGATIONS.— [W]e find that nominal damages, in lieu of compensatory damages, are proper in this case. Under Article 2221, nominal damages may be awarded in order that the plaintiff's right, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any

loss suffered. Nominal damages are "recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown." So long as there is a violation of the right of the plaintiff — whether based on law, contract, or other sources of obligations — an award of nominal damages is proper. Proof of bad faith is not required. x x x It is undisputed that Pryce failed to deliver the titles to the lots subject of the Contract to Sell even as Spouses Octobre had already fully settled the purchase price. Its inability to deliver the titles despite repeated demands undoubtedly constitutes a violation of Spouses Octobre's right under their contract. x x x In fine, contractual breach is sufficient to justify an award for nominal damages but not compensatory damages.

3. ID.; ID.; ID.; ID.; ATTORNEY'S FEES; AWARDED WHEN THE DEFENDANT'S ACT OR OMISSION HAS COMPELLED THE PLAINTIFF TO LITIGATE WITH THIRD PERSONS OR TO INCUR EXPENSES TO PROTECT HIS INTEREST.— Article 2208(2) allows the award of attorney's fees when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. The Court has interpreted that this provision requires a showing of bad faith and not mere erroneous conviction of the righteousness of a defendant's cause. In this case, the Court of Appeals found that Pryce acted in bad faith when it did not disclose to Spouses Octobre the fact that the certificates of title to the properties purchased were in the custody of China Bank until Spouses Octobre had fully paid the price and had demanded delivery of the titles. We agree with this finding and therefore sustain the award of attorney's fees and costs of suit in favor of Spouses Octobre.

APPEARANCES OF COUNSEL

R.R. Torralba & Associates for petitioner.

Tanco & Partners for respondents Octobre.

Lim Vigilia Alcala Dumlao Alameda & Casiding for respondent China Banking Corporation.

D E C I S I O N

JARDELEZA, *J.*:

The primary question is whether a breach of contract automatically triggers the award of actual or compensatory damages.

I

On July 22, 1997, respondent Spouses Sotero Octobre, Jr. and Henrissa A. Octobre (Spouses Octobre) signed a Reservation Agreement with petitioner Pryce Properties Corporation (Pryce) for the purchase of two lots with a total of 742 square meters located in Puerto Heights Village, Puerto Heights, Cagayan de Oro City.[1] The parties subsequently executed a Contract to Sell over the lot for the price of ₱2,897,510.00 on January 7, 1998.[2]

On February 4, 2004, Pryce issued a certification that Spouses Octobre had fully paid the purchase price and amortization interests, as well as the transfer fees and other charges in relation to the property, amounting to a total of ₱4,292,297.92.[3] But Pryce had yet to deliver the certificates of title, which prompted Spouses Octobre to formally demand its delivery. Despite repeated demands, Pryce failed to comply.[4] Thus, on May 18, 2004, Spouses Octobre filed a complaint before the Housing and Land Use Regulatory Board (HLURB), Regional Office No. 10 for specific performance, revocation of certificate of registration, refund of payments, damages and attorney's fees.[5]

It appears that the reason why Pryce was unable to deliver the titles to Spouses Octobre is because it had previously

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[1] *Rollo*, p. 14.

[2] *Id.* at 86.

[3] *Id.*

[4] *Rollo*, p. 15.

[5] *Id.*

transferred custody of the titles, along with others pertaining to the same development project, to China Banking Corporation (China Bank) as part of the Deed of Assignment[6] executed on June 27, 1996.[7] Under this deed, Pryce agreed to assign and transfer its accounts receivables, in the form of contracts to sell, in the Puerto Heights development project to China Bank as security for the ₱200 Million credit facility extended by the latter. Pryce obligated itself to deliver to China Bank the "contracts to sell and the corresponding owner's duplicate copies of the transfer certificates of title, tax declaration, real estate tax receipts and all other documents and papers"[8] relating to the assigned receivables until such receivables are paid or repurchased by Pryce. The titles to the lots purchased by Spouses Octobre were among those held in custody by China Bank.[9] When Pryce defaulted in its loan obligations to China Bank sometime in May 2002, China Bank refused to return the titles to Pryce.[10] For this reason, China Bank was also impleaded in the HLURB complaint.

The HLURB Arbiter rendered a Decision[11] dated March 31, 2005 finding that Spouses Octobre had no cause of action against China Bank and rescinding the contract between Pryce and Spouses Octobre. It ordered Pryce to refund the payments made by the spouses with legal interest and to pay the latter compensatory damages amounting to ₱30,000.00, attorney's fees and costs of suit.[12]

On appeal, the HLURB Board of Commissioners modified the Decision by ordering Pryce to pay the redemption value to

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[6] *Rollo*, pp. 123-127.

[7] *Id.* at 173-175.

[8] *Id.* at 124.

[9] *Id.* at 175.

[10] *Id.* at 175-176.

[11] *Id.* at 97-99.

[12] *Id.* at 99.

China Bank so that the latter may release the titles covering the lots purchased by Spouses Octobre. In default thereof, Pryce shall refund the payments with legal interest. The HLURB Board upheld the grant of compensatory damages, attorney's fees and costs to Spouses Octobre.[13] Pryce moved for reconsideration and to stay the proceedings on account of Pryce's ongoing corporate rehabilitation.[14] The HLURB Board, however, denied Pryce's motion considering that the stay order of the rehabilitation court had already been reversed by the Court of Appeals.[15]

Thereafter, Pryce appealed the case to the Office of the President, which affirmed[16] in full the HLURB Board's Decision. Undeterred, Pryce elevated the case to the Court of Appeals which denied the petition for review and affirmed the Office of the President's Decision. The Court of Appeals found that Pryce acted in bad faith because it "did not disclose [that the titles were in the custody of China Bank] to respondents Spouses Octobre until the latter demanded delivery of the titles."[17] The Court of Appeals held that Pryce's contractual breach justified the award of compensatory damages as well as the payment of attorney's fees and costs of suit.[18]

Pryce is now before this Court primarily arguing that the Court of Appeals erred in upholding the award of compensatory damages because Spouses Octobre failed to present competent proof of the actual amount of loss.[19] It also questions the award of attorney's fees and litigation costs because there was allegedly no finding of bad faith.[20] Additionally, as side issues, Pryce questions the Court of Appeals' finding that the stay order had

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[13] *Id.* at 93-96.

[14] *Id.* at 17.

[15] *Id.* at 90.

[16] *Id.* at 86-91.

[17] *Id.* at 23.

[18] *Id.*

[19] *Rollo*, pp. 41-43.

[20] *Id.* at 44-48.

been reversed and its decision to uphold the finding by the HLURB Board and Office of the President that the subject properties were mortgaged to China Bank.[21]

In response, Spouses Octobre maintain that the award of compensatory damages, attorney's fees and costs were proper because they were forced to litigate to enforce their contractual right as a result of Pryce's breach.[22] With respect to the stay order, Spouses Octobre cite this Court's February 4, 2008 Decision in G.R. No. 172302[23] which affirmed the appellate court's reversal of the stay order. Finally, Spouses Octobre note that the characterization of the Deed of Assignment as a mortgage came from Pryce's own appeal memorandum filed with the HLURB Board, and that, in any event, whether it is an assignment or mortgage, the decisive fact is that the titles were delivered by Pryce to China Bank.[24]

In its comment, China Bank insists that Pryce only has itself to blame for failing to comply with its obligation to remit the payments received from the various contracts to sell, including its obligation to Spouses Octobre. Under the Deed of Assignment, China Bank is entitled to hold custody of the titles surrendered by Pryce until the assigned receivables are paid or repurchased by Pryce, which to date the latter has failed to do.[25]

II

Article 2199 of the Civil Code defines actual or compensatory damages:[26]

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

[22] *Id.* at 196

[23] *Pryce Corporation v. Court of Appeals*, G.R. No. 172302, February 4, 2008, 543 SCRA 657.

[24] *Rollo*, pp. 201-202.

[25] *Id.* at 180.

[26] For brevity, the term "compensatory damages" instead of "actual or compensatory damages" is used to be consistent with the phraseology of the rulings *a quo*.

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him ***as he has duly proved***. Such compensation is referred to as actual or compensatory damages. (Emphasis supplied.)

To be entitled to compensatory damages, the amount of loss must therefore be capable of proof and must be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable. The burden of proof of the damage suffered is imposed on the party claiming the same, who should adduce the best evidence available in support thereof.[27] Its award must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and non-substantial proof.[28]

It is clear that the amount paid by Spouses Octobre to Pryce as purchase price for the lots has been adequately proved. There is no dispute that Spouses Octobre are entitled to such amount with legal interest. The issue being raised by Pryce is only with respect to the ₱30,000.00 awarded as compensatory damages.[29]

The records of this case are bereft of any evidentiary basis for the award of ₱30,000.00 as compensatory damages. When the HLURB Arbiter initially awarded the amount, it merely mentioned that "[Spouses Octobre] are entitled to compensatory damages, which is just and equitable in the circumstances, even against an obligor in good faith since said damages are the natural and probable consequences of the contractual breach committed."[30] On the other hand, the Court of Appeals justified the award of compensatory damages by stating that "it is undisputed that petitioner Pryce committed breach of contract

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[27] *Oceaneering Contractors (Phils.), Inc. v. Barretto*, G.R. No. 184215, February 9, 2011, 642 SCRA 596, 606-607.

[28] *Adrian Wilson International Associates, Inc. v. TMX Philippines, Inc.*, G.R. No. 162608, July 26, 2010, 625 SCRA 321, 339.

[29] *Rollo*, pp. 41-43.

[30] *Id.* at 98.

in failing to deliver the titles to respondents [Spouses] Octobre which necessitated the award of compensatory damages."[31] In their comment, Spouses Octobre emphasized that they were "forced to litigate and seek the intervention of the courts because of Pryce's failure to comply with its contractual and legal obligation"[32] without so much as mentioning any proof that would tend to prove any pecuniary loss they suffered.

In the absence of adequate proof, compensatory damages should not have been awarded. Nonetheless, we find that nominal damages, in lieu of compensatory damages, are proper in this case. Under Article 2221, nominal damages may be awarded in order that the plaintiff's right, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered. Nominal damages are "recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown."[33] So long as there is a violation of the right of the plaintiff — whether based on law, contract, or other sources of obligations[34] — an award of nominal damages is proper.[35] Proof of bad faith is not required.[36] The HLURB Arbiter and the Court of Appeals appear to have confused nominal damages with compensatory damages, since their justifications more closely fit the former.

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[31] *Id.* at 23.

[32] *Id.* at 196.

[33] *Francisco v. Ferrer, Jr.*, G.R. No. 142029, February 28, 2001, 353 SCRA 261, 267-268. Citation omitted.

[34] CIVIL CODE, Art. 2222.

[35] *Almeda v. Cariño*, G.R. No. 152143, January 13, 2003, 395 SCRA 144, 150.

[36] *Id.* at 148-150.

It is undisputed that Pryce failed to deliver the titles to the lots subject of the Contract to Sell even as Spouses Octobre had already fully settled the purchase price. Its inability to deliver the titles despite repeated demands undoubtedly constitutes a violation of Spouses Octobre's right under their contract. That Pryce had transferred custody of the titles to China Bank pursuant to a Deed of Assignment is irrelevant, considering that Spouses Octobre were not privy to such agreement.

In fine, contractual breach is sufficient to justify an award for nominal damages but not compensatory damages.

III

Pryce questions the award of attorney's fees and costs of suit because no exemplary damages were awarded. This contention, however, is clearly unmeritorious because under Article 2208,[37] the award of exemplary damages is just one of 11 instances where attorney's fees and expenses of litigation are recoverable.

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[37] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigatio, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

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Article 2208(2) allows the award of attorney's fees when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. The Court has interpreted that this provision requires a showing of bad faith and not mere erroneous conviction of the righteousness of a defendant's cause.[38] In this case, the Court of Appeals found that Pryce acted in bad faith when it did not disclose to Spouses Octobre the fact that the certificates of title to the properties purchased were in the custody of China Bank until Spouses Octobre had fully paid the price and had demanded delivery of the titles. We agree with this finding and therefore sustain the award of attorney's fees and costs of suit in favor of Spouses Octobre.

IV

The other side issues raised by Pryce shall be disposed of swiftly since they have no substantial bearing on the merits of this case. As admitted by Pryce itself, "it is not the entire Decision that is being assailed"[39] but only the portion regarding the award of compensatory damages, attorney's fees and costs of suit.

A

When the stay order being invoked by Pryce was reversed and set aside at the first instance by the Court of Appeals in CA-G.R. SP No. 88479, that stay order was automatically deemed vacated.[40] By reversing the stay order of the rehabilitation court, the Court of Appeals effectively enjoined the execution of such order as allowed by the 2000 Interim Rules of Procedure on

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[38] *The President of the Church of Jesus Christ of Latter Day Saints v. BTL Construction Corporation*, G.R. No. 176439, January 15, 2014, 713 SCRA 455, 472-473; *Oceaneering Contractors (Phils.), Inc. v. Barretto*, *supra* note 27 at 610-611; *ABS-CBN Broadcasting Corporation v. Court of Appeals*, G.R. No. 128690, January 21, 1999, 301 SCRA 572, 601-602.

[39] *Rollo*, p. 41.

[40] See *Lee v. Trocino*, G.R. No. 164648, August 6, 2008, 561 SCRA 178, 198.

Corporate Rehabilitation[41] (which was then in effect when Pryce filed its petition for rehabilitation in 2004). We affirmed the Court of Appeals' decision to set aside the stay order in the Decision dated February 4, 2008[42] and Resolution dated June 16, 2008.[43] Although we later reconsidered the Decision on February 18, 2014,[44] the same does not affect the validity of the proceedings already conducted before the HLURB, Office of the President, and Court of Appeals during the intermediate period that the stay order was vacated. Neither does it affect our resolution of this petition for review because under the Financial Rehabilitation and Insolvency Act of 2010[45] (FRIA), the stay order shall not apply to cases already pending appeal in the Supreme Court.[46] Section 146 of the FRIA expressly allows the application of its provisions to pending rehabilitation cases, except to the extent that their application would not be feasible or would work injustice.[47]

B

The characterization of the Deed of Assignment between Pryce and China Bank as either an assignment of receivables or a mortgage of real property is irrelevant to Pryce's obligation to Spouses Octobre. The principal reason why Pryce raises this argument is to elude the applicability of Section 18 of Presidential Decree No. 957.[48] But Spouses Octobre's claim is precisely

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[41] Sec. 5, Rule 3, A.M. No. 00-8-10-SC, December 15, 2000.

[42] *Pryce Corporation v. Court of Appeals, supra* note 23.

[43] *Pryce Corporation v. China Banking Corporation*, G.R. No. 172302, February 18, 2014, 716 SCRA 207, 215.

[44] *Id.*

[45] Republic Act No. 10142.

[46] Republic Act No. 10142, Sec.18(a).

[47] See also Financial Rehabilitation Rules of Procedure (2013), A.M. No. 12-12-11-SC, Rule 1, Sec. 2; and *Majority Stockholders of Ruby Industrial Corporation v. Lim*, G.R. No. 165887, June 6, 2011, 650 SCRA 461, 523.

[48] Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof (1976).

premised on its contract with Pryce, not this specific provision of law. Hence, even if the provision is inapplicable, Pryce's contractual liability to deliver the titles to Spouses Octobre remains.

WHEREFORE, the petition is **DENIED**. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 103615 are **MODIFIED** in that nominal damages in the amount of ₱30,000.00 are awarded in lieu of compensatory damages.

SO ORDERED.

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

Sec. 18. *Mortgages*. No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto.

THIRD DIVISION

[G.R. No. 189220. December 7, 2016]

ALBERT WILSON, *petitioner, vs.* **THE HONORABLE EXECUTIVE SECRETARY EDUARDO ERMITA, SECRETARY OF FOREIGN AFFAIRS ALBERTO ROMULO, SECRETARY OF JUSTICE RAUL GONZALES, BUREAU OF JAIL MANAGEMENT AND PENOLOGY, BOARD OF CLAIMS, DEPARTMENT OF JUSTICE, SOLICITOR GENERAL AGNES DEVANADERA, and BUREAU OF IMMIGRATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; A PURELY MINISTERIAL DUTY MUST EXIST AND A CLEAR LEGAL RIGHT MUST BE ESTABLISHED BY THE PETITIONER FOR *MANDAMUS* TO LIE.— Under Section 3, Rule 65 of the Rules of Court, *mandamus* is a writ issued to compel a tribunal to perform an act which the law enjoins as a duty resulting from an office, trust or station x x x. In *Yuvienco v. Hon. Canonoy, etc., et al.*, and several times reiterated thereafter, the Court held that a purely ministerial duty must exist and a clear legal right must be established by the petitioner for *mandamus* to lie, to wit: Two pertinent principles are well settled in this jurisdiction: (a) one is that mandamus would lie only to compel a tribunal, board or officer to comply with a purely ministerial duty, or to allow a party to exercise a right or to occupy and enjoy the privileges of an office to which he is lawfully entitled; (b) the others is that for the writ of *mandamus* to issue, petitioner must establish a clear legal right to the relief sought, and a mandatory duty on the part of the respondent in relation thereto.

2. ID.; ID.; ID.; ID.; A MINISTERIAL DUTY MUST BE CLEAR AND SPECIFIC AS TO LEAVE NO ROOM FOR THE EXERCISE OF DISCRETION IN ITS PERFORMANCE.— It is well-settled that a ministerial duty must be clear and specific as to leave no room for the exercise

of discretion in its performance. As stated in *Lord Allan Jay Q. Velasco v. Hon. Speaker Feliciano R. Belmonte, Jr., Secretary General Marilyn B. Barua-Yap and Regina Ongsiako Reyes*: A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.

3. ID.; ID.; ID.; ID.; IT IS NOT WITHIN THE COURT'S DISCRETION TO ADJUST ANY MONETARY GRANT ARBITRARILY; THE RESPONDENTS HAVE NO MINISTERIAL DUTY TO GRANT THE PETITIONER ADDITIONAL COMPENSATION AS THE LATTER HAS NO LEGAL RIGHT THERETO.— R.A. No. 7309 was passed on March 30, 1992 creating a BoC-DOJ to evaluate and investigate claims for compensation for persons who were: (1) unjustly accused, convicted and imprisoned but released by virtue of an acquittal; (2) unjustly detained and released without being charged; (3) a victim of arbitrary or illegal detention and released without being charged; and (4) victim of a violent crime. Under R.A. No. 7309, compensation for victims of unjust imprisonment or detention will be based on the number of months of imprisonment. Compensation for each month of imprisonment shall not exceed ₱1,000.00. It is clear, however, that Wilson has been granted compensation under R.A. No. 7309. In fact, the BoC-DOJ granted to Wilson the maximum allowed compensation under that law. It was Wilson's decision not to collect the money granted to him. Other than the R.A. No. 7309, under which Wilson had already been granted compensation, there is no other law or regulation that forms the basis of such ministerial right that the government is impelled to grant. Wilson does not present any law by which his ministerial right arises from with respect to additional compensation. It is not within this Court's discretion to adjust any monetary grant arbitrarily.

4. INTERNATIONAL LAW; TREATY; INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

(ICCPR) AND THE OPTIONAL PROTOCOL; THE VIEWS ISSUED BY THE UNITED NATIONS HUMAN RIGHTS COMMITTEE DO NOT FORM PART OF THE TREATY. THEY ONLY DISPLAY "IMPORTANT CHARACTERISTICS OF A JUDICIAL DECISION" AND ARE NOT *PER SE* DECISIONS WHICH MAY BE ENFORCED OUTRIGHT; THUS, THEY ARE MERE RECOMMENDATIONS TO GUIDE THE STATE IT IS ISSUED AGAINST.— On December 19, 1966, the RP became party to the ICCPR and the Optional Protocol.xxx Pursuant to Article 41 of the ICCPR, the Committee was organized. Signatories recognized the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the ICCPR. In addition, under Article 1 of the Optional Protocol, the State parties agreed to recognize the competence of the Committee to receive and consider communications from individuals who claim to be victims of a violation by that State Party of any rights set forth in the ICCPR. The Philippine Congress ratified the ICCPR on October 23, 1986 and the Optional Protocol on August 22, 1989. xxx. [T]here must be an act more than ratification to make a treaty applicable in our jurisdiction. [W]hat was ratified were the ICCPR and the Optional Protocol, nowhere in the instrument does it say that the View of the Committee forms part of the treaty. x x x. Any View issued by the Committee only displays "important characteristics of a judicial decision" and are not *per se* decisions which may be enforced outright. These Views, therefore, are mere recommendations to guide the State it is issued against.

5. **ID.; ID.; ID.; ID.; IT IS BEYOND THE COURT'S PURVIEW TO ACT ON THE RECOMMENDATIONS OF THE UNITED NATIONS HUMAN RIGHTS COMMITTEE AS THESE ARE MATTERS WHICH ARE BEST TAKEN UP BY THE LEGISLATIVE AND THE EXECUTIVE BRANCHES OF GOVERNMENT.—** [T]he Court would like to stress that it is beyond its purview to act on such recommendations as these are matters which are best taken up by the Legislative and the Executive branches of government as can be seen by the formation of the Presidential Human Rights Committee. [T]he Court derives its powers under its basic

> mandate under Section 1, Article VIII of the 1987 Constitution: 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.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices for petitioner.
Office of the Solicitor General for public respondents.

D E C I S I O N

REYES, *J.*:

Before the Court is a Petition for *Mandamus*[1] filed by Albert Wilson (Wilson) to enforce the United Nations Human Rights Committee (the Committee) Communication No. 868/1999[2] (View) against the Republic of the Philippines (RP).

Antecedent Facts

The present case has its roots in the incarceration and subsequent acquittal of Wilson for the crime of rape which was the subject of the Court's ruling in G.R. No. 135915 entitled *People of the Philippines v. Wilson*.[3]

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[1] *Rollo*, pp. 4-42.

[2] United Nations Human Rights, Office of the High Commissioner; CCPR/C/79/D/868/1999; <http://tbinternet.ohchr.org/layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f79%2fD%2f868%2f1999&Lang=en> (visited June 9, 2016).

[3] 378 Phil. 1023 (1999).

Proceedings in G.R. No. 135915

On September 16, 1996, Wilson, a British national, was accused and charged with the crime of consummated rape[4] by a 12-year-old girl, the daughter of his Filipina live-in partner. The girl was assisted by her biological father in filing the criminal complaint. Immediately thereafter, Wilson was taken into custody.

After trial, Wilson was found guilty beyond reasonable doubt of the crime of Rape by the Regional Trial Court (RTC) of Valenzuela, Metro Manila, Branch 171, in its Decision dated September 30, 1998 and was imposed the death penalty pursuant to Section 11 of Republic Act (R.A.) No. 7659[5] and ordered to indemnify the victim the amount of ₱50,000.00.[6] The case was elevated to the Supreme Court for automatic review.

Pending appeal, or on June 15, 1999, Wilson filed with the Committee, pursuant to Article 5, paragraph 4 of the Optional Protocol, a case[7] against the RP for violations of the International Covenant on Civil and Political Rights (ICCPR) specifically: Article 2, paragraphs 2 and 3;[8] Articles

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[4] Defined under Section 11 of Republic Act No. 7659.

[5] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES. Approved on December 13, 1993.

[6] *People v. Wilson*, *supra* note 3, at 1029.

[7] CCPR/C/79/D/868/1999, *supra*, p. 3.

[8] Article 2

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2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

6;[9] 7;[10] 9;[11] 10, paragraphs 1 and 2;[12] and Article 14, paragraphs

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(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

United Nations Human Rights, Office of the High Commissioner, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (visited June 9, 2016).

[9] Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant. *Id.*

[10] Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. *Id.*

1, 2, and 3 and 6.[13]

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[11] Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. *Id.*

[12] Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

x x x x x x x x x *Id.*

[13] Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice;

In the Decision[14] dated December 21, 1999, the Court reversed the ruling of the RTC. It found that there were serious discrepancies and inconsistent statements particularly in the testimony given by the victim. It concluded that there was not enough evidence to support the finding of guilt beyond reasonable

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but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the tree assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

x x x

6. When a person has by a final decision been convicted of a criminal offense and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributed to them. *Id.*

[14] *People v. Wilson*, *supra* note 3.

doubt for the crime of rape by Wilson. The Court, thus, acquitted Wilson stating:

> **WHEREFORE,** the decision of the trial court is reversed and set aside. The accused is hereby acquitted of the charge of consummated rape. The Director of the Bureau of Corrections is ordered to effect his immediate release from custody unless he is being held in custody for some other legal cause.
>
> **SO ORDERED.**[15]

The Present Case

Wilson was released from detention the day after the acquittal. He immediately left the Philippines for the United Kingdom (UK). Upon his return in the UK, Wilson sought compensation from the Board of Claims (BOC) of the Department of Justice (DOJ) pursuant to R.A. No. 7309[16] through counsel as one who was unjustly accused, convicted and imprisoned but released by virtue of an acquittal.

On January 1, 2001, the BoC-DOJ awarded to Wilson ₱14,000.00 as compensation. On February 21, 2001, Wilson was informed of the BoC-DOJ award and that he had to claim the compensation in person in the Philippines. Wilson moved for reconsideration arguing that under R.A. No. 7309, he was entitled to ₱40,000.00.[17]

On April 23, 2001, the BoC-DOJ informed Wilson that a memorandum was issued directing the BOC to raise the award to the maximum amount that may be paid to those unjustly imprisoned or detained subject to the availability of funds.[18]

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[15] *Id.* at 1040.

[16] AN ACT CREATING A BOARD OF CLAIMS UNDER THE DEPARTMENT OF JUSTICE FOR VICTIMS OF UNJUST IMPRISONMENT OR DETENTION AND VICTIMS OF VIOLENT CRIMES AND FOR OTHER PURPOSES. Approved on March 30, 1992.

[17] *Rollo*, p. 57.

[18] *Id.*

Wilson applied for and was denied a tourist visa to travel to the Philippines due to his presence in the Bureau of Immigration (BI) watch list.[19] According to the BI, Wilson's presence in the watch list could be attributed to his overstaying and his previous conviction of a crime involving moral turpitude.[20]

The BoC-DOJ, thereafter, issued Resolution No. 2001-25 dated August 24, 2001 granting Wilson an additional award of ₱26,000.00 in addition to the initial amount of ₱14,000.00 bringing the total award to ₱40,000.00.[21]

In September 2001, the DOJ issued a check amounting to ₱26,000.00 representing the additional award. The check was made out to Wilson, care of the Ambassador of UK at the request of the former.[22]

On November 11, 2003, the Committee issued the View. It found that the allegations falling under Article 14, paragraphs 1, 2, 3 and 6 of the ICCPR were inadmissible.[23] The Committee stated:

9. In accordance with Article 2, paragraph 3 (a), of the [ICCPR], the State party is under an obligation to provide the author with an effective remedy. In respect of the **violations of Article 9** the **State party should compensate** the author. As to the **violations of Articles 7 and 10** suffered while in detention, including subsequent to sentence of death, the **Committee observes** that the **compensation provided by the State party under its domestic law was not directed at these violations, and that compensation due to the author should take due account both of the seriousness of the violations and the damage to the author caused**. In this context, the Committee recalls the **duty upon the State party to undertake a comprehensive and impartial investigation of the issues raised in the course of**

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[19] *Id.* at 58.

[20] *Id.*

[21] *See* letter dated January 14, 2008 of the Department of Foreign Affairs addressed to the Supreme Court.

[22] *Id.*

[23] CCPR/C/79/D/868/1999, *supra* note 2, at 11-12.

the author's detention, and to draw the appropriate penal and disciplinary consequences for the individuals found responsible. As to the imposition of immigration fees and visa exclusion, the Committee takes the view that in order to remedy the violations of the Covenant the State party should refund to the author the moneys claimed from him. All monetary compensation thus due to the author by the State party should be made available for payment to the author at the venue of his choice, be it within the State party's territory or abroad. The State party is also under an obligation to avoid similar violations in the future.[24]

In a letter[25] dated June 19, 2008, Wilson, through his counsel, asked the Executive Secretary [ES]:

As with internationally wrongful acts, a breach of a State obligation gives rise first to a duty of reparation. The Committee found that the breach of Covenant obligations required that the Philippines provide compensation or redress. In accordance with the decision of the Committee, we thus pray that this Honorable Office:

1. take steps to effect payment of compensation to Mr. Wilson, taking into consideration the seriousness of the breach of his human rights;
2. direct the [BOC] to release the sums awarded to Mr. Wilson to his authorized representatives, the undersigned counsel Roque and Butuyan Law Office.
3. direct the [BI] to refund the amount unjustly imposed upon Mr. Wilson for overstaying his tourist visa, such be indirectly attributable to the wrongful decision of the trial court.[26]

In his letter[27] dated October 20, 2008, Wilson reiterated his June 19, 2008 letter and asked that the payment of compensation be effected, a comprehensive and impartial investigation be conducted, and the monies paid by Wilson with respect to immigration fees and visa exclusion be refunded.[28]

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[24] CCPR/C/79/D/868/1999, *id.* at 13.

[25] *Rollo*, pp. 66-67.

[26] *Id.* at 67.

[27] *Id.* at 82-84.

[28] *Id.* at 84.

On October 29, 2008, the letter was referred by the ES to the DOJ Secretary for appropriate action.[29]

On September 9, 2009, Wilson filed the present petition for *mandamus*.[30] He insists his entitlement to the writ of *mandamus* owing to the ICCPR and the Optional Protocol. He argues that by virtue of the doctrine of transformation, the RP is in breach of an international obligation since any View issued by the Committee constitutes part of international law and that the RP is obligated to enforce the same. He prays that:

1. Respondents take steps to ensure that Albert Wilson is paid and given reparation in the amount sufficient to compensate him for the torture and abuse he suffered under the penal system of the Philippines, in compliance with Philippine treaty obligations in the ICCPR as embodied in the Communication of the Human Rights Committee in Case no. 868/1999 in keeping with international law on reparations.

2. Respondents undertake continual efforts and steps to ensure that no torture and inhuman and degrading treatment are suffered by prisoners in the National Penitentiary and other places of detention and imprisonment in the Philippines, in the manner laid down in the *Manila Bay case*.[31]

The RP, through the Office of the Solicitor General (OSG), opines that the petition is without merit. It argues that Wilson was not able to prove that there is any national law giving life to the ICCPR and Optional Protocol in order for it to have force and effect in our jurisdiction as required under Article 2(2) of the ICCPR.[32] It further avers that the findings of the Committee are merely recommendatory and does not give rise to an obligation to enforce and implement the View. Thus, being recommendatory, the View cannot be used to compel the

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[29] *Id.* at 85.

[30] *Id.* at 4-42.

[31] *Id.* at 39.

[32] *Id.* at 189-194.

Philippine Government to compensate Wilson.[33] In any event, Wilson's documents show that BoC-DOJ had already awarded in his favor ₱40,000.00 pursuant to R.A. No. 7309 and it was of Wilson's own volition that the amount remains unclaimed.[34] It disagrees that the case of *Metropolitan Manila Development Authority, et al. v. Concerned Residents of Manila Bay, et al*.[35] is applicable because unlike the *Manila Bay* case, the petitioner, in this case, seeks to enforce international law and not domestic law.[36]

Issue

Simply, the issue before this Court is whether *mandamus* lies to compel the enforcement of the View.

Ruling of the Court

The petition is without merit.

Under Section 3, Rule 65 of the Rules of Court, *mandamus* is a writ issued to compel a tribunal to perform an act which the law enjoins as a duty resulting from an office, trust or station, to wit:

Section 3. *Petition for mandamus*. – **When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station**, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, **and there is no other plain, speedy and adequate remedy in the ordinary course of law**, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect

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[33] *Id.* at 194-197.

[34] *Id.* at 198.

[35] 595 Phil. 305 (2008).

[36] *Rollo*, pp. 199-202.

the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (Emphasis ours)

In *Yuvienco v. Hon. Canonoy, etc., et al.*,[37] and several times reiterated thereafter, the Court held that a purely ministerial duty must exist and a clear legal right must be established by the petitioner for *mandamus* to lie, to wit:

Two pertinent principles are well settled in this jurisdiction: (a) one is that mandamus would lie only to compel a tribunal, board or officer to comply with a purely ministerial duty, or to allow a party to exercise a right or to occupy and enjoy the privileges of an office to which he is lawfully entitled; (b) the others is that for the writ of mandamus to issue, petitioner must establish a clear legal right to the relief sought, and a mandatory duty on the part of the respondent in relation thereto.[38]

It behooves the Court to examine whether the View dated November 11, 2003 relied upon by Wilson confers upon him any legal right which the respondents are ministerially required to perform but have unlawfully neglected.

No Ministerial Duty

It is well-settled that a ministerial duty must be clear and specific as to leave no room for the exercise of discretion in its performance.[39] As stated in *Lord Allan Jay Q. Velasco v. Hon. Speaker Feliciano R. Belmonte, Jr., Secretary General Marilyn B. Barua-Yap and Regina Ongsiako Reyes*:[40]

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[37] 148-A Phil. 532 (1971).

[38] *Id.* at 537.

[39] *Lord Allan Jay Q. Velasco v. Hon. Speaker Feliciano R. Belmonte, Jr., Secretary General Marilyn B. Barua-Yap and Regina Ongsiako Reyes*, G.R. No. 211140, January 12, 2016.

[40] G.R. No. 211140, January 12, 2016.

A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.[41]

R.A. No. 7309 was passed on March 30, 1992 creating a BoC-DOJ to evaluate and investigate claims for compensation for persons who were: (1) unjustly accused, convicted and imprisoned but released by virtue of an acquittal; (2) unjustly detained and released without being charged; (3) a victim of arbitrary or illegal detention and released without being charged; and (4) victim of a violent crime.[42] Under R.A. No. 7309, compensation for victims of unjust imprisonment or detention will be based on the number of months of imprisonment. Compensation for each month of imprisonment shall not exceed ₱1,000.00.[43]

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[41] *Id.*

[42] Section 3. *Who may File Claims*. – The following may file claims for compensation before the Board:

(a) any person who was unjustly accused, convicted and imprisoned but subsequently released by virtue of a judgment of acquittal;

(b) any person who was unjustly detained and released without being charged;

(c) any victim of arbitrary or illegal detention by the authorities as defined in the Revised Penal Code under a final judgment of the court; and

(d) any person who is a victim of violent crimes. For purposes of this Act, violent crimes shall include rape and shall likewise refer to offenses committed with malice which resulted in death or serious physical and/or psychological injuries, permanent incapacity or disability, insanity, abortion, serious trauma, or committed with torture, cruelly or barbarity.

[43] Section 4. *Award Ceiling*. – For victims of unjust imprisonment or detention, the compensation shall be based on the number of months of imprisonment or detention and every fraction thereof shall be considered one month; Provided, however, That in no case shall such compensation exceed One Thousand pesos (₱1,000.00) per month.

It is clear, however, that Wilson has been granted compensation under R.A. No. 7309. In fact, the BoC-DOJ granted to Wilson the maximum allowed compensation under that law. It was Wilson's decision not to collect the money granted to him.

Other than the R.A. No. 7309, under which Wilson had already been granted compensation, there is no other law or regulation that forms the basis of such ministerial right that the government is impelled to grant. Wilson does not present any law by which his ministerial right arises from with respect to additional compensation. It is not within this Court's discretion to adjust any monetary grant arbitrarily.

There is No Clear and Complete Legal Right

On December 19, 1966, the RP became party to the ICCPR and the Optional Protocol.[44] The ICCPR recognized the "inherent dignity of the human person" and its concomitant rights. At the same time, the Philippines made a declaration that:

> The Philippine Government, in accordance with Article 41 of the said Covenant, recognizes the competence of the Human Rights Committee set up in the aforesaid Covenant, to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant.[45]

Pursuant to Article 41 of the ICCPR, the Committee was organized. Signatories recognized the competence of the Committee to receive and consider communications to the effect

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In all other cases, the maximum amount for which the Board may approve a claim shall not exceed Ten thousand pesos (₱10,000.00) or the amount necessary to reimburse the claimant the expenses incurred for hospitalization, medical treatment, loss of wage, loss of support or other expenses directly related to injury, whichever is lower. This is without prejudice to the right of the claimant to seek other remedies under existing laws.

[44] Pursuant to Article 49 of the ICCPR, the same went into force on March 23, 1976.

[45] <https://umich.edu/~psci160/PSI160/Readings/HumanRights/v_4.html> (visited June 9, 2016).

that a State Party claims that another State Party is not fulfilling its obligations under the ICCPR.[46] In addition, under Article 1 of the Optional Protocol, the State parties agreed to recognize the competence of the Committee to receive and consider communications from individuals who claim to be victims of a violation by that State Party of any rights set forth in the ICCPR. The Philippine Congress ratified the ICCPR on October 23, 1986 and the Optional Protocol on August 22, 1989.

As the OSG points out, the Court in the case of *Pharmaceutical and Health Care Association of the Philippines v. Health Sec. Duque III*[47] stated that a treaty is transformed into domestic law through a constitutional mechanism. The Court explained:

> Under the 1987 Constitution, international law can become part of the sphere of domestic law either by transformation or incorporation. The **transformation method** requires that **an international law be transformed into a domestic law through a constitutional mechanism such as local legislation**. The **incorporation method** applies when, by **mere constitutional declaration, international law is deemed to have the force of domestic law**.
>
> Treaties become part of the law of the land through transformation pursuant to Article VII, Section 21 of the Constitution which provides that "[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate." Thus, treaties or conventional international law must go through a process prescribed by the Constitution for it to be transformed into municipal law that can be applied to domestic conflicts.[48] (Citations omitted and emphasis ours)

In sum, there must be an act more than ratification to make a treaty applicable in our jurisdiction. To be sure, what was ratified were the ICCPR and the Optional Protocol, nowhere in the instrument does it say that the View of the Committee forms part of the treaty. Even the Committee in its General Comment No. 33 stated that:

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[46] ICCPR, Article 41(1).

[47] 561 Phil. 386 (2007).

[48] *Id.* at 397-398.

11. While the function of the Human Rights Committee in considering individual communications is not, as such, that of a judicial body, the views issued by the Committee under the Optional Protocol exhibit some important characteristics of a judicial decision. x x x.[49]

Any View issued by the Committee only displays "important characteristics of a judicial decision" and are not *per se* decisions which may be enforced outright. These Views, therefore, are mere recommendations to guide the State it is issued against.

Once again, the Court would like to stress that it is beyond its purview to act on such recommendations as these are matters which are best taken up by the Legislative and the Executive branches of government as can be seen by the formation of the Presidential Human Rights Committee.[50] To recall, the Court derives its powers under its basic mandate under Section 1, Article VIII of the 1987 Constitution:

> 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.

The Court finds that there is no ministerial duty and clear legal right which would justify the issuance of a writ of mandamus.

WHEREFORE, the petition is denied for lack of merit.

SO ORDERED.

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

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[49] <http://ohchr.org/english/bodies/hrc/docs/CCPR.C.GC.33.pdf> (visited June 9, 2016).

[50] The RP formed a Human Rights Committee under Administration Order No. 101 on December 13, 1988. On January 27, 2002, under A.O. No. 29, the Committee was renamed the Presidential Human Rights Committee.

SPECIAL FIRST DIVISION

[G.R. No. 189563. December 7, 2016]

GILAT SATELLITE NETWORKS, LTD., *petitioner, vs.* **UNITED COCONUT PLANTERS BANK GENERAL INSURANCE CO., INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; CONTRACT OF SURETY; SURETY'S LIABILITY TO THE CREDITOR IS PRIMARY AND ABSOLUTE.—** [A]lthough the contract of a surety is in essence secondary only to a valid principal obligation, the surety's liability to the creditor or the "promise'' of the principal is direct, primary and absolute. The surety becomes liable for the debt and duty of the principal obligor, even without possessing a direct or personal interest in the obligations constituted by the latter.

2. **ID.; ID.; ARBITRATION CLAUSE IN PURCHASE AGREEMENT, BINDING ONLY ON THE PARTIES THERETO.—** [R]espondent cannot invoke the arbitration clause, because it is not a party to the principal contract: the Purchase Agreement. An arbitration agreement, being contractual in nature, is binding only on the parties thereto, as well as their assigns and heirs.

3. **ID.; DAMAGES; INTEREST ON LEGAL INTEREST.—** [O]n the interest to be imposed, we agree with petitioner that interest on legal interest is due and demandable, pursuant to Article 2212 of the Civil Code. We have emphasized this rule in *PCI Leasing and Finance, Inc., v. Trojan Metal Industries, Inc*., when we said that Article 2212 had in fact been "incorporated in the comprehensive summary of existing rules on the computation of legal interest.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
Michael C. Ramirez for respondent.

RESOLUTION

SERENO, *C.J.*:

Before this Court is petitioner's Motion for Partial Reconsideration and/or For Clarification[1] and respondent's Motion for Reconsideration[2] of this Court's Decision dated 7 April 2014.[3] The Court reversed the Decision[4] and Resolution[5] of the Court of Appeals (CA) in CA-G.R. CV No. 89263, ordering petitioner and One Virtual Inc., to proceed to arbitration, the outcome of which shall bind the parties herein.

In Our Decision dated 7 April 2014, We held that as a surety to the principal contract between petitioner (seller) and One Virtual (buyer), respondent was liable to petitioner for the failure of One Virtual to pay for the equipment delivered to the latter as buyer under the Purchase Agreement.[6]

We stressed that respondent cannot invoke as a defense the arbitration clause in the Purchase Agreement, because the existence of a suretyship agreement does not give the surety (herein respondent) the right to intervene in the principal contract. The liability of the surety is direct, primary and absolute, and it may in fact be sued separately or together with the principal debtor.[7]

Consequently, We found respondent liable to petitioner for payment of the debt under the Surety Bond in the amount of one million two hundred thousand dollars (USD 1.2 million), and interest at the rate of 6% per annum from 5 June 2000

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[1] *Rollo*, pp. 536-549.

[2] *Id.* at 556-579.

[3] *Id.* at 523-535.

[4] *Id.* at 84-94.

[5] *Id.* at 95-96.

[6] *Id.* at 534.

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

until satisfaction of the obligation under the Suretyship Contract and Purchase Agreement.[8]

In its **Motion for Reconsideration**, respondent argues that while the liability of a surety is principal and direct, such liability presupposes the existence of a valid principal obligation.[9] In this case, there is a principal contract, but the obligations stated therein have not been complied with. There is allegedly no sufficient evidence on record to prove that petitioner was able to install and commission the equipment and deliver the software under the Purchase Agreement.[10] The fulfilment of petitioner's obligation under the Purchase Agreement would have given rise to the concomitant obligation of the debtor or surety to pay.[11] Petitioner, therefore, cannot demand payment if it has not complied with its obligations.[12]

Respondent also believes that the surety agreement must be applied and interpreted together with the principal contract, because the surety is bound by the terms and conditions thereof. Necessarily therefore, the surety — herein respondent — can invoke the arbitration clause found in the principal contract.[13]

Anent the awarded interest, respondent avers that the Court erred, because there is no evidence to prove that the delay caused by respondent in the payment of the supposed obligation to petitioner is inexcusable. Had the latter completed the delivery, installation and commissioning of the equipment and software, One Virtual would have made the proper payments, and respondent would not have incurred any delay.[14]

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[8] *Id.* at 534; *See also* p. 156.

[9] *Id.* at 558.

[10] *Id.* at 561.

[11] *Id.* at 569.

[12] *Id.* at 572.

[13] *Id.* at 566.

[14] *Id.* at 573.

Likewise, respondent contests the award of attorney's fees, in that the "mere fact that a party was compelled to litigate to protect its rights will not justify an award of attorney's fees under Article 2208 of the Civil Code when no sufficient showing of bad faith would be reflected in the other party's persistence in a case other than an erroneous conviction of righteousness of his cause."[15] Here, petitioner allegedly failed to present even "a shred of evidence to prove that respondent acted in gross and evident bad faith in denying the claim of petitioner under the Surety Agreement."[16] In fact, the lower court ruled that the delay incurred by respondent was excusable, because the latter received advice from One Virtual that petitioner had breached its obligation under the Purchase Agreement and should therefore not be paid.[17]

On the other hand, in its **Motion for Partial Reconsideration and/or for Clarification**, petitioner prays for the "reconsideration and/or clarification of the Decision with respect to: (i) the rate of legal interest due on the principal debt of US$1.2 Million; (ii) legal interest due on the accrued interest on the principal debt as of the filing of the Complaint; and (iii) the legal interest due on the total award (*i.e.*, principal, interest, interest on interest, and the attorney's fees and litigation expenses) from finality of the Decision until full payment thereof."[18]

In particular, petitioner insists that while the Court correctly held that respondent's obligation started to run from 5 June 2000 (the date of the extrajudicial demand), the imposed legal interest of 6%, by virtue of *Bangko Sentral* Circular No. 799 (effective 30 June 2013, series of 2013), must be imposed prospectively. Accordingly, the legal interest of 12% per annum

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[15] *Id.* at 575.

[16] *Id.* at 576.

[17] *Id.*

[18] *Id.* at 536-537.

must be applied from 5 June 2000 up to 30 June 2013, and 6% per annum from 1 July 2013 until full payment.[19]

Petitioner also points out that whatever interest is due shall itself earn legal interest from the time it is judicially demanded, in accordance with Article 2210 of the Civil Code.[20] It then claims "interest on the accrued interest on the principal debt as of the filing of the Complaint on [23 April 2002] when Gilat judicially demanded payment of interest due on the principal debt,"[21] as follows:

> 13. As of [23 April 2002], the accrued interest on the principal debt of US$1.2 Million (computed from 5 June 2000) is US$270,270. This is computed as follows: US$1.2 Million x 12% x 1.88 years = US$270,270.
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> x x x x x x x x x
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> (a) 12% per annum from [23 April 2002] up to 30 June 2013 (*i.e.*, US$270,270 x 12% x 11.19 years US$363,522.82); and
>
> (b) 6% per annum on US$270,270 from 1 July 2013 until finality of judgment.[22]

Moreover, petitioner insists that when a monetary judgment becomes final and executory, it shall earn legal interest from the date of its fina1ity until its satisfaction. Gilat prays that the "Decision expressly state the legal interest of 6% shall be due from finality until satisfaction, not only on the principal debt but also on the accrued interest, interest on interests, and on the award of attorney's fees and litigation expenses."[23]

Overall, the Court is being asked to modify the Decision by ordering respondent to pay petitioner the following amounts:

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[19] *Id.* at 537.

[20] *Id.* at 540.

[21] *Id.* at 541.

[22] *Id.*

[23] *Id.* at 543.

(a) US$1.2 Million representing the principal debt under the Surety Bond;

(b) US$1,882,080 representing legal interest on the principal debt of US$1.2 Million computed at 12% per annum from June 5, 2000 up to June 30, 2013;

(c) Legal interest on the principal debt of US$1.2 Million computed at 6% per annum from July 1, 2013 until finality of judgment;

(d) US$363,522.82 representing legal interest on the accrued interest of US$270,270 (*i.e.*, the accrued interest on the principal debt as of the date of the filing of the Complaint on April 23, 2002) computed at 12% per annum from April 12, 2002 up to June 30, 2013:

(e) Legal interest on US$270,270 (*i.e.*, the accrued interest on the principal debt as of the date of the filing of the Complaint on April 23, 2002) computed at 6% per annum from July 1, 2014 until finality of judgment;

(f) US$44,004.04 representing attorney's fees and litigation expenses; and

(g) Legal interest on the total amount due (*i.e.*, the sum of all the foregoing) as of the date of finality of judgment computed at 6% per annum from the date of finality until full satisfaction of the total amount due.[24]

We agree with petitioner on all points.

First, We reiterate our ruling that although the contract of a surety is in essence secondary only to a valid principal obligation, the surety's liability to the creditor or the "promise" of the principal is direct, primary and absolute.[25] The surety becomes liable for the debt and duty of the principal obligor, even without possessing a direct or personal interest in the obligations constituted by the latter.[26]

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[24] *Id.* at 545.

[25] *Id.* at 530.

[26] *Id.*

It bears stressing that petitioner did in fact deliver the equipment and licensing, but that the commissioning was not completed because One Virtual was already in default at that time.[27] Had the latter paid its obligation on time, then petitioner would not have been forced to stop the commissioning.[28] Unfortunately, respondent miserably failed to debunk this argument when it presented witnesses who had no personal knowledge of petitioner's alleged breach of contract.[29] The trial court rightly treated these testimonies as hearsay.[30]

Accordingly, respondent cannot invoke the arbitration clause, because it is not a party to the principal contract: the Purchase Agreement.[31] An arbitration agreement, being contractual in nature, is binding only on the parties thereto, as well as their assigns and heirs.[32] We have explained this exhaustively in Our Decision dated 7 April 2014, but we deem it necessary to reiterate the relevant portions, to wit:

> *First*, we have held in *Stronghold Insurance Co. Inc. v. Tokyu Construction Co. Ltd.*, that "[the] acceptance [of a surety agreement], however, does not change in any material way the creditor's relationship with the principal debtor nor does it make the surety an active party to the principal creditor-debtor relationship. In other words, the acceptance does not give the surety the right to intervene in the principal contract. The surety's role arises only upon the debtor's default, at which time, it can be directly held liable by the creditor for payment as a solidary obligor." Hence, the surety remains a stranger to the Purchase Agreement. We agree with petitioner that respondent cannot invoke in its favor the arbitration clause in the Purchase Agreement, because it is not a party to that contract. An arbitration agreement being contractual in nature, it is binding only on the parties thereto, as well as their assigns and heirs.

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[27] *Id.* at 530, 533.

[28] *Id.*

[29] *Id.* at 155.

[30] *Id.*

[31] *Id.* at 529-531.

[32] *Id.*

Second, Section 24 of Republic Act No. 9285 is clear in stating that a referral to arbitration may only take place "if at least one party so requests not later than the pre-trial conference, or upon the request of both parties thereafter." Respondent has not presented even an iota of evidence to show that either petitioner or One Virtual submitted its contesting claim for arbitration. In no way can respondent be allowed to hide behind the cloak of the arbitration agreement, because it is not a party thereto, and there is no referral to arbitrate.

Third, sureties do not insure the solvency of the debtor, but rather the debt itself. They are contracted precisely to mitigate risks of non-performance on the part of the obligor. This responsibility necessarily places a surety on the same level as that of the principal debtor. The effect is that the creditor is given the right to directly proceed to either principal debtor or surety. This is the reason why excussion cannot be invoked. To require the creditor to proceed to arbitration would render the very essence of suretyship nugatory and diminish its value in commerce. At any rate, as we have held in *Palmares v. Court of Appeals*, "if the surety is dissatisfied with the degree of activity displayed by the creditor in the pursuit of his principal, he may pay the debt himself and become subrogated to all the rights and remedies of the creditor."[33] [Emphasis and citation omitted]

Second, on the issue of whether or not there is inexcusable delay, We have already pointed out that petitioner presented sufficient evidence to prove that it had complied with the terms and conditions under the Purchase Agreement.[34] The deposition of Mr. Erez Antebi, vice president of Gilat, repeatedly stated that petitioner had delivered all the equipment, including the licensed software; and that the equipment had been installed and, in fact, gone into operation. Notwithstanding these compliances, respondent still failed to pay.[35] Assuming *arguendo* that the commissioning work was not completed, respondent has no one to blame but its principal, One Virtual; if only the latter had paid its obligation on time, petitioner would not have been forced to stop operations.[36]

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[33] *Id.* at 530-531.

[34] *Id.* at 533.

[35] *Id.*

[36] *Id.*

It may not be amiss to point out that mere advice from buyer One Virtual, Inc. that petitioner did not complete the installation, testing and commissioning of the ordered equipment, cannot constitute a solid defense without any effort on the part of respondent to verify the claim. It would be the height of injustice to excuse the latter from its liability simply because it received unverified advice from One Virtual, Inc. – advice that is, at best, self-serving evidence. To accept respondent's defense would run counter to the purpose of sureties, whose liability is direct, primary and absolute.

Third, on the interest to be imposed, we agree with petitioner that interest on legal interest is due and demandable, pursuant to Article 2212 of the Civil Code.[37] We have emphasized this rule in *PCI Leasing and Finance, Inc., v. Trojan Metal Industries,Inc.*,[38] when we said that Article 2212 had in fact been "incorporated in the comprehensive summary of existing rules on the computation of legal interest laid down by the Court in *Eastern Shipping Lines, Inc. v. Court of Appeals*,"[39] as follows:

> In accordance with the rules laid down in *Eastern Shipping Lines, Inc. v. Court of Appeals* [citation omitted], we derive the following formula for the RTC's guidance:
>
> TOTAL AMOUNT DUE = [principal - partial payments made] + [interest + interest on interest], where
>
> Interest = remaining balance x 12% per annum x no. of years from due date (8 December 1998 when demand was made) until date of sale to a third party
>
> Interest on interest = interest computed as of the filing of the complaint on 7 May 1999 x 12% x no. of years until date of sale to a third party.[40]

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[37] CIVIL CODE, Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

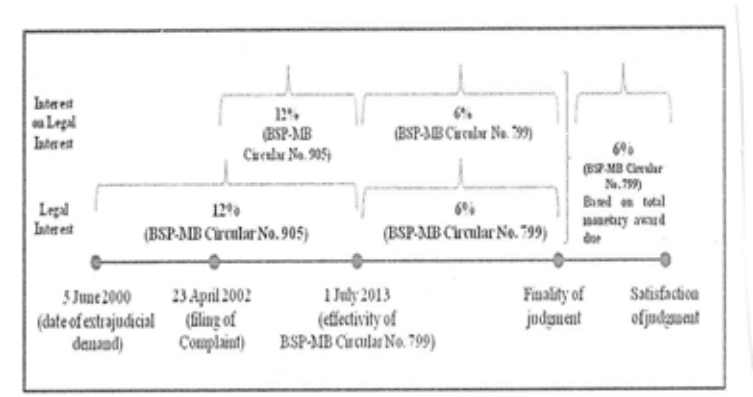
[38] G.R. No. 176381, 653 Phil. 296 (2010).

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

[40] *Supra* note 8, at 311-312.

While *Bangko Sentral*-Monetary Board Circular No. 799 (Series of 2013) modified the legal interest rate from 12% to 6% per annum, the interest must be applied prospectively in accordance with the Court's pronouncements in *Nacar v. Gallery Frames*.[41]

Applying the ruling above, We recompute the interests due petitioner, as follows:



1. the amount of USD 1.2 million representing the principal debt under the Surety Bond;
2. legal interest of 12% *per annum* of the principal amount of USD 1.2 million reckoned from 5 June 2000 until 30 June 2013;
3. legal interest of 6% *per annum* on the principal amount of USD 1.2 million from 1 July 2013 to date when this Decision becomes final and executory;
4. 12% *per annum* applied to the sum of the interests stated in paragraphs 2 and 3 from 23 April 2002, the date of judicial demand, to 30 June 2013, as interest due earning legal interest;

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[41] G.R. No. 189871, 13 August 2013, 703 SCRA 439.

5. 6% *per annum* applied to the sum of the interests stated in paragraphs 2 and 3 from 1 July 2013 to date, when this Decision becomes final and executory, as interest due earning legal interest; and
6. interest of 6% *per annum* on the total of the monetary awards in paragraphs 1 to 5, from the finality of this Decision until full payment thereof.

We do not deem it necessary to discuss in detail the award of attorney's fees and litigation expenses awarded to petitioner, this matter having been sufficiently threshed out by the trial court as follows:

> The court grants the claim of attorney's fees and expenses in the total amount of Forty Four Thousand Four Dollars and Four Cents (US$44,004.04) as having been sufficiently established by the plaintiff ***(Exhibits "I"to "SS"- "SS-2", and as testified to by Mr. Rizalino Castillo)***.[42] [Emphasis theirs]

WHEREFORE, in view of the foregoing, we **DENY** respondent's Motion for Reconsideration, **GRANT** petitioner's Motion for Partial Reconsideration and/or for Clarification, and **AFFIRM WITH MODIFICATION** our Decision dated 7 April 2014. Respondent United Coconut Planters Bank General Insurance Co., Inc. is ordered to pay petitioner Gilat Satellite Networks, Ltd. the following:

1. The amount of USD 1.2 million representing the principal debt under the Surety Bond;
2. Legal interest of 12% *per annum* of the principal amount of USD 1.2 million reckoned from 5 June 2000 until 30 June 2013;
3. Legal interest of 6% *per annum* of the principal amount of USD 1.2 million from 1 July 2013 to date, when this Decision becomes final and executory;
4. 12% *per annum* applied to the sum of the interests stated in paragraphs 2 and 3 from 23 April 2002, the date of

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[42] *Rollo*, p. 156.

judicial demand, to 30 June 2013, as interest due earning legal interest;

5. 6% *per annum* applied to the sum of the interests stated in paragraphs 2 and 3 from 1 July 2013 to date, when this Decision becomes final and executory, as interest due earning legal interest;
6. interest of 6% *per annum* on the total of the monetary awards in paragraphs 1 to 5, from the finality of this Decision until full payment thereof; and
7. The amount of forty-four thousand four dollars and four cents (USD 44,004.04) representing attorney's fees and litigation expenses.

SO ORDERED.

Leonardo-de Castro, Bersamin, Reyes, and *Caguioa*,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 191856. December 7, 2016]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE BUREAU OF INTERNAL REVENUE (BIR), *petitioner, vs.* **GMCC UNITED DEVELOPMENT CORPORATION, JOSE C. GO, and XU XIAN CHUN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE COURT DOES NOT INTERFERE

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[*] Pursuant to the third paragraph. Sec. 7, Rule 2 of the Internal Rules of the Supreme Court, as amended.

IN THE CONDUCT OF PRELIMINARY INVESTIGATIONS, AS THE DUTY THEREOF IS CONFINED TO A DETERMINATION OF WHETHER THE ASSAILED EXECUTIVE OR JUDICIAL DETERMINATION OF PROBABLE CAUSE WAS DONE WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO WANT OF JURISDICTION.— [T]his Court has a policy of non-interference in the conduct of preliminary investigations. In *First Women's Credit Corporation v. Baybay* the Court said: It is settled that the determination of whether probable cause exists to warrant the prosecution in court of an accused should be consigned and entrusted to the Department of Justice, as reviewer of the findings of public prosecutors. The court's duty in an appropriate case is confined to a determination of whether the assailed executive or judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final, albeit in extreme cases, exceptional circumstances have been recognized. The rule is also consistent with this Court's policy of non-interference in the conduct of preliminary investigations, and of leaving to the investigating prosecutor sufficient latitude of discretion in the exercise of determination of what constitutes sufficient evidence as will establish probable cause for the filing of an information against a supposed offender. While prosecutors are given sufficient latitude of discretion in the determination of probable cause, their findings are subject to review by the Secretary of Justice. Once a complaint or information is filed in court, however, any disposition of the case, *e.g.*, its dismissal or the conviction or acquittal of the accused rests on the sound discretion of the Court.

2. ID.; ID.; ID.; ID.; BEFORE JUDICIAL RELIEF FROM A DISCRETIONARY PROSECUTORIAL ACTION MAY BE OBTAINED, THE PETITIONER MUST ESTABLISH THAT THE PROSECUTOR EXERCISED HIS POWER IN AN ARBITRARY AND DESPOTIC MANNER BY REASON OF PASSION OR PERSONAL HOSTILITY, AND IT MUST BE SO PATENT AND GROSS AS TO AMOUNT TO AN EVASION OR TO A UNILATERAL REFUSAL TO PERFORM THE DUTY ENJOINED OR TO ACT IN

CONTEMPLATION OF LAW.— [A] prosecutor's grave abuse of discretion in dismissing a case must be clearly shown before the Courts can intervene. *Elma v Jacobi*, explained: The necessary component of the Executive's power to faithfully execute the laws of the land is the State's self-preserving power to prosecute violators of its penal laws. This responsibility is primarily lodged with the DOJ, as the principal law agency of the government. The prosecutor has the discretionary authority to determine whether facts and circumstances exist meriting reasonable belief that a person has committed a crime. The question of whether or not to dismiss a criminal complaint is necessarily dependent on the sound discretion of the investigating prosecutor and, ultimately, of the Secretary (or Undersecretary acting for the Secretary) of Justice. Who to charge with what crime or none at all is basically the prosecutor's call. Accordingly, the Court has consistently adopted the policy of non-interference in the conduct of preliminary investigations, and to leave the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause. Courts cannot order the prosecution of one against whom the prosecutor has not found a *prima facie* case; as a rule, courts, too, cannot substitute their own judgment for that of the Executive. In fact, the prosecutor may err or may even abuse the discretion lodged in him by law. This error or abuse alone, however, does not render his act amenable to correction and annulment by the extraordinary remedy of *certiorari*. To justify judicial intrusion into what is fundamentally the domain of the Executive, the petitioner must clearly show that the prosecutor gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached. This requires the petitioner to establish that the prosecutor exercised his power in an arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law, before judicial relief from a discretionary prosecutorial action may be obtained. Based on the foregoing, absent any indication that the Secretary of Justice gravely abused his discretion in not finding probable cause for the complaint against respondent officers to prosper, the dismissal stands.

3. TAXATION; NATIONAL INTERNAL REVENUE CODE; ASSESSMENT AND COLLECTION OF TAXES; PERIOD OF LIMITATION; PURPOSE.— The power of the Commissioner of Internal Revenue to assess and collect taxes is provided under Section 2 of the National Internal Revenue Code x x x . However, this power to assess and collect taxes is limited by Section 203 of the National Internal Revenue Code: SEC. 203. Period of Limitation Upon Assessment and Collection. - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. x x x. The Court, in *Republic v. Ablaza*, explained the purpose behind this limitation: The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense[,] taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend the approval of the law.

4. ID.; ID.; ID.; ID.; FOR THE TEN-YEAR PRESCRIPTIVE PERIOD TO APPLY, IT IS NOT ENOUGH THAT FRAUD IS ALLEGED IN THE COMPLAINT, THE BUREAU OF INTERNAL REVENUE MUST ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT THE TAXPAYER FILED A FRAUDULENT RETURN WITH INTENT TO EVADE PAYMENT OF TAX.— In arguing for the application of the 10-year prescriptive period, petitioner claims that the

tax return in this case is fraudulent and thus, the three-year prescriptive period is not applicable. Petitioner fails to convince that respondents filed a fraudulent tax return. The respondents may have erred in reporting their tax liability when they recorded the assailed transactions in the wrong year, but such error stemmed from the wrong application of the law and is not an indication of their intent to evade payment. If there were really an intent to evade payment, respondents would not have reported and subsequently paid the income tax, albeit in the wrong year. In *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*, the Court emphasized that the Bureau of Internal Revenue must show that the return was filed fraudulently with intent to evade payment. The Court ruled: x x x. Since the BIR failed to demonstrate clearly that private respondent had filed a fraudulent return with the intent to evade tax, or that it had failed to file a return at all, the period for assessments has obviously prescribed. Such instances of negligence or oversight on the part of the BIR cannot prejudice taxpayers, considering that the prescriptive period was precisely intended to give them peace of mind. For the ten-year period under Section 222(a) to apply, it is not enough that fraud is alleged in the complaint, it must be established by clear and convincing evidence. The petitioner, having failed to discharge the burden of proving fraud, cannot invoke Section 222(a).

5. ID.; ID.; ID.; ID.; AFTER THE EXPIRATION OF THE THREE-YEAR PERIOD, THE BUREAU OF INTERNAL REVENUE IS PROHIBITED FROM MAKING AN ASSESSMENT FOR THE COLLECTION OF THE TAXES IN THE RETURN, AND INITIATING A COURT PROCEEDING ON THE BASIS OF SUCH RETURN.— Having settled that the case falls under Section 203 of the Tax Code, the three-year prescriptive period should be applied. In GMCC's case, the last day prescribed by law for filing its 1998 tax return was April 15, 1999. The petitioner had three years or until 2002 to make an assessment. Since the Preliminary Assessment was made only on December 8, 2003, the period to assess the tax had already prescribed. A reading of Section 203 will show that it prohibits two acts after the expiration of the three-year period. First, an assessment for the collection of the taxes in the return, and second, initiating a court proceeding on the basis of such return. The State Prosecutor was correct in dismissing the complaint for tax evasion since it was clear that the prescribed return cannot be used as basis for the case.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Pacheco Law Offices for respondents.

D E C I S I O N

LEONEN, *J.*:

Before this Court is a Petition for Review on Certiorari[1] assailing the Court of Appeals' Decision[2] dated September 8, 2009 and Resolution[3] dated March 30, 2010 in CA-G.R. SP No. 100380. The Court of Appeals affirmed the May 26, 2006 Resolution[4] of the Department of Justice, which dismissed the criminal complaint for tax evasion filed by the Bureau of Internal Revenue against GMCC United Development Corporation's corporate officers on the ground that the period to assess the tax had already prescribed.[5]

On March 28, 2003, the Bureau of Internal Revenue National Investigation Division issued a Letter of Authority, authorizing its revenue officers to examine the books of accounts and other accounting records of GMCC United Development Corporation (GMCC) covering taxable years 1998 and 1999.[6] On April 3, 2003 GMCC was served a copy of said Letter of Authority and was requested to present its books of accounts and other accounting records.[7] GMCC failed to respond to the Letter of

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[1] *Rollo*, pp. 32-72.

[2] *Id.* at 9-24. The Decision was penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Celia C. Librea-Leagogo and Priscilla J. Baltazar-Padilla of the Eighth Division, Court of Appeals Manila.

[3] *Id.* at 516-517.

[4] *Id.* at 211-223.

[5] *Id.* at 211-223.

[6] *Id.* at 10.

[7] *Id.*

Authority as well as the subsequent letters requesting that its records and documents be produced.[8]

Due to GMCC's failure to act on the requests, the Assistant Commissioner of the Enforcement Service of the Bureau of Internal Revenue issued a Subpoena *Duces Tecum* on GMCC president, Jose C. Go (Go).[9] When GMCC still failed to comply with the Subpoena *Duces Tecum*, the revenue officers were constrained to investigate GMCC through Third Party Information.[10]

The investigation revealed that in 1998, GMCC, through Go, executed two *dacion en pago* agreements to pay for the obligations of GMCC's sister companies, Ever Emporium, Inc., Gotesco Properties, Inc. and Ever Price Club, Inc., to Rizal Commercial Banking Corporation.[11] GMCC allegedly failed to declare the income it earned from these agreements for taxation purposes in 1998.[12] Moreover, these transactions constituted a donation in favor of GMCC's sister companies for which GMCC failed to pay the corresponding donor's tax.[13] The BIR also assessed the value added tax over the said transactions.[14]

It was also discovered that in 1999, GMCC sold condominium units and parking slots for a total amount of ₱5,350,000.00 to a Valencia K. Wong.[15] However, GMCC did not declare the income it earned from these transactions in its 1999 Audited Financial Statements.[16]

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

[9] *Id.* at 11.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 11-12.

[13] *Id.* at 12.

[14] *Id.*

[15] *Id.*

[16] *Id.*

Thus, on November 17, 2003, the Bureau of Internal Revenue issued a Notice to Taxpayer to GMCC, which GMCC ignored.[17] On December 8, 2003, the Bureau of Internal Revenue issued a Preliminary Assessment Notice.[18] It was only when the Bureau of Internal Revenue issued the Final Assessment Notice that GMCC responded.[19] In a Letter dated November 23, 2004, GMCC protested the issuance of the Final Assessment Notice citing that the period to assess and collect the tax had already prescribed. The Bureau of Internal Revenue denied the protest in a Final Decision dated February 10, 2005.[20]

In light of the discovered tax deficiencies, the Bureau of Internal Revenue, on October 7, 2005, filed with the Department of Justice a criminal complaint for violation of Sections 254,[21] 255,[22]

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[17] *Id.* at 13.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] TAX CODE, Sec. 254 provides:

SEC. 254. Attempt to Evade or Defeat Tax. – Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to the other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (₱30,000.00) but not more than One hundred thousand pesos (₱100,000.00) and suffer imprisonment of not less than two (2) years but not more than four (4) years: *Provided*, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

[22] TAX CODE, Sec. 255 provides:

SEC. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided

and 267,[23] of the National Internal Revenue Code against GMCC, its president, Jose C. Go, and its treasurer, Xu Xian Chun.[24]

In his Counter-Affidavit, Go prayed that the complaint be dismissed, arguing, among others, that the action had already prescribed and that GMCC did not defraud the government.[25] Assuming that the period to assess had not yet prescribed, GMCC argued that there was nothing to declare since it earned no income from the *dacion en pago* transactions.[26] Furthermore, even though the *dacion en pago* transactions were not included in the GMCC 1998 Financial Statement, they had been duly reflected in the GMCC 2000 Financial Statement.

On May 26, 2006, the Department of Justice, through the Chief State Prosecutor, issued a Resolution[27] dismissing the

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by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years. Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefore, be punished by a fine of not less than Ten thousand pesos (₱10,000) but not more than Twenty thousand pesos (₱20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

[23] TAX CODE, Sec. 267 provides:

SEC. 267. Declaration under Penalties of Perjury. – Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

[24] *Rollo*, p. 130.

[25] *Rollo*, p. 13.

[26] *Id.* at 14.

[27] *Id.* at 211-223. The Resolution was signed by State Prosecutor Melvin J. Abad and approved by Assistant Chief State Prosecutor Miguel F. Gudio, Jr., and Chief State Prosecutor Jovencito R. Zuño.

criminal complaint against the GMCC officers. The State Prosecutor ruled that there was no proof that GMCC defrauded the government. The Bureau went beyond its authority when it assessed and issued the Letter of Authority knowing that the period to assess had already lapsed. Moreover, the prosecutor ruled that since GMCC did not gain from the assailed transactions, the imposition of income, VAT, and donor's taxes were improper.[28] The dispositive portion of the Resolution reads:

> All told, we find no probable cause to warrant indictment of respondents for violation of Sections 254, 255 and 267 of the National Internal Revenue Code of 1997.
>
> **WHEREFORE**, it is respectfully recommended that the instant complaint be **DISMISSED**.[29]

The Bureau of Internal Revenue filed a Motion for Reconsideration,[30] which the Department of Justice denied in the Resolution dated August 31, 2006.[31]

Aggrieved, the Bureau of Internal Revenue filed before the Court of Appeals a Petition for Certiorari.[32] The Bureau argued that the Department of Justice gravely abused its discretion in dismissing the criminal complaint against GMCC's officers. On September 8, 2009, the Court of Appeals denied the Petition and affirmed *in toto* the Department of Justice's Resolution. The dispositive portion of the Decision[33] reads:

> **WHEREFORE**, the foregoing considered, the instant petition is hereby **DISMISSED** and the assailed resolutions **AFFIRMED** *in toto*. No costs.
>
> **SO ORDERED.**[34]

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[28] *Id.* at 222.

[29] *Id.* at 222-223.

[30] *Id.* at 224-239.

[31] *Id.* at 266-267.

[32] *Id.* at 32-72.

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

[34] *Id.* at 24.

The Bureau of Internal Revenue moved for reconsideration, but it was denied in the Resolution[35] dated March 30, 2010.

Petitioner Bureau of Internal Revenue is now before this Court, insisting that the Court of Appeals erred in finding that the applicable period of prescription in its case is the three-year period under Section 203 of the NIRC and not the ten-year prescriptive period under Section 222.[36]

The issues before us are as follows:

First, whether the Court of Appeals erred in declaring that the Secretary of Justice did not commit grave abuse of discretion when he found no probable cause and dismissed the tax evasion case against the respondent officers of GMCC.

Second, whether the applicable prescriptive period for the tax assessment is the ten-year period or the three-year period.

The Petition must be denied.

I

We are convinced that the Court of Appeals committed no reversible error in affirming the ruling of the Secretary of Justice that there was no probable cause to file a tax evasion case against the respondent officers. Since the assessment for the tax had already prescribed, no proceeding in court on the basis of such return can be filed.

The petitioner filed a criminal complaint against respondents for violating Articles 254, 255, and 267 of the National Internal Revenue Code. The Articles provide:

SEC. 254. Attempt to Evade or Defeat Tax. – Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to the other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Thirty thousand pesos (₱30,000.00) but not more than One hundred thousand pesos (₱100,000.00) and suffer

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[35] *Id.* at 90-91.

[36] *Id.* at 63-65.

imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

SEC. 255. Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation. – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of an internal revenue office wherein the same was actually filed shall, upon conviction therefore, be punished by a fine of not less than Ten thousand pesos (₱10,000) but not more than Twenty thousand pesos (₱20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

SEC. 267. Declaration under Penalties of Perjury. - Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

In ruling that there was no probable cause to indict the respondent officers for the acts charged, the Court of Appeals said there was no clear showing that there was deliberate intent on the part of the respondents to evade payment of the taxes.

Both the State Prosecutor[37] and the Court of Appeals[38] emphasized that if respondents really intended to evade payment, they would have omitted the assailed transactions completely in all their financial statements. We agree.

As it stands, while the *dacion en pago* transactions were missing in the GMCC 1998 Financial Statement, they had been listed in the GMCC 2000 Financial Statement.[39] Respondents' act of filing and recording said transactions in their 2000 Financial Statement belie the allegation that they intended to evade paying their tax liability. Petitioner's contention that the belated filing is a mere afterthought designed to make it appear that the non-reporting was not deliberate, does not persuade considering that the filing of the 2000 Financial Statement was done prior to the issuance of the March 2003 Letter of Authority, which authorized the investigation of GMCC's books.[40]

In any case, this Court has a policy of non-interference in the conduct of preliminary investigations. In *First Women's Credit Corporation v. Baybay*[41] the Court said:

> It is settled that the determination of whether probable cause exists to warrant the prosecution in court of an accused should be consigned and entrusted to the Department of Justice, as reviewer of the findings of public prosecutors. The court's duty in an appropriate case is confined to a determination of whether the assailed executive or judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final, albeit in extreme cases, exceptional circumstances have been recognized. The rule is also consistent with this Court's policy of

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[37] *Id.* at 221.

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

[39] *Id.* at 20.

[40] *Id.*

[41] *First Women's Credit Corporation v. Baybay*, 542 Phil. 607 (2007) [Per *J.* Carpio-Morales, Second Divison].

non-interference in the conduct of preliminary investigations, and of leaving to the investigating prosecutor sufficient latitude of discretion in the exercise of determination of what constitutes sufficient evidence as will establish probable cause for the filing of an information against a supposed offender. While prosecutors are given sufficient latitude of discretion in the determination of probable cause, their findings are subject to review by the Secretary of Justice.

Once a complaint or information is filed in court, however, any disposition of the case, *e.g.*, its dismissal or the conviction or acquittal of the accused rests on the sound discretion of the Court.[42]

Moreover, a prosecutor's grave abuse of discretion in dismissing a case must be clearly shown before the Courts can intervene. *Elma v. Jacobi*,[43] explained:

The necessary component of the Executive's power to faithfully execute the laws of the land is the State's self-preserving power to prosecute violators of its penal laws. This responsibility is primarily lodged with the DOJ, as the principal law agency of the government. The prosecutor has the discretionary authority to determine whether facts and circumstances exist meriting reasonable belief that a person has committed a crime. The question of whether or not to dismiss a criminal complaint is necessarily dependent on the sound discretion of the investigating prosecutor and, ultimately, of the Secretary (or Undersecretary acting for the Secretary) of Justice. Who to charge with what crime or none at all is basically the prosecutor's call.

Accordingly, the Court has consistently adopted the policy of non-interference in the conduct of preliminary investigations, and to leave the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause. Courts cannot order the prosecution of one against whom the prosecutor has not found a prima facie case; as a rule, courts, too, cannot substitute their own judgment for that of the Executive.

In fact, the prosecutor may err or may even abuse the discretion lodged in him by law. This error or abuse alone, however, does not

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[42] *Id.* at 614-615.

[43] *Elma v. Jacobi*, 689 Phil. 307 (2012) [Per *J.* Brion, Second Division].

render his act amenable to correction and annulment by the extraordinary remedy of certiorari. To justify judicial intrusion into what is fundamentally the domain of the Executive, the petitioner must clearly show that the prosecutor gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached. This requires the petitioner to establish that the prosecutor exercised his power in an arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law, before judicial relief from a discretionary prosecutorial action may be obtained.[44]

Based on the foregoing, absent any indication that the Secretary of Justice gravely abused his discretion in not finding probable cause for the complaint against respondent officers to prosper, the dismissal stands.

II

As to the issue on the applicable prescriptive period, it is the three-year prescriptive period that applies in this case.

The power of the Commissioner of Internal Revenue to assess and collect taxes is provided under Section 2 of the National Internal Revenue Code:

SEC. 2. Powers and Duties of the Bureau of Internal Revenue – The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.

The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.

However, this power to assess and collect taxes is limited by Section 203 of the National Internal Revenue Code:

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[44] *Id.* at 340-342.

SEC. 203. Period of Limitation Upon Assessment and Collection. – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed.

For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

The Court, in *Republic v. Ablaza*,[45] explained the purpose behind this limitation:

> The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and to its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. Without such a legal defense[,] taxpayers would furthermore be under obligation to always keep their books and keep them open for inspection subject to harassment by unscrupulous tax agents. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficient purpose of affording protection to the taxpayer within the contemplation of the Commission which recommend the approval of the law.[46]

Petitioner contends that Section 203 finds no application in this case and insists that it is Section 222 of the same Code, which should be applied. Section 222 in part states:

SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –

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[45] *Republic v. Ablaza*, 108 Phil. 1105 (1960) [Per J. Labrador, *En Banc*].

[46] *Id.* at 1108.

> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

In arguing for the application of the 10-year prescriptive period, petitioner claims that the tax return in this case is fraudulent and thus, the three-year prescriptive period is not applicable.[47]

Petitioner fails to convince that respondents filed a fraudulent tax return. The respondents may have erred in reporting their tax liability when they recorded the assailed transactions in the wrong year, but such error stemmed from the wrong application of the law and is not an indication of their intent to evade payment. If there were really an intent to evade payment, respondents would not have reported and subsequently paid the income tax, albeit in the wrong year.

In *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*,[48] the Court emphasized that the Bureau of Internal Revenue must show that the return was filed fraudulently with intent to evade payment. The Court ruled:

> Ineludibly, the BIR failed to show that private respondent's 1974 return was filed fraudulently with intent to evade the payment of the correct amount of tax. Moreover, even though a donor's tax, which is defined as "a tax on the privilege of transmitting one's property or property rights to another or others without adequate and full valuable consideration," is different from capital gains tax, a tax on the gain from the sale of the taxpayer's property forming part of capital assets, the tax return filed by private respondent to report its income for the year 1974 was sufficient compliance with the legal

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[47] *Rollo*, p. 50.

[48] *Commissioner of Internal Revenue v. B.F. Goodrich Phils., Inc.*, 363 Phil. 169 (1999) [Per *J.* Panganiban, Third Division].

requirement to file a return. In other words, the fact that the sale transaction may have partly resulted in a donation does not change the fact that private respondent already reported its income for 1974 by filing an income tax return.

Since the BIR failed to demonstrate clearly that private respondent had filed a fraudulent return with the intent to evade tax, or that it had failed to file a return at all, the period for assessments has obviously prescribed. Such instances of negligence or oversight on the part of the BIR cannot prejudice taxpayers, considering that the prescriptive period was precisely intended to give them peace of mind.[49]

As found by the Court of Appeals, there is no clear and deliberate intent to evade payment of taxes in relation to the *dacion en pago* transactions[50] or on the sale transaction with Valencia Wong.[51] The *dacion en pago* transactions, though not included in the 1998 Financial Statement, were properly listed in GMCC's Financial Statement for the year 2000.[52] Regarding the sale transaction with Valencia Wong, the respondents said that it was not reflected in the year 1999 because it was an installment sale. Units sold on installment, they explained, are recognized not in the year they are fully paid, but in the year when at least 25% of the selling price is paid.[53] In this instance, the unit and the parking lot were sold prior to 1996, thus, in the Schedule of Unsold Units filed by GMCC as of December 31, 1996, the said properties were no longer included.[54]

For the ten-year period under Section 222(a) to apply, it is not enough that fraud is alleged in the complaint, it must be established by clear and convincing evidence.[55] The petitioner,

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[49] *Id.* at 180.

[50] *Rollo*, p. 20.

[51] *Id.* at 21.

[52] *Id.* at 20.

[53] *Id.* at 150.

[54] *Id.*

[55] *Republic v. Lim De Yu*, 119 Phil. 1013, 1015-1016 (1964) [Per *J.* Makalintal, *En Banc*].

having failed to discharge the burden of proving fraud, cannot invoke Section 222(a).

Having settled that the case falls under Section 203 of the Tax Code, the three-year prescriptive period should be applied. In GMCC's case, the last day prescribed by law for filing its 1998 tax return was April 15, 1999.[56] The petitioner had three years or until 2002 to make an assessment. Since the Preliminary Assessment was made only on December 8, 2003, the period to assess the tax had already prescribed.

A reading of Section 203 will show that it prohibits two acts after the expiration of the three-year period. First, an assessment for the collection of the taxes in the return, and second, initiating a court proceeding on the basis of such return. The State Prosecutor was correct in dismissing the complaint for tax evasion since it was clear that the prescribed return cannot be used as basis for the case.

All told, the dismissal of the tax evasion case against respondent officers was proper. The Court of Appeals did not err in affirming the dismissal. Petitioner failed to prove that respondent officers wilfully intended to evade paying tax. Moreover, having found no basis to disregard the three-year period of prescription, it is clear that the assessments were issued beyond the statute of limitations.

WHEREFORE, the Petition is **DENIED**. The Decision dated September 8, 2009 and the Resolution dated March 30, 2010 of the Court of Appeals in CA-GR. SP No. 100380 are **AFFIRMED**.

SO ORDERED.

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

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[56] *Rollo,* p. 143.

THIRD DIVISION

[G.R. No. 192948. December 7, 2016]

B.F. CORPORATION AND HONORIO PINEDA, *petitioners, vs.* **FORM-EZE SYSTEMS, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ARBITRATIONS; FACTUAL FINDINGS OF CONSTRUCTION ARBITRATORS ARE SUBJECT TO JUDICIAL REVIEW BY THE COURT OF APPEALS.— Factual findings of construction arbitrators may be reviewed by the Court in cases where: 1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act (R.A.) No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made; (6) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators; (7) when the findings of the Court of Appeals are contrary to those of the CIAC, and (8) when a party is deprived of administrative due process. While this rule, which limits the scope of the review of CIAC findings, applies only to the Supreme Court, the Court of Appeals nonetheless is not precluded from reviewing findings of facts, it being a reviewer of facts. By conveniently adopting the CIAC's decision as its own and refusing to delve into its factual findings, the Court of Appeals had effectively turned a blind eye to the evidentiary facts which should have been the basis for an equitable and just award. While factual findings are not within

the purview of a petition for review before this Court, we take exception in this case on the ground of the appellate court's refusal to delve into the findings of facts of the CIAC Arbitral Tribunal.

2. ID.; HUMAN RELATIONS; UNJUST ENRICHMENT; THE PRINCIPLE OF UNJUST ENRICHMENT ESSENTIALLY CONTEMPLATES PAYMENT WHEN THERE IS NO DUTY TO PAY, AND THE PERSON WHO RECEIVES THE PAYMENT HAS NO RIGHT TO RECEIVE IT; ALLOWING PETITIONER TO EARN MORE THAN IT LEGALLY AND CONTRACTUALLY DESERVED IS TANTAMOUNT TO UNJUST ENRICHMENT.— As agreed upon by the parties, the 708.12 sq. m. contact area covered by the grid girders should be included in the billing. Taking into account this contact area corresponding the grid girders and the 4,441.73 contact square meter assembled deckforms, the total contact area is only 5,149.85, which still falls short of the 7,000 contact area requirement. To award the full contract price to Form-Eze in Contract No. 1 is tantamount to unjust enrichment. There is unjust enrichment under Article 22 of the Civil Code when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another. The principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it. By requiring BFC to pay the full contract price when it only supplied deckforms which covered only 5,149.85 contact square meters of formworks, the CIAC Arbitral Tribunal is essentially unjustly giving unwarranted benefit to Form-Eze by allowing it to earn more than it legally and contractually deserved.

3. ID.; OBLIGATIONS AND CONTRACTS; CONTRACTS; REFORMATION; A REMEDY IN EQUITY, WHEREBY A WRITTEN INSTRUMENT IS MADE OR CONSTRUED SO AS TO EXPRESS OR CONFORM TO THE REAL INTENTION OF THE PARTIES, WHERE SOME ERROR OR MISTAKE HAS BEEN COMMITTED; ACTION FOR REFORMATION OF INSTRUMENT, REQUISITES TO PROSPER.— An action for reform a contract is grounded on Article 1359 of the New Civil Code x x x. Reformation is a remedy in equity, whereby a written instrument is made or construed so as to express or conform to the real intention of

the parties, where some error or mistake has been committed. In granting reformation, the remedy in equity is not making a new contract for the parties, but establishing and perpetuating the real contract between the parties which, under the technical rules of law, could not be enforced but for such reformation. In order that an action for reformation of instrument may prosper, the following requisites must concur: (1) there must have been a meeting of the minds of the parties to the contract; (2) the instrument does not express the true intention of the parties; and (3) the failure of the instrument to express the true intention of the parties is due to mistake, fraud, inequitable conduct or accident.

4. ID.; ID.; ID.; ID.; WHILE INTENTIONS INVOLVE A STATE OF MIND WHICH MAY SOMETIMES BE DIFFICULT TO DECIPHER, SUBSEQUENT AND CONTEMPORANEOUS ACTS OF THE PARTIES AS WELL AS THE EVIDENTIARY FACTS AS PROVED AND ADMITTED CAN BE REFLECTIVE OF ONE'S INTENTION; CONTRACT NO. 1 MUST BE REFORMED TO INCLUDE A LABOR-GUARANTEE PROVISION.— In the instant case, the question to be resolved is whether the contract expressed their true intention; and, if not, whether it was due to mistake, fraud, inequitable conduct or accident. While intentions involve a state of mind which may sometimes be difficult to decipher, subsequent and contemporaneous acts of the parties as well as the evidentiary facts as proved and admitted can be reflective of one's intention. x x x. Considering that both parties admitted that there should be a labor- guarantee clause in Contract No. 1, it can be reasonably inferred that the failure to include said provision was due to mistake. A reformation is in order to include a cost of labor provision in Contract No. 1.

5. ID.; ID.; ID.; THE COST OF LABOR SHOULD BE DEDUCTED UNDER CONTRACTS NO. 2 AND 3.— Except for the expenses for x-bracing used in deck assemblies which had been admitted by Form-Eze President James Franklin, BFC is not entitled to be reimbursed for the cost of helmets, petroleum, and oil lubricants in the absence of any stipulations in the contracts. The cost of labor, on the other hand, should be deducted pursuant to the labor-guarantee provisions in Contracts No. 2 and 3.

6. ID.; ID.; ID.; THE MEMORANDUM OF AGREEMENT EXECUTED BY THE PARTIES ON 5 JANUARY 2007 IS AN EXCLUSIVE LICENSING AGREEMENT.— [W]e agree that the subsequent Memorandum of Agreement executed by the parties on 5 January 2007 is an exclusive licensing agreement. It was signed by both parties wherein BFC has agreed to sell the scaffolding frames and accessories it manufactured to Form-Eze at the end of the project. This Agreement was incorporated in Contract No. 4 wherein BFC will be allowed to deduct ₱6,352,500.00 from the equipment lease contract, which is presumably Contract No. 1. At this point, Contract No. 4 is deemed to have novated the obligation of BFC with respect to furnishing all scaffoldings. Contract No. 1 states that BFC shall furnish the scaffoldings at no cost to Form-Eze. On the other hand, Contract No. 4 requires BFC to sell the scaffoldings to Form-Eze at the end of the project and deduct the cost of the same from the contract price of Contract No. 1. This setup cannot in any way be interpreted as part of the deckform supplied by Form-Eze. As pointed out by BFC, the scaffoldings and accessories were the responsibility of BFC under Contract No. 1. Thus, the manufactured hardware under Contract No. 4 could not have added to the deckform system because they are not the equipment of Form-Eze had obligated itself to supply under Contract No. 1.

7. ID.; ID.; ID.; OBLIGATION OF PETITIONER-CORPORATION UNDER CONTRACTS NO. 2 AND 3.— BFC maintains that since Form-Eze failed to meet the minimum conditions under Contract No. 1 where the minimum 126,000 contact square meters were not reached, then the forklifts under Contract No. 2 were also not used for a minimum of 126,000 contact square meters. We agree. BFC is liable only to pay the amount proportionate to 92,696.40 contact square meters at ₱50.00 per contact square meter, the rental rate for the forklifts. x x x. The CIAC itself had already ruled that the ambiguity in Contract No. 3 should not favor Form-Eze, the party who prepared the contract. Thus, it is only logical that the methodology employed by BFC should be credited. Using 12 column forms as the minimum requisite and Form-Eze having supplied only four (4) usable column forms, it can be established that the delivered column forms can only be used for 1/3 portion of the 9,100 contact square meters or 3,033.33 contact square meters.

It was further proven by BFC that about 50% of the column form requirements of the project were already completed with the use of their own equipment. Thus, it is but equitable that the 3,033.33 contact square meters be further reduced by 50% or 1,516.67 contact square meters. BFC is then liable to pay ₱441,502.87.

8. ID.; ID.; ID.; PETITIONER-CORPORATION IS OBLIGED TO PAY RENTAL OF THE EQUIPMENT.— Under the letter dated 8 February 2007, "BFC has completed fabrication on a sufficient quantity of u-heads with screw assemblies and heavy duty bases so that BFC can immediately start returning the 24 inch and 18 inch u-head assemblies (561 pcs) and heavy duty bases (483 pcs) which were on temporary loan to BFC by [Form-Eze] until BFC could manufacture their own equipment. The temporary loan was expected to be approximately [two] (2) weeks and the equipment was picked-up January 9th, 2007 and still in used today." It is understood that upon expiration of the two-week temporary loan and upon failure by BFC to return the equipment, it is then liable to pay for rent. We find that the monthly rental amount of ₱96,600.00 was substantiated by Form-Eze.

9. ID.; ID.; ARBITRATIONS; JURISDICTION OF CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); ANYONE WHO IS NOT A PARTY TO THE CONTRACT IN HIS PERSONAL CAPACITY IS NOT SUBJECT TO THE JURISDICTION OF THE CIAC.— Section 4 of Executive Order No. 1008 vests jurisdiction on CIAC over disputes disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. Moreover, the party involved must agree to submit to voluntary arbitration. In other words, anyone who is not a party to the contract in his personal capacity is not subject to the jurisdiction of the CIAC. In this case, Pineda signed the challenged contracts in his capacity as President of BFC. There is no indication that he voluntarily submitted himself as a party to the arbitration case. In fact, he has been consistently contesting his inclusion as a respondent in the CIAC proceedings. CIAC however considered Pineda as a joint tortfeasor, thus justifying his joinder as a co-defendant. We do not consider the imputed

acts of Pineda as an indicia of bad faith to classify him as a joint tortfeasor.

10. ID.; ID.; DAMAGES; ABSENT BAD FAITH, ATTORNEY'S FEES CANNOT BE RECOVERED; COSTS OF ARBITRATION SHOULD BE EQUALLY SHARED BY BOTH PARTIES IN CASE AT BAR.— Neither party was able to prove bad faith in their dealing with each other. Under Article 2208 of the Civil Code, attorney's fees may, among others, be recovered where defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim. We observe that in filing the complaint against BFC, Form-Eze was merely seeking payment for its service under the contract. BFC had admitted to its obligation. The problem lies only on the amount to be paid. This is not tantamount to bad faith. Finally, both parties should equally share the costs of arbitration since their prayers were only partially granted.

APPEARANCES OF COUNSEL

Castelo & Associates Law Office for petitioners.
Mendoza Arzaga-Mendoza for respondent.

D E C I S I O N

PEREZ, *J.*:

This petition for review assails the 15 January 2010 Decision[1] and 13 July 2010 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 102007 which affirmed the Final Award rendered by the Construction Industry Arbitration Commission (CIAC) Arbitral Tribunal on 7 December 2007.

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[1] *Rollo*, Vol. I, pp. 131-151; Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Fernanda Lampas Peralta and Florito S. Macalino concurring.

[2] *Id.* at 153-157.

FACTUAL ANTECEDENTS

Petitioner B.F. Corporation (BFC) is a corporation engaged in general engineering and civil works construction. Petitioner Honorio H. Pineda (Pineda) is the President of BFC. Respondent Form-Eze Systems Inc. (Form-Eze) is a corporation engaged in highway and street construction.

On 29 August 2006, SM Prime Holdings, Inc. awarded the contract for general construction of the SM City-Marikina mall (the Project) to BFC whereby the latter undertook to supply materials, labor, tools, equipment and supervision for the complete construction of the Project.[3] In turn, BFC engaged Form-Eze for the lease of formwork system and related equipment for and needed by the Project. Accordingly, five (5) contracts and two (2) letter-agreements were executed by the BFC, represented by its President Pineda, and Form-Eze, represented by its President, James W. Franklin. These contracts and their salient provisions are provided in the following table:

CONTRACT NO. 1: Contract for the Lease of the Equipment for the Beam and Slab Hardware for the Formwork on SM Marikina Mall Project dated 20 December 2006[4]	
Obligations of Form-Eze	1. Furnish all hardware required in the formwork system for the poured in place beam and slab concrete decks excluding the scaffoldings and accessories required to support the system; and 2. Provide consumable beam ties and steel accessories needed to maintain the rigidity and alignment of the plywood formed surfaces.

[3] *Id.* at 1596-1600.

[4] *Id.* at 161.

Obligations of BFC	1. Furnish all scaffoldings as required to support the system at no cost to Form-Eze; 2. Furnish all plywood and lumber as required in the formwork operation as no cost to Form-Eze; 3. Purchase materials for the formwork as requested by Form-Eze. The direct cost of materials shall be deducted from the contract and the balance paid to Form-Eze; and 4. Responsible for the freight of the equipment to and fro the Marikina jobsite and the Form-Eze warehouse in Cainta, Rizal.
Work Specifications	The amount of hardware to be furnished is sufficient to provide 7,000 contact square meters of formwork.
Contract Price	Total contract amount for the equipment: 126,000 contact square meters (equipment to be used) x ₱225.00/contact square meter (cost per use of the hardware for forming the elevated beam and slab)= ₱28,350,000.00.
Terms of Payment	1. 15% down payment or ₱4,252,500.00 paid to Form-Eze on or before pick up of equipment; 2. When concrete is placed on the slab forms, the equipment rental per contact square meter is due and payable to Form-Eze and shall be paid on the first day of the following month; 3. All equipment purchased by BFC as requested by Form-Eze shall be prorated and deducted equally in the first 4-month duration of the equipment lease; and 4. Monthly progress payments for the equipment lease shall be made timely.

CONTRACT NO. 2: Contract for Stripping and Moving Form-Eze Systems Inc. Equipment from Location to Location on SM Marikina Mall Project dated 20 December 2006[5]	
Obligations of Form-Eze	1. Furnish forklift for the movement of the deck forms and related hardware of the forming system from location to location; 2. Strip all formwork from under the poured concrete slab and beam deck. Move all equipment to the next location where it will be reset by BFC; and 3. Assist BFC in setting the deck forms to the proper grade and locations provided that BFC has laid out the grid lines as needed for placing the scaffoldings under the deck forms and provided the scaffoldings is readily available for placement under the deck forms.
Obligations of BFC	1. Furnish additional hoisting; and 2. Provide all labor requested by Form-Eze and deducted from the contract at ₱60.00 per carpenter man-hour.
Contract Price	Total contract amount for moving equipment: 126,000 x ₱50.00/contact square meter (cost for stripping and movement of the equipment, excluding cost of resetting to grade, cleaning plywood surfaces and applying release agent) ₱6,300,000.00.
Terms of Payment	1. 15% down payment or ₱945,000.00 paid to Form-Eze on or before pick up of equipment; and 2. Monthly progress billing will coincide with the contact square meters formed with the Form-Eze equipment.

[5] *Id.* at 162.

CONTRACT NO. 3: Contract for Column Formwork on the SM Marikina Mall Project dated 20 December 2006[6]	
Obligations of Form-Eze	1. Furnish sufficient number of built up column forms as required to complete 6 poured in place full height concrete columns per day provided the installation of the rebar and the placement of the concrete can maintain that schedule of performance; 2. Provide supervision for the column formwork operation; 3. Responsible for bracing the columns to maintain them plumb when poured; 4. Correct any defects in the poured column due to failure in the formwork. (Not responsible for air entrapment or aggregate separation caused by improper placement or improper vibration of the concrete; and 5. Furnish chamfer and form release agent
Obligations of BFC	1. Furnish all hoisting and moving of the columns; 2. Responsible for installation of the rebar and placement of the concrete; 3. Furnish labor as required by Form-Eze for forming columns and will deduct fro Form-Eze ₱60.00 per man-hour for each carpenters for the column framework; and 4. Responsible for all column grid lay-out and establishing elevations on the columns
Terms of Payment	1. Total Contract Amount: 9,100 contact square meters of formwork x ₱355.00/ contact square meter= ₱3,230,500.00; 2. Downpayment of ₱484,575.00 (15%) on or before pick up of equipment;

[6] *Id.* at 163.

	3. BFC agrees to purchase all materials for the formwork as required by Form-Eze and the direct cost of those materials will be deducted from this contract and the balance paid to Form-Eze; and 4. When columns are poured and stripped, ₱355.00 per contact square meter is due and payable at that time. Progress payments will be made for the work completed in a particular month and paid on the first day of the following month. Any materials or equipment purchased by BFC at the request of Form-Eze shall be deducted from this contract and prorated equally over a 4-month period.
CONTRACT NO. 4: Contract for the Lease of the Heavy Duty Galvanized Scaffold Frames and Related Accessories on SM Marikina Mall Project dated 29 January 2007[7]	
Obligations of BFC	1. Manufacture heavy duty galvanized scaffoldings and certain accessories for Form-Eze. The scaffoldings and accessories will be manufactured exactly as per the drawings and samples given to BFC by Form-Eze, provided the equipment produced is of excellent quality and to the exact specification specified by Form-Eze; 2. The agreement is for 1,500 pieces of heavy duty galvanized 6-ft frames and related accessories (3,000 pcs of 14-inch adjustable u-heads and 3,000 pcs heavy duty base plates); and 3. BFC will deduct ₱6,352,500.00 from Form-Eze equipment leased contract (all equipment must be in good condition and turned over to Form-Eze at the end of project). Form-Eze will own the equipment.

[7] *Id.* at 164.

Obligations of Form-Eze	1. Form-Eze will credit BFC with ₱4,235.00 per frame and related accessories; and 2. Form-Eze will accept all frames in good condition up to a maximum of 1,500 frames and related accessories.
Agreement is contingent upon parties entering into an exclusive licensing agreement with BFC for the manufacture of Form-Eze equipment.	
CONTRACT NO. 5: Contract for the Purchase and Lease of the Heavy Duty Galvanized X-Bracing on SM Marikina Mall Project dated 29 January 2007[8]	
Obligations of BFC	Manufacture heavy duty galvanized x-bracing.
Obligations of Form-Eze	Credit BFC with ₱400.00 per x-brace. If the x-bracing is not manufactured exactly as specified by Form-Eze, credit is ₱300.00 per x-brace.
Agreement is contingent upon parties entering into an exclusive licensing agreement for the manufacturing of Form-Eze equipment.	
MEMORANDUM OF AGREEMENT dated 5 January 2007[9]	
BFC will manufacture Form-Eze equipment and will sell exclusively to Form-Eze.	
LETTER-AGREEMENT dated 5 January 2007[10]	
Changes to Contract No.4 1. The 18-inch adjustable u-head will be changed to a 14-inch adjustable u-head. 2. The threading of the heavy duty screw will be accomplished in segments and then machined.	

[8] *Id.* at 165.

[9] *Id.* at 166.

[10] *Id.* at 167.

3. Form-Eze will send to the jobsite all 18-inch and 24-inch adjustable u-heads available in its current stock in order to start forming the project while BFC is fabricating the 14-inch adjustable u-heads. When the 3.000 pieces 14-inch u-heads are completed and are on the jobsite, Form-Eze will take back the 18-inch and 24-inch adjustable u-heads that were temporarily in use at the jobsite.
4. The creditable amount for the purchase of the 6-foot heavy duty galvanized scaffolding and related accessories is changed to ₱4,235.00 per 6-foot heavy duty galvanized frames, adjustable u-heads and heavy duty base plate.

On 30 March 2007, Form-Eze filed a Request for Arbitration[11] before the CIAC. In its Complaint, Form-Eze alleged that BFC has an unpaid obligation amounting to ₱9,189,024.58; that BFC wanted to re-negotiate the equipment leases; and that it was not complying with the contractual and supplemental agreements in effect. Form-Eze prayed for the following relief:

1. [For BFC] to pay the current monthly equipment rentals;
2. Provisions made to guarantee the earned monthly equipment leased amounts are paid timely;
3. To legislate provisions to ensure the lease contracts are not breached during the construction of the SM Marikina Mall;
4. Provisions made to guarantee the performance of [BFC] for the manufacturing of the shoring equipment purchased by Form-Eze from BFC;
5. Provisions made to guarantee the return of all Form-Eze equipment when the concrete structure is completed and all lost and damaged equipment has been paid for by [BFC]; and
6. All cost related to Arbitration.[12]

In its Amended Answer with Counterclaim, BFC sought for reformation of Contract #1 to incorporate a provision that BFC shall deduct from said billing the cost of labor supplied by it for the fabrication and assembly of the forming system and for

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[11] *Id.* at 158.

[12] *Id.* at 160.

the stripping, cleaning, resetting thereof at the rate of ₱60.00 per man-hour. BFC also demanded the refund of ₱5,773,440.00 as expenses for the manufacture of additional hardware to complete the 7,000 square meters of formwork required in Contract #1. BFC explained that Form-Eze had only furnished 4,682.4 square meters of formwork.[13]

The CIAC appointed a 3-member Arbitral Tribunal (CIAC Arbitral Tribunal), composed of Atty. Custodio O. Parlade, Atty. Alfredo F. Tadiar and Engineer Romeo C. David, to adjudicate Form-Eze's claims.

Under the Terms of Reference, the parties made the following admissions:

1. The existence of five contracts, a memorandum of agreement and a supplemental contract.
2. BFC renegotiated Contract #1 but it did not result in a separate written contract.
3. Under Contract #1, BFC is willing and ready to pay Form-Eze the amount of ₱3,515,003.59, which amount shall be deducted from the amount of the latter's claim.
4. Under Contract #2, BFC is willing and ready to pay Form-Eze the amount of ₱675,788.97, which amount shall be deducted from the amount of the latter's claim.
5. BFC admits that it has the obligation to return to Form-Eze equipment furnished them under Contracts #1, 2, and 3, and all heavy duty galvanized scaffold frames and related accessories, heavy duty galvanized x-bracing and adjustable U-heads and base plates fabricated and manufactured by BFC under Contracts #4, 5 and letters dated 5 January 2007.[14]

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[13] *Id.* at 195-196.

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

The claims[15] of the parties are summarized, as follow:

FORM-EZE'S CLAIMS	As of 7/19/2007	From 7/20/2007 to end of contract based on agreed minimum contact sq.m. of 126,000
Arrears on Contract No.1	₱26,310,476.29 -3,515,003.59 22,795,472.70	₱11,489,523.71
Arrears on Contract No. 2	4,771,723.63 -675,788.97 4,095,934.66	1,528,276. 37
Arrears on Contract No.3	2,099,825.00	1,130,675.00
Arrears on Letter dated 1/5/07	740,600.00	483,000.00
	₱29,731,832.36	₱14,631,475.08
Attorney's Fees		300,000.00
TOTAL SUM IN DISPUTE		₱44,663,307.44

BFC's COUNTERCLAIM	
Cost of labor, helmet & expenses for x-bracing for the assembly of the form system under Contract #1	₱ 812,791.09
Cost of stripping, petroleum, oil, & helmet under Contract #2	1,391,086.02
Attorney's Fees	300,000.00
Total Counterclaims	₱2,503,877.11
TOTAL SUM IN DISPUTE	₱46,867,184.55

The total arbitration fees amounted to ₱616,393.73.

CIAC Arbitral Tribunal was tasked to resolve the following issues, to wit:

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[15] *Id.* at 253-254.

1. Is Claimant entitled to its total claim of ₱34,284,996.41 representing the alleged arrear on equipment rental under Contract #1?
2. Is Claimant entitled to its claim of ₱5,624,211.03 representing the alleged arrears under Contract #2?
3. Is Claimant entitled to its claim of ₱3,230,500.00 representing the alleged arrears under Contract #3?
4. Is Claimant entitled to its claim of ₱1,374,408.00 representing the rental fees under Letter dated 5 January 2007?
5. Is Claimant entitled to its claim for the reformation of the subject Contracts to include the following:
   a. Contract #1 — Provisions to guarantee the earned monthly equipment leased amounts are paid timely;
   b. Contract #1 — Provision to ensure that the lease contracts are not breached during the construction of the SM Marikina Mall;
   c. Contracts #4 and 5 — Provision to guarantee the performance of [BFC] for the manufacturing of the shoring equipment purchased by Form-Eze from BF Corp.;
   d. Contracts#1, 2, 3, 4 and 5 — Provision for [BFC] to pay for the lost and damaged equipment furnished them by the [Form-Eze]; and
   e. Contract #1 — Provision in the Contract to include the ₱75 per contact sq.m. for labor guarantee.
6. Is [BFC] #1 entitled to the reformation of Contract #1 to include a provision that [BFC] #1 shall deduct from [Form-Eze's] billing the cost of labor, helmet and expenses for x-bracing supplied by it for the assembly of the form system amounting to ₱812,791.09 , to deduct from the billing under Contract #2 the cost of labor for the stripping thereof, the costs of petroleum, oil and lubricant and helmet of the said laborers up to the end of the contract in the sum of ₱1,391,086.02 and from the billing under Contract #3, the cost of labor for the installation and forming of the built up column forms from June 19, 2007 up to the end of the project in the sum of ₱273,240.00?[16]

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[16] The CIAC Arbitral Tribunal corrected Issue No. 6 in the TOR upon BFC's motion.

7. Is it proper to include Mr. Honorio Pineda as Respondent No. 2?

8. Does the Arbitral Tribunal have the jurisdiction to award claims that accrued after the filing of the Request for Arbitration or does the Claimant have a cause of action for claims that accrued during the same period?

9. Who between the parties is entitled to attorney's fees?

10. Who between the parties should bear the arbitration costs?[17]

FINAL AWARD BY CIAC

On 7 December 2007, the CIAC Arbitral Tribunal rendered a Final Award in favor of Form-Eze. The dispositive portion reads:

WHEREFORE, award is hereby made in favor of Claimant and against [BFC], ordering the latter to pay the former the following amounts:

a) On Contracts No. 1	₱28,350,000.00
Less: Payments already made	7,700,000.00
TOTAL	₱20,650,000.00
b) On Contract No. 2	₱ 6,300,000.00
Less: Payments already made	990,000.00
Less: Cost of labor	60,000.00
TOTAL	₱ 5,250,000.00
c) On Contract No.3	₱ 2,153,166.67
Less: cost of labor	96,915.00
TOTAL	₱2,056,751.67

[17] *Rollo*, Vol. I, pp. 252-253.

On Letter Agreement of January 5, 2008 to December 8, 2007	
	₱ 560,000.00
IN SUM THE FOLLOWING AWARDS ARE MADE:	
Contract No. 1	₱ 20,650,000.00
Contract No. 2	5,250,000.00
Contract No. 3	2,056,751.67
Letter Agreement of January 5, 2007	560,000.00
GRAND TOTAL	₱28,517,251.67

The Tribunal further awards in favor of [Form-Eze] and against [BFC] and [Pineda] who are ordered, jointly and severally to pay [Form- Eze] ₱300,00.00 as attorney's fees, and to indemnify [Form-Eze's] cost of arbitration paid to CIAC.

The Tribunal likewise disposes of the remaining issues as follows:

a) The claims under Issues No. 5 and 6 for reformation of Contracts No 1, 2, 3, 4 and 5 are denied for lack of merit.

b) The inclusion of Mr. Honorio Pineda in the Complaint as additional respondent is proper.

c) The Tribunal has jurisdiction over the claims of [Form-Eze] and finds that the Complaint states a cause of action as to claims that accrued after the filing of the Complaint.

d) All other claims and counterclaims submitted pursuant to the definition of issues in the Terms of Reference, not otherwise disposed of or resolved above, are dismissed for lack of merit. All claims and counterclaims peripherally discussed in these proceedings which are outside the scope of the definition of issues in the Terms of Reference are likewise outside the scope of this Final Award.

e) The net award in favor of [Form-Eze] amounting to ₱28,517,251.67 shall earn interest at the rate of 6% per annum from the date of this Final Award, and 12% from

> the date the Final Award becomes final and executory until the same is fully paid.[18]

BFC filed a Motion for Correction of the Final Award. Form-Eze asserted that the calculations made on the total quantity of deckforms supplied to be used under Contract No. 1 is erroneous because the quantity of the accessories that were delivered together with the loose truss chords and assembled trusses that were backloaded were ignored in the computation. BFC explained that the hardware supplied must be assembled first into deckforms since what is actually rented under Contract No. 1 are the deckforms, and not the hardware, thus:

> Evidently, in the computation thereof, the total quantity of the accessories that were delivered together with the said loose truss chords and assembled trusses, both of which are shown in the same delivery receipts, and the total length of the loose truss chords and assembled trusses that were backloaded, were not considered and totally ignored.
>
> Needless to state, these accessories, such as joist and beam hanger, just like the chords and the trusses, are component and indispensable parts of a deckform without which it can not be completely assembled to be used for the purpose intended. In the case of a deckform 44 ft. in length, it will need, for it to be completely assembled, 34 pieces of joists and 68 pieces of beam hangers, as shown in the herewith attached Annex "A" hereof.
>
> Therefore, to form 87 completely assembled deckforms of 44 ft. in length out of/from the delivered chords and trusses, it will require 2,958 pieces of joist and 5,916 pieces of beam hangers.
>
> However, as show in Exhibits "C-9(5)", "C-9(11)", "C-9(15)", "C-9(18)", "C-9(21)", "C-9(25)", "C-9(27)", "C-9(30)", and "C-9(31)", only 2,512 pieces of joists and in Exhibits "C-9(8)", "C-9(15)", "C-9(16)", "C- 9(18)", "C-9(21)", "C-9(27)", "C-9(32)", "C-9(34)", "C-9(35)", "C-9(37)", "C-9(38)", "C-9(41)", "C-9(35)", "C-9(38)", "C-9(40)", and "C-9(41)", only 3,626 pieces of beam hangers, the very documents on which this Commission/Tribunal anchored its finding now sought to be corrected, were actually delivered by the Claimant.

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[18] *Id.* at 2157-2159.

Accordingly, 87 deckforms of 44 ft. in length can not be completely assembled from the delivered chords and trusses because the quantity of the delivered accessories is insufficient for the purpose. To be precise, only 53 deckforms of 44 ft. in length can be completely assembled out of the total length of the chords and trusses with the use of 1,802 pieces of joists and 3,604 pieces of beam hangers (with an excess of 22 pieces of beam hangers, 710 pieces of joist and 2,720 ft of chords and trusses) which are sufficient to provide only 4,441.73 contact sq.m. of formworks.

To therefore conclude that 87 deckforms of 44 ft. in length can be completely assembled with the use of/out of 2,512 pieces of joists and 3,626 pieces of beam hangers, is an evident miscalculation.

xxx x x x x x x

In as much as only 3,626 pieces of beam hangers were actually delivered, which, when used with the delivered quantity of joists and length of the delivered chords and trusses in completely assembling 53 deckforms of 44 ft. in length, is sufficient to provide only 4,441.73 contact sq.m. of formworks, the minimum rental amount stipulated under Contract No. l should correspondingly be reduced to only Php17,989,006.50, less payment of Php 7,700,000.00= Php 10,829,006.50 as the net amout of rent due the Claimant thereunder, as shown in the herewith attached Annex "B" hereof.

On the same ground, the minimum contact amount stipulated under Contract No. 2 should also be proportionately reduced to Php 3,997,557.00, less payment of Php 990,000.00 + cost of labor of Php60,000.00 = Php 2,947,557.00 as the net amount due the Claimant thereunder.[19]

The CIAC Arbitral Tribunal denied the motion prompting BFC to file a petition for review before the Court of Appeals.

While the case was pending before the Court of Appeals, Form-Eze filed a Motion with Leave to Direct BFC to return pieces of equipment on 14 July 2009.

On 15 January 2010, the Court of Appeals dismissed the petition for lack of merit. The Court of Appeals heavily relied on factual findings of the CIAC Arbitral Tribunal.

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[19] *Rollo*, Vol. II, pp. 2179-2181.

THE PETITION

BFC filed a motion for reconsideration but it was denied by the Court of Appeals in a Resolution dated 13 July 2010. Hence, the present petition. BFC, in its Memorandum, raised the following issues for our resolution:

I.

Whether or not the Court of Appeals committed a reversible error in affirming the CIAC's ruling that BFC is liable to pay rent to the [Form- Eze] under Contract Nos. 1, 2, and 3 even for portions where the latter's supplied formwork system were not used.

II.

Whether or not the Court of Appeals committed a reversible error in affirming the CIAC's conclusion that [Form-Eze] was able to supply BFC with such quantity of deckforms sufficient to provide the stipulated 7,000 contact square meter of formworks as to entitle said [Form-Eze] to the stipulated minimum contract rental price of Php28,350,000.00 under Contract No. 1 and consequently to Php6,300,000.00 under Contract No. 2, when, based on the quantity of the delivered accessories, which are component parts of deck form system, but which the CIAC totally ignored, [Form-Eze] can only provide 4,441.73 contact square meters of formworks that will entitle it to only Php17,989,006.05 and Php3,997,557.00, respectively thereunder.

III.

Whether or not the Court of Appeals committed reversible error in affirming the CIAC's ruling that [Form-Eze] is entitled to twoOthirds of the stipulated minimum contract amount of Php3,230,500.00 or Php2,153,666.67 under Contract No. 3, considering that CIAC did not state the factual and legal basis of said ruling and despite its contrary factual finding that [Form-Eze] failed to supply the minimum required columnforms.

IV.

Whether or not the Court of Appeals committed a reversible error in affirming the CIAC's ruling against the reformation of Contract No. 1 to include a provision that BFC shall furnish the labor needed by [Form-Eze] in assembling the deckforms and that it shall deduct

therefrom the agreed cost of labor at Php60.00 per man hour, since it has been the true intention and real agreement of the parties thereto.

V.

Whether or not the Court of Appeals committed a reversible error in affirming the CIAC when it did not deduct the following costs incurred by BFC from the minimum contract amounts due:

(1) under Contract No. 1 for the cost of labor in assembling the deckforms, the cost of helmets of said laborers, and the expenses for x-bracing supplied by BFC for the assembly of said forms in the total amount of Php812,791.09;
(2) under Contract No. 2 for the cost of labor in the stripping of said deckforms, the cost of petroleum, oil and lubricant and helmet up to the end of the contract in the sum total of Php1,391,086.02; and
(3) under Contract No. 3 for the cost of labor in installing and forming the built up columnforms from 25 June 2007 up to the end of the contract in the sum total of Php273,240.00, when BFC is legally entitled thereto.

VI.

Whether or not the Court of Appeals committed a reversible error in affirming the CIAC in ordering BFC to pay rental fees under letter dated 5 January 2007, covering the period from 25 June 2007 to 17 December 2007 in the sum total of Php560,000.00 at Php96,000.00 a month, when the acquisition cost of the pieces of u-heads and plates referred to therein is allegedly only Php96,000.00, and there is evidence presented to show that these items were purchased at Php96,000.00 and there is on evidence to show the prevailing rate of rent for the same items.

VII.

Whether or not the Court of Appeals committed a reversible error in affirming the CIAC in ruling that Respondent Pineda can be held as co-respondent (in the arbitration case) when he is not a party to the contracts and agreements involved in this case, as well as the arbitration agreement, and he did not voluntarily submit himself to arbitration in this case.

VIII.

Whether or not the Court of Appeals committed a reversible error when it ruled that the attorney's fees and cost of arbitration shall be for the account of Petitioners, considering that [Form-Eze] failed to

supply the minimum required equipment under the contracts and when the root cause of the dispute is the imprecision of the language and the incompleteness of the contracts and agreements, which were prepared by the Respondents.[20]

BFC prays for a modification of the Final Award to read:

a.	On Contract No. 1		Php17,989,006.50
Less:			
	Payments already made	Php 7,700,000.00	
	Payment made on Billing No. 1	487,828.05	
	Cost of labor in assembling Deckforms, expenses for x-Bracings and cost of helmet	812,791.90	9,000,619.95
SUBTOTAL			**Php 8,988,386.55**
b.	On Contract No. 2		Php 3,997,557.50
Less:			
	Payments already made		Php 990,000.00
	Costs of labor in stripping And moving of the same Deckforms, petroleum, oil And lubricant and helmet	1,304,036.82	Php 2,294,036.82
SUBTOTAL			**Php 1,702,520.68**
c.	On Contract No. 3		Php 538,417.87
Less:			
	Cost of labor in the installation and removal of the Columnforms		96,915.00
SUBTOTAL			**Php 441,502.87**
d.	On Letter Agreement dated 5 January 2007		**Php 70,000.00**
e.	The award of attorney's fees be deleted; and		
f.	The award for cost of arbitration fees be deleted.[21]		

[20] *Id.* at 3368-3370.

[21] *Rollo*, Vol. I, pp. 123-124.

THE COURT'S RULING

The Final Award of CIAC is subject to review by the Court of Appeals.

BFC first asserts that the Court of Appeals has the power and the duty to review the factual findings made by CIAC and that the Court of Appeals should not be bound by the factual findings of the construction arbitrators.

The case of *Asian Construction and Dev't. Corp. v. Sumimoto Corporation*[22] summarized the development of the principle that the final award of CIAC may be still be subject to judicial review, thus:

> To begin, Executive Order No. (EO) 1008, which vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, plainly states that the arbitral award "shall be final and inappealable except on questions of law which shall be appealable to the Court." Later, however, the Court, in Revised Administrative Circular (RAC) No. 1-95, modified this rule, directing that the appeals from the arbitral award of the CIAC be first brought to the CA on "questions of fact, law or mixed questions of fact and law." This amendment was eventually transposed into the present CIAC Revised Rules which direct that "a petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court." Notably, the current provision is in harmony with the Court's pronouncement that "despite statutory provisions making the decisions of certain administrative agencies 'final,' the Court still takes cognizance of petitions showing want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice or erroneous interpretation of the law" and that, in particular, "voluntary arbitrators, by the nature of their functions, act in a quasi-judicial capacity, such that their decisions are within the scope of judicial review."[23]

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[22] 716 Phil. 788 (2013).

[23] *Id.* at 802-803.

Factual findings of construction arbitrators may be reviewed by the Court in cases where: 1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act (R.A.) No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made; (6) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators; (7) when the findings of the Court of Appeals are contrary to those of the CIAC, and (8) when a party is deprived of administrative due process.[24]

While this rule, which limits the scope of the review of CIAC findings, applies only to the Supreme Court, the Court of Appeals nonetheless is not precluded from reviewing findings of facts, it being a reviewer of facts. By conveniently adopting the CIAC's decision as its own and refusing to delve into its factual findings, the Court of Appeals had effectively turned a blind eye to the evidentiary facts which should have been the basis for an equitable and just award.

While factual findings are not within the purview of a petition for review before this Court, we take exception in this case on the ground of the appellate court's refusal to delve into the findings of facts of the CIAC Arbitral Tribunal.

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[24] *Ibex International, Inc. v. Government Service and Insurance System*, 618 Phil. 304, 312-313 (2009) citing *Uniwide Sales Realty and Resources Corp. v. Titan-Ikeda Construction and Dev't. Corp.*, 540 Phil. 350, 360-361 (2006).

Under Contract No. 1, Form-Eze was not able to supply BFC with deckforms sufficient to provide 7,000 contact square meter of formworks.

The CIAC Arbitral Tribunal conducted its own study and came up with the following findings:

The receipted hardware deliveries made by [Form-Eze] show that the total length of loose truss chords delivered was 11,912 lineal feet and the length of the truss chords from the assembled trusses delivered was 2,052 lineal feet or a total available length of trusses of 13,964 lineal feet. By an iterative process of selection and elimination, 175 units of 44' long trusses could be assembled, equivalent to 87 deckforms of 44 feet in length. The assembled 87- 44' deckforms can provide 7,268.58 square meters of contact area, broken down as follows:

		Contact Area (%)
Interior & Near Column Slabs	=	4,156.89 sq.m. (57.19%)
Grid Beams (B-1)	=	740.37 sq.m. (10.19%)
Interior Beams (B-2)	=	1,663.20 sq.m. (22.88%)
Grid Girders (G-2)	=	708.12 sq.m. (9.74%)
Total	=	7,268.58 sq.m. (100%)

The resulting contact area of 7,628.58 sq.m. is 3.84% over the 7,000 sq.m. requirement of the contract. But the former figure includes the contact area of girders which according to [petitioners] should not be included. As shown in ANNEX "A", sheets 5 & 6 of 6, the contact area contributed by the girders is only 708.12 sq.m., and if this is deducted from the computed total contact area, the remaining available contact area would be 6,560.46 sq.m. or 93.72%. The fact, however, is that the non- inclusion of the contact area provided by the girders would be a violation of the letter-contract dated 8 February 2007, paragraph 9 of which provides that: "[Form-Eze] offered to install beam hangers and ledger angles in order to support the moment beam from from column to column and thereby save BFC considerable labor and eliminate the use of BFC's light duty scaffolding underneath and beam. By doing that it will also speed up the forming operation and save BFC labor. The only light duty scaffolding that BFC will be installing is that under the girder which supports tremendous loading

during the stressing of the beams prior to it being stressed. By forming the girder in this manner, [Form-Eze] is not involved in the tripping or resetting of the girder formwork. However, [Form-Eze] is has purchased and furnished considerable forming hardware and consumables (tie rods, pvc sleeves, pvc cones, whaler clips and brackets and wing-nuts) which are being used on girders and the beams. [Form-Eze] will give the ownership of this equipment to BFC and BFC will buy all additional consumables and hardware (as needed) directly from Comer. In return, [Form-Eze] will include the contact square meters of formwork in the girders in its billing for both the equipment lease and for the moving contract." This letter-contract, Exhibit C-12, binds [BFC] to pay Claimant for the girder formworks contact area for both Contract No. 1 and Contract No. 2.

Petitioners argued that the formwork of the girder (or large beam) is independent of the deck form system and so should not be counted in favor of [Form-Eze]. The Tribunal does not agree. How could the girder formwork be considered independent from the deckform system when both sides of the girder formworks are held stiff together by "tie rods, pvc sleeves (to make the tie rods reusable), pvc cones, whaler clips and brackets and wing-nuts" supplied by the [Form-Eze] and pressed between deckforms preparatory to concrete pouring? The girder cannot be considered structurally independent of the deck slabs because it is the requirement of design and the National Building Code and its reference code the American Concrete Institute Code (ACI Code) that the girders are to be poured monolithically with the slabs and beams up to L/3 or 1/3 of the floor span (the point of infection and location of the construction joint where the bending moment is the least or zero), as is clearly shown on the floor concrete pouring schedule plans.

Conclusion of Tribunal

In view of the above, it is the finding of the Arbitral Tribunal that [Form-Eze] had been able to furnish the amount of hardware that was sufficient to provide 7,000 contact square meters of formwork, all in accordance to Contract No. 1. Thus, the remaining question to resolve is the area of the project covered by the formwork equipment in contact square meters.[25]

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[25] *Rollo,*Vol. I, pp. 2137-2139.

BFC accuses the CIAC of coming up with its own biased computation of the contact area of the hardware supplied by Form-Eze under Contract No. 1. According to BFC, Form-Eze had furnished only 53 completely assembled deckforms of 44 ft. in length which correspond to only 4,441.73 contact square meters of formworks, while CIAC found that Form-Eze had delivered truss chords equivalent to 87 deckforms which can provide 7,268.58 contact square meters. BFC maintains that Contract No. 1 is clear that the object is the supply of the complete deckform system and not unassembled hardware such as loose truss chords. BFC adds that Form-Eze judicially admitted that it is only claiming equipment rentals for the areas that its equipment are being used. BFC reiterates that based on the provisions of Contract No. 1 on the contemporaneous and subsequent acts of the parties, as well as application of principles of contract interpretation, the inclusion of loose truss chords in the computation of the quantity of hardware supplied by Form-Eze is an erroneous interpretation by CIAC. BFC also claims that the CIAC wrongfully included the contact area of girders in the computation of the sufficiency of equipment supplied by Form-Eze. BFC contends that the girders are not part of the deckforms contemplated in Contract No. 1. BFC offers to compensate Form-Eze to the extent that its supplied deckforms were used under the principle of *quantum meruit*. BFC submits that 4,441.73 contact square meters or 63.45% of the 7,000 minimum contact area required under Contract No. 1 is a reasonable computation.

We reverse the finding of the CIAC on this point as it is contrary to the evidence on record.

We agree with BFC that the CIAC should not have included the unassembled truss chords in theoretically forming deckforms. We subscribe to BFC's submission that the object of Contract No. 1 is the deckforms and not just the hardware that make up the formwork. Contract No. 1, in itself, is clear that "F-E has agreed to furnish all hardware required in the formwork system for the poured in place beam and slab concrete decks x x x." In fact, the equipment rental is only due and payable to Form-

Eze when the concrete is placed on the slab forms, which provision is based on the premise that the hardware had already been assembled into deckforms ready for concrete pouring. Moreover, the Proposed SM Marikina Mall Project Elevated Beam and Slab Formwork dated 7 December 2006, which document has been admitted by the parties in the Term of Reference, provides that Form-Eze will furnish sufficient deckforms to produce 1/2 floor each month on the project.

BFC had also explained to our satisfaction that loose truss chords alone could not be assembled into deckforms, to wit:

> To try to assemble truss chords alone into a deckform is like taking three two-foot round pegs, trying to stand them upright, then balancing twelve-inch round wooden slab on top, and expect it to be a stool capable of supporting a person. Joist, beam hangers and other component parts fix the truss chords into place for the structural integrity of a deckform. In the case of a deckform 44 ft. in length, it will need, for it to be completely assembled, 34 pieces of joists and 68 pieces of beam hangers as illustrated in the Petitioner's Motion for Correction of Final Award.
>
> Thus, assembling 87 deeckforms of 44 ft. in length would require 2,958 pieces of joist and 5,916 pieces of beam hangers to assemble such 87 44-foot deckforms. However, as show in the same documents that CIAC anchored its theoretical findings, only 2,512 pieces of joists and only 3,626 pieces of beam hangers were actually delivered by [Form- Eze].[26]

BFC's computation of the total contact area covered by the deckforms furnished by Form-Eze is backed by delivery receipts of the joists and beam hangers while CIAC's computation is more theoretical than it is actual.

The inclusion of the additional contact area of the grid girders in the calculation of the total contact area of the equipment supplied by Form-Eze under Contract No. 1, however, should be upheld. Paragraph 9 of the Letter dated 8 February 2007, which was also admitted by the parties, clearly provides:

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[26] See BFC's Memorandum, *rollo*, Vol. II, p. 3382.

[Form-Eze] offered to install beam hangers and ledger angles in order to support the moment beam fro column to column and thereby save BFC considerable labor and eliminate the use of BFC's light duty scaffolding underneath that beam. By doing that it will also speed up the forming operation and save BFC labor. The only light duty scaffolding that BFC will be installing is under the girder which supports tremendous loading during the stressing for the beams prior to it being stressed. By forming the girder in this manner F-E is not involved in the stripping or re-setting of the girder formwork. However, [Form-Eze] has purchased and furnished considerable forming hardware and consumables (tie rods, pvc sleeves, pvc cones, whaler clips and brackets and wing-nuts) which are being used on the girders and the beams. [Form-Eze] will give ownership to this equipment toi BFC and BFC will buy all additional consumables and hardware (as needed) directly from Comer. In return [Form-Eze] will include the contact square meters of formwork in the girders in its billing for both the equipment lease and for the moving contract.[27]

BFC cannot claim that this provision does not refer to Contract No. 1. Said provision mentions beam hangers and ledger angles which are used to support the beams forming the deckform and to eliminate the use of light duty scaffolding on the part of BFC which it had initially obligated to provide under Contract No. 1. More pertinently, the inclusion of the contact square meters of formwork in the girders is a mere application of one of the provisions in Contract No. 1, *i.e.*, "BFC agrees to purchase materials for the formwork as requested by F-E and the direct cost of those materials will be deducted from this contract and the balance paid to [Form-Eze]." Form-Eze is giving ownership of the forming hardware and consumables which are used on the girders and beams to BFC. Instead of deducting the cost of these materials from the contract, Form-Eze will instead include the contact square meters of formwork in the girder in its billing for the lease of the deckforms.

As agreed upon by the parties, the 708.12 sq. m. contact area covered by the grid girders should be included in the billing. Taking into account this contact area corresponding the grid

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[27] *Rollo*, Vol. I, p. 204.

girders and the 4,441.73 contact square meter assembled deckforms, the total contact area is only 5,149.85, which still falls short of the 7,000 contact area requirement.

To award the full contract price to Form-Eze in Contract No. 1 is tantamount to unjust enrichment. There is unjust enrichment under Article 22 of the Civil Code when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another. The principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it.[28] By requiring BFC to pay the full contract price when it only supplied deckforms which covered only 5,149.85 contact square meters of formworks, the CIAC Arbitral Tribunal is essentially unjustly giving unwarranted benefit to Form-Eze by allowing it to earn more than it legally and contractually deserved. It is also worth mentioning that Form-Eze had in fact only been claiming for the contact area where its equipment was used.

Therefore, using the computation of BFC, the amount of contact square meters that the delivered hardware and deckforms can handle is:

$$\frac{126{,}000 \text{ sq. m.}}{7{,}000 \text{ sq. m.}} \times \frac{Y}{\substack{5{,}149.85 \text{ sq. m.} \\ \text{deckforms delivered}}} = \textbf{92,696.40 contact sq. m.}$$

Contract No. 1 be reformed to include a labor guarantee provision.

An action for reform a contract is grounded on Article 1359 of the New Civil Code which provides:

ARTICLE 1359. When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask

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[28] *Filinvest Land, Inc. v. Backy*, 697 Phil. 403, 412-413 (2012).

for the reformation of the instrument to the end that such true intention may be expressed.

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Reformation is a remedy in equity, whereby a written instrument is made or construed so as to express or conform to the real intention of the parties, where some error or mistake has been committed. In granting reformation, the remedy in equity is not making a new contract for the parties, but establishing and perpetuating the real contract between the parties which, under the technical rules of law, could not be enforced but for such reformation.[29]

In order that an action for reformation of instrument may prosper, the following requisites must concur: (1) there must have been a meeting of the minds of the parties to the contract; (2) the instrument does not express the true intention of the parties; and (3) the failure of the instrument to express the true intention of the parties is due to mistake, fraud, inequitable conduct or accident.[30]

In the instant case, the question to be resolved is whether the contract expressed their true intention; and, if not, whether it was due to mistake, fraud, inequitable conduct or accident. While intentions involve a state of mind which may sometimes be difficult to decipher, subsequent and contemporaneous acts of the parties as well as the evidentiary facts as proved and admitted can be reflective of one's intention.[31]

BFC relies on the Form-Eze Proposed SM Marikina Mall Project Elevated Beam and Slab Formwork dated 7 December 2006[32] to support its contention that Contract No. 1 should have a provision on the cost of labor. Indeed, in the aforementioned

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[29] *Multi-Ventures Capital and Management Corp. v. Stalwart Management Services, Corp.*, 553 Phil. 385 391 (2007).

[30] *Id.*

[31] *Id.*

[32] *Rollo,* Vol. I, pp. 198-200.

proposal, BFC has agreed "to furnish the labor required for fabrication and assembly of the forming equipment" and that "BFC will deduct from the total contract amount ₱50.00 per man-hour each carpenter or laborer supplied to Form-Eze." Notably, Contracts No. 2 and 3 contain labor-guarantee provisions considering that BFC has committed to provide the necessary labor for both contracts.

As initially agreed upon, BFC hired workers for the assembly of the deckforms since Form-Eze only undertook to supervise the installation of the deckforms. This was evident during the cross-examination of Mr. Romano Clemente (Mr. Clemente) who admitted that no workers of Form-Eze were employed for the installation of the deckforms, thus:

ATTY. D. MORGA, JR. (COUNSEL-RESPONDENT):

Since it is the obligation of the Claimant to assemble the hardware into deckform, how many workers were employed for the purpose.

MR. R.V. CLEMENTE (CLAIMANT):

We are only supplier sir. We supervise the guys in the jobsite for tern to install all these deckforms.

ATTY. D. MORGA, JR. (COUNSEL-RESPONDENT):

Ano?

MR. R.V. CLEMENTE (CLAIMANT):

To install the guys in the jobsite like for example your laborers carpenters to install this deckforms. We just only supply one supervisor in the jobsite for him to supervise the installation of this form.

ATTY. D. MORGA, JR. (COUNSEL-RESPONDENT):

You mean BF Corporation has the expertise to assemble this.

MR. R.V. CLEMENTE (CLAIMANT):

No, we will supervise your guys for them to assemble this.

ATTY. D. MORGA, JR. (COUNSEL-RESPONDENT):

Do you know if BF has the expertise to assemble this?

MR. R.V. CLEMENTE (CLAIMANT):

That is why we were there in your jobsite. If they don't have really the expertise we are the one who supervise them to install the deckforms. Supervise them to install the deckforms

ATTY. D. MORGA, JR. (COUNSEL-RESPONDENT):

You mean no former workers of the Claimant were employed for the purpose.

MR. R.V. CLEMENTE (CLAIMANT):

No.[33]

Obviously, BFC would want to be compensated for the labor it provided to Form-Eze as shown in Contracts No. 2 and 3.

As a matter of fact, Mr. James Franklin, the President of Form-Eze conceded that Contract No. 1 should be modified to include a labor-guarantee provision, to wit:

Q: Mr. Witness, respondent [BFC], in their counterlcaims, would like this Commission to reform Contract No. 1 to include a provision that it should deduct from your billing the cost of labor, helmet and expense for x-bracing supplied by it for the assembly of the form system, what can you say?

A: [BFC] is allowed to deduct the cost of the x-bracing purchase from Comer that was used in the FORM-EZE deck assemblies. [BFC] is allowed to deduct the cost of the assembly labor for the deck forms which is included in the Labor Guarantee. These deductions have been reflected in all our billings where the ₱75.00 Labor Guarantee has been applied. The cost of helmet is not included and should not be included. Contract No. 1 is only a lease contract but it was modified to include a Labor Guarantee. For the [BFC] to deduct from our billing the cost of labor, etc. which allegedly they supplied for the use of our said equipment for the assembly thereof is included in the Labor Guarantee. They should be allowed to do so in conformance with the Labor Guarantee but definitely the cost of helmet and their other claims of deductions would

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[33] *Rollo*, pp. 861-862; TSN, 13 August 2007.

> not have any basis at all since these have not been agreed upon both in the original contract and in the subsequent agreement as contain (sic) in the February 8, 2007 signed letter.[34]

This admission by Form-Eze bolsters the conclusion that the parties intended to include a labor-guarantee provision in Contract No. 1. Both Contracts No. 2 and 3 set the labor rate at ₱60.00 per carpenter man-hour. BFC fixed the cost of labor at ₱453,294.50.

Considering that both parties admitted that there should be a labor- guarantee clause in Contract No. 1, it can be reasonably inferred that the failure to include said provision was due to mistake. A reformation is in order to include a cost of labor provision in Contract No. 1.

Expenses for x-bracing gand the cost of labor should be deducted under Contracts No. 2 and 3.

Except for the expenses for x-bracing used in deck assemblies which had been admitted by Form-Eze President James Franklin, BFC is not entitled to be reimbursed for the cost of helmets, petroleum, and oil lubricants in the absence of any stipulations in the contracts. The cost of labor, on the other hand, should be deducted pursuant to the labor-guarantee provisions in Contracts No. 2 and 3.

The cost for x-bracing amounts to P358,250.00 as evidenced by the receipt issued by Comer.[35]

The costs of labor are as follow:

Contract No. 1 = ₱453,294.50
Contract No. 2 = ₱1,373,634.60
Contract No. 3 = ₱273,240.00

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[34] See Judicial Affidavit of Mr. James W. Franklin; *rollo*, pp. 287-288.

[35] *Rollo*, Vol. I, p. 482.

Obligation of BFC under Contract No. 1:

92,696.40 contact square meters x ₱225.00 =		₱20,856,690.00
Less:	Amount paid	7,700,000.00
	Payment for billing for Pour 1	487,828.05
	Cost of labor	453,294.50
	Cost of X-bracing	358,250.00
		₱11,857,317.45

The Memorandum of Agreement dated 5 January 2007 is an exclusive licensing agreement.

BFC avers that CIAC erred when it stated the BFC was given the exclusive license to manufacture Form-Eze's equipment consisting of scaffoldings and accessories and they became part of that provided by Form-Eze to BFC.

At the outset, we agree that the subsequent Memorandum of Agreement executed by the parties on 5 January 2007 is an exclusive licensing agreement. It was signed by both parties wherein BFC has agreed to sell the scaffolding frames and accessories it manufactured to Form-Eze at the end of the project. This Agreement was incorporated in Contract No. 4 wherein BFC will be allowed to deduct ₱6,352,500.00 from the equipment lease contract, which is presumably Contract No. 1. At this point, Contract No. 4 is deemed to have novated the obligation of BFC with respect to furnishing all scaffoldings. Contract No. 1 states that BFC shall furnish the scaffoldings at no cost to Form-Eze. On the other hand, Contract No. 4 requires BFC to sell the scaffoldings to Form-Eze at the end of the project and deduct the cost of the same from the contract price of Contract No. 1. This setup cannot in any way be interpreted as part of the deckform supplied by Form-Eze. As pointed out by BFC, the scaffoldings and accessories were the responsibility of BFC under Contract No. 1. Thus, the manufactured hardware under Contract No. 4 could not have added to the deckform system because they are not the equipment of Form-Eze had obligated itself to supply under Contract No. 1.

Obligation of BFC under Contract No.2

BFC maintains that since Form-Eze failed to meet the minimum conditions under Contract No. 1 where the minimum 126,000 contact square meters were not reached, then the forklifts under Contract No. 2 were also not used for a minimum of 126,000 contact square meters.

We agree. BFC is liable only to pay the amount proportionate to 92,696.40 contact square meters at ₱50.00 per contact square meter, the rental rate for the forklifts. Thus:

92,696.40 contact square meters x ₱50.00 =	₱ 4,634,820.00
Less: Payments made	990,000.00
Cost of Labor	1,286,377.50
SUBTOTAL	₱ 2,358,442.50

Obligation of BFC under Contract No. 3.

The CIAC had correctly noted the ambiguity in Contract No. 3, particularly the "sufficient number of column forms as required to complete six (6) poured in place columns per day." For BFC, the sufficient number of column forms is 12 sets a day while Form-Eze considered its supply of six (6) full height built up column forms as sufficient. The CIAC found that Form-Eze failed to comply with the requirements under Contract No. 3, hence it merely awarded Form-Eze 2/3 of the minimum contract amount at ₱2,153,666.67.

We find that the CIAC's award lacked bases. It gave credence to the methodology used by Form-Eze and noted that the latter had supplied six (6) full height built-up columnforms, *albeit* insufficient. We hold the contrary. The methodology used by BFC, which involves "columnforms with window openings and that from its installation, alignment, bracing, inspection, approval of alignment, verticality and rigidity of the erected columnforms, pouring, drying and removal of the forms, it will require twelve

(12) column forms a day, should have been considered. The CIAC itself had already ruled that the ambiguity in Contract No. 3 should not favor Form-Eze, the party who prepared the contract. Thus, it is only logical that the methodology employed by BFC should be credited.

Using 12 column forms as the minimum requisite and Form-Eze having supplied only four (4) usable column forms, it can be established that the delivered column forms can only be used for 1/3 portion of the 9,100 contact square meters or 3,033.33 contact square meters. It was further proven by BFC that about 50% of the column form requirements of the project were already completed with the use of their own equipment. Thus, it is but equitable that the 3,033.33 contact square meters be further reduced by 50% or 1,516.67 contact square meters. BFC is then liable to pay ₱441,502.87 broken down as follows:

1,516.67 X ₱355.00	=	₱ 538,417.85
Less: Cost of Labor		96,915.00
SUBTOTAL:		**₱ 441,502.87**

BFC is obliged to pay rental for u-heads under Letter-Agreement dated 5 January 2007.

Under the letter dated 8 February 2007, "BFC has completed fabrication on a sufficient quantity of u-heads with screw assemblies and heavy duty bases so that BFC can immediately start returning the 24 inch and 18 inch u-head assemblies (561 pcs) and heavy duty bases (483 pcs) which were on temporary loan to BFC by [Form-Eze] until BFC could manufacture their own equipment. The temporary loan was expected to be approximately [two] (2) weeks and the equipment was picked-up January 9th, 2007 and still in used today."[36] It is understood that upon expiration of the two-week temporary loan and upon failure by BFC to return the equipment, it is then liable to pay for rent. We find that the monthly rental amount of ₱96,600.00

[36] *Id.* at 204.

was substantiated by Form-Eze. 483 pieces of 24 inch and 18 inch galvanized adjustable heads and 483 pieces of galvanized heavy duty plates were indeed delivered to BFC as evidenced by the delivery receipts.[37] According to Mr. Clemente, Form-Eze's Sales Engineer, the rental amount for adjustable u-heads are fixed at ₱160.00 per unit, while the galvanized heavy duty plates are at ₱40.00 per unit.[38] By agreeing to the terms of the 8 February 2007 Letter, BFC is deemed to have acquiesced to the rental fee in case it failed to return the u-heads and plates on time. Therefore, we affirm the CIAC's ruling that BFC is liable to pay rental of the equipment in the amount of ₱96,000.00 per month until the equipment leased is fully returned to Form-Eze.

BFC President should not be included as party to this case?

Section 4 of Executive Order No. 1008 vests jurisdiction on CIAC over disputes disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. Moreover, the party involved must agree to submit to voluntary arbitration. In other words, anyone who is not a party to the contract in his personal capacity is not subject to the jurisdiction of the CIAC. In this case, Pineda signed the challenged contracts in his capacity as President of BFC. There is no indication that he voluntarily submitted himself as a party to the arbitration case. In fact, he has been consistently contesting his inclusion as a respondent in the CIAC proceedings. CIAC however considered Pineda as a joint tortfeasor, thus justifying his joinder as a co-defendant.

We do not consider the imputed acts of Pineda as an indicia of bad faith to classify him as a joint tortfeasor. First, it was proven that Form-Eze is not entitled to all its monetary claims under the contract. Second, we have also subscribed to BFC's position that Contract No. 1 should have included a labor

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[37] *Id.* at 324-325, 330 and 334.

[38] *Id.* at 387. Judicial Affidavit of Mr. Clemente.

guarantee provision and that it was by mistake that said clause was excluded. Third, BFC's alleged refusal to return the u-head assemblies and heavy duty bases was meted with a heavy penalty in the form of a huge rental fee. BFC had, as a matter of fact, admitted to owing Form-Eze rental payment. Fourth, the claim of threat against Form-Eze's President is unsubstantiated and uncorroborated.

Attorney's Fees and Costs of Arbitration.

The controversy essentially boils down to the interpretation and factual application of the existing contracts. Neither party was able to prove bad faith in their dealing with each other. Under Article 2208 of the Civil Code, attorney's fees may, among others, be recovered where defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim. We observe that in filing the complaint against BFC, Form-Eze was merely seeking payment for its service under the contract. BFC had admitted to its obligation. The problem lies only on the amount to be paid. This is not tantamount to bad faith.

Finally, both parties should equally share the costs of arbitration since their prayers were only partially granted.[39]

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated 15 January 2010 and Resolution dated 13 July 2010 are **MODIFIED**. Petitioner B.F. Corporation is ordered to pay respondent Form-Eze Systems Inc. the following amounts:

Under Contract No. 1:	₱11 ,857,317.45
Under Contract No. 2:	2,358,442.50
Under Contract No. 3:	441,502.87
Under Letter-Agreement dated 7 January 2007:	560,000.00
GRAND TOTAL:	**₱15,217,262.82**

and 50% of the Cost of Arbitration.

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[39] *Filipinas (Pre-Fab Bldg.) System, Inc. v. MRT Dev't. Corp.*, 563 Phil. 184, 218 (2007).

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 194554. December 7, 2016]

ROMEO M. LANDICHO, *petitioner, vs.* **WILLIAM C. LIMQUECO,** *respondent.*

[G.R. No. 194556. December 7, 2016]

EDGAR PEÑALOSA, DARWIN P. LANDICHO, JURIS P. LANDICHO, IVY P. LANDICHO, and FELIPE PEÑALOSA, *petitioners, vs.* **WILLIAM C. LIMQUECO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS TO THE COURT OF APPEALS; PROPER REMEDY TO QUESTION THE JURISDICTION OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB), AND THE PROVINCIAL AGRARIAN REFORM ADJUDICATOR (PARAD) OVER THE CASE.— Respondent impugns the jurisdiction of the DARAB and PARAD over the cases filed by the petitioners. In other words, the question posed before

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[*] Additional member per Raffle dated 5 December 2016.

the CA pertained to jurisdiction over the subject matter of a case. In *Sevilleno v. Carilo,* the Court has reiterated that such kind of question is a pure question of law. Thus, considering that Section 3, Rule 43 of the Rules of Court permits appeal whether the questions involved are of fact, of law or both, respondent's resort *via* Rule 43 was certainly proper.

2. ID.; ID.; PLEADINGS AND PRACTICE; CERTIFICATION OF NON-FORUM SHOPPING; WHEN THE CERTIFICATION AGAINST FORUM SHOPPING WAS NOT SIGNED BY ALL THE PLAINTIFFS OR PETITIONERS IN A CASE, THE EFFECT WOULD BE THAT ONLY THOSE WHO DID NOT SIGN WOULD BE DROPPED AS PARTIES IN THE CASE.— As regards the admission by the CA of the amended petition despite Hai's non-compliance with the rule on certification of non-forum shopping, petitioners must be reminded that in *Altres v. Empleo,* the Court has categorically stated that when the certification against forum shopping was not signed by all the plaintiffs or petitioners in a case, the effect would be that only those who did not sign would be dropped as parties in the case. Accordingly, the failure of respondent's co-appellant to affix her signature should not prejudice his rights. As far as respondent is concerned, he complied with the rules on certification of non-forum shopping to the extent of correcting the apparent lack of Hai's signature by asking the CA to admit the amended petition with him as the sole petitioner.

3. LABOR AND SOCIAL LEGISLATION; THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (CARL) (REPUBLIC ACT NO. 6657); THE DARAB, THE PARAD AND THE DEPARTMENT OF AGRARIAN REFORM (DAR); JURISDICTION THEREOF; DAR ADMINISTRATIVE ORDER NO. 6, SERIES OF 2000 HAS BEEN REPEALED BY DAR ADMINISTRATIVE ORDER NO. 3, SERIES OF 2003.— The CA was of the view that the claims of the petitioners should have been filed with the DAR Secretary following DAR Administrative Order No. 6, Series of 2000 x x x. [D]AR Administrative Order No. 6, Series of 2000 has already been repealed by DAR Administrative Order No. 3, Series of 2003. Section 38, Rule VII of DAR Administrative Order No. 3, Series of 2003 expressly provides "this order modifies or repeals DAR-A0-6-2000 and all other

issuances or portions thereof that are inconsistent herewith." Section 3, Rule I of the same administrative order recognizes that **the DARAB and the PARAD have exclusive original jurisdiction, among others, over the annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands under the administration and disposition of the DAR or Land Bank of the Philippines** and **those cases involving the sale, alienation, pre-emption and redemption of agricultural lands under the coverage of the CARL or other agrarian laws.** On this score alone, it is clear that the CA erred in ruling that the DAR Secretary had jurisdiction over the case. Further, R.A. No. 6657 vests with the DAR the primary jurisdiction to determine and adjudicate agrarian reform matters including those involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (*DA*) and the Department of Environment and Natural Resources (*DENR*).

4. ID.; ID.; ID.; ID.; AGRARIAN DISPUTE, DEFINED; CONTROVERSY PERTAINING TO THE SALE TO A THIRD PERSON OF LANDS ACQUIRED UNDER THE THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP) IS AN AGRARIAN DISPUTE WITHIN THE JURISDICTION OF THE DARAB AND PARAD.— [T]he PARAD and the DARAB have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the CARP under R.A. No. 6657, as amended by R.A. No. 9700, E.O. Nos. 228, 229, and 129-A, R.A. No. 3844, as amended by R.A. No. 6389, P.D. No. 27 and other agrarian laws and their Implementing Rules and Regulations. x x x. Section 3(d) of the CARL defines an agrarian dispute as: x x x, any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship, or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. In this case, the petitions filed before the PARAD asking for the nullification of the contracts of sale and recovery of the CLOAs did not contain any allegation of tenurial relations constitutive of an agrarian dispute as the parties

were not subjects of a landowner and tenant relationship, or an allegation that they were lessors and lessees of each other as reinforced by the categorical admission of the parties in their pleadings that no such contract exists. These circumstances, however, do not mean that the controversy is no longer agrarian in nature. The second sentence of Section 3(d) of the CARL clearly provides that an agrarian dispute also includes "any controversy relating to compensation of lands acquired under the CARP law and other terms and conditions of transfer of ownership from landowner to farmworkers, tenants, and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee." Here, the controversy pertains to respondent's act of selling to a third person the lands acquired by the petitioners under the CARP. Hence, the case is still an agrarian dispute and within the jurisdiction of the DARAB and PARAD.

5. ID.; ID.; ID.; ID.; ID.; SUFFICIENT ALLEGATIONS ESTABLISHING THE EXISTENCE OF AN AGRARIAN DISPUTE MUST BE MADE IN THE COMPLAINT, IN ORDER FOR THE DARAB AND PARAD TO EXERCISE JURISDICTION OVER CONTROVERSIES.— In order for the DARAB and PARAD to exercise jurisdiction over such controversies, sufficient allegations establishing the existence of an agrarian dispute must be made in the complaint following the rule that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all such reliefs. In the case at bench, the subject properties, which originally formed part originally of Romeo Landicho's property covered by OCT No. P-29365, were subjected to voluntary land transfer, thereby placing it under the coverage of the CARL. The petitioners became the beneficiaries of the subdivided properties by operation of Section 6 and Section 22 of the CARL, commonly referred to as the retention limits of a landowner, who in this case was Romeo Landicho. These allegations plainly show that the petitioners are invoking their rights as beneficiaries of the CARL; that they consider the conveyance of their properties as having been

made in violation of the terms and conditions of the CARL; and that all of the transfers should be nullified because they were procured through fraud, undue influence and mistake. All these constitute an agrarian dispute in the context of a controversy relating to terms and conditions of transfer of ownership from landowner to agrarian reform beneficiaries. This is because the main contention of the parties was clearly couched on the alleged denial by the respondent of their established rights as beneficiaries over the subject properties under agrarian reform laws. Accordingly, it is undeniable that the DARAB and PARAD have jurisdiction over this controversy.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; COURT IS NOT A TRIER OF FACTS; REMAND OF THE CASE TO THE COURT OF APPEALS, WARRANTED.— Settled is the rule that this Court is not a trier of facts. In that regard, the Court notes that the CA failed to pass upon the question on whether fraud, undue influence and mistake occasioned the procurement by respondent of the titles to the properties and whether there was indeed a violation of the CARL. As there were none, the Court finds it necessary to remand this case to the CA for the proper review of the substantive issues as raised by the parties concerning the legality of the transfer of the properties to the respondent.

APPEARANCES OF COUNSEL

Mark Anthony M. Nuguit for Romeo M. Landicho.
Vincent Paul S. Ventus for Edgar Peñalosa, *et al.*
Limqueco & Macaraeg Law Office for respondent.

D E C I S I O N

MENDOZA, *J.*:

These are consolidated petitions[1] for review on *certiorari* under Rule 45 of the Rules of Court seeking to review the

[1] *Rollo* (G.R. No. 194554), pp. 10-41; *rollo*, (G.R. No. 194556), pp. 11-54.

June 28, 2010 Decision[2] and November 23, 2010 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 75482, which reversed and set aside the January 15, 2003 Decision[4] of the Department of Agrarian Reform Adjudication Board *(DARAB)* in DARAB Case Nos. 10392, 10392-A, 10392-A-1, 10392-A-2 and 10392-A-3.

The January 15, 2003 DARAB Decision affirmed the March 5, 2001 Decision[5] of the Provincial Agrarian Reform Adjudicator in Region IV, Lucena City *(PARAD)* in DARAB Case Nos. R-0408-004-00, R-0408-015-00, R-0408-016-00, R-0408-017-00, R-0408-018-00, R-0408-019-00, R-0408-020-00, and R-0408-021-00.

The DARAB and PARAD earlier ordered respondent William C. Limqueco *(respondent)* to immediately surrender to the petitioners[6] their respective owner's copies of the Certificate of Land Ownership Award *(CLOA)* Nos. 00125976, 00125977, 00125978, 00125979, 00125980, 00122648, 00122649, 00122650, 00122659 or, in case of failure, ordering the Registry of Deeds *(RD)* of Quezon Province to cancel the aforementioned CLOAs and for the Department of Agrarian Reform *(DAR)* Provincial Office to issue new owner's duplicate CLOAs to petitioners.

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[2] *Rollo* (G.R. No. 194554), pp. 44-51. Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Sesinando E. Villon and Marlene Gonzales-Sison, concurring.

[3] *Id.* at 54-55. Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villion, concurring.

[4] *Id.* at 61-70. Penned by Assistant Secretary Ianela G. Jusi-Barrantes, with Assistant Secretaries Augusto P. Quijano, Lorenzo R. Reyes and Roel Eric C. Garcia, concurring.

[5] *Id.* at 71-87. Penned by Provincial Adjudicator Mardocheo S. Camporedondo.

[6] The petitioners in the cases filed before the PARAD are: (1) Juris P. Landicho, Ivy P. Landicho, Darwin P. Landicho, Edgar Peñalosa and Felipe Peñalosa.

The Antecedents

Sometime in the year 2000, petitioners Felipe Peñalosa, represented by Joel Peñalosa and Edgar Peñalosa, Darwin P. Landicho, Juris P. Landicho, and Ivy P. Landicho each filed petitions before the PARAD against respondent and Yang Chin Hai *(Hai)*, his Taiwanese investor-partner. Petitioner Romeo Landicho *(Romeo Landicho)* was impleaded *via* third-party complaint in the said cases. The petitions sought the nullification of the contracts of sale in favor of respondent and the return to the petitioners of their respective owner's duplicate copies of the CLOAs issued by the DAR back in 1992 or, in the alternative, the cancellation of the CLOAs and the issuance of the RD of new certificates in petitioners' names.

The CLOAs and Transfer Certificates of Title *(TCTs)* covered five (5) parcels of land located in Mabang Parang, Lucban, Quezon, which originally formed part of a bigger landholding with an area of 177,763 square meters, previously covered by Original Certificate of Title *(OCT)* No. P-29365 or Free Patent No. 593794 and registered in the name of spouses Romeo and Evangeline Landicho *(Spouses Landicho)*. By virtue of a Voluntary Land Transfer, the land covered by OCT No. P-29365 was placed under the coverage of the Comprehensive Agrarian Reform Program *(CARP)* in 1992. As a consequence, Spouses Landicho were able to retain five (5) hectares of said landholding, while the remaining portion was subdivided among the petitioners, to wit:

BENEFICIARY	CLOA NO.	TCT NO.	AREA(sq. m.)	LOCATION
Juris P. Landicho	00125976	T-4006	29,345	Mahabang Parang
Darwin P. Landicho	00125977	T-4007	21,393	Mahabang Parang
Ivy P. Landicho	00125978	T-4008	27,592	Mahabang Parang
Felipe L. Peñalosa	00125979	T-4009	24,717	Mahabang Parang
Edgar L. Peñalosa	001259801	T-4010	24,716	Mahabang Parang
	TOTAL LAND AREA =		127,763	

Petitioner Felipe Peñalosa averred that respondent was able to obtain physical possession of his CLOA as well as his TCT to the property and that he came to know that respondent and Romeo Landicho entered into a contract of sale of his property and as a result thereof, respondent was able to take hold of the copy of the TCT to his land.

Petitioners Edgar Peñalosa, Darwin P. Landicho, Juris P. Landicho, and Ivy P. Landicho, on the other hand, contended that sometime in June 1994, they were asked by respondent and Romeo Landicho to sign certain documents which turned out to be contracts of sale and lease involving their properties covered by the CLOAs; that by reason of such sale, the owner's duplicate copies of their TCTs were delivered to respondent; and that in affixing their signatures, they did not receive any consideration and the legal implications of the said contracts were not explained to them.

Petitioners Darwin Landicho, Juris Landicho and Ivy Landicho further stated that they had entrusted their owner's duplicate copies of their TCTs and the CLOAs to their father, Romeo Landicho. In June 1994, however, they came to know that respondent and their father entered into a contract of sale and/or lease involving their properties and by virtue thereof, the TCTs were given to respondent.

Hence, the petitioners claimed that the transfers of lands covered by their individual CLOAs by Romeo Landicho to respondent were made in violation of Republic Act *(R.A.)* No. 6657 or the Comprehensive Agrarian Reform Law of 1988 *(CARL)*, which prohibited the sale, transfer or conveyance of land for a period of ten (10) years;[7] and that their consent to such transactions was vitiated by fraud, undue influence and mistake. For said reason, they filed the cases before the PARAD to recover their lands.

Respondent opposed the petitions. He asserted that he was a purchaser in good faith and for value and that the PARAD

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[7] Republic Act No. 6657, Section 27.

had no jurisdiction over the subject petitions because no agrarian dispute was involved.

In its March 5, 2001 Decision,[8] the PARAD ruled in favor of the petitioners. On the procedural aspect, it held that it had jurisdiction as the cases involved an agrarian dispute or the *"rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation and use of all agricultural lands covered by the CARP and other agrarian laws."* It further declared that respondent was already estopped from questioning the jurisdiction over the subject matter because his motion to dismiss was filed seven (7) months after he had submitted his answer. On the merits, the PARAD ordered respondent to surrender the subject CLOAs and TCTs over the properties. The dispositive portion of the PARAD decision reads:

WHEREFORE, judgment is hereby rendered in favor of the petitioners as follows:

A. ORDERING respondent, Atty. William Limqueco to immediately surrender and deliver to petitioners their respective owner's copies of CLOA No. 00125976 (T-4006); CLOA No. 00125977 (T-4007); CLOA No. 00125978 (T-4008); CLOA No. 00125979 (T-4009); CLOA No. 00125980 (T-4010); CLOA No. 00122648 (T-3747); CLOA No. 00122649 (T-3749); CLOA No. 00122650 (T-3748) and CLOA No. 00122659 (T-3785), within five (5) days from receipt of this decision;

B. In the event respondent Limqueco refuses or fails to surrender subject CLOAs/titles to petitioner within the aforesaid 5-day period, ORDERING, the Register of Deeds of Quezon Province to cancel the subject owner's copies of said CLOAs/titles as lost and therefore, null and void and without legal effect, and further ORDERING the DAR Provincial Office, Talipan, Pagbilao, Quezon, in coordination with the Register of Deeds of Quezon Province to cause immediate issuance of new owner's duplicate CLOAs/titles to petitioners which new CLOAs/titles shall immediately be released to the latter, and be accorded full faith, value and credit.

C. ORDERING respondent William L. Limqueco and Yang Chin Hai to pay jointly and severally each of the petitioners in the eight

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[8] *Rollo* (G.R. No. 194554), pp. 71-87. Penned by Provincial Adjudicator Mardocheo S. Camporedondo.

(8) petitions herein the amount of ₱20,000.00 as for compensatory damages, ₱50,000.00 as for exemplary damages and ₱50,000.00 as for attorney's fees.

D. Ordering defendant Atty. Romeo Landicho to pay petitioners Felipe Peñalosa and Edgar Peñalosa the amount of ₱20,000.00 each as for compensatory damages, ₱50,000.00 as for exemplary damages and ₱50,000.00 each as for attorney's fees.

E. DISMISSING the counter-claims of respondents in the herein petitions, and

F. DISMISSING the third-party complaints/cross-claims and the counter-claim in DARAB CASE NOS. R-0408-00 and DARAB CASE NO. R-0408-015-00.

SO ORDERED.[9]

Aggrieved, respondent and Hai appealed before the DARAB. In its January 15, 2003 Decision,[10] the DARAB affirmed *in toto* the decision of the PARAD, disposing as follows:

WHEREFORE, premises considered, the decision of the Adjudicator a quo dated March 5, 2001 is hereby **AFFIRMED** and the appeal is hereby **DISMISSED** for lack of merit.

SO ORDERED.[11]

Undaunted, respondent and Hai appealed[12] to the CA *via* a petition for review under Rule 43 of the Rules of Court. They averred that the DARAB gravely erred in ruling that it had jurisdiction over the cases despite the absence of an agrarian issue. This appeal was, however, dismissed due to the failure of Hai to sign the certification of non-forum shopping. Respondent moved for reconsideration and prayed for the

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[9] *Id.* at 86-87.

[10] *Id.* at 61-70. Penned by Assistant Secretary Ianela G. Jusi-Barrantes, with Assistant Secretaries Augusto P. Quijano, Lorento R. Reyes and Roel Eric C. Garcia, concurring.

[11] *Id.* at 69.

[12] *Rollo* (G.R. No. 194556), p. 216.

admittance of his amended petition with him as the sole petitioner. In a resolution, dated May 26, 2013, the CA granted the same.[13]

Ruling of the CA

In its June 28, 2010 Decision,[14] the CA ruled that the DAR Secretary, and not the PARAD/DARAB, had jurisdiction to hear the subject petitions in the absence of an agrarian dispute. Thus, the petition was granted by the CA, to wit:

> **ACCORDINGLY,** the petition is **GRANTED**. The *Decision* dated January 15, 2003 of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case Nos. 10392, 10392-A, 10392-A-1, 10392-A-2 and 10392-A-3 and the *Decision* dated March 5, 2001 of the Department of Agrarian Reform Provincial Adjudication Board (PARAD) in Region IV, Lucena City, in DARAB Case Nos, R-048-004-00, R-048-015-00, R-0408-016-00 R-0408-017-00, R-0408-018-00, R-0408-019-00, R-0408-020-00, and R-0408-021-00, are **SET ASIDE**. DARAB Case Nos. 10392, 10392-A, 10392-A-1, 10392-A-2 and 10392-A-3 as well as DARAB Case Nos. R-048-004-00, R-048-015-00, R-0408-016-00, R-0408-017-00, R-0408-018-00, R-0408-019-00, R-0408-020-00, and R-0408-021-00 are **DISMISSED**. This is without prejudice to the re-filing of the petitions in these aforementioned cases following DAR Administrative Order No. 6, Series of 2000, within (30) days from the finality of this *Decision.*
>
> **SO ORDERED.**[15]

The petitioners separately moved for reconsideration. Nevertheless, in a Resolution,[16] dated November 23, 2010, the motions for reconsideration were denied.

Hence, these petitions.

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[13] *Rollo* (G.R. No. 194554), p. 194.

[14] *Id.* at 44. Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Sesinando E. Villon and Marlene Gonzales-Sison, concurring.

[15] *Id.* at 50-51.

[16] *Id.* at 54-55. Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon, concurring.

ISSUES

I. The Court of Appeals seriously erred in admitting Atty. Limqueco's amended petition for review despite dismissal of the original petition for review on the ground of Atty. Limqueco's violation of the rule against forum shopping disregarding the settled rule that a violation of the rule against forum shopping is not curable by mere amendment under para. 2, Section 5, Rule 7 of the 1997 Rules of Civil Procedure in relation to Supreme Court Adm. Circular No. 04-94.

II. The Court of Appeals seriously erred in not holding that respondent's remedy of appeal by petition for review under Rule 43 is procedurally improper because the correct remedy is a special civil action for certiorari under Rule 65 in view of respondent's assertion that the DARAB/PARAD lacked jurisdiction over the cases decided *a quo.*

III. The Court of Appeals erred in setting aside the herein DARAB Decision, which affirmed *in toto* the PARAD Decision, disregarding that, by settled jurisprudence, the DARAB has exclusive jurisdiction, to the exclusion of the DAR Secretary, to try and decide any agrarian dispute or "any incident involving the implementation of the Comprehensive Agrarian Reform Program (CARP)" such as the herein petitions a quo which seek the principal relief of getting back the owners' copies of petitioners certificates of land ownership award (CLOAs) in the illegal possession of respondent Limqueco.

IV. The Court of Appeals erred in invoking the case of *Heirs of the Late Herman Rey Santos et al. v. Court of Appeals* (327 SCRA 293) because, unlike in said *Santos Case* which involves conflicting ownership claims over a parcel of land sold at auction sale, the DARAB Petitions do not involve any conflicting ownership claims as therein petitioners are farmers-beneficiaries, and admittedly CLOA-registered owners to the exclusion of respondent Limqueco who admittedly is but the illegal possessor of the owners' copies of CLOAs and has no title or claim whatsoever over said CLOAs.

V. The Court of Appeals seriously erred in suggesting to the parties to refer their petitions to the DAR Secretary supposedly pursuant to DAR AO No. 6, Series of 2000,

ignoring and/or negligently not knowing that said DAR AO NO. 6, Series of 2000 had long been repealed by DAR AO No. 3, Series of 2003 issued by the DAR Secretary on January 15, 2003 and, hence, the said suggestion is incorrect, invalid and misleading.

VI. The Court of Appeals erred in not holding that respondent's amended petition for review (Annex "N" hereof) filed under Rule 43 suffers from the procedural infirmity of non-exhaustion of administrative remedy by way of a motion for reconsideration of the subject DARAB Decision in view of the settled ruling that the non-exhaustion doctrine is mandatory specially if it applies to decisions of quasi-judicial bodies like DARAB.[17]

VII. The Court of Appeals erred in not holding that respondent is in estoppel to question the jurisdiction of both the PARAD and the DARAB in view of his filing of answer with counter-claims to petitioners' petitions below and his subsequent filing of a third-party complaint against respondent Romeo Landicho.

VIII. The Court of Appeals seriously erred in ignoring petitioners' request for clarification as to which petition the subject Decision dated June 28, 2010 (Annex "A" hereof) pertains, i.e., the original petition for review dated February 11, 2003 (Annex "K" hereof) or the amended petition for review dated March 3, 2003 (Annex "N" hereof) considering that both the notice of decision (Annex "A-1") and the Decision itself (Annex "A") in CA-G.R. SP No. 75482 are similarly captioned with Atty. William Limqueco (Limqueco) and Yang Chin Hai (Hai) still indicated as the two (2) petitioners.[18]

Position of Respondent

In his Comment,[19] respondent countered that (1) the PARAD and DARAB had no jurisdiction over the petitions considering

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[17] *Rollo* (G.R. No. 194556), pp. 25-26; *rollo* (G.R. No. 194554), pp. 23-24.

[18] See *Rollo* (G.R. No. 194556), pp. 25-26.

[19] *Id.* at 222.

that the petitioners expressly admitted the non-existence of an agrarian relationship – a requirement in agrarian cases following the ruling of the Court in the *Santos case;*[20] (2) that the petition for review under Rule 43 filed before the CA was the proper remedy because the requirement of non-existence of an appeal in order for a petition for *certiorari* under Rule 65 to prosper was wanting; (3) that he was not estopped in questioning the DARAB's jurisdiction as the same could be raised at any stage of the proceedings, even on appeal; (4) that the failure to file a motion for reconsideration before appealing to the CA was of no moment as it was not a mandatory requirement under Rule 43; (5) that the CA did not err in denying petitioners' motion for clarification asking whether the CA decision pertained to the original petition or the amended one because both raised the same principal issues; and (6) that the CA correctly held that the claims could be properly ventilated under the jurisdiction of the DAR Secretary.

Position of Petitioners

In their consolidated replies,[21] the petitioners averred (1) that the absence of tenancy relationship did not deprive the DARAB and PARAD of their jurisdiction, citing *Heirs of Jose M. Cervantes v. Miranda*[22] where the Court held that *"if the issues between the parties are intertwined with the resolution of an issue within the exclusive jurisdiction of the DARAB, such dispute must be addressed and resolved by the DARAB;"* (2) that the proper remedy from the decision of the DARAB should have been a petition for *certiorari* Rule 65 instead of Rule 43 as held in *Fortich v. Corona;*[23] (3) that the CA erred in giving due course to the petition despite respondent's failure to file a motion for reconsideration with the DARAB following the

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[20] 384 Phil. 26 (2000).

[21] *Rollo* (G.R. No. 194554), pp. 281-296; *rollo* (G.R. No. 194556), pp. 367-388.

[22] 641 Phil. 553 (2010).

[23] Resolution, 371 Phil. 672 (1999).

doctrine of exhaustion of administrative remedies; (4) that the CA erred in admitting the amended petition for review despite the rule that non-compliance with the requirements of certification of non-forum shopping could not be cured by mere amendment; and (5) that the decision of the CA resolved the earlier-dismissed original petition instead of the amended petition as shown in its caption and body.

The primordial issue in this case is whether the CA correctly ruled that PARAD and DARAB had no jurisdiction over the subject matter of the cases filed by the petitioners.

The Court's Ruling

Procedural Matters

Petitioners attempt to question the ruling of the CA on two (2) procedural fronts. *First,* they claim that respondent's recourse to the CA *via* Rule 43 was improper because the correct remedy should have been a special civil action for *certiorari* under Rule 65 in view of respondent's assertion that the DARAB or PARAD lacked jurisdiction over the cases. *Second,* it was an error on the part of the CA to have admitted respondent's amended petition for review for it disregarded the settled rule that a violation of the rule against forum shopping is not curable by mere amendment under paragraph 2, Section 5, Rule 7 of the 1997 Rules of Civil Procedure in relation to Supreme Court Administrative Circular No. 04-94.

Respondent impugns the jurisdiction of the DARAB and PARAD over the cases filed by the petitioners. In other words, the question posed before the CA pertained to jurisdiction over the subject matter of a case. In *Sevilleno v. Carilo*[24] the Court has reiterated that such kind of question is a pure question of law.[25] Thus, considering that Section 3, Rule 43 of the Rules of Court permits appeal whether the questions involved are of

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[24] 559 Phil. 789 (2007).

[25] *Id.*

fact, of law or both,[26] respondent's resort *via* Rule 43 was certainly proper.

As regards the admission by the CA of the amended petition despite Hai's non-compliance with the rule on certification of non-forum shopping, petitioners must be reminded that in *Altres v. Empleo*,[27] the Court has categorically stated that when the certification against forum shopping was not signed by all the plaintiffs or petitioners in a case, the effect would be that only those who did not sign would be dropped as parties in the case.

Accordingly, the failure of respondent's co-appellant to affix her signature should not prejudice his rights. As far as respondent is concerned, he complied with the rules on certification of non-forum shopping to the extent of correcting the apparent lack of Hai's signature by asking the CA to admit the amended petition with him as the sole petitioner.

On Jurisdiction

The CA was of the view that the claims of the petitioners should have been filed with the DAR Secretary following DAR Administrative Order No. 6, Series of 2000, which provides:

SECTION 2. *Cases Covered* — These Rules shall govern cases falling within the exclusive jurisdiction of the DAR Secretary which shall include the following:

(a) x x x x x x x x x

(q) Such other matters not mentioned above but strictly involving the administrative implementation of RA 6657 and other agrarian laws, rules and regulations as determined by the Secretary. (Emphasis supplied).[28]

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[26] The Rules of Court, Section 3. *Where to appeal.* — An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.

[27] 594 Phil. 246 (2008).

[28] See < http://www.lis.dar.gov.ph/home/document_view/6637>. [Last visited September 7, 2016]

First, DAR Administrative Order No. 6, Series of 2000 has already been repealed by DAR Administrative Order No. 3, Series of 2003. Section 38, Rule VII of DAR Administrative Order No. 3, Series of 2003 expressly provides "this order modifies or repeals DAR-A0-6-2000 and all other issuances or portions thereof that are inconsistent herewith." Section 3, Rule I of the same administrative order recognizes that **the DARAB and the PARAD have exclusive original jurisdiction, among others, over the annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands under the administration and disposition of the DAR or Land Bank of the Philippines**[29] and **those cases involving the sale, alienation, pre-emption and redemption of agricultural lands under the coverage of the CARL or other agrarian laws.**[30]

On this score alone, it is clear that the CA erred in ruling that the DAR Secretary had jurisdiction over the case.

Further, R.A. No. 6657 vests with the DAR the primary jurisdiction to determine and adjudicate agrarian reform matters including those involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture *(DA)* and the Department of Environment and Natural Resources *(DENR)*.[31]

To strengthen and expand the functions of the DAR,[32] the DARAB was created by then President Corazon Aquino through Executive Order *(E.O.)* No. 129-A.[33]

When the petitions were filed in the year 2000, the proceedings before the PARAD and the DARAB were governed by the DARAB New Rules of Procedures, which were adopted and

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[29] Section 3.3, Rule I, DAR AO No. 3, Series of 2003.

[30] Section 3.5, Rule I, DAR AO No. 3, Series of 2003.

[31] Republic Act No. 6657, Section 50.

[32] The Whereas Clauses, E.O. No. 129-A.

[33] Issued on July 27, 1987.

promulgated on May 30, 1994, and came into effect on June 21, 1994 after publication (1994 DARAB Rules). The 1994 DARAB Rules identified the cases over which the DARAB shall have jurisdiction, to wit:

RULE II

JURISDICTION OF THE ADJUDICATION BOARD

SECTION 1. *Primary and Exclusive Original and Appellate Jurisdiction.* The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate **all agrarian disputes** involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:

a) The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation and use of all agricultural lands covered by the CARP and other agrarian laws;

b) The valuation of land, and the preliminary determination and payment of just compensation, fixing and collection of lease rentals, disturbance compensation, amortization payments, and similar disputes concerning the functions of the Land Bank of the Philippines (LBP);

c) The annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands under the administration and disposition of the DAR or LBP;

d) Those case arising from, or connected with membership or representation in compact farms, farmers cooperatives and other registered farmers associations or organizations, related to lands covered by the CARP and other agrarian laws;

e) Those involving the sale, alienation, mortgage, foreclosure, pre-emption and redemption of agricultural lands under the coverage of the CARP or other agrarian laws;

f) Those involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

g) Those cases previously falling under the original and exclusive jurisdiction of the defunct Court of Agrarian Relations under Section 12 of Presidential No. 946, except sub-paragraph (Q) thereof and Presidential Decree No. 815.

It is understood that the aforementioned cases, complaints or petitions were filed with the DARAB after August 29, 1987.

Matters involving strictly the administrative implementation of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARP) of 1988 and other agrarian laws as enunciated by pertinent rules shall be the exclusive prerogative of and cognizable by the Secretary of the DAR.

h) And such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR.

SECTION 2. *Jurisdiction of the Regional and Provincial Adjudicator*. The RARAD and the PARAD shall have concurrent original jurisdiction with the Board to hear, determine and adjudicate all agrarian cases and disputes, and incidents in connection therewith, arising within their assigned territorial jurisdiction. (Emphases supplied.)

Specifically, the PARAD and the DARAB have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the CARP under R.A. No. 6657, as amended by R.A. No. 9700, E.O. Nos. 228, 229, and 129-A, R.A. No. 3844, as amended by R.A. No. 6389, P.D. No. 27 and other agrarian laws and their Implementing Rules and Regulations.[34]

The question here boils down to whether this case falls under the DARAB's jurisdiction as contemplated under the CARL

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[34] *Heirs of del Rosario v. del Rosario*, 688 Phil. 485, 495 (2012).

and the 1994 DARAB Rules. Consequently, the question as to what an agrarian dispute is and whether sufficient allegations were indeed made in the petitioners' complaints showing to establish an agrarian dispute must first be resolved.

Agrarian Dispute

Section 3(d) of the CARL defines an agrarian dispute as:

> xxx, any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship, or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements.

In this case, the petitions filed before the PARAD asking for the nullification of the contracts of sale and recovery of the CLOAs did not contain any allegation of tenurial relations constitutive of an agrarian dispute as the parties were not subjects of a landowner and tenant relationship, or an allegation that they were lessors and lessees of each other as reinforced by the categorical admission of the parties in their pleadings that no such contract exists.[35] These circumstances, however, do not mean that the controversy is no longer agrarian in nature.

The second sentence of Section 3(d) of the CARL clearly provides that an agrarian dispute also includes "any controversy relating to compensation of lands acquired under the CARP law and other terms and conditions of transfer of ownership from landowner to farmworkers, tenants, and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee."

Here, the controversy pertains to respondent's act of selling to a third person the lands acquired by the petitioners under the CARP. Hence, the case is still an agrarian dispute and within the jurisdiction of the DARAB and PARAD.

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[35] *Rollo* (G.R. No. 194554), p. 49.

Allegations in the complaints

In order for the DARAB and PARAD to exercise jurisdiction over such controversies, sufficient allegations establishing the existence of an agrarian dispute must be made in the complaint following the rule that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all such reliefs.

In the case at bench, the subject properties, which originally formed part originally of Romeo Landicho's property covered by OCT No. P-29365, were subjected to voluntary land transfer, thereby placing it under the coverage of the CARL. The petitioners became the beneficiaries of the subdivided properties by operation of Section 6 and Section 22 of the CARL,[36]

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[36] **Section 6.** ***Retention Limits.*** — Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: provided, that landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the areas originally retained by them thereunder: provided, further, that original homestead grantees or their direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

The right to choose the area to be retained, which shall be compact or contiguous, shall pertain to the landowner: provided, however, that in case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features.n case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act in case the tenant chooses to be a beneficiary in another agricultural land, he

commonly referred to as the retention limits of a landowner, who in this case was Romeo Landicho.

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loses his right as a leaseholder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention.

In all cases, the security of tenure of the farmers or farmworkers on the land prior to the approval of this Act shall be respected.

Upon the effectivity of this Act, any sale, disposition, lease, management, contract or transfer of possession of private lands executed by the original landowner in violation of the Act shall be null and void: provided, however, that those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds shall inform the Department of Agrarian Reform (DAR) within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares.

x x x x x x x x x

Section 22. ***Qualified Beneficiaries.*** — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same barangay, or in the absence thereof, landless residents of the same municipality in the following order of priority:

(a) agricultural lessees and share tenants;
(b) regular farmworkers;
(c) seasonal farmworkers;
(d) other farmworkers;
(e) actual tillers or occupants of public lands;
(f) collectives or cooperatives of the above beneficiaries; and
(g) others directly working on the land.

Provided, however, that the children of landowners who are qualified under Section 6 of this Act shall be given preference in the distribution of the land of their parents: and provided, further, that actual tenant-tillers in the landholdings shall not be ejected or removed therefrom.

Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under this Program.

A basic qualification of a beneficiary shall be his willingness, aptitude, and ability to cultivate and make the land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the PARC.

If, due to the landowner's retention rights or to the number of tenants, lessees, or workers on the land, there is not enough land to accommodate any or

The petitioners made the following allegations in their complaints/petitions:[37]

(8) Sometime in June 1994, petitioner was asked by respondent (now petitioner) Limqueco and Romeo Landicho to sign certain documents which turned out to be contracts of sale and lease involving petitioner's aforesaid property covered by TCT No. T-4007. Having utmost trust in confidence in his father and respondent Limqueco that they were supposedly protecting petitioner's interest, petitioner without examining said contracts which are undated and which do not indicate the names of the buyer or the lessee, had affixed his signature to said contracts of sales and lease of TCT No. T-4007. Respondent Limqueco and Romeo Landicho did not furnish or give petitioner a copy of said contract which are being used by respondent Limqueco with DAR to harass petitioner.

(9) In affixing his signature as aforesaid, petitioner did not receive any consideration and was not told the legal implications of said contracts. He came to learn later that by reason of said contracts, the owner's copy of petitioner's TCT No. T-4007 was delivered by his father Romeo Landicho to respondent Limqueco who, by his own admission, has custody and physical possession of said title up to the present.

(10) Petitioner learned thereafter that the contracts involving the sale and/or lease of his TCT No. T-4007, which is a CLOA title, are null and void as they are prohibited and violates R.A. No. 6657 because under the express restriction incorporated in the CLOA title, the parcel of land subject thereof "shall not be sold transferred or conveyed except through hereditary succession, or to the Government, or to the Land Bank of the Philippines, or to the other qualified beneficiaries for a period of ten (10) years. x x x:"

(11) Petitioner should not be penalized by way of cancellation of his TCT No. T-4007 because he acted in good faith and is not guilty of any fraud considering that his consent to the contracts of sale was

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some of them, they may be granted ownership of other lands available for distribution under this Act, at the option of the beneficiaries.
Farmers already in place and those not accommodated in the distribution of privately-owned lands will be given preferential rights in the distribution of lands from the public domain.

[37] *Rollo* (G.R. No. 194556), pp. 86-91.

vitiated by fraud, undue influence and mistake when he affixed his signature thereto and hence he should be protected under Articles 1412(2) and 1416 of the New Civil Code and other pertinent provisions of law.[38]

x x x x x x x x x

These allegations plainly show that the petitioners are invoking their rights as beneficiaries of the CARL; that they consider the conveyance of their properties as having been made in violation of the terms and conditions of the CARL; and that all of the transfers should be nullified because they were procured through fraud, undue influence and mistake. All these constitute an agrarian dispute in the context of a controversy relating to terms and conditions of transfer of ownership from landowner to agrarian reform beneficiaries. This is because the main contention of the parties was clearly couched on the alleged denial by the respondent of their established rights as beneficiaries over the subject properties under agrarian reform laws.

Accordingly, it is undeniable that the DARAB and PARAD have jurisdiction over this controversy. It was, therefore, an error on the part of the CA to have overturned the rulings of the concerned quasi-judicial bodies on the ground that they had no jurisdiction over the controversy.

Question on Vitiation of Consent

Settled is the rule that this Court is not a trier of facts. In that regard, the Court notes that the CA failed to pass upon the question on whether fraud, undue influence and mistake occasioned the procurement by respondent of the titles to the properties and whether there was indeed a violation of the CARL.

As there were none, the Court finds it necessary to remand this case to the CA for the proper review of the substantive issues as raised by the parties concerning the legality of the transfer of the properties to the respondent.

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[38] *Id.* at 87-88.

WHEREFORE, the petitions are **PARTIALLY GRANTED.** The June 28, 2010 Decision and November 23, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 75482 are hereby **REVERSED** and **SET ASIDE.** The case is **REMANDED** to the Court of Appeals to determine the merits of the alleged violation of the CARP Law as well as the allegations of fraud in respondent's procurement of the CLOAs and titles over the subject properties.

SO ORDERED.

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

THIRD DIVISION

[G.R. No.195445. December 7, 2016]

ANGELINA DE GUZMAN, GILBERT DE GUZMAN, VIRGILIO DE GUZMAN, JR., AND ANTHONY DE GUZMAN, *petitioners, vs.* **GLORIA A. CHICO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICE; CERTIFICATION AGAINST FORUM SHOPPING; A CERTIFICATE AGAINST FORUM SHOPPING IS NOT A REQUIREMENT IN AN *EX PARTE* PETITION FOR THE ISSUANCE OF A WRIT OF POSSESSION, AS THE LATTER IS NOT A COMPLAINT OR OTHER INITIATORY PLEADING.— We affirm the ruling of the CA that a certificate against forum shopping is not a requirement in an *ex parte* petition for the issuance of a writ of possession. An *ex parte* petition for the issuance of writ of possession is not a complaint or other initiatory pleading as contemplated in

Section 5, Rule 7 of the 1997 Rules of Civil Procedure. The non-initiatory nature of an *ex parte* motion or petition for the issuance of a writ of possession is best explained in *Arquiza v. Court of Appeals*. In that case we ruled that the *ex parte* petition for the issuance of a writ of possession filed by the respondent is not an initiatory pleading. Although the private respondent denominated its pleading as a petition, it is, nonetheless, a motion. What distinguishes a motion from a petition or other pleading is not its form or the title given by the party executing it, but rather its purpose. A petition for the issuance of a writ of possession does not aim to initiate new litigation, but rather issues as an incident or consequence of the original registration or cadastral proceedings. As such, the requirement for a forum shopping certification is dispelled.

2. ID.; ID.; ID.; BY ITS NATURE, A WRIT OF POSSESSION IS A MERE INCIDENT IN THE TRANSFER OF TITLE AND NOT A SEPARATE JUDGMENT; THUS, A PETITION FOR THE ISSUANCE OF THIS WRIT IS EXEMPT FROM THE REQUIREMENT OF A CERTIFICATE AGAINST FORUM SHOPPING.— We also cannot subscribe to petitioners' narrow view that only cases covered by foreclosure sales under Act No. 3135 are excused from the requirement of a certificate against forum shopping. Based on jurisprudence, a writ of possession may be issued in the following instances: (a) land registration proceedings under Section 17 of Act No. 496, otherwise known as The Land Registration Act; (b) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (c) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135, as amended by Act No. 4118; and (d) in execution sales. We note that there is no law or jurisprudence which provides that the petition for the issuance of a writ of possession depends on the nature of the proceeding in which it is filed. Thus, we find no logical reason for petitioners' contention that only cases covered by Act No. 3135 are exempt from the requirement of a certificate against forum shopping. [B]y its very nature, a writ of possession is a mere incident in the transfer of title. It is an incident of ownership, and not a separate judgment. It would thus be absurd to require that a petition for the issuance of this writ to be accompanied by a certification against forum shopping.

3. ID.; SPECIAL CIVIL ACTIONS; FORECLOSURE OF REAL ESTATE MORTGAGE; WRIT OF POSSESSION; THE RIGHT TO POSSESS A PROPERTY MERELY FOLLOWS THE RIGHT OF OWNERSHIP.— [T]he CA did not err in upholding the writ of possession in this case. In *St. Raphael Montessori School, Inc. v. Bank of the Philippine Islands*, an action involving the application of Act No. 3135, this Court recognized that the writ of possession was warranted not merely on the basis of the law, but ultimately on the right to possess as an incident of ownership. The right to possess a property merely follows the right of ownership, and it would be illogical to hold that a person having ownership of a parcel of land is barred from seeking possession. Precisely, the basis for the grant of the writ of possession in this case is respondent's ownership of the property by virtue of a tax delinquency sale in her favor, and by virtue of her absolute right of ownership arising from the expiration of the period within which to redeem the property.

4. ID.; ID.; ID.; ID.; THE ISSUANCE OF A WRIT OF POSSESSION IS WARRANTED WHERE THE PARTY'S OWNERSHIP OVER THE PROPERTY IS AFFIRMED BY A FINAL AND EXECUTORY JUDGMENT.— Respondent's ownership over the property is affirmed by the final and executory judgment in LRC Case No. M-4992. To be clear, a writ of possession is defined as a writ of execution employed to enforce a judgment to recover the possession of land, commanding the sheriff to enter the land and give its possession to the person entitled under the judgment. x x x. [R]ecords of this case already established that the Decision in LRC Case No. M-4992 has long become final and executory, as evidenced by the Entry of Judgment issued on March 3, 2008. Hence, the issuance of a writ of possession is warranted.

5. ID.; CIVIL PROCEDURE; JUDGMENTS;THE GENERAL RULE IS THAT A FINAL EXECUTORY JUDGMENT CAN NO LONGER BE DISTURBED, OFFERED OR MODIFIED IN ANY RESPECT.— Petitioners cannot attack the validity of the proceedings in LRC Case No. M-4992. Having become final and executory, the judgment in LRC Case No. M-4992 can only be nullified in a petition for annulment of judgment, which petitioner did not do. The general rule is that a final and executory judgment can no longer be disturbed, altered, or

modified in any respect, and that nothing further can be done but to execute it. A final and executory decision may, however, be invalidated *via* a petition for relief or a petition to annul the same under Rules 38 or 47, respectively, of the Rules of Court.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez Gatmaitan for petitioners.
Benjamin Bulalacao for respondent.

D E C I S I O N

JARDELEZA, *J.*:

Before us is a petition for review[1] under Rule 45 of the Rules of Court. Petitioners seek the review of the January 31, 2011 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 114103 for being contrary to law and jurisprudence. The CA affirmed the Order[3] of the Regional Trial Court (RTC), Branch 59, Makati City in LRC Case No. M-5188 dated January 19, 2010 which denied the petitioners' Urgent Motion to Cite Petitioner in Contempt and to Nullify Proceedings, and the Order[4] of the RTC dated April 19, 2010 which denied petitioners' Motion for Reconsideration.

The Facts

The subject of this case is a property situated at 7-A 32 A. Bonifacio Street, Bangkal, Makati City, previously registered under the name of petitioners, and covered by Transfer Certificate of Title (TCT) No. 164900.[5]

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[1] *Rollo*, pp. 3-32.

[2] *Id*. 34-43; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Normandie B. Pizarro and Ruben C. Ayson.

[3] CA *rollo*, pp. 61-63.

[4] *Id*. at 69.

[5] *Rollo*, p. 35.

On May 24, 2006, the property was sold at a public auction of tax delinquent properties conducted by the City Government of Makati City pursuant to Sections 254 to 260 of the Local Government Code. Respondent was the winning bidder at the public auction, and the City Government of Makati executed a Certificate of Sale in her favor on even date.[6]

Petitioners failed to redeem the property within the one-year period. Thus, on July 12, 2007, respondent filed with the RTC of Makati City an application for new certificate of title under Section 75[7] in relation to Section 107[8] of Presidential Decree (PD) No. 1529 or the Property Registration Decree (LRC Case No. M-4992).[9] On December 28, 2007, after hearing, the RTC ordered that the title over the property be consolidated and transferred in the name of respondent. The Register of Deeds of Makati consequently cancelled TCT No. 164900 and issued

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[6] *Id*.

[7] Section 75. *Application for new certificate upon expiration of redemption period.* – Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on execution taken or sold for the enforcement of a lien of any description, except a mortgage lien, the purchaser at such sale or anyone claiming under him may petition the court for the entry of a new certificate of title to him.

[8] Section 107. *Surrender of withhold duplicate certificates*.– Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if not any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

[9] LRC Case No. M-4992 was raffled to Branch 62, RTC Makati City. *Rollo*, pp. 35; 45-50.

a new one, TCT No. T-224923, in favor of respondent.[10] Afterwards, in the same court, respondent moved for the issuance of a writ of possession. The motion was, however, denied by the court for failure to set the motion for hearing.[11]

On January 14, 2009, respondent, once again, filed (for the same property), an *Ex Parte* Petition for the Issuance of a Writ of Possession[12] (LRC Case No. M-5188) with the RTC of Makati City. This *ex parte* petition was raffled to Branch 59 (court *a quo*).[13]

On April 1, 2009, the court *a quo* issued an Order[14] granting respondent's *ex parte* petition and ordered the issuance of a writ of possession in her favor. The writ was subsequently issued on August 7, 2009.[15]

On August 28, 2009, petitioners filed an urgent motion to cite respondent in contempt, and to nullify the proceedings on the ground that LRC Case No. M-5188 contained a defective/ false verification/certification of non-forum shopping.[16]

On September 11, 2009, respondent filed her comment/ opposition. She alleged that petitioner's objection to the certification against forum shopping was deemed waived for failure to timely object thereto. She also claimed that forum shopping does not exist.[17]

On January 19, 2010, the court *a quo* issued an Order[18] denying petitioners' motion. It ruled that the *ex parte* petition for the

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[10] *Id*. at 35.

[11] *Id*. at 117.

[12] *Id*. at 74-80.

[13] *Id*. at 35.

[14] *Id*. at 98-100.

[15] *Id*. at 35-36; 103.

[16] *Id*. at 36; 81-87.

[17] *Id*. at 36; CA *rollo*, pp. 43-52.

[18] *Supra* note 3.

issuance of a writ of possession filed by respondent in LRC Case No. M-5188, although denominated as a petition, is not an initiatory pleading, and, thus, does not require a certificate of non-forum shopping. Thus, in the same Order, the court *a quo* ruled that petitioners' motion to present respondent and her counsel as witnesses is without merit.[19] Petitioner filed a motion for reconsideration, but it was denied in an Order[20] dated Apri1 19, 2010.

Aggrieved, petitioners filed a special civil action for *certiorari* before the CA to annul the January 19, 2010 and April 19, 2010 Orders of the court *a quo*. They averred that it acted with grave abuse of discretion in issuing the assailed orders.[21] Petitioners further alleged that the tax auction sale proceeding is governed by Sections 246 to 270 of the Local Government Code, and not by Act No. 3135[22] as relied upon by respondent.[23]

On January 31, 2011, the CA rendered a Decision dismissing the petition and affirming the challenged Orders of the court *a quo*, to wit:

WHEREFORE, the instant petition is DISMISSED for lack of merit. The challenged *orders* dated January 19, 2010 and April 19, 2010 are hereby **AFFIRMED**.[24]

The CA ruled that there is no forum shopping. Prior to the filing of the *ex parte* petition in LRC Case No. M-5188, RTC Branch 62 has already denied respondent's motion for issuance of a writ of possession in LRC Case No. M-4992. The CA added that there can be no forum shopping because the issuance of a writ of possession is a ministerial function and is summary in

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[19] CA *rollo*, pp. 61; 63.

[20] *Id*. at 69.

[21] *Rollo*, pp. 34; 37.

[22] An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed To Real Estate Mortgages (1924).

[23] *Rollo*, p. 37.

[24] *Id*. at 42-A.

nature, thus, it cannot be said to be a judgment on the merits but simply an incident in the transfer of title.[25]

The CA also said that a certificate of non-forum shopping is required only in complaints or other initiatory pleadings. A petition or motion for issuance of a writ of possession is not a complaint or initiatory pleading which requires a verification and certificate of non-forum shopping.[26]

Lastly, the CA rejected petitioners' argument that the tax auction sale proceeding is governed by Sections 246 to 270 of the Local Government Code, and not by Act No. 3135. It explained that the issue was raised by petitioners for the first time on appeal, and the decision finding the respondent as the lawful and registered owner of the property by virtue of the public auction has long become final and executory and beyond the ambit of judicial review.[27]

Petitioners appealed the Decision of the CA to this Court by way of a petition for review on *certiorari*.

Petitioners' Arguments

Petitioners aver that the CA committed reversible error in:

(a) Ruling that because of Section 7 of Act No. 3135, a certification of non-forum shopping was unnecessary in the *ex parte* petition, and thus it was unnecessary to examine respondent Chico and her counsel on said certification; and

(b) Not ruling conformably with Article 433 of the Civil Code and the cases of *Factor v. Martel, Jr.*,[28] *Serra*

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[25] *Id*. at 38.

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

[27] *Id*. at 41.

[28] G.R. No. 161037, February 4, 2008, 543 SCRA 549.

Serra v. Court of Appeals,[29] and *Maglente v. Baltazar-Padilla*[30] that:

(i) The certification of non-forum shopping was required in the *ex-parte* petition;

(ii) All proceedings in LRC Case No. M-5188 should have been in the nature of an *accion reivindicatoria*; and

(iii) Consequently, said proceedings were void, being summary and in the nature of proceedings for an *ex parte* motion.[31]

Respondent's Arguments

In her Comment,[32] respondent insists that a certification of non-forum shopping is not necessary in this case because an *ex parte* petition for the issuance of a writ of possession is not an action, complaint, or an initiatory pleading. She avers that although denominated as a petition, the *ex parte* petition is actually in the nature of a motion, whose office is not to initiate new litigation, but to bring a material but incidental matter arising in the progress of the case, in this case, the registration proceedings.[33] Respondent also denies committing forum shopping, and instead posits that it is petitioners who are guilty of forum shopping. Respondent notes that in this petition, petitioners' arguments center on the alleged nullity of the writ of possession itself which is likewise subject of another petition before the Court of Appeals docketed as CA-G.R SP No. 110654.[34]

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[29] G.R. No. 34080, March 22, 1991, 195 SCRA 482.

[30] G.R. No. 148182, March 7, 2007, 517 SCRA 643.

[31] *Rollo*, p. 16.

[32] *Id.* at 115-122.

[33] *Id.* at 118-120.

[34] *Id.* at 121.

Respondent likewise argues that Article 433 of the New Civil Code has no application to a buyer of property in a tax delinquency sale. Respondent contends that the cases petitioner cited do not involve actions pertaining to tax delinquency sales, and that they could not, in fact, identify a particular provision of law or jurisprudence saying that a buyer in a tax delinquency sale has to file an independent action to be able to take possession of the property he bought in a tax delinquency sale.[35]

The Court's Ruling

We deny the petition.

No certificate against forum shopping is required in a petition or motion for issuance of a writ of possession.

We affirm the ruling of the CA that a certificate against forum shopping is not a requirement in an *ex parte* petition for the issuance of a writ of possession. An *ex parte* petition for the issuance of writ of possession is not a complaint or other initiatory pleading as contemplated in Section 5,[36] Rule 7 of the 1997

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

[36] Sec. 5. C*ertification against forum shopping*. The plaintiff or principal party shall certifY under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding

Rules of Civil Procedure.[37]

The non-initiatory nature of an *ex parte* motion or petition for the issuance of a writ of possession is best explained in *Arquiza v. Court of Appeals*.[38] In that case we ruled that the *ex parte* petition for the issuance of a writ of possession filed by the respondent is not an initiatory pleading. Although the private respondent denominated its pleading as a petition, it is, nonetheless, a motion. What distinguishes a motion from a petition or other pleading is not its form or the title given by the party executing it, but rather its purpose.[39] A petition for the issuance of a writ of possession does not aim to initiate new litigation, but rather issues as an incident or consequence of the original registration or cadastral proceedings. As such, the requirement for a forum shopping certification is dispelled.[40]

We also cannot subscribe to petitioners' narrow view that only cases covered by foreclosure sales under Act No. 3135 are excused from the requirement of a certificate against forum shopping.

Based on jurisprudence, a writ of possession may be issued in the following instances: (a) land registration proceedings under Section 17 of Act No. 496, otherwise known as The Land Registration Act; (b) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (c) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135, as amended by Act No. 4118; and (d) in execution sales.[41]

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administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[37] *Rollo*, pp. 38-39.

[38] G.R. No. 160479, June 8, 2005, 459 SCRA 753.

[39] *Id* at 762.

[40] *Id* at 763.

[41] *Sia v. Arcenas*, G.R. Nos. 209672-74, January 14, 2015, 746 SCRA 272, 283-284.

We note that there is no law or jurisprudence which provides that the petition for the issuance of a writ of possession depends on the nature of the proceeding in which it is filed. Thus, we find no logical reason for petitioners' contention that only cases covered by Act No. 3135 are exempt from the requirement of a certificate against forum shopping. As explained in the previous paragraphs, by its very nature, a writ of possession is a mere incident in the transfer of title. It is an incident of ownership, and not a separate judgment. It would thus be absurd to require that a petition for the issuance of this writ to be accompanied by a certification against forum shopping.

The issuance of a writ of possession is warranted.

Petitioners cite the rulings in *Factor v. Martel, Jr., Serra Serra v. Court of Appeals,* and *Maglente v. Baltazar-Padilla* to justify their position that respondent availed of the wrong remedy when she filed an *ex parte* petition for issuance of a writ of possession. Petitioners contend that this is a departure from the proper procedure which required the filing of an appropriate case for *accion reivindicatoria*.

Respondent, on the other hand, argues that the cases petitioner cited do not involve actions pertaining to tax delinquency sales. Respondent adds that petitioners could not, in fact, identify a particular provision of law or jurisprudence saying that a buyer in a tax delinquency sale has to file an independent action to be able to take possession of the property he brought in a tax delinquency sale.

We agree with respondent.

Factor involves the issuance of a writ of possession pursuant to an original action for registration; *Serra Serra* involves a petition for reconstitution; while *Maglente* involves an action for interpleader. These rulings cannot apply in this case. For one, none of them contemplate the present situation where the action is between, on the one hand, the previous registered owner of the parcel of land; and on the other, the buyer in a tax delinquency sale. Second, none of these cases involves the right

of a purchaser in a tax delinquency sale for the issuance of a writ of possession after the redemption period.

Contrary therefore, to petitioners' contentions, the CA did not err in upholding the writ of possession in this case. In *St. Raphael Montessori School, Inc. v. Bank of the Philippine Islands*,[42] an action involving the application of Act No. 3135, this Court recognized that the writ of possession was warranted not merely on the basis of the law, but ultimately on the right to possess as an incident of ownership. The right to possess a property merely follows the right of ownership, and it would be illogical to hold that a person having ownership of a parcel of land is barred from seeking possession.[43] Precisely, the basis for the grant of the writ of possession in this case is respondent's ownership of the property by virtue of a tax delinquency sale in her favor, and by virtue of her absolute right of ownership arising from the expiration of the period within which to redeem the property.[44]

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[42] G.R. No. 184076, October 21, 2015, 773 SCRA 419.

[43] *Id*. at 429-430, citing *Edralin v. Philippine Veterans Bank*, G.R. No. 168523, March 9, 2011, 645 SCRA 75.

[44] LOCAL GOV'T. CODE, Sec. 261 and Sec. 262 in relation to Sec. 33, Rule 39 of the Rules of Court.

LOCAL GOV'T. CODE, Sec. 261. *Redemption of Property Sold.* – Within one (I) year from the date of sale, the owner of the delinquent real property or person having legal interest therein, or his representative, shall have the right to redeem the property upon payment to the local treasurer of the amount of the delinquent tax, including the interest due thereon, and the expenses of sale from the date of delinquency to the date of sale, plus interest of not more than two percent (2%) per month on the purchase price from the date of sale to the date of redemption. Such payment shall invalidate the certificate of sale issued to the purchaser and the owner of the delinquent real property or person having legal interest therein shall be entitled to a certificate of redemption which shall be issued by the local treasurer or his deputy.

From the date of sale until the expiration of the period of redemption, the delinquent real property shall remain in the possession of the owner or person having legal interest therein who shall be entitled to the income and other fruits thereof.

In *Cloma v. Court of Appeals*,[45] the City of Pasay sold the property of Spouses Cloma at public auction for tax delinquency. Private respondent Nocom was declared the winning bidder of the sale, for which he was issued a certificate of sale. The spouses failed to redeem the property within the prescribed period, and a final deed of sale was issued in favor of Nocom. Thus, Nocom filed a petition invoking Section 75 of PD No. 1529 (as in this case),[46] which was granted. Accordingly, Nocom applied for a writ of possession over the property, and was eventually granted by the trial court. The spouses argued that the trial court cannot issue the writ of possession. This Court rejected this argument, citing Section 2 of PD No. 1529. This Court said:

The local treasurer or his deputy, upon receipt from the purchaser of the certificate of sale, shall forthwith return to the latter the entire amount paid by him plus interest of not more than two percent (2%) per month. Thereafter, the property shall be free from the lien of such delinquent tax, interest due thereon and expenses of sale.

LOCAL GOV'T. CODE, Sec. 262. *Final Deed to Purchaser*. – In case the owner or person having legal interest therein fails to redeem the delinquent property as provided herein, the local treasurer shall execute a deed conveying to the purchaser said property, free from lien of the delinquent tax, interest due thereon and expenses of sale. The deed shall briefly state the proceedings upon which the validity of the sale rests.

RULES OF COURT, Rule 39, Sec. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* — If no redemption be made within one (1) year from the date ofthe registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it. (Underscoring ours.)

x x x x x x x x x

[45] G.R. No. 100153 August 2, 1994, 234 SCRA 665.

[46] See note 7.

Section 2 of PD 1529 also clearly rejects the thesis of petitioners that the trial court cannot issue a writ of possession to effectuate the result of a tax sale, thus:

> "Sec 2. Nature of registration of proceedings; jurisdiction of courts. — x x x Courts of First Instance shall have exclusive jurisdiction over all applications for original registration of title, to land, including improvements and interests therein, and over all petitions filed after original registration of title, *with power to hear and determine all questions arising upon such* applications or petitions. x x x" (Emphasis in the original.)[47]

More, respondent's ownership over the property is affirmed by the final and executory judgment in LRC Case No. M-4992.[48] To be clear, a writ of possession is defined as a writ of execution employed to enforce a judgment to recover the possession of land, commanding the sheriff to enter the land and give its possession to the person entitled under the judgment.[49]

In the same vein, we note the finding of the court *a quo* in granting the *ex parte* petition for the issuance of writ of possession of respondent, thus:

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[47] *Cloma v. Court of Appeals, supra* at 672.

[48] RULES OF COURT, Rule 39, Sec. 10. Section 10 provides:

Sec. 10. *Execution of judgments for specific act.—*

(a) *Conveyance, delivery of deeds, or other specific acts; vesting title.*– If a judgment directs a party to execute a conveyance of land or personal property, or to deliver deeds or other documents, or to perform any other specific act in connection therewith, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party. If real or personal property is situated within the Philippines, the court in lieu of directing a conveyance thereof may by an order divest the title of any party and vest it in others which shall have the force and effect of a conveyance executed in due form of law.

[49] *Sia v. Arcenas, supra* note 41, citing *Metropolitan Bank & Trust Company v. Abad Santos*, G.R. No. 157867, December 15, 2009, 608 SCRA 222, 232. Underscoring ours.

Facts of the case reveal that the Regional Trial Court of Makati City, Branch 62, rendered a Decision under LRC Case No. M-4992 which granted Chico's Petition for Application for a New Certificate of Title under Sec. 75 in relation to Sec. 107 of the Property Registration Decree. Said Decision became final and executory on 27 February 2008.

Sec. 6, Rule 135 of the Rules of Court succinctly provides that when by law jurisdiction is conferred on a court or judicial officer, all ancilliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer, and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.[50]

The reason for the premature issuance of the writ of possession in *Republic* (*Department of Transportation and Communication* [DOTC]) *v. City of Mandaluyong*[51] does not obtain in this case. In *Republic*, the Metro Rail Transit Corporation failed to pay the real property taxes due to the City of Mandaluyong, hence a public auction was conducted. For lack of bidders, the real properties were forfeited in favor of the city. The period for the redemption of the real properties expired, thus a final deed of sale was issued in the city's favor. By virtue of this final deed of sale, the city filed an *ex parte* petition for the issuance of a writ of possession, which the regional trial court granted. The DOTC questioned the propriety of the issuance of the writ of possession. While this Court held that a writ of possession is a mere incident in the transfer of title, and which may arise from ownership by virtue of a tax delinquency sale, we nonetheless ruled that the issuance of the writ was premature. The reason being, there was still a pending issue on whether the auction sale should proceed, in the first place.[52]

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[50] *Rollo*, p. 102.

[51] G.R. No. 184879, February 23, 2011, 644 SCRA 269.

[52] *Id*. at 276-277.

This impediment does not exist in this case precisely because title has already been consolidated, and a new certificate of title has already been issued in the name of respondent in LRC Case No. M-4992. More, unlike in *Republic*, records of this case already established that the Decision in LRC Case No. M-4992 has long become final and executory, as evidenced by the Entry of Judgment issued on March 3, 2008.[53] Hence, the issuance of a writ of possession is warranted. As the trial court ruled, "[a]ll things considered, the petitioner is now the lawful registered owner of the subject property and by virtue of law, is entitled to the issuance of a Transfer Certificate of Title in her name."[54]

Finally, petitioners cannot attack the validity of the proceedings in LRC Case No. M-4992. Having become final and executory, the judgment in LRC Case No. M-4992 can only be nullified in a petition for annulment of judgment, which petitioner did not do. The general rule is that a final and executory judgment can no longer be disturbed, altered, or modified in any respect, and that nothing further can be done but to execute it. A final and executory decision may, however, be invalidated *via* a petition for relief or a petition to annul the same under Rules 38 or 47, respectively, of the Rules of Court.[55]

WHEREFORE, the petition is **DENIED**. The Decision dated January 31, 2011 of the Court of Appeals in CA-G.R. SP No. 114103 is hereby **AFFIRMED**.

SO ORDERED.

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

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[53] *Rollo*, p. 71.

[54] *Id.* at 69.

[55] *Genato Investments, Inc. v. Barrientos*, G.R. No. 207443, July 23, 2014, 731 SCRA 35, 42, citing *Gochan v. Mancao*, G.R. No. 182314, November 13, 2013, 709 SCRA 438.

FIRST DIVISION

[G.R. No. 196403. December 7, 2016]

ARSENIO TABASONDRA, FERNANDO TABASONDRA, CORNELIO TABASONDRA, JR., MIRASOL TABASONDRA-MARIANO, FAUSTA TABASONDRA-TAPACIO, GUILLERMO TABASONDRA, MYRASOL TABASONDRA-ROMERO, AND MARLENE TABASONDRA-MANIQUIL, *petitioners, vs.* **SPOUSES CONRADO CONSTANTINO AND TARCILA TABASONDRA-CONSTANTINO,[*] PACITA ARELLANO-TABASONDRA AND HEIRS OF SEBASTIAN TABASONDRA,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY AND OWNERSHIP; CO-OWNERSHIP; EACH CO-OWNER HAS THE RIGHT TO ALIENATE HIS/HER *PRO INDIVISO* SHARES TO ANOTHER PERSON EVEN WITHOUT THE KNOWLEDGE OR CONSENT OF HIS/HER CO-OWNERS AS THE ALIENATION COVERED THE DISPOSITION OF ONLY HIS/HER INTERESTS IN THE COMMON PROPERTY.— There is no question that the total area of the three lots owned in common by Cornelio, Valentina and Valeriana was 100,352 square meters; and that each of the co-owners had the right to one-third of such total area. It was established that Valentina and Valeriana executed the Deed of Absolute Sale, whereby they specifically disposed of their shares in the property registered under TCT No. 10612 in favor of Sebastian Tabasondra and Tarcila Tabasondra x x x. We uphold the right of Valentina and Valeriana to thereby alienate their *pro indiviso* shares to Sebastian and Tarcila even without the knowledge or consent of their co-owner Cornelio because the alienation covered the disposition of only their respective interests in the common

[*] Also spelled as Tarsila in some parts of the record, including the decision under review.

property. According to Article 493 of the *Civil Code*, each co-owner *"shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved,"* but *"the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership."* Hence, the petitioners as the successors-in-interest of Cornelio could not validly assail the alienation by Valentina and Valeriana of their shares in favor of the respondents.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PARTITION; AN ACTION FOR PARTITION IS AT ONCE AN ACTION FOR DECLARATION OF CO-OWNERSHIP AND FOR SEGREGATION AND CONVEYANCE OF A DETERMINATE PORTION OF THE PROPERTIES INVOLVED; IF THE TRIAL COURT SHOULD FIND AFTER TRIAL THE EXISTENCE OF CO-OWNERSHIP AMONG THE PARTIES, IT MAY AND SHOULD ORDER THE PARTITION OF THE PROPERTIES IN THE SAME ACTION.— As a result of Valentina and Valeriana's alienation in favor of Sebastian and Tarcila of their *pro indiviso* shares in the three lots, Sebastian and Tarcila became co-owners of the 100,352-square meter property with Cornelio (later on, with the petitioners who were the successors-in-interest of Cornelio). In effect, Sebastian and Tarcila were co-owners of two-thirds of the property, with each of them having one-third *pro indiviso* share in the three lots, while the remaining one-third was co-owned by the heirs of Cornelio, namely, Sebastian, Tarcila and the petitioners. Nonetheless, we underscore that this was a case for partition and accounting. According to *Vda. de Daffon v. Court of Appeals*, an action for partition is at once an action for declaration of co-ownership and for segregation and conveyance of a *determinate portion* of the properties involved. If the trial court should find after trial the existence of co-ownership among the parties, it may and should order the partition of the properties in the same action.

3. ID.; ID.; ID.; PHYSICAL PARTITION OF THE PROPERTY IS REQUIRED; REMAND OF THE CASE TO THE

COURT OF ORIGIN WARRANTED TO DETERMINE THE TECHNICAL METES AND BOUNDS, AND THE SPECIFIC PORTIONS OF THE PROPERTY ASSIGNED TO EACH CO-OWNER.— Although the CA correctly identified the co-owners of the three lots, it did not segregate the 100,352-square meter property into determinate portions among the several co-owners. To do so, the CA should have followed the manner set in Section 11, Rule 69 of the *Rules of Court*, to wit*:* Section 11. *The judgment and its effect; copy to be recorded in registry of deeds.* – if actual partition of property is made, the judgment shall state definitely , by metes and bounds and adequate description, the particular portion of the real estate assigned to each party, and the effect of the judgment shall be to vest in each party to the action in severalty the portion of the real estate assigned to him. xxx. Accordingly, there is a need to remand the case to the court of origin for the purpose of identifying and segregating, *by metes and bounds*, the specific portions of the three lots assigned to the co-owners, and to effect the physical partition of the property in the following proportions: Tarcila, one-third; the heirs of Sebastian, one-third; and the petitioners (individually), along with Tarcila and the heirs of Sebastian (collectively), one-third. That physical partition was required, but the RTC and the CA uncharacteristically did not require it.

4. ID.; ID.; ID.; THE ACCOUNTING OF THE FRUITS SHALL ONLY INVOLVE THE PORTION OF THE PROPERTY STILL UNDER THE CO-OWNERSHIP OF ALL THE PARTIES.— [W]ith the Court having determined that the petitioners had no right in the two-thirds portion that had been validly alienated to Sebastian and Tarcila, the accounting of the fruits shall only involve the one-third portion of the property inherited from Cornelio. For this purpose, the RTC shall apply the pertinent provisions of the *Civil Code*, particularly Article 500 and Article 1087 of the *Civil Code*.

APPEARANCES OF COUNSEL

Romeo T. Saavedra for petitioners.

D E C I S I O N

BERSAMIN, *J.*:

This case for partition and accounting concerns a property owned in common, and focuses on the right of two of the co-owners to alienate their shares before the actual division of the property.

The Case

Under appeal is the adverse decision promulgated on November 30, 2010[1] whereby the Court of Appeals (CA) modified the judgment rendered on September 22, 2008 by the Regional Trial Court (RTC), Branch 64, in Tarlac City ordering the partition of all the three parcels of land owned in common among the parties.[2] The modification by the CA, which expressly recognized the alienation by the two co-owners of their shares, consisted in limiting the partition of the property owned in common to only the unsold portion with an area of 33,450.66 square meters.

Antecedents

The parties herein were the children of the late Cornelio Tabasondra from two marriages. The respondents Tarcila Tabasondra-Constantino and the late Sebastian Tabasondra were the children of Cornelio by his first wife, Severina; the petitioners, namely: Arsenio Tabasondra, Fernando Tabasondra, Cornelio Tabasondra, Jr., Mirasol Tabasondra-Mariano, Fausta Tabasondra-Tapacio, Myrasol Tabasondra-Romero, Marlene Tabasondra-Maniquil, and Guillermo Tabasondra, were children of Cornelio by his second wife, Sotera.

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[1] *Rollo*, 74-84; penned by Associate Justice Normandie B. Pizarro, with Associate Justice Amelita G. Tolentino (retired) and Associate Justice Ruben C. Ayson (retired) concurring.

[2] *Id.* at 85-93; penned by Presiding Judge Domingo C. San Jose, Jr.

The CA summarized the undisputed factual findings and procedural antecedents as follows:

Cornelio, Valentina, and Valeriana, all surnamed Tabasondra. were siblings. They were also the registered owners of the three (3) parcels of land located at Dalayap, Tarlac City, identified as Lot No. 2536, containing an area of seventy-seven thousand one hundred and forty-seven (77,147) sq. m.; Lot No. 3155, with an area of thirteen thousand six hundred fifty-nine (13,659) sq. m.; and, Lot No. 3159, with an area of nine thousand five hundred forty-six (9,546) sq. m., covered by Transfer Certificate of Title (TCT) No. 106012.

x x x x x x x x x

Cornelio died on March 15, 1991, while Valentina and Valeriana both died single on August 19, 1990 and August 4, 1998, respectively. They all died intestate and without partitioning the property covered by TCT No. 106012. Thus, the Plaintiffs-Appellees and the Defendants-Appellants, as descendants of Cornelio, possessed and occupied the property.

The Controversy:

On August 22, 2002, the Plaintiffs-Appellees filed the complaint below against the Defendants-Appellants. In essence, they claimed that the parcels of land are owned in common by them and the Defendants-Appellants but the latter does not give them any share in the fruits thereof. Hence, they asked for partition but the Defendants-Appellants refused without valid reasons. They maintained that they tried to amicably settle the dispute before the Lupon, but to no avail. Thus, their filing of the suit praying that the subject land be partitioned, that new titles be issued in their respective names, that the Defendants-Appellants be ordered to render an accounting on the fruits thereon, and that such fruits also be partitioned.

In their Answer, the Defendants-Appellants averred that they do not object to a partition provided that the same should be made only with respect to Cornelio's share. They contended that they already own the shares of Valentina and Valeriana in the subject land by virtue of the Deed of Absolute Sale that the said sisters executed in their favor on August 18, 1982. Moreover, they alleged that the Plaintiffs-Appellees are the ones who should account for the profits of the property because it is the latter who enjoy the fruits thereof. By way of counterclaim, they, thus, prayed that the Plaintiffs-Appellees be ordered to render an accounting and to pay for damages.

After the issues were joined and the pre-trial conference was conducted, a full blown trial followed in view of the parties' failure to settle amicably.

On September 22, 2008, the RTC rendered the assailed disposition, the *fallo* of which reads:

> *WHEREFORE, on the basis of the foregoing considerations, judgment is hereby rendered in favor of the plaintiffs, ordering* [the] *partition of the three (3) parcels of land covered by TCT No. 16012 among the compulsory and legal heirs of Cornelio, Valentina[,] and Valeriana, all surnamed Tabasondra. Sotero Duenas Tabasondra shall be entitled to 3,040 square meters while plaintiffs and defendants shall be entitled to 6,690 square meters each.*
>
> *SO ORDERED.*[3]

Dissatisfied, the respondents appealed the judgment of the RTC to the CA, assigning the following as the reversible errors, to wit:

I.

THE HONORABLE COURT A- [sic] QUO GRAVELY ERRED AND COMMITTED A REVERSIBLE ERROR IN NOT CONSIDERING AND APPRECIATING THE FACT THAT THE DEED OF ABSOLUTE SALE EXECUTED BY THE DECEASED VALENTINA TABASONDRA AND VALERIANA TABASONDRA, IN FAVOR OF DEFENDANTS TARCILA TABASONDRA AND SEBASTIAN TABASONDRA, WAS VALID AND SUBSISTING AT THE TIME THE COURT CONSIDERED IT TO HAVE NO VALID LEGAL FORCE AND EFFECT[.]

II.

THE HONORABLE COURT A-[sic] QUO GRAVELY ERRED AND COMMITTED A REVERSIBLE ERROR IN ORDERING FOR THE PARTITION OF THE PROPERTY IN QUESTION WITHOUT ANY LEGAL AND VALID GROUNDS[.][4]

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[3] *Id.* at 75-77.

[4] *Id.* at 97.

On November 30, 2010, the CA promulgated the decision under review,[5] disposing:

> **WHEREFORE,** the appeal is **GRANTED.** The assailed disposition is **AFFIRMED** with **MODIFICATION** in that the partition and the accounting is ordered to be made only with respect to a thirty-three thousand four hundred fifty point sixty-six (33,450.66) sq.m. portion of the property. With costs.
>
> **SO ORDERED.**[6]

The petitioners moved for reconsideration,[7] but the CA denied their motion on April 4, 2011.[8]

Hence, this appeal.

Issues

The petitioners submit in support of their appeal:

1. THAT THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN SUMMARILY DISMISSING THE NEW MATTERS OF SUBSTANCE RAISED IN MOTION FOR RECONSIDERATION
2. THAT THE COURT OF APPEALS IN SUMMARILY DISMISSING MOTION FOR RECONSIDERATION OF PLAINTIFFS-PETITIONERS RENEGED IN ITS DUTY TO RESOLVE LEGAL AND FACTUAL ISSUES OF SUBSTANCE IN A WAY NOT PROBABLY IN ACCORD WITH LAW OR APPLICABLE DECISIONS OF THE SUPREME COURT;
3. THAT THE COURT OF APPEALS DECISION IN DECLARING THE QUESTIONED DEED OF SALE VALID AND IN SUMMARILY DISMISSING PLAINTIFFS-PETITIONERS[’] MOTION FOR RECONSIDERATION

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[5] *Supra* note 1.

[6] *Rollo*, p. 83.

[7] *Id.* at 30-43.

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

RAISING NEW ARGUMENTS AND MATTERS OF SUBSTANCE NOT RAISED IN THE APPEAL BY DEFENDANTS-RESPONDENTS, ARE CONTRARY TO LAW, JURISPRUDENCE, ADMISSIONS OF FACTS/ TESTIMONY OF TARCILA TABASONDRA, ONLY WITNESS FOR DEFENDANTS-RESPONDENTS AND EVIDENCE PRESENTED BY PLAINTIFFS-PETITIONERS AT THE TRIAL;

4. THAT SUCH COURSE OF ACTION TAKEN BY THE COURT OF APPEALS OR DEPARTURE THEREFROM IN EXERCISING OR FAILING TO EXERCISE ITS POWER OF JUDICIAL REVIEW CERTAINLY CALLS FOR THE EXERCISE BY THE SUPREME COURT OF ITS POWER OF JUDICIAL REVIEW TO AFFORD COMPLETE RELIEF TO PARTIES IN THIS CASE AND TO AVOID MULTIPLICITY OF SUITS.[9]

In other words, did the CA correctly order the partition and accounting with respect to only 33,450.66 square meters of the property registered under TCT No. 10612?

Ruling of the Court

The appeal lacks merit.

There is no question that the total area of the three lots owned in common by Cornelio, Valentina and Valeriana was 100,352 square meters; and that each of the co-owners had the right to one-third of such total area.

It was established that Valentina and Valeriana executed the Deed of Absolute Sale,[10] whereby they specifically disposed of their shares in the property registered under TCT No. 10612 in favor of Sebastian Tabasondra and Tarcila Tabasondra as follows:

NOW, THEREFORE, for and in consideration of the sum of TEN THOUSAND PESOS (₱10,000.00), Philippine Currency, to us in

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[9] *Id.* at 14-15.

[10] Records, p. 81.

hand paid, receipt whereof is hereby acknowledged in full to our entire satisfaction, by SEBASTIAN TABASONDRA and TARCILA TABASONDRA, married to Pacita Arellano and Conrado Constantino, respectively, both of legal ages, Filipinos, and residents of Dalayap, Tarlac, Tarlac, we do hereby SELL, CEDE, TRANSFER and CONVEY, by way of ABSOLUTE SALE, unto the said Sebastian Tabasondra and Tarcila Tabasondra, their heirs and assigns, **all our shares, rights, interests and participations in the above-described parcel of land** free from liens and incumbrances. That we hereby certify that the herein VENDEES are the actual tillers or tenants of the above-described parcel of land subject matter of this deed of absolute sale and, as such, have the prior right of pre-emption and redemption, under the Land Reform Code. (Bold underscoring supplied for emphasis)

We uphold the right of Valentina and Valeriana to thereby alienate their *pro indiviso* shares to Sebastian and Tarcila even without the knowledge or consent of their co-owner Cornelio because the alienation covered the disposition of only their respective interests in the common property. According to Article 493 of the *Civil Code,* each co-owner *"shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved,"* but *"the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership."* Hence, the petitioners as the successors-in-interest of Cornelio could not validly assail the alienation by Valentina and Valeriana of their shares in favor of the respondents.[11]

Accordingly, the Court declares the following disposition by the CA to be correct and in full accord with law, to wit:

x x x [T]here is no dispute that the subject property was owned in common by the siblings Cornelio, Valentina, and Valeria. Corollarily, the records at bench glaringly show that the genuineness and due

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[11] *Torres v. Lapinid,* G.R. No. 187987, November 26, 2014, 742 SCRA 646, 652.

execution of the Deed of Absolute Sale executed by Valeriana and Valentina in favor of the Defendants-Appellants was not rebutted by the Plaintiffs-Appellees. A fortiori, such deed is *prima facie* evidence that a contract of sale was, indeed, entered into and consummated between Valeriana and Valentina as sellers and the Defendants-Appellants as vendors.

The foregoing facts, juxtaposed with the laws and the jurisprudential precepts mentioned elsewhere herein, lead to no other conclusion but that the sale by Valeriana and Valentina of their *pro indiviso* shares in favor of the Defendants-Appellants is valid. As enunciated by the Supreme Court in ***Alejandrino v. CA, et al.****:*

> x x x ***Under a co-ownership, the ownership of an undivided thing or right belongs to different persons. Each co-owner of property which is held pro indiviso exercises his rights over the whole property and may use and enjoy the same with no other limitation than that he shall not injure the interests of his co-owners.*** *The underlying rationale is that until a division is made, the respective share of each cannot be determined and every co-owner exercises, together with his co-participants, joint ownership over the pro indiviso property, in addition to his use and enjoyment of the same.*
>
> ***Although the right of a heir over the property of the decedent is inchoate as long as the estate has not been fully settled and partitioned, the law allows a co-owner to exercise rights of ownership over such inchoate right.*** *Thus, the Civil Code provides:*
>
> > *Art. 493.* ***Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate,*** *assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But* ***the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.***
>
> *With respect to properties shared in common by virtue of inheritance, alienation of a pro indiviso portion thereof is specifically governed by Article 1088 that provides:*

> *Art. 1088.* ***Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale by the vendor.***
>
> *In the instant case, Laurencia was within her hereditary rights in selling her pro indiviso share in Lot No. 2798. However, because the property had not yet been partitioned in accordance with the Rules of Court, no particular portion of the property could be identified as yet and delineated as the object of the sale. Thus, interpreting Article 493 of the Civil Code providing that an alienation of a co-owned property "shall be limited to the portion which may be allotted to (the seller) in the division upon the termination of the co-ownership, the Court said:*
>
> > *... (p)ursuant to this law,* ***a co-owner has the right to alienate his pro-indiviso share in the co-owned property even without the consent of the other co-owners.*** x x x

Using the foregoing disquisitions as guidelines, there is no denying that the RTC erred in granting the complaint and ordering a partition without qualifying that such should not include the shares previously pertaining to Valeria and Valentina. Simply put, since the aggregate area of the subject property is one hundred thousand three hundred fifty-two (100,352) sq.m., it follows that Cornelio, Valentina, and Valeriana each has a share equivalent to thirty-three thousand four hundred fifty point sixty-six (33,450.66) sq. m. portion thereof. Accordingly, when Valentina and Valeriana sold their shares, the Defendants-Appellants became co-owners with Cornelio. Perforce, upon Cornelio's death, the only area that his heirs, that is, the Plaintiffs-Appellees and the Defendants-Appellants, are entitled to and which may be made subject of partition is only a thirty-three thousand four hundred fifty point sixty-six (33,450.66) sq.m. portion of the property.

All told, finding the RTC's conclusions to be not in accord with the law and jurisprudence, necessarily, the same cannot be sustained.[12]

As a result of Valentina and Valeriana's alienation in favor of Sebastian and Tarcila of their *pro indiviso* shares in the three

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[12] *Rollo,* pp. 80-83.

lots, Sebastian and Tarcila became co-owners of the 100,352-square meter property with Cornelio (later on, with the petitioners who were the successors-in-interest of Cornelio). In effect, Sebastian and Tarcila were co-owners of two-thirds of the property, with each of them having one-third *pro indiviso* share in the three lots, while the remaining one-third was co-owned by the heirs of Cornelio, namely, Sebastian, Tarcila and the petitioners.

Nonetheless, we underscore that this was a case for partition and accounting. According to *Vda. de Daffon v. Court of Appeals*,[13] an action for partition is at once an action for declaration of co-ownership and for segregation and conveyance of a *determinate portion* of the properties involved. If the trial court should find after trial the existence of co-ownership among the parties, it may and should order the partition of the properties in the same action.[14]

Although the CA correctly identified the co-owners of the three lots, it did not segregate the 100,352-square meter property into determinate portions among the several co-owners. To do so, the CA should have followed the manner set in Section 11, Rule 69 of the *Rules of Court*, to wit:

> Section 11. *The judgment and its effect; copy to be recorded in registry of deeds.* If actual partition of property is made, the judgment shall state definitely, by metes and bounds and adequate description, the particular portion of the real estate assigned to each party, and the effect of the judgment shall be to vest in each party to the action in severalty the portion of the real estate assigned to him. xxxs (Bold emphasis supplied.)

Accordingly, there is a need to remand the case to the court of origin for the purpose of identifying and segregating, *by metes and bounds*, the specific portions of the three lots assigned to the co-owners, and to effect the physical partition of the property in the following proportions: Tarcila, one-third; the

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[13] G.R. No. 129017, August 20, 2002, 387 SCRA 427.

[14] *Id.* at 433-434.

heirs of Sebastian, one-third; and the petitioners (individually), along with Tarcila and the heirs of Sebastian (collectively), one-third. That physical partition was required, but the RTC and the CA uncharacteristically did not require it. Upon remand, therefore, the RTC should comply with the express terms of Section 2, Rule 69 of the *Rules of Court,* which provides:

> Section 2. *Order for partition, and partition by agreement thereunder.* — If after the trial the court finds that the plaintiff has the right thereto, it shall order the partition of the real estate among all the parties in interest. **Thereupon the parties may, if they are able to agree, make the partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon by all the parties, and such partition, together with the order of the court confirming the same, shall be recorded in the registry of deeds of the place in which the property is situated.**(2a)
>
> A final order decreeing partition and accounting may be appealed by any party aggrieved thereby. (n)

Should the parties be unable to agree on the partition, the next step for the RTC will be to appoint not more than three competent and disinterested persons as commissioners to make the partition, and to command such commissioners to set off to each party in interest the part and proportion of the property as directed in this decision.[15]

Moreover, with the Court having determined that the petitioners had no right in the two-thirds portion that had been validly alienated to Sebastian and Tarcila, the accounting of the fruits shall only involve the one-third portion of the property inherited from Cornelio. For this purpose, the RTC shall

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[15] Section 3, Rule 69 of the *Rules of Court* states:

> Section 3. *Commissioners to make partition when parties fail to agree.* – If the parties are unable to agree upon the partition, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to make the partition, commanding them to set off to the plaintiff and to each party in interest such part and proportion of the property as the court shall direct. (3a)

apply the pertinent provisions of the *Civil Code,* particularly Article 500 and Article 1087 of the *Civil Code, viz.:*

> Article 500. Upon partition, there shall be a mutual accounting for benefits received and reimbursements for expenses made. Likewise, each co-owner shall pay for damages caused by reason of his negligence or fraud. (n)
>
> Article 1087. In the partition the co-heirs shall reimburse one another for the income and fruits which each one of them may have received from any property of the estate, for any useful and necessary expenses made upon such property, and for any damage thereto through malice or neglect. (1063)

WHEREFORE, the Court **AFFIRMS WITH MODIFICATION** the decision of the Court of Appeals promulgated on November 30, 2010 in CA-G.R. CV No. 92920 in that the accounting is to be made only with respect to the fruits of the one-third portion of the property still under the co-ownership of all the parties; **REMANDS** the case to the Regional Trial Court, Branch 64, in Tarlac City for further proceedings in accordance with this decision, and to determine the technical metes and bounds and description of the proper share of each co-owner of the property covered by Transfer Certificate of Title No. 10612, including the improvements thereon, in accordance with the *Civil Code* and Rule 69 of the *Rules of Court;* and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 202280. December 7, 2016]

CARLOS A. DIMAANDAL, *petitioner, vs.* **P02 REXY S. ILAGAN AND PO2 EDENLY V. NAVARRO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE LOWER COURT, ADMINISTRATIVE AGENCY, OR QUASI-JUDICIAL BODY NEED NOT BE CONSIDERED BY A REVIEWING COURT, AS THEY CANNOT BE RAISED FOR THE FIRST TIME AT THAT LATE STAGE, AND ANY ISSUE RAISED FOR THE FIRST TIME IS BARRED BY ESTOPPEL.—** We reiterate the well-settled rule that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency, or quasi-judicial body need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. ***Any issue raised for the first time is barred by estoppel***.

2. **ID.; ID.; ID.; ID.; A PARTY IS BOUND BY THE THEORY HE ADOPTS AND BY THE CAUSE OF ACTION HE STANDS ON, AND CANNOT BE PERMITTED AFTER HAVING LOST THEREON TO REPUDIATE HIS THEORY AND CAUSE OF ACTION AND ADOPT ANOTHER AND SEEK TO RE-LITIGATE THE MATTER ANEW EITHER IN THE SAME FORUM OR ON APPEAL.—** Note that [the] principle forbids parties from changing their theory of the case. A party, after all, is *bound by the theory he adopts* and by the cause of action he stands on, and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal. In the present case, Dimaandal raised the issue on his former

counsel's gross neglect **for the first time** in his motion for reconsideration before the CA, after the latter affirmed the RTC's finding on the proper dismissal of Dimaandal's appeal before the MCTC for having been filed out of time. The CA, therefore, correctly dismissed the motion for reconsideration for lack of merit, as it is barred from taking cognizance of an issue raised for the first time on appeal.

3. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; THE CLIENT IS BOUND BY THE NEGLIGENCE AND MISTAKES OF HIS COUNSEL, EXCEPT WHERE THE LAWYER'S GROSS NEGLIGENCE WOULD RESULT IN THE GRAVE INJUSTICE OF DEPRIVING HIS CLIENT OF THE DUE PROCESS OF LAW.— The general rule is that **the client is bound by the negligence and mistakes of his counsel.** The ***only*** exception would be where the lawyer's gross negligence would result in the grave injustice of *depriving his client of the due process of law*. A departure from this rule would bring about never-ending suits, so long as lawyers could allege their own fault or negligence to support the client's case and obtain remedies and reliefs already lost by operation of law. In *Producers Bank of the Philippines v. Court of Appeals*, the decision of the trial court attained finality due to the failure of the petitioner's counsel to timely file a notice of appeal. The Court ruled that such negligence did not deprive the petitioner of due process of law since it was given the opportunity to advocate its cause or defend its interest in due course. By simply failing to file its appeal within the reglementary period, it could be successfully argued that the petitioner was deprived of its day in court.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; SO LONG AS A PARTY IS GIVEN THE OPPORTUNITY TO DEFEND ITS INTERESTS IN DUE COURSE, HE WOULD HAVE NO REASON TO COMPLAIN, FOR IT IS THE OPPORTUNITY TO BE HEARD THAT MAKES UP THE ESSENCE OF DUE PROCESS.— We reject the argument that Dimaandal was denied due process because of the negligence of his counsel who belatedly filed his notice of appeal, precisely because Dimaandal had the opportunity to defend himself in the criminal proceedings against him before the MCTC. As shown by the records, Dimaandal was able to actively participate

in the proceedings *a quo*. While he may have lost his right to appeal, he was not denied his day in court. So long as a party is given the opportunity to defend its interests in due course, he would have no reason to complain, for it is the opportunity to be heard that makes up the essence of due process.

5. ID.; ID.; ID.; ID.; THE RIGHT TO APPEAL IS NEITHER A NATURAL RIGHT NOR A PART OF DUE PROCESS; IT IS MERELY A STATUTORY PRIVILEGE THAT MUST BE EXERCISED IN THE MANNER AND IN ACCORDANCE WITH THE PROVISIONS OF LAW.— We stress that ***the right to appeal is neither a natural right nor a part of due process.*** It is merely a statutory privilege that must be exercised in the manner and in accordance with the provisions of law. One who seeks to avail of the right to appeal must strictly comply with the requirements of the rules; failure to do so, as in Dimaandal's case, leads to the loss of the right to appeal. The MCTC decision, therefore, became final and executory when Dimaandal failed to file a timely appeal therefrom.

APPEARANCES OF COUNSEL

Bernardo C. Cabidoy for petitioner.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] assailing the August 31, 2011 decision[2] and the May 29, 2012 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 113236. The CA denied the petition for review filed by petitioner Carlos Dimaandal (*Dimaandal*), challenging the November 20, 2009

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[1] *Rollo,* pp. 8-19.

[2] *Id.* at 128-136; penned by Associate Justice Magdangal M. De Leon, with Associate Justices Mario V. Lopez and Socorro B. Inting concurring.

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

decision[4] and the February 24, 2010 order[5] of the Regional Trial Court (*RTC*) in Special Civil Case No. 1-2009 which dismissed his petition for *certiorari* for lack of merit.

The Factual Antecedents

On May 20, 2009, the Municipal Circuit Trial Court (*MCTC*) of Taal-San Nicolas, Batangas, convicted Dimaandal of the crime of resistance and disobedience to an agent of a person in authority under Article 151 of the Revised Penal Code, and sentenced him to suffer the penalty of imprisonment of three (3) months and to pay a fine of One Hundred and Fifty Pesos (₱150.00).[6] A copy of the MCTC decision was received by Dimaandal's former counsel, Atty. Josephine A. Concepcion (*Atty. Concepcion*) on the same day.[7]

On June 4, 2009, Dimaandal, thru Atty. Concepcion, filed a motion for reconsideration, but the MCTC denied the motion in its order dated July 9, 2009.[8] Following the denial, Atty. Concepcion filed a notice of appeal with the MCTC on July 17, 2009, insisting that under the "fresh period rule," Dimaandal had fifteen (15) days from July 13, 2009 (the date of receipt of the July 9, 2009 order), within which to perfect his appeal.[9]

The MCTC denied the notice of appeal for having been filed out of time.[10] It also denied Dimaandal's motion for reconsideration for lack of merit and declared the May 20, 2009 decision final and executory.[11] Accordingly, the MCTC ordered

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[4] *Id.* at 106-110; penned by Judge Juanita G. Areta.

[5] *Id.* at 111-112.

[6] *Id.* at 30-34; penned by Presiding Judge Ma. Cecilia L. Saquin-Esperanza.

[7] *Id.* at 129.

[8] *Id.* at 40.

[9] *Id.* at 41.

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

[11] *Id.* at 76-77.

the issuance of a warrant of arrest against Dimaandal for his service of the sentence.

Atty. Concepcion thus filed a petition for *certiorari* under Rule 65 of the Rules of Court before the RTC, with prayer for the issuance of a temporary restraining order and preliminary injunction, questioning the propriety of the MCTC's denial of Dimaandal's appeal.[12]

In its decision dated November 20, 2009, the RTC dismissed the petition for lack of merit.[13] It held that Dimaandal lost his right to appeal when he failed to file his notice of appeal on time. It likewise denied the motion for reconsideration filed by Dimaandal in its order dated February 24, 2010.[14]

As a consequence, Atty. Concepcion filed a petition for review under Rule 42 of the Rules of Court before the CA, seeking to nullify the RTC's November 20, 2009 decision and February 24, 2010 order.[15]

In its decision dated August 31, 2011, the CA denied the petition for review and affirmed the RTC's assailed decision and order. It noted that Dimaandal's filing of a motion for reconsideration before the MCTC did not toll the running of the period to appeal the May 20, 2009 decision, as such motion is a prohibited pleading in criminal cases covered by the Revised Rules on Summary Procedure. Thus, when Dimaandal filed his notice of appeal, the period to perfect his appeal had already lapsed. The MCTC, therefore, properly denied the appeal for having been filed out of time.

The CA also pointed out that the proper remedy for the RTC's dismissal of Dimaandal's petition for *certiorari* is to file an ordinary appeal under Rule 41 of the Rules of Court and not a petition for review under Rule 42, which governs appeals

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[12] *Id.* at 44-54.

[13] *Id.* at 110.

[14] *Id.* at 112.

[15] *Id.* at 89-103.

from a decision of the RTC in the exercise of its appellate jurisdiction.

Dimaandal, this time with the assistance of his new counsel, Atty. Bernardo C. Cabidoy, moved for reconsideration and raised for the first time the issue of Atty. Concepcion's gross negligence in filing a prohibited pleading before the MCTC and in failing to file his notice of appeal within the fifteen-day reglementary period. The CA, however, denied his motion for lack of merit in its resolution dated May 29, 2012.[16]

Thereafter, Dimaandal filed the present petition for review on *certiorari* before the Court on August 3, 2012, assailing the CA's August 31, 2011 decision and May 29, 2012 resolution.

In the present petition, Dimaandal admits that the CA correctly affirmed the MCTC's denial of his appeal for having been filed out of time. The only issue he raises for the Court's resolution is *whether he is bound by the negligence of his former counsel* whose procedural lapses, *i.e., the filing of a prohibited pleading before the MCTC and the belated filing of his notice of appeal,* resulted in the denial of his right to due process of law.[17] He thus prays that the Court relax its rules of procedure and order that his appeal be given due course.

The Court's Ruling

We DENY the petition for review on *certiorari* as we find no reversible error committed by the CA in issuing its assailed decision and resolution.

At the outset, we reiterate the well-settled rule that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency, or quasi-judicial body need not be considered by a reviewing court, as they cannot be raised for the first time at

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[16] *Id.* at 137-145.

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

that late stage. Basic considerations of fairness and due process impel this rule. ***Any issue raised for the first time is barred by estoppels***.[18]

Note that this principle forbids parties from changing their theory of the case.[19] A party, after all, is *bound by the theory he adopts* and by the cause of action he stands on, and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal.[20]

In the present case, Dimaandal raised the issue on his former counsel's gross neglect **for the first time** in his motion for reconsideration before the CA, after the latter affirmed the RTC's finding on the proper dismissal of Dimaandal's appeal before the MCTC for having been filed out of time. The CA, therefore, correctly dismissed the motion for reconsideration for lack of merit, as it is barred from taking cognizance of an issue raised for the first time on appeal.[21]

At any rate, there is no merit in Dimaandal's claim that he is not bound by the mistakes of his former counsel.

The general rule is that **the client is bound by the negligence and mistakes of his counsel.** The ***only*** exception would be where the lawyer's gross negligence would result in the grave injustice of *depriving his client of the due process of law*.[22] A departure from this rule would bring about never-ending suits, so long as lawyers could allege their own fault or negligence

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[18] *S.C. Megaworld Construction and Development Corporation v. Parada*, G.R. No. 183804, September 11, 2013, 705 SCRA 584, 594: citing *Besana v. Mayor*, G.R. No. 153837, July 21, 2010, 625 SCRA 203, 219.

[19] *Bote v. Spouses Veloso*, G.R. No. 194270, December 3, 2012, 686 SCRA 758, 767.

[20] *Id.*, citing *Arroyo v. House of Representatives Electoral Tribunal*, G.R. No. 118597, July 14, 1995, 246 SCRA 384, 403.

[21] See *Besana v. Mayor*, *supra* note 18.

[22] *Pasiona, Jr. v. Court of Appeals*, G.R. No. 165471, July 21, 2008, 559 SCRA 137, 147.

to support the client's case and obtain remedies and reliefs already lost by operation of law.[23]

In *Producers Bank of the Philippines v. Court of Appeals*,[24] the decision of the trial court attained finality due to the failure of the petitioner's counsel to timely file a notice of appeal. The Court ruled that such negligence did not deprive the petitioner of due process of law since it was given the opportunity to advocate its cause or defend its interest in due course. By simply failing to file its appeal within the reglementary period, it could be successfully argued that the petitioner was deprived of its day in court.

Similarly, in the present case, we reject the argument that Dimaandal was denied due process because of the negligence of his counsel who belatedly filed his notice of appeal, precisely because Dimaandal had the opportunity to defend himself in the criminal proceedings against him before the MCTC.[25]

As shown by the records, Dimaandal was able to actively participate in the proceedings *a quo*. While he may have lost his right to appeal, he was not denied his day in court. So long as a party is given the opportunity to defend its interests in due course, he would have no reason to complain, for it is the opportunity to be heard that makes up the essence of due process.[26]

We stress that ***the right to appeal is neither a natural right nor a part of due process.*** It is merely a statutory privilege that must be exercised in the manner and in accordance with the provisions of law. One who seeks to avail of the right to appeal must strictly comply with the requirements of the rules;

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[23] *Stanley Fine Furniture v. Gallano*, G.R. No. 190486, November 26, 2014, 743 SCRA 306, 325.

[24] G.R. No. 126620, April 17, 2002, 381 SCRA 185, 200.

[25] *Supra* note 22.

[26] *GCP-Manny Transport Services, Inc. v. Principe*, G.R. No. 141484, November 11, 2005.

failure to do so, as in Dimaandal's case, leads to the loss of the right to appeal.[27] The MCTC decision, therefore, became final and executory when Dimaandal failed to file a timely appeal therefrom.

WHEREFORE, we **DENY** the petition for review on *certiorari* and **AFFIRM** the decision dated August 31, 2011 and resolution dated May 29, 2012, of the Court of Appeals in CA-G.R. SP No. 113236.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 204896. December 7, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SAMSON BERK *y* BAYOGAN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; THE FACT THAT THE TRIAL JUDGE WHO PENNED THE DECISION WAS DIFFERENT FROM THE ONE WHO RECEIVED THE EVIDENCE DOES NOT RENDER THE SAME ERRONEOUS, FOR IT IS NOT NECESSARY FOR A JUDGMENT TO BE VALID THAT THE JUDGE WHO PENNED THE DECISION SHOULD ACTUALLY HEAR THE CASE IN ITS ENTIRETY, FOR

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[27] *Heirs of Teofilo Gaudiano v. Benemerito*, G.R. No. 174247; February 21, 2007.

HE CAN MERELY RELY ON THE TRANSCRIBED STENOGRAPHIC NOTES TAKEN DURING THE TRIAL AS THE BASIS FOR HIS DECISION.— Well-settled in our jurisprudence is the rule that findings of the trial court on the credibility of witnesses deserve great weight, as the trial judge is in the best position to assess the credibility of the witnesses, and has the unique opportunity to observe the witness first hand and note his demeanor, conduct and attitude under gruelling examination. The fact that the trial judge who penned the Decision was different from the one who received the evidence does not render the same erroneous. It is not necessary for a judgment to be valid that the judge who penned the decision should actually hear the case in its entirety, for he can merely rely on the transcribed stenographic notes taken during the trial as the basis for his decision. That Judge Robert P. Fangayen was not the one who heard the evidence and had no opportunity to observe the demeanor of the witnesses is of no moment so long as he based his ruling on the records before him the way appellate courts review the evidence of the case raised on appeal. Absent any showing that the trial court's findings of facts were tainted with arbitrariness or that it overlooked or misapplied some facts or circumstances of significance and value, or its calibration of credibility was flawed, the appellate court is bound by its assessment.

2. **CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS; MET.—** In the prosecution of the crime of murder as defined in Article 248 of the Revised Penal Code (RPC), the following elements must be established by the prosecution: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by treachery; and (4) that the killing is not infanticide or parricide. Our review of the records convinces us that these elements were clearly met. The prosecution eyewitnesses positively identified appellant as the person responsible for killing the victim through valid out-of-court and in-court identifications. The Court finds no reason to disbelieve these credible and straightforward testimonies.

3. **REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND ALIBI; CANNOT PREVAIL OVER THE EYEWITNESSES' POSITIVE IDENTIFICATION OF THE**

ACCUSED AS THE PERPETRATOR OF THE CRIME.— We are also not persuaded by the appellant's defenses of denial and alibi as these cannot prevail over the eyewitnesses' positive identification of him as the perpetrator of the crime. Denial, like alibi, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law.

4. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCES; TREACHERY; ESTABLISHED.—** The prosecution ably established the presence of the element of treachery as a qualifying circumstance. The shooting of the unsuspecting victim was sudden and unexpected which effectively deprived her of the chance to defend herself or to repel the aggression, insuring the commission of the crime without risk to the aggressor and without any provocation on the part of the victim.

5. **ID.; ID.; MURDER; PROPER PENALTY.—** The Court affirms the penalty of *reclusion perpetua* imposed upon appellant. Under Article 248 of the Revised Penal Code, as amended, the crime of murder qualified by treachery is penalized with *reclusion perpetua* to death. The lower courts were correct in imposing the penalty of *reclusion perpetua* in the absence of any aggravating and mitigating circumstances that attended the commission of the crime.

6. **ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.—** The Court likewise affirms the award of civil indemnity and moral damages but the award of the other damages should be modified, in accordance with prevailing jurisprudence, as follows: ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages. Further, all the amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

This is an appeal assailing the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 04573 dated 29 June 2012 which dismissed the appeal of appellant Samson Berk y Bayogan and affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 39, in Criminal Case No. L-8391, which found appellant guilty beyond reasonable doubt of the crime of Murder.

Appellant and his co-accused Jeneto Serencio (Serencio) were charged before the RTC of Lingayen, Pangasinan, Branch 39 with murder as follows:

> That on or about 10:45 o'clock in the morning of December 16, 2007, in Poblacion East, Sual, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with each other with treachery and with intent to kill, did then and there, wilfully, unlawfully and feloniously attack, and shot **Clarita Disu** several times, inflicting upon her several gunshot wounds which [caused] her instantaneous death, to the damage and prejudice of her heirs.
>
> Contrary to Article 248 of the Revised Penal Code in relation to RA 7659 as amended.[3]

During arraignment, appellant pleaded not guilty to the crime charged. Serencio remains at large. Trial on the merits thereafter ensued.

The prosecution presented eyewitnesses Marbie S. Disu (Marbie) and Loreto Inocencio (Loreto), respectively the daughter

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[1] *Rollo*, pp. 2-17; Penned by Associate Justice Rodil V. Zalameda with Associate Justices Rebecca De Guia-Salvador and Normandie B. Pizarro concurring.

[2] Records, pp. 133-143; Penned by Presiding Judge Robert P. Fangayen.

[3] Records, p. 1.

and grandson of the victim. Their testimonies established that in the morning of 16 December 2007, the victim Clarita Disu and her daughter Marbie were tending their neighbourhood variety store in Sual, Pangasinan with Loreto, when two (2) men on board a motorcycle arrived. One dismounted the vehicle and bought a cigarette from Marbie while the other stayed on the vehicle. The man who bought the cigarette suddenly pulled a gun and pointed it to Clarita and shot her four (4) times. Marbie shouted for help and ran to the fallen victim to help and embrace her. The assailant, who had been wearing a yellow t-shirt, then boarded the motorcycle and headed east. Marbie noted the motorcycle plate number as AR 3273.[4]

On 29 January 2008, police authorities invited Marbie and Loreto to the police station to identify whether the gunman had been among those whom they arrested. Of three (3) persons in the prison cell, both Marbie and Loreto pointed to appellant. Both also identified appellant in open court as the victim's assailant.[5]

Appellant asserted that he had been away on a fishing boat off Pangasinan on the date and time of the incident. He also countered that he had been arrested for alleged illegal possession of a gun. While he was in prison, Marbie came and was allegedly apprised by the police that it was appellant who had killed her mother.[6]

After trial, the RTC gave credence to the eyewitness accounts of Marbie and Loreto of appellant's liability in the killing of the victim. On 19 July 2010, the RTC rendered the assailed decision disposing as follows:

WHEREFORE, in the (sic) light of the foregoing discussions, this Court finds accused SAMSON BERK **GUILTY** beyond reasonable doubt of the crime of MURDER as defined in Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659, qualified

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[4] TSN, 24 June 2008, pp. 3-7, 18-21; TSN, 15 July 2008, pp. 5-11.

[5] *Id.* at 7-8; TSN, 15 July 2008, pp. 9-10.

[6] TSN, 7 July 2009, pp. 3-12.

by treachery. The proper imposable penalty would have been death. However, pursuant to Rep. Act No. 9346, accused is sentenced to suffer the penalty of *reclusion perpetua* without possibility of parole.

Accused is further ORDERED to pay the heirs of Clarita Disu, the amounts of (a) Php 75,000 as civil indemnity; (b) Php 75,000.00 as moral damages; (c) Php 25,000.00 as exemplary damages; and (d) Php 25,000.00 as temperate damages.

Insofar as accused JENETO SERENCIO is concerned, let the case against him be **ARCHIVED**. Let an alias warrant of arrest be issued for his immediate apprehension to be furnished to the following officers:

1. Chief of Police, PNP, Sual, Pangasinan;
2. Provincial Director, PNP, Pangasinan;
3. Regional Director, PNP, Region Office 1;
4. The NBI Director, Pangasinan;
5. The Regional Director, NBI, Regional Office 1;
6. The Director, NBI, Manila;
7. The CIDG Provincial Director, Pangasinan;
8. The Regional Director, CIDG Regional Office 1;
9. The National Director, CIDG, Manila; and
10. The Chief PNP, Camp Crame, Quezon City

who are all ordered to effect the immediate arrest of the above named accused and furnish this Court with their respective returns of service, the soonest.[7]

The Court of Appeals found no reason to disturb the findings of the RTC and upheld its ruling. The appellate court also found the eyewitness accounts credible, straightforward and reliable and upheld their positive identification of appellant as the perpetrator. The Court of Appeals thus disposed:

WHEREFORE, premises considered, the instant Appeal is **DENIED** and the Decision dated 19 July 2010 rendered by Branch 39, Regional Trial Court of Lingayen, Pangasinan is hereby **AFFIRMED** but **MODIFIED** to read as follows:

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[7] *Id.* at 141.

> WHEREFORE, in light of the foregoing discussions, this Court finds accused SAMSON BERK GUILTY beyond reasonable doubt of the crime of MURDER as defined in Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659, qualified by treachery. There being no aggravating or mitigating circumstance, the accused is sentenced to suffer the penalty of reclusion perpetua.
>
> Accused is further ORDERED to pay the heirs of Clarita Disu, the amounts of (a) Php 75,000 as civil indemnity; (b) Php 75,000.00 as moral damages; (c) Php 25,000.00 as exemplary damages; and (d) Php 25,000.00 as temperate damages.
>
> Insofar as accused JENETO SERENCIO is concerned, let the case against him be ARCHIVED. Let an alias warrant of arrest be issued for his immediate apprehension to be furnished to the following officers:
>
> 1. Chief of Police, PNP; Sual, Pangasinan;
> 2. Provincial Director, PNP, Pangasinan;
> 3. Regional Director, PNP, Region Office 1;
> 4. The NBI Director, Pangasinan;
> 5. The Regional Director, NBI, Regional Office 1;
> 6. The Director, NBI, Manila;
> 7. The CIDG Provincial Director, Pangasinan;
> 8. The Regional Director, CIDG Regional Office 1;
> 9. The National Director, CIDG, Manila; and
> 10. The Chief PNP, Camp Crame, Quezon City
>
> who are all ordered to effect the immediate arrest of the above named accused and furnish this Court with their respective returns of service the soonest.[8]

Now before the Court for final review, we affirm appellant's conviction.

Well-settled in our jurisprudence is the rule that findings of the trial court on the credibility of witnesses deserve great weight, as the trial judge is in the best position to assess the credibility of the witnesses, and has the unique opportunity to observe the witness first hand and note his demeanor, conduct and attitude

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[8] *Rollo*, pp. 16-17.

under gruelling examination.[9] The fact that the trial judge who penned the Decision was different from the one who received the evidence does not render the same erroneous. It is not necessary for a judgment to be valid that the judge who penned the decision should actually hear the case in its entirety, for he can merely rely on the transcribed stenographic notes taken during the trial as the basis for his decision.[10]

That Judge Robert P. Fangayen was not the one who heard the evidence and had no opportunity to observe the demeanor of the witnesses is of no moment so long as he based his ruling on the records before him the way appellate courts review the evidence of the case raised on appeal.[11] Absent any showing that the trial court's findings of facts were tainted with arbitrariness or that it overlooked or misapplied some facts or circumstances of significance and value, or its calibration of credibility was flawed, the appellate court is bound by its assessment.

In the prosecution of the crime of murder as defined in Article 248 of the Revised Penal Code (RPC), the following elements must be established by the prosecution: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by treachery; and (4) that the killing is not infanticide or parricide.[12]

Our review of the records convinces us that these elements were clearly met. The prosecution eyewitnesses positively identified appellant as the person responsible for killing the victim through valid out-of-court and in-court identifications. The Court finds no reason to disbelieve these credible and straightforward testimonies. Marbie significantly testified as follows:

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[9] *People v. Rivera*, 458 Phil. 856, 873 (2003) cited in *People v. Sevillano*, G.R. 200800, 9 February 2015, 750 SCRA 221, 227.

[10] *Kummer v. People*, 717 Phil. 670, 680 (2013).

[11] *Id.*

[12] *People v. Sevillano*, G.R. 200800, 9 February 2015, 750 SCRA 221, 227 citing *People v. Sameniano*, 596 Phil. 916, 928 (2009).

ATTY. FERNANDEZ

Q: Could you tell how were you able to know the identity who shot your mother?
A: Last January 29, 2008 [I] was invited by the police authorities to identify some of those whom they arrested, sir.

Q: What particular office were you invited?
A: Police Station of Sual, sir.

Q: Were you able to go to that police station of Sual?
A: Yes, sir.

Q: Do you have any companion when you went to that police station?
A: Yes, sir, there is.

Q: Who is that?
A: Marmolito Disu and Loreto Inocencio, sir.

Q: Upon reaching the office of Sual PNP, what happened there?
A: They showed me those persons they arrested, sir.

Q: What else did the police tell you, if any?
A: When they showed me the person they have arrested I saw the gunman who shot my mother sir.

Q: After seeing the gunman in the police station, what did you do?
A: I told the policemen, that is the gunman, sir.

Q: What did the police tell you in identifying the gunman of your mother?
A: After I pointed to the gunman they told me the name of the person by the name of Samson Berk, sir.

Q: Madam Witness, I request you to look inside the Courtroom and tell the Honorable Court if this alleged gunman is inside the Courtroom?
A: Than (sic) man, sir. (witness pointing to the accused and when asked of his name he answered. Samson Berk).[13]

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[13] TSN, 24 June 2008, pp. 7-8.

The above-quoted testimony disproves appellant's assertion that Marbie had been coaxed by the police authorities to pin him down as her mother's assassin. We are also not persuaded by the appellant's defenses of denial and alibi as these cannot prevail over the eyewitnesses' positive identification of him as the perpetrator of the crime. Denial, like alibi, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law.[14] In fine, the Court finds no error in the conviction of the appellant.

The prosecution ably established the presence of the element of treachery as a qualifying circumstance. The shooting of the unsuspecting victim was sudden and unexpected which effectively deprived her of the chance to defend herself or to repel the aggression, insuring the commission of the crime without risk to the aggressor and without any provocation on the part of the victim.

The Court affirms the penalty of *reclusion perpetua* imposed upon appellant. Under Article 248 of the Revised Penal Code, as amended, the crime of murder qualified by treachery is penalized with *reclusion perpetua* to death. The lower courts were correct in imposing the penalty of *reclusion perpetua* in the absence of any aggravating and mitigating circumstances. that attended the commission of the crime. The Court likewise affirms the award of civil indemnity and moral damages but the award of the other damages should be modified, in accordance with prevailing jurisprudence, as follows: ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages.[15]

Further, all the amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.[16]

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[14] *Malana v. People*, 573 Phil. 39, 53 (2008).

[15] *People v. Jugueta*, G.R. No. 202124, 5 April 2016.

[16] *People v. Vitero*, 708 Phil. 49, 65 (2013).

WHEREFORE, premises considered, the Decision dated 29 June 2012 of the Court of Appeals, Third Division, in CA-G.R. CR-H.C. No.04573, finding Samson Berk y Bayogan guilty of murder in Criminal Case No. L-8391 is **AFFIRMED with MODIFICATION**. Appellant is **ORDERED** to pay the heirs of Clarita Disu as follows:₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages.

He is **FURTHER** ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. Nos. 206310-11. December 7, 2016]
(OMB-0-01-0211 and OMB-0-01-0291; Sandiganbayan Special Division-Criminal Case No. 26558)

JAIME DICHAVES, *petitioner*, *vs*. **OFFICE OF THE OMBUDSMAN AND THE SPECIAL DIVISION OF THE SANDIGANBAYAN,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE;

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[*] Additional member per Raffle dated 5 December 2016.

THE COURT DOES NOT INTERFERE WITH THE OFFICE OF THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE, FOR IT IS ARMED WITH THE POWER TO INVESTIGATE, AND IS, THEREFORE, IN A BETTER POSITION TO ASSESS THE STRENGTHS OR WEAKNESSES OF THE EVIDENCE ON HAND NEEDED TO MAKE A FINDING OF PROBABLE CAUSE.— As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[.]" An independent constitutional body, the Office of the Ombudsman is "beholden to no one, acts as the champion of the people[,] and [is] the preserver of the integrity of the public service." Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is *executive* in nature. The executive determination of probable cause is a highly factual matter. It requires probing into the "existence of such *facts and circumstances* as would excite the belief, in a reasonable mind, *acting on the facts within the knowledge of the prosecutor,* that the person charged was guilty of the crime for which he [or she] was prosecuted." The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman. Practicality also leads this Court to exercise restraint in interfering with the Office of the Ombudsman's finding of probable cause.

2. ID.; ID.; ID.; ID.; TO WARRANT JUDICIAL INTERVENTION, IT MUST BE PROVED THAT THE PUBLIC PROSECUTOR GRAVELY ABUSED ITS DISCRETION IN ACTING ON THE CASE.— While, indeed, this Court may step in if the public prosecutor gravely abused its discretion in acting on the case, such grave abuse must be substantiated, not merely alleged. In *Casing v. Hon. Ombudsman,*

et al.: Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner — which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law — in order to exceptionally warrant judicial intervention.

3. ID.; ID.; ID.; ID.; THE ACCUSED WHO HAS YET TO BE ARRAIGNED AND FACE TRIAL HAS NO RIGHT TO CROSS-EXAMINE THE WITNESSES DURING A PRELIMINARY INVESTIGATION, AS ONLY WHEN A PERSON STANDS TRIAL MAY HE/ SHE DEMAND THE RIGHT TO CONFRONT AND CROSS-EXAMINE HIS/HER ACCUSER.— [T]here is nothing capricious or whimsical about petitioner's lack of opportunity to cross-examine the witnesses. A person's rights in a preliminary investigation are subject to the limitations of procedural law. These rights are statutory, not constitutional. The purpose of a preliminary investigation is merely to present such evidence "as may engender a well-grounded belief that an offense has been committed and that [the respondent in a criminal complaint] is probably guilty thereof." It does not call for a "full and exhaustive display of the parties' evidence[.]" Thus, petitioner has no right to cross-examine the witnesses during a preliminary investigation. At this early stage, the Ombudsman has yet to file an information that would trigger into operation the rights of the accused (found under Section 14(2) of Article III of the Constitution). "It is the filing of a complaint or information in court that initiates a criminal action[,]" and carries with it all the accompanying rights of an accused. Only when a person stands trial may he or she demand "the right to confront and cross-examine his [or her] accusers[.]" This right cannot apply to petitioner, who has yet to be arraigned and face trial as he left the country at the time he was initially charged with plunder. Petitioner's failure to cross-examine the witnesses during the trial in *People v. Estrada* was, thus, his own fault.

4. ID.; ID.; ID.; ID.; THE PUBLIC PROSECUTOR IS NOT BOUND BY THE TECHNICAL RULES ON EVIDENCE, AS THE FINDING OF PROBABLE CAUSE REQUIRES ONLY SUBSTANTIAL EVIDENCE, NOT ABSOLUTE

CERTAINTY OF GUILT.— [T]he public prosecutor is not bound by the technical rules on evidence. The executive finding of probable cause requires only substantial evidence, not absolute certainty of guilt. In *Kalalo v. Office of the Ombudsman, et al.*: In determining probable cause, the average [person] weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he [or she] has no technical knowledge. He [or she] relies on common sense. The Ombudsman merely depends on evidence of such facts and circumstances amounting to a "more likely-than-not" belief that a crime has been committed. As the Office of the Ombudsman's conclusion is based on a belief or an opinion, the technical rules on evidence cannot be made to apply to it. Thus, at the stage of preliminary investigation, the question on the admissibility of evidence is premature for petitioner to raise.

5. ID.; ID.; ID.; ID.; IN THE DETERMINATION OF PROBABLE CAUSE, THE OMBUDSMAN MAY CONSIDER EVIDENCE ALREADY ESTABLISHED IN A RELATED AND DECIDED CASE.— Petitioner erroneously claims that the Ombudsman considered pieces of evidence not presented during the preliminary investigation. No part of the ruling in the March 14, 2012 Joint Resolution of the Office of the Ombudsman was based on the proceedings in Estrada's impeachment and plunder trials or their records. All references to the impeachment and plunder trials were made only by way of summarizing the initial allegations and reply of complainants in OMB-0-01-0211 and OMB-0-01-0291. x x x. In any event, the Ombudsman may rely on the facts as stated in *People v. Estrada.* In the determination of probable cause, nothing bars the Ombudsman from considering evidence already established in a related and decided case. Notably, the present case is an offshoot of the proceedings in Estrada's impeachment and plunder trials. Petitioner was identified as one of the John Does in Estrada's plunder case. Both *People v. Estrada* and this case are docketed as Criminal Case No. 26558. Thus, the Sandiganbayan's pronouncements in *People v. Estrada* may be taken judicial notice of. That case, which was decided in 2007, had long become of public knowledge, when the Ombudsman proceeded with petitioner's preliminary investigation on December 7, 2011. More importantly, it has long formed part of Philippine jurisprudence, which the Office of the Ombudsman may accord full faith and reliance on.

6. ID.; ID.; ID.; ID.; IN DEALING WITH PROBABLE CAUSE, WE DEAL WITH PROBABILITIES, THESE ARE NOT TECHNICAL, BUT ARE FACTUAL AND PRACTICAL CONSIDERATIONS OF EVERYDAY LIFE ON WHICH REASONABLE AND PRUDENT MEN, NOT LEGAL TECHNICIANS, ACT; THE OFFICE OF THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE TO CHARGE PETITIONER WITH PLUNDER, UPHELD.— The determination of whether Ocier's affidavit of recantation should be considered is for the Sandiganbayan, during trial, to rule upon. Notwithstanding, there is substantial evidence to affirm the finding of probable cause against petitioner. The contents of the second envelope, the deposits in the "Jose Velarde" account, and the affidavits of witnesses Carlos Arellano, Federico Pascual, and Mark Jimenez, among others, support the Ombudsman's ruling. "In dealing with probable cause[,] as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." Section 2 of Republic Act No. 7080 punishes "[a]ny person who participated with the [accused] public officer in the commission of an offense contributing to the crime of plunder[.]" The Office of the Ombudsman correctly found probable cause to charge petitioner with plunder in conspiracy with the former President. x x x. Given the supporting evidence it has on hand, the Ombudsman's exercise of prerogative to charge petitioner with plunder was not whimsical, capricious, or arbitrary.

7. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT PROPER, AS THE PETITIONER'S OTHER DEFENSE CONTESTING THE OFFICE OF THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE IS HIGHLY FACTUAL IN NATURE WHICH MUST BE THRESHED OUT IN A FULL-BLOWN TRIAL.— [I]t must be emphasized that only opinion and reasonable belief are sufficient at this stage. Thus, petitioner's "other defense contesting the finding of probable cause that is highly factual in nature must be threshed out in a full-blown trial, and not in a special civil action for *certiorari* before this Court." This Court finds no reason to violate the policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers. The Ombudsman's ruling must be respected.

APPEARANCES OF COUNSEL

Ranada Malaya Sanchez & Simpao Law Offices for petitioner.

D E C I S I O N

LEONEN, *J.*:

This resolves a Petition for Certiorari[1] assailing the Office of the Ombudsman's finding of probable cause to charge petitioner Jaime Dichaves with plunder. Petitioner prays for the annulment of the March 14, 2012 Joint Resolution[2] and February 4, 2013 Order[3] of the Office of the Ombudsman in OMB-0-01-0211 and OMB-0-01-0291,[4] which resolved the two complaints filed in 2001.[5]

The first complaint, docketed as OMB-0-01-0211, accuses Jaime Dichaves and William Gatchalian, among others,[6] of direct bribery, indirect bribery, corruption of public officials, violations of Presidential Decree No. 46[7] and Republic Act No. 6713,[8] and plunder under Republic Act No. 7080, in connection with the "Jose Velarde" account[9] of former President Joseph Ejercito Estrada (Estrada).[10]

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[1] *Rollo,* pp. 3-29.

[2] *Id.* at 31-62.

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

[4] *Id.* at 26, Petition for *Certiorari*.

[5] *Id.* at 173, Jaime Dichaves' Memorandum.

[6] The other persons charged are Abby Dichaves, Mark Jimenez, Manny Pangilinan, George Go, Dante Tan, Lucio Co, Kevin/Kelvin Garcia and Atty. Fernando Chua.

[7] Making it Punishable for Public Officials and Employees to Receive, and for Private Persons to Give, Gifts on any Occasion, including Christmas.

[8] Code of Conduct and Ethical Standard for Public Officials and Employees.

[9] *Rollo,* p. 35, Office of the Ombudsman Joint Resolution.

[10] *People v. Estrada,* Sandiganbayan Criminal Case No. 26558, September 12, 2007. The Decision was penned by Presiding Justice Teresita J. Leonardo-

Private complainants are Atty. Leonard De Vera, Atty. Romeo T. Capulong, Atty. Dennis B. Funa, Dante Jimenez (representing the Volunteers Against Crime and Corruption), and Jesus E.G. Martinez (representing the Citizens' Battle Against Corruption Party List).[11]

The second complaint, docketed as OMB-0-01-0291, accuses Jaime Dichaves; then President and General Manager of the Government Service Insurance System, Federico "Ping" Pascual; then President and Chairman of the Social Security System, Carlos "Chuckie" Arellano; and Belle Corporation Vice Chairman and Director Willy Ng Ocier, among others,[12] of violating Republic Act No. 6713, Section 3 (a), (e), (g), and (i) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act, and plunder under Republic Act No. 7080.[13] The charges are in connection with the purchase, upon Estrada's instructions,[14] of shares of stock of a private corporation by government financial institutions.[15]

Private complainants are Atty. Leonard De Vera (representing Caucus of Lawyers for Estrada's Abrupt Resignation), Atty. Romeo T. Capulong (representing OUSTER), Atty. Crisostomo M. Akol (representing CLAMOR), Dante Jimenez (representing

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De Castro (now Associate Justice) and concurred in by Associate Justices Francisco H. Villaruz Jr. and Diosdado M. Peralta (now Associate Justice) of the Sandiganbayan Special Division.

[11] *Rollo,* p. 35, Office of the Ombudsman Joint Resolution.

[12] *Id.* at 55, Office of the Ombudsman Joint Resolution. The other persons charged were Mark Jimenez, Hermogenes D. Concepcion, Leonora Vasquez-De Jesus, Reynaldo P. Palmiery, Elmer T. Bautista, Fulgencio S. Factoran, Fioriño O. Ibañez, Aida C. Nocete, Leovigildo P. Arellano, Dody R. Agcaoili, Rafael Estrada, Amado B. Almazan, Aurora R. Arnaez, Marianita O. Mendoza, Cecilio T. Seno, Miguel Varela, Aurora P. Mathay, Enriqueta P. Disuanco, Amalio M. Mallari, and Fernando Gaite, Jr.

[13] An Act Defining and Penalizing the Crime of Plunder.

[14] *People v. Estrada,* Sandiganbayan Criminal Case No. 26558, September 12, 2007.

[15] *Rollo,* pp. 35-36, Office of the Ombudsman Joint Resolution.

Volunteers Against Crime and Corruption), and Atty. Roberto Argee Guevarra (representing ARM).[16]

The consolidated complaints trace their roots to the contents of the sealed second envelope, Estrada's impeachment trial, and his plunder trial before the Sandiganbayan in *People v. Estrada* (Criminal Case No. 26558).[17]

On November 13, 2000, the House of Representatives impeached Estrada for bribery, graft and corruption, betrayal of public trust, and culpable violation of the Constitution.[18] After Estrada's impeachment, it was reported that Dichaves fled the country "and cooled his heels off in China[.]"[19]

On December 7, 2000, the Senate next proceeded with the impeachment proceedings against Estrada.[20] On January 16, 2001, 11 senators voted against opening a sealed second envelope allegedly containing damaging evidence against Estrada[21] and Jaime Dichaves, among others.[22] This move caused the House prosecution panel to stage a walkout, triggered EDSA 2, and eventually led to Estrada's downfall.[23]

By January 20, 2001, Estrada was considered resigned as president, and, therefore, no longer immune to criminal prosecution.[24]

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[16] *Rollo,* pp. 35-36, Office of the Ombudsman Joint Resolution.

[17] The Decision was promulgated on September 12, 2007.

[18] *J.* Vitug, Concurring Opinion, and *J.* Mendoza, Concurring Opinion in *Estrada v. Desierto,* 406 Phil. 1, 86, 100-101 (2001) [Per *J.* Puno, *En Banc*].

[19] Malou Guanzon-Apalisok, *Jaime Dichaves uncovered,* INQUIRER.NET, APRIL 5, 2012 < http://newsinfo.inquirer.net/172533/jaime-dichaves-uncovered > (last visited November 23, 2016).

[20] *J.* Mendoza, Concurring Opinion in *Estrada v. Desierto,* 406 Phil. 1, 101 (2001) [Per *J.* Puno, *En Banc*].

[21] *Estrada v. Desierto,* 406 Phil. 31-32 (2001) [Per *J.* Puno, *En Banc*].

[22] *Rollo,* pp. 38-39, Office of the Ombudsman Joint Resolution.

[23] *Estrada v. Desierto,* 406 Phil. 74 (2001) [Per *J.* Puno, *En Banc*].

[24] *Id.* at 47-60.

On April 4, 2001, the Office of the Ombudsman filed an information charging Estrada, Jose "Jinggoy" Estrada, Charlie "Atong" Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, Eleuterio Tan (also known as Eleuterio Ramos Tan or Mr. Uy), Jane Doe (also known as Delia Rajas), and several John and Jane Does with plunder before the Sandiganbayan.[25] The case was docketed as Criminal Case No. 26558 *(People v. Estrada).*[26]

Dichaves was subsequently identified as one of the John Does in *People v. Estrada.*[27] The complaints were docketed at the Office of the Ombudsman as OMB-0-01-0211 and OMB-0-01-0291.[28] While the preliminary investigation proceedings in these complaints were being conducted, Dichaves was nowhere to be found in the Philippines.[29]

On April 18, 2001, the Office of the Ombudsman filed an Amended Information for plunder against Estrada, *et al*.[30]

On September 13, 2001, the Ombudsman jointly resolved OMB-0-01-0211 and OMB-0-01-0291, finding probable cause to also indict Dichaves for plunder under Section 2 of Republic Act No. 7080.[31] The dispositive portion reads:

> WHEREFORE, this Office finds and so holds that there is sufficient evidence to support the conclusion that probable cause exists that the crime of Plunder was committed by respondent Jaime Dichaves in conspiracy with former President Joseph Ejercito Estrada and others already accused under Criminal Case No. 26558 pending in the 3rd Division of the Sandiganbayan.

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[25] *People v. Estrada,* Sandiganbayan Criminal Case No. 26558, September 12, 2007.

[26] *Id.*

[27] *Rollo,* p. 42, Office of the Ombudsman Joint Resolution.

[28] *Id.* at 34.

[29] *Id.* at 173, Jaime Dichaves' Memorandum.

[30] *Id.* at 42-45, Office of the Ombudsman Joint Resolution.

[31] *Id.* at 41 and 60.

Accordingly, let JAIME C. DICHAVES be prosecuted for Plunder in the Sandiganbayan through a motion to substitute him as one of the John Does in the cases pending in the Sandiganbayan under Criminal Case No. 26558.

And having been accorded immunity from prosecution, the charges against respondents Federico Pascual, Carlos Arellano and Willie Ocier are hereby dropped.[32]

Thus, the Amended Information (Criminal Case No. 26558) includes Dichaves in the charge, as follows:

The undersigned Ombudsman Prosecutor and OIC [Officer-in-Charge]-Director, EPIB, Office of the Ombudsman, hereby accuses former PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, Joseph Ejercito Estrada a.k.a. "ASIONG SALONGA" and a.k.a. "JOSE VELARDE[,]" together with Jose ["]Jinggoy["] Estrada, Charlie "Atong" Ang, Edward Serapio, Yolanda T. Ricafort, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Tan OR Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, **JAIME C. DICHAVES** and John DOES & Jane Does, of the crime of Plunder, defined and penalized under [Republic Act No.] 7080, as amended by Sec. 12 of [Republic Act No.] 7659, committed as follows:

That during the period from June 1998 to January 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, THEN A PUBLIC OFFICER, BEING THEN THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, by himself AND/OR in CONNIVANCE/ CONSPIRACY with his co accused, WHO ARE MEMBERS OF HIS FAMILY, RELATIVES BY AFFINITY OR CONSANGUINITY, BUSINESS ASSOCIATES, SUBORDINATES AND /OR OTHER PERSONS, BY TAKING UNDUE ADVANTAGE OF HIS OFFICIAL POSITION, AUTHORITY, RELATIONSHIP, CONNECTION, OR INFLUENCE, did then and there willfully, unlawfully and criminally amass, accumulate and acquire BY HIMSELF, DIRECTLY OR INDIRECTLY, ill-gotten wealth in the aggregate amount OR TOTAL VALUE OF FOUR BILLION NINETY SEVEN MILLION EIGHT HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AN[D] SEVENTEEN CENTAVOS

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[32] *Id.* at 248, Office of the Ombudsman's Memorandum.

[₱4,097,804,173.17] more or less. THEREBY UNJUSTLY ENRICHING HIMSELF OR THEMSELVES AT THE EXPENSE AND TO THE DAMAGE OF THE [F]ILIPINO PEOPLE AND THE REPUBLIC OF THE PHILIPPINES, through ANY OR A combination OR A series of overt OR criminal acts, or SIMILAR SCHEMES OR MEANS, described as follows:

. . . . . .

(c) By directing, ordering and compelling, FOR HIS PERSONAL GAIN AND BENEFIT, the Government Service Insurance System (GSIS) TO PURCHASE 351,878,000 SHARES OF STOCKS. MORE OR LESS, and the Social Security System (SSS) 329,855,000 SHARES OF STOCKS, MORE OR LESS, OF THE BELLE CORPORATION IN THE AMOUNT OF MORE OR LESS ONE BILLION ONE HUNDRED TWO MILLION NINE HUNDRED SIXTY FIVE THOUSAND SIX HUNDRED SEVEN PESOS AND FIFTY CENTAVOS [P1,102,965,607.50[]] AND MORE OR LESS SEVEN HUNDRED FORTY FOUR MILLION SIX HUNDRED TWELVE THOUSAND AND FOUR HUNDRED FIFTY PESOS [P744,612,450.00], RESPECTIVELY, OR A TOTAL OF MORE OR LESS ONE BILLION EIGHT HUNDRED FORTY SEVEN MILLION FIVE HUNDRED SEVENTY EIGHT THOUSAND FIFTY SEVEN PESOS AND FIFTY CENTAVOS [P1,847,578,057.50]; **AND BY COLLECTING OR RECEIVING DIRECTLY OR INDIRECTLY, BY HIMSELF AND/OR IN CONNIVANCE WITH JAIME C. DICHAVES, JOHN DOES AND JANE DOES, COMMISSIONS OR PERCENTAGES BY REASON OF SAID PURCHASES OF SHARES OF STOCK IN THE AMOUNT OF ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED PESOS [₱189,700,000.00] MORE OR LESS FROM THE BELLE CORPORATION WHICH BECAME PART OF THE DEPOSIT IN THE EQUITABLE-PCI BANK UNDER THE ACCOUNT NAME, "JOSE VALERDE";**

(d) by unjustly enriching himself **FROM COMMISSIONS, GIFTS, SHARES, PERCENTAGES, KICKBACKS, OR ANY FORM OF PECUNIARY BENEFITS, IN CONNIVANCE, WITH JAIME C. DICHAVES, JOHN DOES AND JANE DOES**, in the amount of **MORE OR**

> **LESS**, THREE BILLION TWO HUNDRED THIRTY THREE MILLION ONE HUNDRED FOUR THOUSAND AND ONE HUNDRED SEVENTY THREE PESOS **AND SEVENTEEN CENTAVOS [P3,233,104,173.17] AND DEPOSITING THE SAME UNDER HIS ACCOUNT NAME "JOSE VELARDE[") AT THE EQUITABLE-PCI BANK[.]**

CONTRARY TO LAW[.][33] (Emphasis and underscoring in the original)

On January 29, 2002, a warrant of arrest was issued against Dichaves, but he could not be located as he had already slipped out of the country.[34] No subpoena was served on him.[35]

The plunder case, *People v. Estrada* (Criminal Case No. 26558), was assigned to the Special Division of the Sandiganbayan.[36] Trial ensued, wherein several witnesses gave their testimonies.[37]

During the Senate and the Sandiganbayan trials of Estrada, Equitable-PCIBank Senior Chief Legal Counsel Atty. Manuel Curato and Vice President Clarissa Ocampo established that the Jose Velarde-owner of the "Jose Velarde" account, and Estrada, are the same person.[38]

On September 12, 2007, Estrada was found guilty beyond reasonable doubt of the crime of plunder.[39] The Sandiganbayan ruled that Estrada was the real and beneficial owner of the "Jose Velarde" account (Savings Account No. 0160-62501-5).[40]

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[33] *Id.* at 44-45, Office of the Ombudsman Joint Resolution.

[34] *ld*. at 173, Jaime Dichaves' Memorandum, and 249, Office of the Ombudsman's Memorandum.

[35] *Id.* at 174, Jaime Dichaves' Memorandum.

[36] *Id.* at 173.

[37] *Id.* at 174.

[38] *Id.* at 37-38, Office of the Ombudsman Joint Resolution.

[39] *Id.* at 174, Jaime Dichaves' Memorandum.

[40] *The Wellex Group, Inc. v. Sandiganbayan,* 689 Phil. 44, 64 (2012) [Per *J*. Sereno (now *C.J.*), Second Division).

Six weeks later, former President Gloria Macapagal-Arroyo pardoned Estrada.[41]

After Estrada's conviction and pardon, Dichaves resurfaced on November 19, 2010.[42] He filed a Motion to Quash and/or Motion for Reinvestigation, seeking for a preliminary investigation of his case as none was conducted.[43]

In a Resolution dated July 1, 2011, the Sandiganbayan granted the motion for reinvestigation and directed the Ombudsman to conduct/complete the preliminary investigation of Dichaves' case.[44] The Sandiganbayan held in abeyance further proceedings until after the preliminary investigation was completed.[45] On September 18, 2011, it resolved to recall Dichaves' warrant of arrest.[46]

Meanwhile, the anti-graft court denied Dichaves' motion to quash, ruling that "the material facts in the Amended Information sufficiently establish the elements of the crime of Plunder."[47]

On December 7, 2011, the Ombudsman commenced the preliminary investigation,[48] and Dichaves was ordered to submit his counter-affidavit on the consolidated cases.[49]

On March 14, 2012, the Office of the Ombudsman Special Panel issued a Joint Resolution, finding probable cause to charge Dichaves with plunder.[50] The dispositive portion states:

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[41] Manny Mogato, *Former Philippine president Estrada pardoned,* REUTERS, October 25, 2007 < http://uk.reuters.com/article/uk-philippines-estrada-idUKMNB0007120071025 > (last visited November 23, 2016).

[42] *Rollo,* p. 174, Jaime Dichaves' Memorandum.

[43] *Id.*

[44] *Id.*

[45] *Id.* at 250, Office of the Ombudsman's Memorandum.

[46] *Id.*

[47] *Id.*

[48] *Id.* at 74, Jaime Dichaves' Motion for Reconsideration.

[49] *Id.* at 250, Office of the Ombudsman's Memorandum.

[50] *Id.* at 251.

WHEREFORE, as probable cause lies against respondent ***JAIME C. DICHAVES*** for Plunder, his indictment therefor by Amended Information dated April 18, 2001 before the Sandiganbayan in Criminal Case No. 26558 remains.

SO RESOLVED.[51]

On February 4, 2013, the Office of the Ombudsman denied Dichaves' Motion for Reconsideration.[52]

Thus, Dichaves was indicted for conspiring with the former President in amassing ill-gotten wealth through profits and commissions from the purchase of Belle Corporation shares by the Government Service Insurance System and the Social Security System.[53]

The Special Division of the Sandiganbayan set Dichaves' arraignment on April 5, 2013.[54]

On April 4, 2013, Dichaves filed a Petition for Certiorari before this Court, with prayer for a temporary restraining order, assailing the March 14, 2012 Joint Resolution and February 4, 2013 Order of the Office of the Ombudsman in OMB-0-01-0211 and OMB-0-01-0291.[55]

Dichaves moved to suspend the proceedings before the Sandiganbayan in view of the Petition for Certiorari filed with this Court.[56] The motion was denied on April 18, 2013, and his arraignment was re-set to July 26, 2013.[57]

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[51] *Id.* at 61, Office of the Ombudsman Joint Resolution.

[52] *Id.* at 63-68. The Order was penned by Assistant Special Prosecutor III Kristine Jennifer E. Carreon, Assistant Ombudsman Elvira C. Chua, and Deputy Special Prosecutor John I.C. Turalba, and approved by Ombudsman Conchita Carpio Morales.

[53] *Id.* at 59-61, Office of the Ombudsman Joint Resolution.

[54] *Id.* at 252, Office of the Ombudsman's Memorandum.

[55] *Id.* at 26, Petition for *Certiorari*.

[56] *Id.* at 252, Office of the Ombudsman's Memorandum.

[57] *Id.*

In a Resolution dated July 17, 2013, this Court (a) required respondents Office of the Ombudsman and Special Division of the Sandiganbayan to Comment, and (b) issued a temporary restraining order enjoining Dichaves' arraignment and trial for plunder.[58] Further proceedings in Criminal Case No. 26558 were again held in abeyance, pending the resolution of this Court on his petition.[59]

On September 18, 2013, We resolved to (a) grant the Sandiganbayan's prayer to be relieved from filing its Comment as it is a mere nominal party, (b) note the Office of the Ombudsman's Comment, and (c) require Dichaves to file his Reply.[60]

On February 3, 2014, Dichaves and the Office of the Ombudsman were directed to submit their memoranda.[61]

On August 6, 2014, Dichaves filed a Motion to Be Allowed to Travel[62] to Bangkok, Hong Kong, and Singapore for 15 days.[63] In a Resolution[64] dated January 26, 2015, this Court granted his motion, subject to certain conditions.

On August 18, 2015, Dichaves moved to be allowed to travel for the second time, for business purposes, to Beijing, Shanghai, Guangzhou, Shenzhen, and Hong Kong for 15 days.[65] This Court resolved to grant his motion on September 23, 2015, again subject to certain conditions.[66]

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[58] *Id.* at 108, Supreme Court Resolution dated July 17, 2013.

[59] *Id.* at 252, Office of the Ombudsman's Memorandum.

[60] *Id.* at 130, Supreme Court Resolution dated September 18, 2013.

[61] *Id.* at 151, Supreme Court Resolution dated February 3, 2014.

[62] *Id.* at 269-271.

[63] *Id.* at 349-350, Supreme Court Resolution dated January 26, 2015.

[64] *Id.* at 348-352.

[65] *Id.* at 353-357.

[66] *Id.* at 361-364, Supreme Court Resolution dated September 23, 2015.

On September 4, 2015, Dichaves moved that his name in the Court records be changed from "Jaime C. Dichaves" to his correct name, "Jaime Dichaves."[67] We noted the motion for correction on December 9, 2015.[68]

On March 7, 2016, Dichaves again moved to be allowed to travel a third time, to accompany his 89-year old mother for a family reunion in Hong Kong and Tokyo, for 15 days.[69]

In a Resolution[70] dated March 9, 2016, we granted such motion, subject to certain conditions, among others: that his ₱1 million travel bond, which he posted as a condition for the grant of his second motion to travel, be retained; and that upon his and his mother's return, they must present their passports bearing the stamps of exit from and entry to the Philippines.

Dichaves flew out without his mother, Elena Dichaves.[71] "He never sought this Court's permission to travel on his own, in light of the change of plans."[72] He likewise failed to present his mother's stamped passport bearing the exit and entry dates of their travel together. The grant of his third motion to travel was premised on the condition that he would be accompanying his mother.[73]

On June 15, 2016, we resolved to require Dichaves to show cause why he should not be made liable for violating Our condition for his third travel.[74] Dichaves did not deny the

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[67] *Id.* at 380, Supreme Court Resolution dated December 9, 2015.

[68] *Id.*

[69] *Id.* at 387-390, Jaime Dichaves' Motion to be Allowed to Accompany 89-year old Mother Elena Dichaves for a Family Reunion in Hong Kong (sic) and Tokyo (3rd Travel Request) for Fifteen (15) Days.

[70] *Id.* at 392-395, Supreme Court Resolution dated March 9, 2016.

[71] *Id.* at 459, Supreme Court Resolution dated September 14, 2016.

[72] *Id.*

[73] *Id.*

[74] *Id.* at 439, Supreme Court Resolution dated June 15, 2016.

violation, and explained that it was costly and difficult for him to reset the travel date.[75]

In a Resolution[76] dated September 14, 2016, this Court forfeited Dichaves' ₱1 million travel bond in favor of the government and directed that his future travel bond be increased to a minimum of ₱1.5 million.[77] He was also sternly warned against repeating the same or similar acts.[78]

I

We now discuss the substantive matters of the case.

Complainants in OMB-0-01-0211 allege that on August 26, 1999, a person opened Savings Account No. 0160-62501-5[79] (Savings Account) with the Equitable Banking Corporation and Philippine Commercial International Bank (Equitable-PCIBank), Juan Luna Branch, Binondo, Manila, under the fictitious name, "Jose Velarde."[80]

The Savings Account had an initial deposit of one peso (₱1.00).[81] Aside from the Savings Account, other accounts under the same name, "Jose Velarde," were also opened with the same branch of Equitable-PCIBank.[82] Two (2) of these accounts[83] were Current Account No. 0110-25495-4 (Current Account)[84]

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[75] *Id.* at 445, Jaime Dichaves' Affidavit.

[76] *Id.* at 456-461.

[77] *Id.* at 460.

[78] *Id.*

[79] This Savings Account Number, opened under the name "Jose Velarde," is also mentioned in *The Wellex Group, Inc. v. Sandiganbayan,* 689 Phil. 44, 64 (2012) [Per *J.* Sereno (now *C.J.*), Second Division].

[80] *Rollo,* p. 37, Office of the Ombudsman Joint Resolution.

[81] *Id.*

[82] *Id.*

[83] *Id.*

[84] *Id.* at 52.

and Investment Management Trust Account No. 101-78056-1 (Trust Account).[85]

On February 4, 2000, a withdrawal of ₱500 million was made from the Savings Account,[86] by former President Joseph Ejercito Estrada, who affixed his signature as "Jose Velarde."[87] The ₱500 million was placed in the Trust Account[88] and then lent to "plastics king"[89] and presidential friend William Gatchalian (Gatchalian).[90]

On January 18, 2001, the contents of the second sealed envelope were published in several newspapers.[91] The deposits that were made to the "Jose Velarde" account, as well as their sources, were listed as follows:

a. *Jaime* or Abby, *Dichavez* (sic) - ₱20M check dated 8 September 1999 from Far East Bank Cubao, Araneta Branch and a ₱189.7M Check dated 8 November 1999 all amounting to a total of ₱210 Million;

b. Mark Jimenez ₱180 Million;

c. Manny Pangilinan ₱20M deposited in the Velarde Account on November 5, 1999 issued from Pangilinan's checking account no. 009-101-00166-3 with Asian Bank main office;

d. Dante Tan ₱300M;

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[85] *The Wellex Group, Inc. v. Sandiganbayan,* 689 Phil. 44, 53 (2012) [Per *J.* Sereno (now *C.J.*), Second Division].

[86] *Id.* at 57-59.

[87] *Rollo,* pp. 49-50, Office of the Ombudsman Joint Resolution.

[88] *The Wellex Group, Inc. v. Sandiganbayan,* 689 Phil. 44, 58-64 (2012) [Per *J.* Sereno (now *C.J.*), Second Division].

[89] Marc Jayson Cayabyab, *'Plastics King' Gatchalian posts bail in anomalous bank buyout deal,* INQUIRER.NET, July 20, 2016 < http://newsinfo.inquirer.net/797449/plastics-king-gatchalian-posts-bail-in-anomalous-bank-buyout-deal > (last visited November 23, 2016).

[90] *Rollo,* pp. 48-49, Office of the Ombudsman Joint Resolution.

[91] *Id.* at 38.

e. Kevin/Kelvin Garcia - nine (9) checks for ₱10M, five (5) checks for 5 million and three (3) checks for ₱20 million, total of 17 checks from Allied Bank head office branch with an aggregate amount of ₱180 million;

f. Antonio Evangelista a ₱40 million check dated July 25, 2000 from his checking account no. 00686-5-05053-2 with BPI [Bank of the Philippine Islands] Katipunan Loyola;

and

g. George Go, Lucio Co and William Gatchalian for still undetennined amounts . . .[92] (Emphasis supplied)

Complainants aver that the above-listed amounts of deposits were given to Estrada "by reason of his influential and powerful position as [then] President of the Republic of the Philippines[,]"[93] and that he amassed ₱3.3 billion in his one (1) and a half years in office.[94] Deposited in the account were proceeds of illegal gambling, kickbacks, and commissions.[95] According to complainants, Estrada obtained these amounts mainly from "contributions, gifts, commissions, deposits and the like, made by businessmen-friends and cronies[,] to his 'JOSE VELARDE' account."[96]

Meanwhile, Dichaves claims ownership of the Savings and Current Accounts at Equitable PCIBank ("Jose Velarde" account). He argues that he opened these on behalf of the "common fund" of capital contributions or investments from a group of Chinese businessmen, including himself. According to Dichaves, he used the alias, "Jose Velarde," for security purposes.[97]

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[92] *Id.* at 38.

[93] *Id.* at 39.

[94] *Id.*

[95] *Id.* at 173, Jaime Dichaves' Memorandum.

[96] *Id.* at 39, Office of the Ombudsman Joint Resolution.

[97] *Id.* at 47.

Complainants assail Dichaves' defense, saying that his allegations had already been discredited by the September 12, 2007 Decision of the Sandiganbayan.[98] Estrada is the real and beneficial owner of Equitable-PCIBank account, Current Account No. 0110-25495-4, and the mother account, Savings Account No. 0160-62501-5.[99]

II

For the second complaint, complainants in OMB-0-01-0291 allege that Estrada exerted pressure and influence over Carlos Arellano (Arellano), the then Chairman, President, and Chief Executive Officer of the Social Security System, and Federico Pascual (Pascual), the then Vice Chairman, President, and General Manager of the Government Service Insurance System, to purchase shares of stock from Belle Corporation.[100]

Belle Corporation is a leisure estate and gaming company[101] listed on the Philippine Stock Exchange.[102] Its shares are considered by some as speculative, in light of the company's involvement in jai-alai and gambling.[103] Dichaves was a member of the Board of Directors,[104] while Willy Ng Ocier (Ocier) has been its Vice Chairman and Director since 1999.[105]

Complainants claim that Estrada, having influence and dominance over his close friends and appointees, Arellano and

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[98] *Id.* at 51.

[99] *Id.* at 51-52.

[100] *Id.* at 39.

[101] Mission, Vision and Values Statement, *Bellecorp* < http://www.bellecorp.com/our-company/mission-vision-values-statement > (last visited November 23, 2016).

[102] *Rollo,* p. 54, Office of the Ombudsman Joint Resolution.

[103] *People v. Estrada,* Sandiganbayan Criminal Case No. 26558, September 12, 2007.

[104] *Id.*

[105] *Rollo,* p. 54, Office of the Ombudsman Joint Resolution.

Pascual, pressured the two to proceed with the purchase of stocks.[106]

On or about October 13 to 21, 1999, the Social Security System purchased 329,855,000 shares of stocks from Belle Corporation for ₱744,612,450.00, while the Government Service Insurance System purchased 351,878,000 shares of stock for ₱1,102,965,607.50,[107] or a total of about ₱1.85 billion.

Aided by insider trading,[108] the sale of Belle Corporation shares gave Estrada ₱189.7 million in kickbacks.[109] After the sale was consummated, Ocier issued International Exchange Bank Check No. 6000159271, drawn against the account of Eastern Securities Development Corporation, as Estrada's payoff.[110] Ocier "handed [the check] over to Dichaves who, in turn[,] deposited it to the 'JOSE VELARDE' account."[111] "This claim ... was confirmed by ... Mark Jimenez in his March 6, 2001 Affidavit."[112]

"In his March 2, 2001 Affidavit, Ocier recounted in detail the participation of Dichaves and [Estrada], from the planning and preparation for the disposition of the shares of stock of Belle Corporation to the government, to the giving/handing [to Estrada],"[113] through Dichaves, of the profit/commission from the sale.[114] Ocier narrated:

. . . . . .

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[106] *Id.* at 39-40.

[107] *Id.* at 40.

[108] Former Chief State Prosecutor is PDIC Director, PHILIPPINE DEPOSIT INSURANCE CORPORATION < https://www.pdic.gov.ph/index.php?nid1=8&nid2=1&nid=464 > (last visited November 23, 2016).

[109] *Rollo,* p. 40, Office of the Ombudsman Joint Resolution.

[110] *Id.*

[111] *Id.*

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

[113] *Id.* at 53-54.

[114] *Id.*

3. MR. JAIME DICHAVES is a second cousin whom I know quite well. I know for a fact that he is closely associated with former president JOSEPH EJERCITO ESTRADA having helped immensely in the election campaign of the latter in 1992 and 1998.

4. In June 1999, MR. JAIME DICHAVES was voted in as member of the Board of Directors of BELLE CORPORATION, hence, we became Board Members at the same time.

5. On the occasion of one of the board meetings of the corporation in September 1999 held at its principal office located at the 26th Floor East Tower, Philippine Stock Exchange Centre, Exchange Road, Ortigas Center, Pasig City, *MR. DICHAVES came up to me in private and discussed the matter of the 750 million shares of stock of BELLE Corporation.* Twenty- five percent (25%) of the subscriptions to these shares of stock has already been paid, leaving an unpaid balance of 75%. The average price was P2.344 per share for a gross value of ₱1,758,000,000.00 [₱1.758. billion]. Out of these figures the unpaid balance stood at ₱1,318,500,000.00.

. . . . . .

8. At this point, it appeared that the only remaining possible investor is the government through the government financial institutions (GFIs). *MR. JAIME DICHAVES [later] confirmed to me that he had brought the matter up with the President Estrada who in turn assured him that the latter would "take care of the matter".*

9. True enough, in one of our weekends at the Tagaytay Highlands, MR. DICHAVES and I discussed the planned investments of the Government Service Insurance System (GSIS) and the Social Security System (SSS) in Belle Corporation. I asked DICHAVES for any news or development on his talks with JOSEPH EJERCITO ESTRADA who was the President of the country at that time. After these inquiries, I was given the firm assurance that "Ding" (referring to GSIS President and General Manager FEDERICO C. PASCUAL) and "Chuckie" (referring to SSS President and Chairman CARLOS ARELLANO) were already given the instructions by the President to purchase Belle shares.

10. Thereafter, I would make follow-up calls to DICHAVES regarding the plan of the Social Security System (SSS) and the Government Service Insurance System (GSIS), particularly during the early part of October 1999. During one of our telephone conversations *it was explicitly stated by JAIME DICHAVES that GSIS*

and SSS would push thru with the transactions only if I agree to give him the profit commission to be derived from the sale of Belle shares to GSIS and SSS *as instructed to him by President JOSEPH EJERCITO ESTRADA.* Fearing that the transactions would not proceed if I did not agree to the proposition of DICHAVES, I was constrained to agree to the arrangement.

11. On October 21, 1999, out of the 750,000,000 BEL [Belle Corporation] shares of stock we intended to sell, about 447,650,000 million were sold by way of cross-transaction on the market. As aforesaid, these shares of stock were then being held by SSI Management Corporation.

. . . . . .

12. On November 3, 1999, at or around 10:30 o'clock in the evening, *I went to the residence of MR. JAIME DICHAVES* at No. 19 Madrigal Avenue, Corinthian Gardens, Quezon City, *to hand him a company check in the amount of ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND PESOS (₱189,700,000.00)* issued by Eastern Securities Development Corporation.

13. This amount, under I-Bank Check No. 6000159271, after deducting costs of purchase, capital gains tax, broker fees, sales tax and other fees, represented the profit commission generated from the sale of about 447,650,000 BEL [Belle Corporation] shares which were previously covered by the unpaid subscription of SSI Management Corporation for 650,000,000 shares, of which 25% (TWENTY FIVE PERCENT) was already paid for.

14. As agreed upon, *I personally handed the check* representing the amount of the profit commission derived out of the sale of the shares of BELLE to GSIS and SSS *to MR. JAIME DICHAVES* in the living room of his residence. This was done pursuant to our earlier agreement that all profit commissions to be derived out of the sale shall be handed to MR. DICHAVES for subsequent remittance in accordance with the instructions given him by President JOSEPH EJERCITO ESTRADA. Thereafter, he said "Thank you". We then sat down to discuss the breakdown of costs and I was asked to explain to him how the said figure of ₱189,700,000.00 was arrived at.[115]

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[115] *Id.* at 54-56.

Ocier confirmed the contents of this March 2, 2001 Affidavit during his testimony before the Senate and the Sandiganbayan.[116]

According to *People v. Estrada,* Dichaves informed Ocier that the transaction will push through only if Ocier gave Estrada a commission of ₱200 million.[117] In Ocier's testimony before the Sandiganbayan:

> After a few weeks, Dichaves called Ocier and told the latter [Ocier] that the transaction may be pushing through but that Dichaves wanted to take up a matter of *condition* that was proposed for the transaction to push through which was to the effect that *Ocier will have to give a commission for the transaction to push through.* Ocier testified that since the shares involved was approximately 600,000,000 to 650,000,000 and the price of Belle at that time at about P3.00 per share, the total expected proceeds of the sale was almost Two Billion Pesos (₱2,000,000,000.00) and the commission that Jaime was asking for amounted to Two Hundred Million Pesos (₱200,000,000.00).
>
> When asked to whom the commission should be given, Ocier answered that *according to Dichaves, the condition was being imposed by [former President] Estrada.* When asked for his reaction to the information conveyed by Dichaves that it was [former President] Estrada that imposed the condition, Ocier testified that his reaction was that he felt that it was quite a big amount of commission to be paid and that normally, in real estate and stock transactions, commissions range between three (3) to five (5) percent only and he told Dichaves that he finds that quite high, to which Dichaves answered that "that was the condition." When asked what his answer was to the answer of Dichaves that that was the condition, Ocier answered that he was constrained to agree because Dichaves told him that "that was the only way for the transaction to push through." Ocier further testified that on October 21, 1999, Belle shares totaling 447,650,000 were sold by SSI Management to GSIS and SSS through Eastern Securities Development Corporation while other Belle Shares were sold through other brokers.[118] (Citations omitted)

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[116] *Id.* at 178, Jaime Dichaves' Memorandum.

[117] *People v. Estrada,* Sandiganbayan Criminal Case No. 26558, September 12, 2007.

[118] *Id.*

All in all, Dichavez deposited ₱210 million to Estrada's "Jose Velarde" account: the ₱20 million check dated September 8, 1999 from the Far East Bank Cubao, Araneta Branch, followed by the ₱189.7 million check dated November 8, 1999.[119]

"[C]omplainants conclude that given the foregoing facts and circumstances, the former President committed the crime of Plunder, in conspiracy with, among other persons, Dichaves."[120]

On January 10, 2012, 11 years after he gave consistent oral and written testimonies on Dichaves' culpability,[121] Ocier backtracks and claims that Dichaves "had nothing to do with the purchase of Belle shares by SSS and GSIS."[122] Ocier alleges that he gave the ₱189.7 million to Dichaves as his personal investment to the "common fund."[123]

III

For resolution is the issue on whether the Office of the Ombudsman gravely abused its discretion in finding probable cause against petitioner. Subsumed in this issue are the matters of whether the Ombudsman correctly considered pieces of evidence allegedly not presented during the preliminary investigation, and whether there is probable cause to charge petitioner with plunder.

IV

We dismiss the petition for lack of merit.

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[119] *Rollo,* p. 38, Office of the Ombudsman Joint Resolution.

[120] *Id.* at 41.

[121] *Id.* at 79-80, Jaime Dichaves' Motion for Reconsideration. These are as follows: Ocier's Affidavit dated March 2, 2001, his testimony before the Senate Impeachment Court in 2000, and his testimony before the Office of the Ombudsman during the trial of *People v. Estrada* in 2001.

[122] *Id.* at 56, Office of the Ombudsman Joint Resolution.

[123] *Id.* at 86, Jaime Dichaves' Motion for Reconsideration.

As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate.[124] Both the Constitution[125] and Republic Act No. 6770[126] (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees.[127] The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[.]"[128]

An independent constitutional body,[129] the Office of the Ombudsman is "beholden to no one, acts as the champion of the people[,] and [is] the preserver of the integrity of the public

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[124] *Judge Angeles v. Ombudsman Gutierrez, et al.,* 685 Phil. 183, 193 (2012) [Per *J*. Sereno (now *C.J.*), Second Division].

[125] CONST., Art. XI, Sec. 12 provides:

ARTICLE XI. Accountability of Public Officers

. . . . . .

SECTION 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

[126] An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes (1989).

[127] *PCGG v. Hon. Desierto,* 445 Phil 154, 165 (2003) [Per *J*. Panganiban, Third Division]; *Quiambao v. Hon. Desierto,* 481 Phil. 852, 867 (2004) [Per *J*. Ynares-Santiago, First Division].

[128] *Republic v. Ombudsman Desierto,* 541 Phil. 57, 67 (2007) [Per *J*. Azcuna, First Division].

[129] CONST., Art. XI, Sec. 5 provides:

ARTICLE XI. Accountability of Public Officers

. . . . . .

SECTION 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

service." [130] Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused.[131] This function is *executive* in nature.[132]

The executive determination of probable cause is a highly factual matter.[133] It requires probing into the "existence of such *facts and circumstances* as would excite the belief, in a reasonable mind, *acting on the facts within the knowledge of the prosecutor,* that the person charged was guilty of the crime for which he [or she] was prosecuted."[134]

The Office of the Ombudsman is armed with the power to investigate.[135] It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.

Practicality also leads this Court to exercise restraint in interfering with the Office of the Ombudsman's finding of probable cause.[136] *Republic v. Ombudsman Desierto*[137] explains:

[T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory

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[130] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman Desierto,* 415 Phil. 145, 151 (2001) [Per *J.* Pardo, *En Banc*].

[131] *Esquivel v. Hon. Ombudsman,* 431 Phil. 702, 711 (2002) [Per *J.* Quisumbing, Second Division]; *Presidential Commission on Good Government v. Hon. Desierto,* 563 Phil. 517, 525 (2007) [Per *J.* Nachura, Third Division].

[132] *Ledesma v. Court of Appeals,* 344 Phil. 207, 226-228 (1997) [Per *J.* Panganiban, Third Division].

[133] *People v. Court of Appeals,* 361 Phil. 401, 410-413 (1999) [Per *J.* Panganiban, Third Division].

[134] *Id.* at 415-416, citing *Pilapil v. Sandiganbayan,* 293 Phil. 368, 381-382 (1993) [Per *J.* Nocon, *En Banc*].

[135] CONST., Art. XI, Sec. 13(1).

[136] *Republic v. Ombudsman Desierto,* 541 Phil. 57, 67 (2007) [Per *J.* Azcuna, First Division].

[137] 541 Phil. 57 (2007) [Per *J.* Azcuna, First Division].

proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complaint.[138]

V

Invoking an exception to the rule on non-interference, petitioner alleges that the Ombudsman committed grave abuse of discretion. According to him: (a) he was not given the opportunity to cross-examine the witnesses, (b) the Ombudsman considered pieces of evidence not presented during the preliminary investigation, and (c) there is no probable cause to charge him with plunder.[139]

While, indeed, this Court may step in if the public prosecutor gravely abused its discretion in acting on the case,[140] such grave abuse must be substantiated, not merely alleged. In *Casing v. Hon. Ombudsman, et al.*:[141]

> Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner — which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law — in order to exceptionally warrant judicial intervention.[142]

Petitioner argues that he was not able to cross-examine the witnesses; thus, the evidence presented during the impeachment and the plunder trials of Estrada – consisting of testimonies of

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

[139] *Rollo,* pp. 181-182, Jaime Dichaves' Memorandum.

[140] CONST., Art. VIII, Sec. 1.

[141] 687 Phil. 468 (2012) [Per *J.* Brion, Second Division].

[142] *Id.* at 476.

Clarissa Ocampo, Atty. Manuel Curato and Willy Ng Ocier[143] – are allegedly hearsay and, therefore, inadmissible.[144]

Petitioner's assertions are erroneous.

First, there is nothing capricious or whimsical about petitioner's lack of opportunity to cross-examine the witnesses.

A person's rights in a preliminary investigation are subject to the limitations of procedural law.[145] These rights are statutory, not constitutional.[146]

The purpose of a preliminary investigation is merely to present such evidence "as may engender a well-grounded belief that an offense has been committed and that [the respondent in a criminal complaint] is probably guilty thereof."[147] It does not call for a "full and exhaustive display of the parties' evidence[.]"[148]

Thus, petitioner has no right to cross-examine the witnesses during a preliminary investigation.[149] At this early stage, the Ombudsman has yet to file an information that would trigger into operation the rights of the accused (found under Section 14(2) of Article III[150] of the

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[143] *Rollo,* pp. 172, Jaime Dichaves' Memorandum.

[144] *Id.* at 193-194.

[145] *Estrada v. Office of the Ombudsman,* G.R. Nos. 212140-41, January 21, 2015, 748 SCRA 1, 39 [Per *J*. Carpio, *En Banc*].

[146] *Hashim v. Boncan,* 71 Phil. 216, 225 (1941) [Per *J*. Laurel, *En Banc*].

[147] *Estrada v. Office of the Ombudsman,* G.R. Nos. 212140-41, January 21, 2015, 748 SCRA 1, 39 [Per *J*. Carpio, *En Banc*].

[148] *Id.*

[149] *Id.* at 40.

[150] CONST., Art. III, Sec. 14(2), provides:

ARTICLE III. Bill of Rights

. . . . . .

Constitution).[151] "It is the filing of a complaint or information in court that initiates a criminal action[,]"[152] and carries with it all the accompanying rights of an accused.

Only when a person stands trial may he or she demand "the right to confront and cross-examine his [or her] accusers[.]"[153] This right cannot apply to petitioner, who has yet to be arraigned and face trial as he left the country at the time he was initially charged with plunder.

Petitioner's failure to cross-examine the witnesses during the trial in *People v. Estrada* was, thus, his own fault.

When he slipped out of the Philippines following Estrada's impeachment in 2000,[154] petitioner was able to avert the implementation of the initial warrant of arrest against him.[155] His decisions have consequences.

His disappearance during such a crucial period in our history necessarily meant that he could not cross-examine the witnesses at the time of Estrada's plunder trial. Petitioner cannot

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SECTION 14…

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[151] *Estrada v. Office of the Ombudsman,* G.R. Nos. 212140-41, January 21, 2015, 748 SCRA 1, 46 [Per *J.* Carpio, *En Banc*].

[152] *Id.*

[153] *Id.* at 45.

[154] Malou Guanzon-Apalisok, *Jaime Dichaves uncovered,* INQUIRER.NET, APRIL 5, 2012 < http://newsinfo.inquirer.net/172533/jaime-dichaves-uncovered > (last visited November 23, 2016).

[155] *Rollo,* p. 226, Office of the Ombudsman's Memorandum.

conveniently impute this fault on the Ombudsman now, more than a decade later. It is injustice, not to mention a grave error, to attribute to the Ombudsman the dire consequences of petitioner's own actions.

Second, the public prosecutor is not bound by the technical rules on evidence.[156]

The executive finding of probable cause requires only substantial evidence, not absolute certainty of guilt.[157] In *Kalalo v. Office of the Ombudsman, et al.*:[158]

> In determining probable cause, the average [person] weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he [or she] has no technical knowledge. He [or she] relies on common sense.[159]

The Ombudsman merely depends on evidence of such facts and circumstances amounting to a "more likely-than-not" belief that a crime has been committed.[160] As the Office of the Ombudsman's conclusion is based on a belief or an opinion, the technical rules on evidence cannot be made to apply to it.[161]

Thus, at the stage of preliminary investigation, the question on the admissibility of evidence is premature for petitioner to raise. In *Atty. Paderanga v. Hon. Drilon:*[162]

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[156] *Estrada v. Office of the Ombudsman,* G.R. Nos. 212140-41, January 21, 2015, 748 SCRA 1, 40 [Per *J.* Carpio, *En Banc*].

[157] *Atty. Salvador v. Hon. Desierto,* 464 Phil. 988, 997 (2004) [Per *J.* Sandoval-Gutierrez, Third Division].

[158] 633 Phil. 160 (2010) [Per *J.* Peralta, Third Division].

[159] *Id.* at 170.

[160] *Galario v. Office of the Ombudsman (Mindanao),* 554 Phil. 86, 101 (2007) [Per *J.* Chico-Nazario, Third Division].

[161] *Kalalo v. Office of the Ombudsman, et al.,* 633 Phil. 169-170 (2010) [Per *J.* Peralta, Third Division].

[162] 273 Phil. 290 (1991) [Per *J.* Regalado, *En Banc*).

Section 3, Rule 112 [Preliminary Investigation] of the Rules of Court expressly provides that the respondent shall only have the right to submit a counter-affidavit, to examine all other evidence submitted by the complainant and, where the fiscal sets a hearing to propound clarificatory questions to the parties or their witnesses, to be afforded an opportunity to be present but *without the right to examine or cross-examine.... The admissibility or inadmissibility* of said testimonies should be ventilated before the trial court during the trial proper[,] and *not in the preliminary investigation.*[163] (Emphasis supplied)

V

Petitioner erroneously claims that the Ombudsman considered pieces of evidence not presented during the preliminary investigation.

No part of the ruling in the March 14, 2012 Joint Resolution of the Office of the Ombudsman was based on the proceedings in Estrada's impeachment and plunder trials or their records.

All references to the impeachment and plunder trials were made only by way of summarizing the initial allegations and reply of complainants in OMB-0-01-0211 and OMB-0-01-0291.[164]

The probable cause against petitioner was grounded on the following factual considerations, among others: (1) the contents of the second envelope; (2) the deposits in the "Jose Velarde" account; (3) the circumstances leading to the acquisition by the Government Service Insurance System and Social Security System of the Belle shares of stocks; and the (4) affidavits of Carlos Arellano, Federico Pascual, and Mark Jimenez.[165]

In any event, the Ombudsman may rely on the facts as stated in *People v. Estrada.* In the determination of probable cause, nothing bars the Ombudsman from considering evidence already established in a related and decided case.

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[163] *Id.* at 299-300.

[164] *Rollo,* pp. 32-42, Office of the Ombudsman Joint Resolution.

[165] *Id.* at 259, Office of the Ombudsman's Memorandum.

Notably, the present case is an offshoot of the proceedings in Estrada's impeachment and plunder trials. Petitioner was identified as one of the John Does in Estrada's plunder case. Both *People v. Estrada* and this case are docketed as Criminal Case No. 26558.

Thus, the Sandiganbayan's pronouncements in *People v. Estrada* may be taken judicial notice of. That case, which was decided in 2007, had long become of public knowledge, when the Ombudsman proceeded with petitioner's preliminary investigation on December 7, 2011.[166] More importantly, it has long formed part of Philippine jurisprudence, which the Office of the Ombudsman may accord full faith and reliance on.

VI

The determination of whether Ocier's affidavit of recantation should be considered is for the Sandiganbayan, during trial, to rule upon. Notwithstanding, there is substantial evidence to affirm the finding of probable cause against petitioner. The contents of the second envelope, the deposits in the "Jose Velarde" account, and the affidavits of witnesses Carlos Arellano, Federico Pascual, and Mark Jimenez, among others, support the Ombudsman's ruling.

"In dealing with probable cause[,] as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."[167]

Section 2 of Republic Act No. 7080 punishes "[a]ny person who participated with the [accused] public officer in the commission of an offense contributing to the crime of plunder[.]"

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[166] *Id.* at 74, Jaime Dichaves' Motion for Reconsideration.

[167] *Reyes v. Hon. Ombudsman* G.R. Nos. 212593-94, March 15, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=:/jurisprudence/2016/march2016/212593-94.pdf > 3 [Per *J.* Bernabe, *En Banc*], citing *Brinegar v. United States,* 338 U.S. 160 (1949).

The Office of the Ombudsman correctly found probable cause to charge petitioner with plunder in conspiracy with the former President. Thus:

> [T]he evidence indicates that the former President exerted influence over Arellano and Pascual to push through with the transactions, and that the transactions pushed through under that condition that the commission or profit would be given to the former President; . . . that it was ***Dichaves*** who *orchestrated* the consummation of the transactions and received from Ocier the check representing the commission; and that ***Dichaves*** deposited the check to the *"JOSE VEDARDE"* account which was shown to be that of the former President.[168] (Emphasis in the original)

Given the supporting evidence it has on hand, the Ombudsman's exercise of prerogative to charge petitioner with plunder was not whimsical, capricious, or arbitrary.[169]

Finally, it must be emphasized that only opinion and reasonable belief are sufficient at this stage.[170] Thus, petitioner's "other defense contesting the finding of probable cause that is highly factual in nature must be threshed out in a full-blown trial, and not in a special civil action for *certiorari* before this Court."[171]

This Court finds no reason to violate the policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers.[172] The Ombudsman's ruling must be respected.

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[168] *Rollo,* pp. 59-60, Office of the Ombudsman Joint Resolution.

[169] *Brig. Gen. (Ret.) Ramiscal, Jr. v. Sandiganbayan, et al.,* 645 Phil. 69, 82 (2010) [Per *J.* Carpio, Second Division].

[170] *Galario v. Office of the Ombudsman (Mindanao),* 554 Phil. 86, 101 (2007) [Per *J.* Chico-Nazario, Third Division].

[171] *Tigas v. Office of the Ombudsman,* 706 Phil. 503, 509 (2013) [Per *C.J.* Sereno, First Division].

[172] *Republic v. Ombudsman Desierto,* 541 Phil. 57, 67 (2007) [Per *J.* Azcuna, First Division].

WHEREFORE, the Petition for Certiorari is **DISMISSED** for lack of merit, and the March 14, 2012 Joint Resolution and February 4, 2013 Order of the Office of the Ombudsman in OMB-0-01-0211 and OMB-0-01-0291 are **AFFIRMED** *in toto.*

The temporary restraining order already issued in Criminal Case No. 26558 is **RECALLED** and **SET ASIDE.** The Sandiganbayan is directed to immediately proceed with the arraignment and trial of petitioner Jaime Dichaves.

SO ORDERED.

Brion (*Acting Chairperson*), *del Castillo, Mendoza,* and *Reyes,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 206600. December 7, 2016]

ALMA COVITA, FOR HER BEHALF AND IN BEHALF OF HER TWO MINOR CHILDREN, JERRY AND RON, BOTH SURNAMED COVITA, *petitioner, vs.* **SSM MARITIME SERVICES, INC. AND/OR MARITIME FLEET SERVICES PTE. LTD. AND/OR GLADIOLA JALOTJOT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; JUDICIAL REVIEW DOES NOT EXTEND TO A RE-EVALUATION OF THE SUFFICIENCY OF THE

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[*] Designated additional member per Raffle dated November 23, 2016.

EVIDENCE UPON WHICH THE PROPER LABOR TRIBUNAL HAS BASED ITS DETERMINATION, AS THE COURT IS NOT A TRIER OF FACTS, BUT FACTUAL ISSUES MAY BE CONSIDERED AND RESOLVED WHEN THE FINDINGS OF FACTS AND CONCLUSIONS OF LAW OF THE LABOR ARBITER ARE INCONSISTENT WITH THOSE OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND THE COURT OF APPEALS (CA).— It is a settled rule that under Rule 45 of the Rules of Court, only questions of law may be raised in this Court. Judicial review by this Court does not extend to a re-evaluation of the sufficiency of the evidence upon which the proper labor tribunal has based its determination. Firm is the doctrine that this Court is not a trier of facts, and this applies with greater force in labor cases. Factual issues may be considered and resolved only when the findings of facts and conclusions of law of the Labor Arbiter are inconsistent with those of the NLRC and the CA. The reason for this is that the quasi-judicial agencies, like the Arbitration Board and the NLRC, have acquired a unique expertise because their jurisdiction are confined to specific matters. Since the NLRC and the CA's factual findings are conflicting with that of the LA, We are constrained to review the petition.

2. **LABOR AND SOCIAL LEGISLATION; THE LABOR CODE OF THE PHILIPPINES; EMPLOYEES' COMPENSATION BENEFITS; 2000 POEA STANDARD EMPLOYMENT CONTRACT; TO BE ENTITLED FOR DEATH COMPENSATION AND BENEFITS FROM THE EMPLOYER, THE DEATH OF THE SEAFARER MUST BE WORK-RELATED AND MUST HAPPEN DURING THE TERM OF THE EMPLOYMENT CONTRACT.—** Section 20(A) of the 2000 POEA Standard Employment Contract states the rules in granting death benefits to the seafarer's beneficiaries x x x. [T]o be entitled for death compensation and benefits from the employer, the death of the seafarer (1) must be work-related; and (2) must happen during the term of the employment contract. While the 2000 POEA-SEC does not expressly define what a "work-related death" means, it is palpable from Part A (4) x x x that the said term refers to the seafarer's death resulting from a work-related injury or illness.

3. ID.; ID.; ID.; ID.; A WORK-RELATED ILLNESS IS ANY SICKNESS RESULTING TO DISABILITY OR DEATH AS A RESULT OF AN OCCUPATIONAL DISEASE LISTED UNDER SECTION 32-A OF POEA STANDARD EMPLOYMENT CONTRACT; CONDITIONS.— A work-related illness is defined under the POEA Standard Employment Contract as any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied, to wit: (1) The seafarer's work must involve the risks described herein; (2) The disease was contracted as a result of the seafarer's exposure to the described risks; (3) The disease was contracted within a period of exposure and under such other factors necessary to contract it; and (4) There was no notorious negligence on the part of the seafarer. It is also provided under Section 20B(4) of the same contract that illnesses not listed in Section 32-A are disputably presumed work-related. However, Section 20 should be read together with the conditions specified by Section 32-A for an illness to be compensable.

4. ID.; ID.; ID.; ID.; ALTHOUGH ILLNESS NOT LISTED AS AN OCCUPATIONAL DISEASE IS DISPUTABLY PRESUMED WORK-RELATED, THE CLAIMANT MUST STILL PROVE WITH SUBSTANTIAL EVIDENCE THAT THE ILLNESS HE SUFFERED WAS WORK-RELATED AND THAT IT MUST HAVE EXISTED DURING THE TERM OF HIS EMPLOYMENT CONTRACT.— [P]etitioner cannot just contend that while her husband's chronic renal failure is not listed as an occupational disease, it is disputably presumed work-related, and it is for respondents to overcome such presumption. Petitioner still has to prove her claim for death compensation with substantial evidence or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. We held in *Quizora v. Denholm Crew Management (Phils.), Inc*. that: [T]he disputable presumption provision in Section 20(B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of

his employment contract. He cannot simply argue that the burden of proof belongs to respondent company.

5. ID.; ID.; ID.; ID.; BARE ALLEGATIONS DO NOT SUFFICE TO DISCHARGE THE REQUIRED QUANTUM OF PROOF OF COMPENSABILITY, AS THE BENEFICIARIES MUST PRESENT EVIDENCE TO PROVE A POSITIVE PROPOSITION.— A reading of petitioner's x x x allegations to prove the work-relatedness of her husband's chronic renal failure shows that they are mere general statements with no supporting documents or medical records. She failed to show the nature of Rolando's work as a Bosun on board the vessel since there was no specific description of Rolando's daily tasks or his working conditions which could have caused or aggravated his illness. Her claim that Rolando's working conditions were characterized by stress, heavy workload and overfatigue were mere self-serving allegations which are not established by any evidence on record. In fact, petitioner alleged that one of the main causes of kidney failure is high blood pressure due to stress, however, there was nothing on record to show that Rolando was suffering from high blood pressure during his seven day's employment in the vessel. Bare allegations do not suffice to discharge the required quantum of proof of compensability. The beneficiaries must present evidence to prove a positive proposition.

6. ID.; ID.; ID.; ID.; THE PROBABILITY OF WORK-CONNECTION MUST AT LEAST BE ANCHORED ON CREDIBLE INFORMATION AND NOT ON SELF-SERVING ALLEGATIONS.— We agree with the CA when it held that mere allegation that the strenuous demands of Rolando's shipboard duties were the cause of his illness and nothing more, is not sufficient to declare that the same is work-related or work-aggravated. It is settled that probability of work-connection must at least be anchored on credible information and not on self-serving allegations. Indeed, petitioner cannot simply allege without adequate proof that Rolando's working conditions had caused the latter's illness or aggravated the same.

7. ID.; ID.; ID.; ID.; THE DEATH OF SEAFARER IS NOT COMPENSABLE WHERE THE DEATH DID NOT OCCUR DURING THE TERM OF HIS EMPLOYMENT

CONTRACT AND NOT WORK-RELATED.— It bears stressing that Rolando was only on board the vessel for seven days when he was diagnosed with chronic renal failure which xx is a progressive deterioration of the kidney function which happens over a period of time, therefore, it cannot be absolutely declared that he developed such illness during that short period in respondents' vessel. x x x Rolando was medically repatriated on May 23, 2009 and died on September 20, 2009. It is provided under Section 18B(1) of the POEA Standard Employment Contract that the employment of the seafarer is terminated when *he arrives at the point of hire* and signs off and is disembarked for medical reasons. Hence, when Rolando was medically repatriated on May 23, 2009, his contract of employment with respondents was effectively terminated. Considering that Rolando's death did not occur during the term of his employment contract and not work-related, his death is not compensable.

8. ID.; ID.; ID.; ID.; WHILE THE PRE-EXISTENCE OF AN ILLNESS DOES NOT IRREVOCABLY BAR COMPENSABILITY BECAUSE DISABILITY LAWS STILL GRANT THE SAME PROVIDED THE SEAFARER'S WORKING CONDITIONS BEAR CAUSAL CONNECTION WITH HIS ILLNESS, THE SAME, HOWEVER, CANNOT BE ASSERTED PERFUNCTORILY BY THE CLAIMANT AS IT IS INCUMBENT UPON HIM TO PROVE, BY SUBSTANTIAL EVIDENCE, AS TO HOW AND WHY THE NATURE OF HIS WORK AND WORKING CONDITIONS CONTRIBUTED TO AND/OR AGGRAVATED HIS ILLNESS.— Rolando's employment as a seafarer is governed by the contract he signs every time he is rehired and his employment is terminated when his contract expires. Therefore, his contract with respondents was considered automatically terminated after the expiration of each overseas employment contract. If Rolando was already suffering from chronic renal failure when he began his last contract with respondents, his illness during his previous contract with respondents is deemed pre-existing during his subsequent contract. Hence, his death arising from a pre-existing illness is not compensable as he did not acquire it during the term of his last employment contract with respondents. While it is true that the pre-existence of an illness does not irrevocably bar compensability because disability laws still grant the same

provided the seafarer's working conditions bear causal connection with his illness, these rules, however, cannot be asserted perfunctorily by the claimant as it is incumbent upon him to prove, by substantial evidence, as to how and why the nature of his work and working conditions contributed to and/or aggravated his illness. Rolando was only on board the vessel for seven days and there was no substantial evidence to prove how his job as a bosun or his working conditions had aggravated his illness which caused his death.

9. ID.; ID.; ID.; ID.; THE "FIT TO WORK" DECLARATION IN THE PRE-EMPLOYMENT MEDICAL EXAMINATION (PEME) CANNOT BE A CONCLUSIVE PROOF TO SHOW THAT ONE IS FREE FROM ANY AILMENT PRIOR TO HIS DEPLOYMENT, AS THE PEME IS NOT EXPLORATORY AND DOES NOT ALLOW THE EMPLOYER TO DISCOVER ANY AND ALL PRE-EXISTING MEDICAL CONDITION WITH WHICH THE SEAFARER IS SUFFERING AND FOR WHICH HE MAY BE PRESENTLY TAKING MEDICATION.— The PEME declaring Rolando to be fit for sea duty could not have disclosed his actual health condition as the examinations were not exploratory. The PEME is not exploratory and does not allow the employer to discover any and all pre-existing medical condition with which the seafarer is suffering and for which he may be presently taking medication. The PEME is nothing more than a summary examination of the seafarer's physiological condition. The "fit to work" declaration in the PEME cannot be a conclusive proof to show that one is free from any ailment prior to his deployment. As discussed in *Masangcay v. Trans Global Maritime Agency Inc.*, the decrease of GFR, which is an indicator of chronic renal failure, is measured thru the renal function test, and in pre-employment examination, the urine analysis (urinalysis), which is normally included, measures only the creatinine, the presence of which cannot conclusively indicate chronic renal failure.

APPEARANCES OF COUNSEL

Linsangan Linsangan & Linsangan Law Offices for petitioner.
Esguerra & Blanco for respondents.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* seeking to annul and set aside the Decision[1] dated December 13, 2012 and the Resolution[2] dated April 10, 2013 issued by the Court of Appeals (*CA*) in CA-G.R. SP No. 120795.

The antecedent facts are as follows:

On April 29, 2009, Rolando Covita, petitioner's husband, entered into a contract of employment with private respondent SSM Maritime Services, Inc., acting for and in behalf of its foreign principal, private respondent Maritime Fleet Services Pte. Ltd. to work on board M/T Salviceroy as Bosun for a period of eight (8) months with a basic monthly salary of US$635.00.[3] As a condition for employment, Rolando underwent a standard Pre-employment Medical Examination (*PEME*) where he was declared fit for sea duty,[4] and boarded his vessel of assignment on May 7, 2009. However, on May 14, 2009, Rolando developed weakness of both lower extremities and was vomiting; thus, he was confined at the Singapore General Hospital up to May 21, 2009, where he was diagnosed to be suffering from end stage renal failure.[5] On May 23, 2009, he was medically repatriated to the Philippines. He was admitted at the Manila Doctor's Hospital where he was diagnosed by Dr. Nicomedes G. Cruz, the company-designated physician, with chronic renal failure.[6] Later, Dr. Cruz issued a Certification[7] dated May 28,

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[1] *Rollo*, pp. 20-26; Penned by Associate Justice Florito S. Macalino, concurred in by Associate Justices Sesinando E. Villon and Manuel M. Barrios.

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

[3] *Id.* at 139

[4] *Id.* at 140.

[5] *Id.* at 141.

[6] *Id.* at 142.

[7] *Id.* at 214.

2009 that Rolando's chronic renal failure was not work-related. Rolando died on September 20, 2009.[8]

Petitioner Alma Covita, Rolando's surviving spouse, for herself and on behalf of her two minor children, Jerry and Ron, filed with the Labor Arbiter (LA) a Complaint for death benefits, allowance for two minor children, burial allowance, moral and exemplary damages, legal interest and attorney's fees. Petitioner contended that her husband's chronic renal failure was work-connected because one of its causes is high blood pressure; that Rolando's work on board the vessel was characterized by stress, among others, which caused his high blood pressure and, in effect, damaged the small blood vessels in his kidneys; that his kidneys cannot filter wastes from the blood and ultimately failed to function.

Respondents denied the claims alleging that Rolando died of a sickness which was not work-related; that he was repatriated due to chronic renal failure, an illness which developed over a period of years and had nothing to do with his one week employment on board M/T Salviceroy.

On November 26, 2010, the LA rendered its Decision,[9] the dispositive portion of which reads:

> WHEREFORE , premises considered, judgment is hereby rendered ordering SSM Maritime Services Inc., and/or the foreign employer Maritime Fleet Services Pte., Ltd. jointly and severally to pay Alma J. Covita, for herself and on behalf of her two minor children, Jerry and Ron Covita, the aggregate amount of SEVENTY-FIVE THOUSAND DOLLARS ($75,000.00), representing death benefits, allowance for two minor children and burial allowance, plus ten percent (10%) thereof as and for attorney's fees.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[10]

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[8] *Id.* at 144.

[9] *Id.* at 112-119; Per LA Veneranda C. Guerrero.

[10] *Id.* at 119.

In so ruling, the LA found that while Rolando died after the term of his contract, such will not militate against petitioner's claim for death benefits as the underlying cause of Rolando's death was the illness that manifested during the effectivity of their contract; thus, the requirement that the death or cause thereof must have occurred during the term of the contract had been met. As to work connection/aggravation, the LA ruled that respondents did not offer proof to dispute the allegation that prior to his last contract that caused his medical repatriation, Rolando had been contracted for the same position and rendered shipboard services for the respondents and that every time he was contracted, his PEME showed that he was fit for sea duty; and that petitioner had adequately proven that Rolando's working conditions on board the vessel contributed, if not caused, his subsequent illness.

Private respondents filed an appeal with the NLRC.

In a Decision[11] dated March 30, 2011, the NLRC granted the appeal, the decretal portion of which reads:

> WHEREFORE, the appeal is GRANTED, and the assailed decision of the Labor Arbiter is REVERSED and SET ASIDE. Accordingly, the complaint for death and other benefits arising from death of seafarer Rolando Covita is DISMISSED for lack of merit.[12]

The NLRC agreed with the findings of the company-designated physician that Rolando's illness which led to his demise was not work-related. It found that Rolando joined M/T Salviceroy on May 7, 2009 and from May 14-21, 2009, he was confined at the Singapore General Hospital where he was diagnosed with end stage renal failure which could not have developed over a one week period; hence, not work-related; that his PEME showed him fit to work was not a conclusive proof that he was free from any ailment prior to his deployment.

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[11] *Id.* at 100-108; Per Commissioner Perlita B. Velasco, concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go.

[12] *Id.* at 107.

Petitioner's motion for reconsideration was denied in a Resolution[13] dated May 30, 2011.

Petitioner filed a petition for *certiorari* with the CA. Respondents filed their Comment and petitioner her Reply thereto. The parties then submitted their respective memoranda and the case was submitted for decision.

On December 13, 2012, the CA issued its assailed Decision which denied the petition and affirmed the NLRC as there was no substantial evidence to prove that the illness which caused Rolando's death was contracted during the term of his contract with respondents or was work-related.

Petitioner's motion for reconsideration was denied in a Resolution dated April 10, 2013.

Dissatisfied, petitioner filed the instant petition for review on *certiorari*.

Petitioner contends that the CA erred in failing to award her death benefits on the ground that Rolando's illness was not work-related and was not contracted during the term of his employment; that the CA disregarded Section 20B(4) of the Standard Employment Contract, which provides that illnesses not listed as occupational diseases are disputably presumed as work-related and the burden to show the work connection is with the respondents; that Rolando stayed only for one week in respondents' vessel is of no moment as he was able to finish his other contract with respondents prior to his last contract and if the renal cancer was developed prior to his last contract, although unknown to Rolando, his services with the same respondents may have caused or aggravated his illness.

We find no merit in the petition.

It is a settled rule that under Rule 45 of the Rules of Court, only questions of law may be raised in this Court. Judicial review by this Court does not extend to a re-evaluation of the sufficiency of the evidence upon which the proper labor tribunal has based

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[13] *Rollo*, pp. 109-111.

its determination.[14] Firm is the doctrine that this Court is not a trier of facts, and this applies with greater force in labor cases.[15] Factual issues may be considered and resolved only when the findings of facts and conclusions of law of the Labor Arbiter are inconsistent with those of the NLRC and the CA.[16] The reason for this is that the quasi-judicial agencies, like the Arbitration Board and the NLRC, have acquired a unique expertise because their jurisdiction are confined to specific matters.[17] Since the NLRC and the CA's factual findings are conflicting with that of the LA, We are constrained to review the petition.

As with all other kinds of workers, the terms and conditions of a seafarer's employment is governed by the provisions of the contract he signs at the time he is hired. But unlike that of others, deemed written in the seafarer's contract is a set of standard provisions implemented by the POEA, called the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels (POEA Standard Employment Contract), which are considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels.[18] Notably, paragraph 2 of the Contract of Employment executed between Rolando and respondents stated that the contract's terms and conditions in accordance with

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[14] *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, G.R. No. 153031, December 14, 2006, 511 SCRA 44, 54, citing *Gerlach v. Reuters Ltd., Phil.*, G.R. No. 148542, January 17, 2005, 448 SCRA 535, 545.

[15] *Id.*

[16] *Id.*, citing *Lopez Sugar v. Franco*, G.R. No. 148195, May 16, 2005, 458 SCRA 515, 528.

[17] *Id.*, citing *Cosmos Bottling Corporation v. National Labor Relations Commission*, 453 Phil. 151, 157 (2003).

[18] *Cootauco v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529, 542, citing *Nisda v. Sea Serve Maritime Agency*, G.R. No. 179177, July 23, 2009, 593 SCRA 668, 693.

Department Order No. 4,[19] and Memorandum Circular No. 9,[20] both series of 2000, shall be strictly and faithfully observed.

Section 20(A) of the 2000 POEA Standard Employment Contract states the rules in granting death benefits to the seafarer's beneficiaries as follows:

> SECTION 20. COMPENSATION AND BENEFITS
> A. COMPENSATION AND BENEFITS FOR DEATH
>
> 1. In the case of work-related death of the seafarer during the tern of his contract, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.
>
> x x x x x x x x x
>
> 4. The other liabilities of the employer when the seafarer dies as a result of work-related injury or illness during the term of employment are as follows:
>
> x x x x x x x x x
>
> c. The employer shall pay the beneficiaries of the seafarer the Philippine currency equivalent to the amount of One Thousand US dollars (US$1,000) for burial expenses at the exchange rate prevailing during the time of payment.

Clearly, to be entitled for death compensation and benefits from the employer, the death of the seafarer (1) must be work-related; and (2) must happen during the term of the employment contract. While the 2000 POEA- SEC does not expressly define what a "work-related death" means, it is palpable from Part A (4) as above-cited that the said term refers to the seafarer's death resulting from a work-related injury or illness.[21]

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[19] Issued by the Department of Labor and Employment.

[20] Issued by the Philippine Overseas Employment Administration.

[21] *Canuel v. Magsaysay Maritime Corporation*, G.R. No. 190161, October 13, 2014, 738 SCRA 120.

A work-related illness is defined under the POEA Standard Employment Contract as any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied, to wit: (1) The seafarer's work must involve the risks described herein; (2) The disease was contracted as a result of the seafarer's exposure to the described risks; (3) The disease was contracted within a period of exposure and under such other factors necessary to contract it; and (4) There was no notorious negligence on the part of the seafarer. It is also provided under Section 20B(4) of the same contract that illnesses not listed in Section 32-A are disputably presumed work-related. However, Section 20 should be read together with the conditions specified by Section 32-A for an illness to be compensable.[22]

Accordingly, petitioner cannot just contend that while her husband's chronic renal failure is not listed as an occupational disease, it is disputably presumed work-related, and it is for respondents to overcome such presumption. Petitioner still has to prove her claim for death compensation with substantial evidence or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[23] We held in *Quizora v. Denholm Crew Management (Phils.), Inc*.[24] that:

> [T]he disputable presumption provision in Section 20(B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. Contrary to his position, he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract. He cannot simply argue that the burden of proof belongs to respondent company.[25]

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[22] *Jebsen Maritime Inc. v. Ravena,* G.R. No. 200566, September 17, 2014, 735 SCRA 494, 512.

[23] *Cootauco v. MMS Phil. Maritime Services, Inc., supra* note 18, at 544.

[24] G.R. No. 185412, November 16, 2011, 660 SCRA 309.

[25] *Quizora v. Denholm Crew Management (Phils.), Inc., supra*, at 319.

Petitioner claims that Rolando's death was due to a work-related illness and alleged in her position paper presented before the LA the following:

> One of the main causes of kidney failure is high blood pressure. High blood pressure is mainly caused by stress. In the case of Mr. Covita, he was very much exposed to the strenuous work of a seaman. The working conditions prevailing during the time when the husband of the complainant was employed on board the vessel were characterized by stress, heavy workload, overfatigue to mention a few, which collectively constitute strain of work. As a sea-based overseas employee, his occupation is more stressful than that of a land-based employee. Whereas a land-based employee could easily relieve himself from stress caused by his occupation by just going home to be with his family or to sleep, watch or play games, the same is not true for a sea based overseas employee. A sea-based employee has to endure a long period on board working conditions. Twenty-four hours a day, seven days a week and four weeks a month, several months in a contract, he does not have any place to go in order to loosen up or unwind except to stay on board the vessel. What aggravates the situation is the distance to his family and that he has to stay overseas for a long period of time.
>
> Stress is unarguably inherent in petitioner's husband's job. One of the sources of this damaging stress is the working condition. His duties and responsibilities as previously stated cannot be overemphasized. The continuous heavy workload is enough to take its toll on his health. The body's health condition would naturally suffer if the same is subjected to extreme pressure of work on a daily basis.
>
> Medical researches show that stress is one of the major causes of high blood pressure and, in effect, can damage the small blood vessels in the kidneys. When this happens, the kidneys cannot filter wastes from the blood and will fail to function.
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> From the above discussion, it is clear that the illness that caused the death of Mr. Covita is work-related.[26]

A reading of petitioner's above-quoted allegations to prove the work- relatedness of her husband's chronic renal failure

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[26] *Rollo*, pp. 125-126.

shows that they are mere general statements with no supporting documents or medical records. She failed to show the nature of Rolando's work as a Bosun on board the vessel since there was no specific description of Rolando's daily tasks or his working conditions which could have caused or aggravated his illness. Her claim that Rolando's working conditions were characterized by stress, heavy workload and overfatigue were mere self-serving allegations which are not established by any evidence on record. In fact, petitioner alleged that one of the main causes of kidney failure is high blood pressure due to stress, however, there was nothing on record to show that Rolando was suffering from high blood pressure during his seven day's employment in the vessel. Bare allegations do not suffice to discharge the required quantum of proof of compensability.[27] The beneficiaries must present evidence to prove a positive proposition.[28]

We agree with the CA when it held that mere allegation that the strenuous demands of Rolando's shipboard duties were the cause of his illness and nothing more, is not sufficient to declare that the same is work-related or work-aggravated. It is settled that probability of work-connection must at least be anchored on credible information and not on self-serving allegations.[29] Indeed, petitioner cannot simply allege without adequate proof that Rolando's working conditions had caused the latter's illness or aggravated the same.

In *Gau Sheng Phils., Inc. v. Joaquin*,[30] We denied the claim for death compensation benefits of the heirs of a seafarer who died of chronic renal failure and held:

It, thus, behooved the respondent to show a reasonable connection between Roberto's work and the cause of his death; or that the risk

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[27] *Status Maritime Corporation v. Sps. Delalamon*, G.R. No. 198097, July 30, 2014, 731 SCRA 390, 410.

[28] *Id.*

[29] *Id.*

[30] G.R. No. 144665, September 8, 2004, 437 SCRA 608.

of contracting chronic renal failure was increased by Roberto's working conditions. The respondent must submit such proof as would constitute as a *reasonable basis* for concluding either that the conditions of employment of the claimant caused the ailment or that such working conditions had aggravated the risk of contracting that ailment. However, the respondent failed to do so. There is no showing that the progression of the disease was brought about largely by the conditions in Roberto's job as a fisherman. His medical history, medical records, or physicians reports, were not even presented in order to substantiate the respondents claim that the working conditions on board MV Bestow Ocean increased the risk of contracting chronic renal failure.

In Harrisons Principles of Internal Medicine, chronic renal failure is described in the following manner:

> Chronic renal failure results from progressive and irreversible destruction of nephrons, regardless of cause (Chap. 237). This diagnosis implies that GFR is known to have been reduced for at least 3 to 6 months (see Table 233-1). Often a gradual decline in GFR occurs over a period of years. Proof of chronicity is also provided by the demonstration of bilateral reduction of kidney size by scout film, ultrasonography, intravenous pyelography, or tomography. Other findings of long-standing renal failure, such as renal osteodyastrophy or symptoms of uremia, also help to establish this syndrome. Several laboratory abnormalities are often regarded as reliable indicators of chronicity of renal disease, such as anemia, hyperphosphatemia or hypocalcemia, but there are not specific (Chap. 235). In contrast, the finding of broad casts in the urinary sediment (Chap. 44) is specific for chronic renal failure, the wide diameters of these casts reflecting the compensatory dilation and hypertrophy of surviving nephrons. Protenuria is a frequent but nonspecific finding, as is hematuria. Chronic obstructive uropathy polycystic and medullary cystic disease, analgesic nephrophaty, and the inactive end stage of any chronic tubulointerstitial nephrophaty are conditions in which the urine often contains little or no protein cells, or casts even though nephron destruction has progressed to chronic renal failure.[31]

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[31] *Gau Sheng Phils., Inc. v. Joaquin, supra,* at 619-620.

It bears stressing that Rolando was only on board the vessel for seven days when he was diagnosed with chronic renal failure which, as above-quoted, is a progressive deterioration of the kidney function which happens over a period of time, therefore, it cannot be absolutely declared that he developed such illness during that short period in respondents' vessel. As declared in *Masangcay v. Trans-Global Maritime Agency, Inc.*,[32] to wit:

> In Harrison's Principles of Internal Medicine, chronic renal failure is described as a result of progressive and irreversible destruction of nephrons, regardless of cause. This diagnosis implies that glomerular filtration rate (GFR) is known to have been reduced for at least 3 to 6 months. Often a gradual decline in GFR occurs over a period of years. It is, therefore, highly improbable that Masangcay's chronic renal failure developed in just a month's time, the length of time he was on board M/T Eastern Jewel before the symptoms became manifest.[33]

Rolando was medically repatriated on May 23, 2009 and died on September 20, 2009. It is provided under Section 18B(1) of the POEA Standard Employment Contract that the employment of the seafarer is terminated when *he arrives at the point of hire* and signs off and is disembarked for medical reasons. Hence, when Rolando was medically repatriated on May 23, 2009, his contract of employment with respondents was effectively terminated. Considering that Rolando's death did not occur during the term of his employment contract and not work-related, his death is not compensable.

Petitioner claims that the fact that Rolando stayed only in respondents' vessel for one week with his last contract is of no moment as he was able to finish his eight-month contract with respondents prior to his last contract; that there is a big possibility that he had contracted such illness in his previous assignment with the respondents.

We are not impressed.

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[32] G.R. No. 172800, October 17, 2008, 569 SCRA 592.

[33] *Masangcay v. Trans-Global Maritime Agency, Inc., supra,* at 611-612.

Rolando's employment as a seafarer is governed by the contract he signs every time he is rehired and his employment is terminated when his contract expires.[34] Therefore, his contract with respondents was considered automatically terminated after the expiration of each overseas employment contract.[35] If Rolando was already suffering from chronic renal failure when he began his last contract with respondents, his illness during his previous contract with respondents is deemed pre-existing during his subsequent contract.[36] Hence, his death arising from a pre-existing illness is not compensable[37] as he did not acquire it during the term of his last employment contract with respondents.

While it is true that the pre-existence of an illness does not irrevocably bar compensability because disability laws still grant the same provided the seafarer's working conditions bear causal connection with his illness, these rules, however, cannot be asserted perfunctorily by the claimant as it is incumbent upon him to prove, by substantial evidence, as to how and why the nature of his work and working conditions contributed to and/or aggravated his illness.[38] Rolando was only on board the vessel for seven days and there was no substantial evidence to prove how his job as a bosun or his working conditions had aggravated his illness which caused his death.

The PEME declaring Rolando to be fit for sea duty could not have disclosed his actual health condition as the examinations were not exploratory. The PEME is not exploratory and does not allow the employer to discover any and all pre-existing

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[34] *Francisco v. Bahia Shipping Services, Inc.*, G.R. No. 190545, November 22, 2010, 635 SCRA 660, 665, citing *Millares v. National Labor Relations Commission*, G.R. No. 110524, July 29, 2002, 385 SCRA 306.

[35] *Quizora v. Denholm Crew Management (Phils.), Inc., supra* note 24, at 320.

[36] *Francisco v. Bahia Shipping Services, Inc., supra* note 34.

[37] *NYK-FIL Ship Management, Inc. v. National Labor Relations Commission*, G.R. No. 161104, September 27, 2006, 503 SCRA 595, 608.

[38] *Status Maritime Corporation v. Sps. Delalamon, supra* note at 409.

medical condition with which the seafarer is suffering and for which he may be presently taking medication.[39] The PEME is nothing more than a summary examination of the seafarer's physiological condition.[40] The "fit to work" declaration in the PEME cannot be a conclusive proof to show that one is free from any ailment prior to his deployment.[41] As discussed in *Masangcay v. Trans Global Maritime Agency Inc.*,[42] the decrease of GFR, which is an indicator of chronic renal failure, is measured thru the renal function test,[43] and in pre-employment examination, the urine analysis (urinalysis), which is normally included, measures only the creatinine, the presence of which cannot conclusively indicate chronic renal failure.[44]

Finally, as petitioner failed to prove their claim for the grant of death benefits under Section 20(A) of the 2000 POEA Standard Employment Contract, there is also no basis for the award of damages and attorney's fees.

WHEREFORE, the petition is **DENIED**. The Decision dated December 13, 2012 and the Resolution dated April 10, 2013 issued by the Court of Appeals in CA-G.R. SP No. 120795 are hereby **AFFIRMED**.

SO ORDERED.

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

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[39] *Id.*

[40] *Id.*, citing *Philman Marine Inc. (now DOHLE-PHILMAN Manning Agency, Inc.) v. Cabanban*, G.R. No. 186509, July 29, 2013, 702 SCRA 467, 491.

[41] *Id.*

[42] *Supra* note 32.

[43] *Id.* at 612.

[44] *Id.*

THIRD DIVISION

[G.R. No. 208672. December 7, 2016]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **PABLO V. RAYMUNDO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF CIVIL ACTION; KINDS OF ACQUITTAL AND THE EFFECTS THEREOF ON THE CIVIL LIABILITY OF THE ACCUSED; AN ACCUSED MAY STILL BE FOUND CIVILLY LIABLE DESPITE HIS ACQUITTAL BASED ON REASONABLE DOUBT.— The Court explains the two kinds of acquittal recognized by law, as well their effects on the civil liability of the accused, thus: Our law recognizes two kinds of acquittal, with different effects on the civil liability of the accused. First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. There being no delict, civil liability ex delicto is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the delict complained of. This is the situation contemplated in Rule 111 of the Rules of Court. The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only. The *Rules of Court* requires that in case of an acquittal, the judgment shall state "whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist." In light of the foregoing, Raymundo can still be held civilly liable for the charge of violation of Section 3(e) of R.A. No. 3019 because he was only acquitted for failure of the prosecution to establish his guilt beyond

reasonable doubt, and the RTC and the CA erroneously determined that no civil liability might arise from his act of relying on the bookkeeper's verification that the six (6) checks amounting to ₱4,000,000.00 were all good, but later turned out to be drawn against uncollected deposit, *i.e.*, the account has, on its face, sufficient funds but not yet available to the drawer because the deposit, usually a check, had not yet been cleared.

2. ID.; EVIDENCE; FACTUAL FINDINGS OF THE APPELLATE COURT GENERALLY ARE CONCLUSIVE, AND CARRY EVEN MORE WEIGHT WHEN SAID COURT AFFIRMS THE FINDINGS OF THE TRIAL COURT, EXCEPT WHEN THERE IS SHOWING THAT THE FINDINGS ARE TOTALLY DEVOID OF SUPPORT IN THE RECORDS, OR THAT THEY ARE SO GLARINGLY ERRONEOUS AS TO CONSTITUTE GRAVE ABUSE OF DISCRETION.— Factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the records, or that they are so glaringly erroneous as to constitute grave abuse of discretion. [B]oth the RTC and the CA totally ignored the testimonial and documentary evidence of the PNB, showing Raymundo's gross negligence in approving the payment of six (6) checks negotiated by Ms. Juan on August 3, 1993 and August 5, 1993, without waiting for the foreign draft check intended to fund the peso checking account she opened on July 30, 1993, to be cleared by the PNB Foreign Currency Clearing Unit.

3. ID.; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; NO VIOLATION OF ACCUSED'S RIGHT AGAINST SELF-INCRIMINATION WHERE HE WAS NOT COMPELLED TO TESTIFY AGAINST HIMSELF.— Despite their having been identified and formally offered by PNB, and admitted in evidence by the trial court, the RTC and the CA failed to give due credence to Raymundo's affidavits, complaints and testimonies before the other trial courts in San Pedro, Laguna, where he had filed separate criminal and civil cases against Ms. Juan and her cohorts in order to recover the value of the six (6) checks which were encashed despite having

been drawn against uncollected deposit. Contrary to Raymundo's claim, such extra-judicial admissions do not violate his right against self-incrimination, which simply proscribes the legal process of extracting from the lips of the accused an admission of guilt. Suffice it to state that Raymundo's Complaints and Affidavits in the civil and criminal cases he filed against Ms. Juan contain his voluntary statements, which were subscribed and sworn to either before the Assistant Provincial Prosecutor and the Judge or the Notary Public, whereas his testimonies were given during hearings in the said cases. Clearly, Raymundo is not being compelled to testify against himself. In the same vein, PNB cannot be faulted for merely using the documentary and testimonial evidence he willingly proffered in the cases he had filed to recover the losses incurred by the bank due to his unauthorized approval for payment of the six (6) checks drawn against the uncollected deposit.

4. **COMMERCIAL LAW; BANKS AND BANKING; BANKS ARE REQUIRED TO EXERCISE EXTRAORDINARY DILIGENCE IN HANDLING THEIR TRANSACTIONS AND IN THE SELECTION AND SUPERVISION OF THEIR EMPLOYEES. —** Since their business and industry are imbued with public interest, banks are required to exercise extraordinary diligence, which is more than that of a Roman *pater familias* or a good father of a family, in handling their transactions. Banks are also expected to exercise the highest degree of diligence in the selection and supervision of their employees. By the very nature of their work in handling millions of pesos in daily transactions, the degree of responsibility, care and trustworthiness expected of bank employees and officials is far greater than those of ordinary clerks and employees.

5. **ID.; ID.; ID.; PAYMENT OF THE AMOUNTS OF CHECKS WITHOUT PREVIOUSLY CLEARING THEM WITH THE DRAWEE BANK, ESPECIALLY SO WHERE THE DRAWEE BANK IS A FOREIGN BANK AND THE AMOUNTS INVOLVED WERE LARGE, IS CONTRARY TO NORMAL OR ORDINARY BANKING PRACTICE, AND THE SAME AMOUNTS TO GROSS NEGLIGENCE.—** A bank's disregard of its own banking policy amounts to gross negligence, which is described as "negligence characterized by the want of even slight care, acting or omitting

to act in a situation where there is duty to act, not inadvertently but willfully and unintentionally with a conscious indifference to consequences insofar as other persons may be affected." Payment of the amounts of checks without previously clearing them with the drawee bank, especially so where the drawee bank is a foreign bank and the amounts involved were large, is contrary to normal or ordinary banking practice. Before the check shall have been cleared for deposit, the collecting bank can only assume at its own risk that the check would be cleared and paid out. As a bank Branch Manager, Raymundo is expected to be an expert in banking procedures, and he has the necessary means to ascertain whether a check, local or foreign, is sufficiently funded.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; NEGLIGENCE; PROXIMATE CAUSE, DEFINED; RESPONDENT'S DISREGARD OF THE BANK'S FOREIGN CHECK CLEARING POLICY IS THE PROXIMATE CAUSE OF THE IRREGULAR ENCASHMENT OF THE CHECKS, THEREBY CAUSING THE PETITIONER UNDUE INJURY.— Raymundo's act of approving the deposit to Ms. Juan's newly-opened peso checking account of the peso conversion [₱4,752,689.65] of the foreign check prior to the lapse of the 21-day clearing period is the proximate cause why the six (6) checks worth ₱4,000,000.00 were later encashed, thereby causing the PNB undue injury. Defined as that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces injury and without which the result would not have occurred, the proximate cause can be determined by asking a simple question: "If the event did not happen, would the injury have resulted? If the answer is no, then the event is the proximate cause." If Raymundo did not disregard the bank's foreign check clearing policy when he approved crediting of the peso conversion of Ms. Juan's foreign check in her newly opened peso checking account, the PNB would not have suffered losses due to the irregular encashment of the six (6) checks.

7. ID.; ID.; ID.; ACTUAL DAMAGES; TO JUSTIFY AN AWARD OF ACTUAL DAMAGES, THERE MUST BE COMPETENT PROOF OF THE ACTUAL AMOUNT OF LOSS, CREDENCE CAN BE GIVEN ONLY TO CLAIMS

WHICH ARE DULY SUPPORTED BY RECEIPTS, AND COURTS CANNOT SIMPLY RELY ON SPECULATION, CONJECTURE OR GUESSWORK IN DETERMINING THE FACT AND AMOUNT OF DAMAGES.— It is well settled that actual damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. To justify an award of actual damages, there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts, and courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. While the PNB claims having suffered damages to the extent of ₱4,000,000.00 due to the encashment of checks drawn against uncollected deposit, the testimonial and documentary evidence on record show that it only incurred losses in the total sum of ₱2,100,882.87. Based on the accounts receivable ledger and the PNB's letter dated December 5, 1995, Raymundo's account receivable was reduced to ₱2,100,882.87 after the application of six (6) check payments aggregating ₱1,725,172.03 on October 1, 1993.

8. **ID.; ID.; ID.; INTEREST; LEGAL INTEREST OF 12% AND 6% PER ANNUM, IMPOSED.—** Since PNB was unduly deprived of its use of the ₱2,100,882.87 due to Raymundo's gross negligence, the Court also finds it proper to impose on such forbearance of money the following legal interests on the damages awarded, *sans* an express contract as to such interest rate, in line with current jurisprudence: (1) twelve percent (12%) *per annum* reckoned from the filing of the criminal information on May 19, 1997 — which is the making of judicial demand for his liability — until June 30, 2013; (2) the reduced interest of six percent (6%) *per annum* from July 1, 2013 until finality of this Decision; and (3) the interest rate of 6% *per annum* from such finality until fully paid.

APPEARANCES OF COUNSEL

Office of the Chief Legal Counsel PNB for petitioner.
Raul A. Mora for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision[1] dated May 31, 2013 and the Resolution dated August 14, 2013 of the Court of Appeals (*CA*) in CA-G.R. CV No. 96760. The CA denied the appeal of Philippine National Bank (*PNB*)[2] from the civil aspect of the Decision dated December 4, 2009[3] of the Regional Trial Court (*RTC*) of San Pedro Laguna, Branch 93, which acquitted Pablo V. Raymundo of the charge of violation of Section 3(e) of Republic Act (*RA*) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, in Criminal Case No. 0414-SPL.

The CA summarized the facts as follows.[4]

On July 30, 1993, accused-appellee Pablo V. Raymundo (*Raymundo*), then Department Manager of PNB San Pedro Branch, approved for deposit a foreign draft check dated June 23, 1993, in the amount of $172,549.00 issued by Solomon Guggenheim Foundation, drawn against Morgan Guaranty Company of New York, payable to Merry May Juan (*Ms. Juan*) in the opening of the latter's checking account with PNB San Pedro Branch. Consequent to the approval for deposit of the foreign draft check, Checking Account No. 447-810168-1 and a check booklet were issued to Ms. Juan. On even date, Ms. Juan drew six (6) PNB Checks, five (5) of which were made payable to C&T Global Futures and one (1) payable to "CASH," all in the aggregate amount of FOUR MILLION PESOS (₱4,000,000.00). The six (6) checks were negotiated by Ms.

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[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Florito S. Macalino and Pedro B. Corales, concurring.

[2] PNB was originally established as a government bank in 1916, but has been 100% privatized since 2007.

[3] Penned by Judge Francisco Dizon Paño.

[4] *Rollo*, pp. 55-56.

Juan and were approved for payment on the same day by Raymundo, without waiting for the foreign draft check, intended to fund the issued check, to be cleared by the PNB Foreign Currency Clearing Unit.

On August 2, 1993, the PNB Foreign Checks Unit and Clearing Services received the foreign draft check for negotiation with Morgan Trust Company of New York, through PNB's correspondent bank in New York, the Banker's Trust Co. of New York (*BTCNY for brevity*).

On August 6, 1993 and within the clearing period of twenty-one (21) days for foreign draft checks, the PNB received a telex message from BTCNY that the foreign draft check was dishonored for being fraudulent. Subsequent to the said telex message, a letter dated August 20, 1993 was sent by BTCNY to the PNB Corporate Auditor stating the same reason for such dishonor.

On September 9, 1993, Mr. Emerito Sapinoso, Department Manager II of the PNB Foreign Currency Clearing Unit, sent a memorandum to Raymundo, as then Manager of PNB San Pedro, and informed the latter of the return and dishonor of the foreign currency draft and the corresponding debit of the PNB's account to collect the proceeds of the erroneously paid foreign draft check.

For irregularly approving the payment of the six (6) checks issued by Ms. Juan, without waiting for the foreign draft check to be cleared, Raymundo, as then Department Manager of PNB San Pedro Branch, was administratively charged by PNB for Conduct Prejudicial to the Interest of the Service and/or Gross Violation of Bank's Rules and Regulations.

Accused Pablo V. Raymundo denied the allegations that he committed acts which defrauded the PNB of the sum of ₱4,000,000.00. Outlining the procedure from the time the check was presented to the PNB San Pedro Laguna Branch where he worked as Branch Manager up to the time it is paid or dishonored, he noted that the check will pass through the bookkeeper, Ms. Leonida Moredo, who would determine if the check is funded

or not. If the check is not funded, the bookkeeper will accomplish a check return slip and will stamp the back and front of the check that it has no funds and thereafter give it to the accountant, Rodrigo Camello, to verify if indeed the check is not funded. After the receipt of the check, the accountant will check the ledger and the circumstances of the return and thereafter forward the same to the branch manager, or in his absence, the cashier. Upon receipt of the check deposit slip, the branch manager, if there is no return slip, would automatically sign the check because the absence of a return slip is his guide that the check is good. He noted that it is the duty of the bookkeeper to go over the records of the account of each particular client. When he came to know that withdrawals had been made on a deposited check which had no funds, he immediately instructed bookkeeper Leonila Moredo and accountant Rodrigo Camello to hold further withdrawals on the account. He likewise filed criminal charges against Merry May Juan. The case was decided in his favor and the accused therein was made to pay him and the bank the amount of the check. There was no actual payment made however.

In an Information dated September 27, 1996, the Office of the Ombudsman charged Raymundo with violation of Section 3(e) of RA No. 3019, to wit:

> That on or about August 3, 1993, or subsequent thereto, in San Pedro, Laguna, Philippines and within the jurisdiction of this Honorable Court, accused Pablo V. Raymundo, then the Assistant Department Manager of PNB, San Pedro Branch, Laguna, and a public officer, while in the performance and taking advantage of his official function as manager, with evident bad faith, manifest partiality, and gross inexcusable negligence, did then and there willfully and unlawfully approve/allow the encashment of a total of six (6) checks drawn against an uncleared foreign checks in complete disregard of existing banking regulations, that was subsequently returned by the drawee bank as a fraudulent foreign check, thus causing undue injury to complainant PNB in the total sum of ₱4,000,000.00.
>
> CONTRARY TO LAW.

Upon arraignment, Raymundo entered a plea of not guilty to the charge. He waived his right to a pre-trial, and trial on the merits ensued.

After trial, the RTC rendered the Decision dated December 4, 2009, the dispositive portion of which reads:

> In light of the foregoing, it is very clear that the prosecution failed to establish the guilt of accused Pablo V. Raymundo beyond reasonable doubt for the crime charged.
>
> Consequently, accused Pablo V. Raymundo is hereby acquitted of the charge of Violation of Sec. 3(e), R.A. 3019.
>
> No costs.
>
> SO ORDERED.

The RTC held that it would be too harsh and inequitable to impose criminal liability upon Raymundo, who approved the withdrawal because of his belief that the checks were funded, due to the absence of the stamp mark "Returned Check'' on the checks, and check return slips. Considering that Raymundo's duties as Branch Manager entailed a lot of responsibility, the RTC found it almost unreasonable to expect him to directly and personally check the books of accounts of each particular client every time a check is presented to the bank for payment and for his approval. The RTC stressed that it has been established that the responsibility to go over the account records of clients falls on the bookkeeper, and Raymundo's act of relying upon the bookkeeper's verification that the checks were good cannot be deemed gross and inexcusable negligence.

Aggrieved, the PNB appealed from the civil aspect of the RTC Decision which acquitted Raymundo of the charge of violation of Section 3(e) of R.A. No. 3019.

In a Decision dated May 31, 2013, the CA denied the PNB's appeal for lack of merit. In a Resolution dated August 14, 2013, it also denied the PNB's motion for reconsideration for lack of merit. It ruled that Raymundo acted in good faith in relying upon his subordinates, *i.e.*, the bookkeeper and accountant, who were primarily assigned with the task of clearing the checks and ensuring that they are sufficiently funded. It held that he has no duty to go beyond the verification of the documents submitted by the bookkeeper and the accountant, and to

personally authenticate the procedures taken. It added that considering that his duties as Branch Manager entails a lot of responsibility, it is unreasonable to require him to accomplish and direct a personal examination of the records of the account of each particular client before affixing his signature on the documents as approving authority.

Dissatisfied, the PNB filed this petition for review on *certiorari*, arguing that the CA committed serious errors, namely: (1) when it ruled that the trial court aptly concluded that there was lack of malice or bad faith, nor negligence on the part of Raymundo in approving the payment of the checks; (2) when it failed to consider Raymundo's negligence and entirely disregarded the testimonial and documentary evidence of the PNB before the trial court; and (3) when it ruled that Raymundo is not civilly liable for the offense charged.[5]

The petition is meritorious.

The Court explains the two kinds of acquittal recognized by law, as well their effects on the civil liability of the accused, thus:

> Our law recognizes two kinds of acquittal, with different effects on the civil liability of the accused. First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. There being no delict, civil liability ex delicto is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the delict complained of. This is the situation contemplated in Rule 111 of the Rules of Court. The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only.
>
> The *Rules of Court* requires that in case of an acquittal, the judgment shall state "whether the evidence of the prosecution absolutely failed

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[5] *Rollo,* pp. 39-40.

to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist."[6]

In light of the foregoing, Raymundo can still be held civilly liable for the charge of violation of Section 3(e) of R.A. No. 3019 because he was only acquitted for failure of the prosecution to establish his guilt beyond reasonable doubt, and the RTC and the CA erroneously determined that no civil liability might arise from his act of relying on the bookkeeper's verification that the six (6) checks amounting to ₱4,000,000.00 were all good, but later turned out to be drawn against uncollected deposit, *i.e.*, the account has, on its face, sufficient funds but not yet available to the drawer because the deposit, usually a check, had not yet been cleared.[7]

Factual findings of the appellate court generally are conclusive, and carry even more weight when said court affirms the findings of the trial court, absent any showing that the findings are totally devoid of support in the records, or that they are so glaringly erroneous as to constitute grave abuse of discretion.[8] In this case, however, both the RTC and the CA totally ignored the testimonial and documentary evidence of the PNB, showing Raymundo's gross negligence in approving the payment of six (6) checks negotiated by Ms. Juan on August 3, 1993 and August 5, 1993, without waiting for the foreign draft check intended to fund the peso checking account she opened on July 30, 1993, to be cleared by the PNB Foreign Currency Clearing Unit.

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[6] *Dr. Lumantas v. Sps. Calapiz, Jr.*, 724 Phil. 248, 253-254 (2014), citing *Manantan v. Court of Appeals*, G.R. No. 107125, January 29, 2001, 350 SCRA 387, 397.

[7] *Salazar v. People*, 458 Phil. 504, 511 (2003).

[8] *Navaja v. De Castro*, G.R. No. 182926, June 22, 2015, 759 SCRA 487, 503.

Despite their having been identified[9] and formally offered[10] by PNB, and admitted in evidence[11] by the trial court, the RTC and the CA failed to give due credence to Raymundo's affidavits, complaints and testimonies before the other trial courts in San Pedro, Laguna, where he had filed separate criminal and civil cases against Ms. Juan and her cohorts in order to recover the value of the six (6) checks which were encashed despite having been drawn against uncollected deposit. Contrary to Raymundo's claim, such extra-judicial admissions do not violate his right against self- incrimination, which simply proscribes the legal process of extracting from the lips of the accused an admission of guilt. Suffice it to state that Raymundo's Complaints[12] and Affidavits[13] in the civil and criminal cases he filed against Ms. Juan contain his voluntary statements, which were subscribed and sworn to either before the Assistant Provincial Prosecutor and the Judge or the Notary Public, whereas his testimonies[14] were given during hearings in the said cases. Clearly, Raymundo is not being compelled to testify against himself. In the same vein, PNB cannot be faulted for merely using the documentary and testimonial evidence he willingly proffered in the cases he had filed to recover the losses incurred by the bank due to his unauthorized approval for payment of the six (6) checks drawn against the uncollected deposit.

The circumstances showing Raymundo's gross negligence can be gathered in the Complaint for sum of money he had filed against Ms. Juan and her cohorts, to wit:

3. That on July 30, 1993, a group of persons composed of the above-named defendants [including Ms. Juan] who, for some time, have been known to the plaintiff [Raymundo] as ranking and top

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[9] TSN, December 4, 2002, pp. 5-9.

[10] Records, Vol. II, pp. 291-295.

[11] Records, Vol. III, p. 418.

[12] Records, Vol. II, pp. 305-A-306 and 339-344.

[13] *Id.* at 307-308 and 345-346.

[14] *Id.* at 325-409.

executives of the herein defendant corporation [payee C&T Global Futures, Inc.] engaged in the foreign currency trading business, came to the Office of herein plaintiff. They intimated their plan of opening a current account with the said San Pedro Branch of the Philippine National Bank. They let it appear that this was in line with C&T Global Futures, Inc.'s on-going contest which the said group wanted to win the first prize which was purportedly a round-trip ticket to Hong Kong. For this purpose, they wanted the checking account to be opened immediately in the name of defendant Mary May M. Juan with the amount of $172,549.00 (₱4,778,744.55) embodied in a Morgan Guaranty and Trust Company of New York Check No. 069748 as initial deposit. They further assured the herein plaintiff that some more dollars are coming in the near future if this transaction would prosper;

4. **That at first, plaintiff herein [Raymundo] was a bit hesitant to immediately accommodate the seemingly hasty manner of opening a current account not only on the fact that the amount involved was quite big but also on account that he was dealing with a foreign check. But when the group, particularly defendant "Cleo" Tan, showed to him the record of a just-concluded overseas call confirming that the said Morgan Guaranty Company check was good, plaintiff allowed the issuance of six (6) checks bearing different dates in the total amount of ₱4,000,000.00 all payable to herein defendant corporation upon the undertaking of the group that the same would not be "traded" or negotiated until the said Morgan Guaranty Trust Co. check has been finally cleared**;

5. That in utter violation of the trust and confidence reposed in them by the herein plaintiff, defendants went on negotiating all those six (6) checks until it was discovered that the said Morgan Guaranty Trust Company Check No. 069748 was "FRAUDULENT" and from all indications, herein defendants are parts of the criminal syndicate;[15]

Raymundo's gross negligence is likewise underscored in the Affidavit dated October 25, 1993 he had executed to support his complaint for *estafa* against Ms. Juan and her cohorts, thus:

2. That on July 30, 1993, while I was at the office of PNB San Pedro, Laguna, Cleopatra Tan alias "Cleo", Josefina Resari, and Merry

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[15] *Id.* at 339-341. (Emphasis added.)

May M. Juan, representing themselves as department manager, Vice President and employee, respectively of the C&T Global Futures, Inc., and some persons whose identities are not yet known, by false pretenses and fraudulent acts, intimated to me their plan of opening a current account with the Philippine National Bank San Pedro Branch;

3. That, they told me of their plan of opening a current account in line with the C&T Global Futures, Inc.'s on-going contest with the end in view of winning its hefty first prize trip to Hong Kong and for that purpose they are ready to make an initial deposit of US$172,549.00, embodied in a Morgan Guaranty Trust Company of New York [check];

4. That, **because what was shown to me was a foreign check and involving as it does a huge amount of money, I was hesitant to accommodate them and made further inquiries from them until Cleopatra Tan gave me a very strong and convincing assurance that the Morgan Guaranty Check was good by way of telling me of a just-concluded overseas call confirming that said check was good**, which facts she further buttressed later by giving a copy of the bill of the detailed transaction x x x;

5. That, not knowing their dirty scheme and desirous to generate bigger bank deposits, I allowed them to make an initial deposit of US$172,549.00 embodied as earlier stated in a Morgan Guaranty Trust Company of New York [check] dated June 29, 1993 bearing No. 069748 with Merry May M. Juan as payee, xxx;

6. That, **having been fully assured that the Morgan check is good and trusting on their respective representations that they are top executives of the C&T Global Futures, Inc., I allowed the issuance of six (6) checks**, as follows:

PAYEE	AMOUNT	CHECK NO.	DATE
C&T Global Futures Inc.	P1,000,000.00	004801	July 30, 1993
C&T Global Futures Inc.	350,000.00	004802	July 30, 1993
C&T Global Futures Inc.	350,000.00	004803	July 30, 1993
C&T Global Futures Inc.	1,000,000.00	004804	July 30, 1993
C&T Global Futures Inc.	1,000,000.00	004805	July 30, 1993
Cash	300,000.00	004806	August 5, 1993

with a total amount of ₱4,000,000.00, Philippine Currency x x x;

7. That **I allowed the aforecited checks to be issued on the strong and collective undertaking of all the accused, that the same would**

not be traded until after the Morgan Guaranty Check shall have been cleared;

8. That, in utter disregard of the trust and confidence I reposed on all of them, in violation of their undertaking, accused negotiated all the six (6) checks until it was discovered that the Morgan Guaranty Check was fraudulent xxx as per memorandum of the Assistant Department Manager II Clearing Services Group, Philippine National Bank dated September 9, 1993, x x x;[16]

While his prompt filing of criminal and civil cases against Ms. Juan and her cohorts for the recovery of the money negates bad faith in causing undue injury to the PNB, it incidentally revealed Raymundo's gross negligence (1) in allowing the peso conversion of the foreign check to be credited to her newly-opened peso checking account,[17] even before the lapse of the 21-day clearing period, and (2) in issuing her a check booklet, all on the very same day the said account was opened on July 30, 1993. In his desire to secure bigger bank deposits, Raymundo disregarded the bank's foreign check clearing policy, and risked his trust and confidence on Ms. Juan's and her cohorts' assurance that the foreign check was good and that they would not negotiate any check until the former check is cleared.

Since their business and industry are imbued with public interest, banks are required to exercise extraordinary diligence, which is more than that of a Roman *pater familias* or a good father of a family, in handling their transactions.[18] Banks are also expected to exercise the highest degree of diligence in the selection and supervision of their employees.[19] By the very nature

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[16] *Id.* at 307-308. (Emphases added.)

[17] *Id.* at 206; Subsidiary Ledger showing that on July 30, 1993, ₱4,752,689.85 was deposited under Ms. Juan's checking account.

[18] *Philippine National Bank v. Sps. Cheah*, 686 Phil. 760, 771 (2012), citing *Philippine Savings Bank v. Chowking Food Corporation*, G.R. No. 177526, July 4, 2008, 557 SCRA 318, 330, citing *Bank of the Philippine Islands v. Court of Appeals*, 383 Phil. 538, 554 (2000).

[19] *Equitable PCI Bank v. Tan,* 642 Phil. 657, 674 (2010), citing *Citibank, N.A. v. Cabamongan,* G.R. No. 146918, May 2, 2006, 488 SCRA 517, 532.

of their work in handling millions of pesos in daily transactions, the degree of responsibility, care and trustworthiness expected of bank employees and officials is far greater than those of ordinary clerks and employees.[20]

A bank's disregard of its own banking policy amounts to gross negligence, which is described as "negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and unintentionally with a conscious indifference to consequences insofar as other persons may be affected."[21] Payment of the amounts of checks without previously clearing them with the drawee bank, especially so where the drawee bank is a foreign bank and the amounts involved were large, is contrary to normal or ordinary banking practice.[22] Before the check shall have been cleared for deposit, the collecting bank can only assume at its own risk that the check would be cleared and paid out.[23] As a bank Branch Manager, Raymundo is expected to be an expert in banking procedures, and he has the necessary means to ascertain whether a check, local or foreign, is sufficiently funded.

Raymundo's act of approving the deposit to Ms. Juan's newly-opened peso checking account of the peso conversion [₱4,752,689.65][24] of the foreign check prior to the lapse of the 21-day clearing period is the proximate cause why the six (6) checks worth ₱4,000,000.00 were later encashed, thereby causing the PNB undue injury. Defined as that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces injury and without which the result would not have occurred, the proximate cause can be determined by asking a simple question: "If the event did not happen, would the injury

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[20] *Id.*

[21] *Philippine National Bank v. Sps. Cheah, supra* note 18, at 772.

[22] *Id.*, citing *Banco Atlantico v. Auditor General*, 171 Phil. 298, 304 (1978).

[23] *Associated Bank v. Tan*, 487 Phil. 512, 525 (2004).

[24] Records, Vol. II, p. 206.

have resulted? If the answer is no, then the event is the proximate cause."[25] If Raymundo did not disregard the bank's foreign check clearing policy when he approved crediting of the peso conversion of Ms. Juan's foreign check in her newly-opened peso checking account, the PNB would not have suffered losses due to the irregular encashment of the six (6) checks.

It is well settled that actual damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. To justify an award of actual damages, there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts, and courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages.[26] While the PNB claims having suffered damages to the extent of ₱4,000,000.00 due to the encashment of checks drawn against uncollected deposit, the testimonial and documentary evidence on record show that it only incurred losses in the total sum of ₱2,100,882.87. Based on the accounts receivable ledger[27] and the PNB's letter[28] dated December 5, 1995, Raymundo's account receivable was reduced to ₱2,100,882.87 after the application of six (6) check payments aggregating ₱1,725,172.03 on October 1, 1993.

Confirming the two documentary evidence, Jose Rodrigo Cabello, PNB's own witness and former accountant of its San Pedro Laguna Branch, has testified that the bank's losses out of Raymundo's approval of the checks per its accounts receivable ledger, is around ₱2,100,000.00:

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[25] *Philippine National Bank v. Sps. Cheah, supra* note 18, at 77, citing *Allied Banking Corporation v. Lim Sio Wan*, G.R. No. 133179, March 27, 2008, 549 SCRA 504, 518.

[26] *Bacolod v. People of the Philippines*, 714 Phil. 90, 99 (2013).

[27] Records, Vol. II, p. 205.

[28] Records, Vol. I, p. 2.

[Atty. Reyes Geromo, counsel for PNB and for the prosecution]
Q. Mr. Witness, as of today do you know how much is still the bank loss out of the said approval of withdrawal by the accused?

x x x x x x x x x

[PNB Witness Jose Rodrigo Cabello]
A. Around ₱2,100,000.00, Sir. I think.

Q. And what was your basis Mr. Witness? Do you have evidence to show that amount Mr. Witness?
A. Yes, Sir.

Q. What particular document, Mr. Witness?
A. The Accounts receivable ledger, Sir.

Q. When you said accounts receivable ledger, is this the document previously marked as Exhibit "P", Mr. Witness?
A. Yes, Sir.[29]

Cabello's testimony is corroborated by Victor Arapan, PNB's witness and accountant of its San Pedro Branch as of August 14, 2001, who testified that per its books of account, the amount of ₱2,100,882.87 remained unpaid or uncollected by the bank, and is still lodged as account receivable of "Merry May Juan c/o Pablo Raymundo," and that as of said date, the damages sustained due to the fraudulent encashment of the foreign check is ₱5,524,023.57.[30] However, considering that it failed to formally offer in evidence or at least attach to the record the statement of account in order to prove such higher amount of damages, PNB can only be awarded actual damages in the amount of ₱2,100,882.87.

Since PNB was unduly deprived of its use of the ₱2,100,882.87 due to Raymundo's gross negligence, the Court also finds it proper to impose on such forbearance of money the following legal interests on the damages awarded, *sans* an express contract as to such interest rate, in line with current

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[29] TSN, August 22, 2000, pp. 38-39.

[30] TSN, August 14, 2001, pp. 8-9.

jurisprudence:[31] (1) twelve percent (12%) *per annum* reckoned from the filing of the criminal information on May 19, 1997 — which is the making of judicial demand for his liability until June 30, 2013;[32] (2) the reduced interest of six percent (6%) *per annum* from July 1, 2013[33] until finality of this Decision; and (3) the interest rate of 6% *per annum* from such finality until fully paid.

WHEREFORE, premises considered, the petition is **GRANTED**, and the Decision dated May 31, 2013 and the Resolution dated August 14, 2013 of the Court of Appeals in CA-G.R. CV No. 96760 are **REVERSED** and **SET ASIDE.** Accordingly, petitioner Pablo V. Raymundo is **ordered** to **pay** the Philippine National Bank actual damages in the amount of ₱2,100,882.87 with the following legal interest rates, in line with current jurisprudence:[34] (1) twelve percent (12%) *per annum*, reckoned from the filing of the criminal information on May 19, 1997 until June 30, 2013; and (2) six percent (6%) *per annum* from July 1, 2013 until finality of this Decision; and (3) six percent (6%) *per annum* from such finality until fully paid.

SO ORDERED.

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

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[31] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013), 282-283; *Secretary of the Department of Public Works and Highways v. Spouses Tecson*, G.R. No. 179334, April 21, 2015, 756 SCRA 389.

[32] The last day of the effectivity of Central Bank (CB) Circular No. 905 which provides the twelve percent (12%) *per annum* interest rate for loan or forbearance of money in the absence of an express contract as to such rate.

[33] The effectivity date of (CB) Circular No. 799 which provides the six percent (6%) *per annum* interest rate for loan or forbearance of money in the absence of an express contract as to such rate.

[34] See note 31.

SECOND DIVISION

[G.R. No. 209776. December 7, 2016]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, v.* **UNITED CADIZ SUGAR FARMERS ASSOCIATION MULTI-PURPOSE COOPERATIVE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); TAX REFUND; THE RULE REQUIRES THE CLAIMANT TO PROVE NOT ONLY HIS ENTITLEMENT TO A REFUND, BUT ALSO HIS DUE OBSERVANCE OF THE REGLEMENTARY PERIODS WITHIN WHICH HE MUST FILE HIS ADMINISTRATIVE AND JUDICIAL CLAIMS FOR REFUND.— We have consistently ruled that claims for tax refunds, when based on statutes granting tax exemption, partake of the nature of an exemption. Tax refunds and exemptions are exceptions rather than the rule and for this reason are highly disfavored. Hence, in evaluating a claim for refund, the rule of strict interpretation applies. This rule requires the claimant to prove not only his entitlement to a refund, but also his due observance of the reglementary periods within which he must file his administrative and judicial claims for refund. Non-compliance with these *substantive* and *procedural* due process requirements results in the denial of the claim. x x x In this case, the cooperative claims that it is exempted — based on Section 61 of R.A. 6938 and Section 109(1) of the NIRC — from paying advance VAT when it withdraws refined sugar from the refinery/mill as required by RR No. 6-2007. UCSFA-MPC thus alleges that the amounts of advance VAT it paid under protest from November 15, 2007 to February 13, 2009, were illegally arid erroneously collected.

2. ID.; ID.; ID.; WITHIN TWO YEARS FROM THE DATE OF PAYMENT OF TAX, THE CLAIMANT MUST FIRST FILE AN ADMINISTRATIVE CLAIM WITH THE COMMISSIONER OF INTERNAL REVENUE BEFORE FILING ITS JUDICIAL CLAIM WITH THE COURTS OF LAW.— UCSFA-MPC's claim for refund – grounded as it is

on payments of advance VAT alleged to have been **illegally and erroneously** collected from November 15, 2007 to February 13, 2009 — is governed by Sections 204(C) and 229 of the NIRC. These provisions are clear: within two years from the date of payment of tax, the claimant must first file an **administrative claim** with the CIR before filing its **judicial claim** with the courts of law. Both claims must be filed within a two-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional. The court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. In the present case, the court *a quo* found that while the judicial claim was filed merely five days after filing the administrative claim, both claims were filed within the two-year reglementary period. Thus, the CTA correctly exercised jurisdiction over the judicial claim filed by UCSFA-MPC.

3. ID.; ID.; VALUE ADDED TAX (VAT); EXEMPT TRANSACTIONS; CONCURRING CONDITIONS TO EXEMPT SALES BY AGRICULTURAL COOPERATIVES FROM VAT, CITED.— Under Section 109(1) of the NIRC, *sales by agricultural cooperatives* are exempt from VAT provided the following conditions concur, *viz*: *First*, the seller must be an agricultural cooperative duly registered with the CDA. An agricultural cooperative is "duly registered" when it has been issued a **certificate of registration by the CDA**. This certificate is conclusive evidence of its registration. *Second,* the cooperative must sell either: 1) exclusively to its members; or 2) to both members and non-members, *its produce*, whether in its original state or processed form. The second requisite differentiates cooperatives according to its customers. If the cooperative transacts only with members, all its sales are VAT-exempt, regardless of what it sells. On the other hand, if it transacts with both members and non-members, the product sold must be the cooperative's own produce in order to be VAT-exempt. Stated differently, if the cooperative only sells its produce or goods that it manufactures on its own, its entire sales is VAT-exempt. A cooperative is the producer of the sugar if it owns or leases the land tilled, incurs the cost of agricultural production of the sugar, and produces the sugar cane to be refined. It should not have merely purchased the sugar cane from its planters-members. x x x Thus, the BIR itself acknowledged and confirmed that UCSFA-MPC is the producer of the refined

sugar it sells. Under the principle of equitable estoppel, the petitioner is now precluded from unilaterally revoking its own pronouncement and unduly depriving the cooperative of an exemption clearly granted by law. With the UCSFA-MPC established as a duly registered cooperative and the **producer** of sugar cane, its sale of refined sugar is exempt from VAT, whether the sale is made to members or to non-members. The VAT-exempt nature of the sales made by agricultural cooperatives under the NIRC is consistent with the tax exemptions granted to qualified cooperatives under the Cooperative Code which grants cooperatives exemption from sales tax on transactions with members and non-members.

4. ID.; ID.; ID.; ID.; ID.; THE CERTIFICATE OF TAX EXEMPTION SHALL REMAIN VALID SO LONG AS THE COOPERATIVE IS IN GOOD STANDING AS ASCERTAINED BY THE COOPERATIVE DEVELOPMENT AUTHORITY.— Article 2(d) of the Cooperative Code defines a certificate of tax exemption as "the ruling granting exemption to the cooperative" issued by the BIR. In turn, under RR No. 20-2001, the cooperative shall file a letter-application for the issuance of certificate of tax exemption, attaching thereto its certificates of registration and good standing duly issued by the CDA. The certificate of tax exemption shall remain valid so long as the cooperative is "in good standing" as ascertained by the CDA. In line with the presumption of regularity in the performance of duties of public officers, the issuance of the certificate of tax exemption in favor of UCSFA-MPC presupposes that the cooperative submitted to the BIR the complete documentary requirements for application, including its certificate of good standing. Simply stated, when the cooperative's certificate of tax exemption was issued in 2004, it had already obtained its certificate of good standing from the CDA.

5. ID.; ID.; ID.; ID.; REVENUE REGULATIONS MUST BE UNDERSTOOD TO IMPLEMENT THE SAME PRINCIPLE AS THE COOPERATIVE CODE AND THE NIRC AND NOT ADD TO THE EXISTING REQUIREMENTS PROVIDED BY THESE LAWS.— Section 109(1) of the NIRC clearly sets forth only two requisites for the exemption of the sale of refined sugar from VAT. Tax regulations implementing Sections 61 and 62 of the Cooperative

Code as well as Section 109(1) of the NIRC must be read together, and read as well to be consistent with the laws from which they have been derived. Thus, RR 20-2001 must be understood to implement the same principle as the Cooperative Code and the NIRC and not add to the existing requirements provided by these laws. We must remember that regulations may not enlarge, alter, or restrict the provisions of the law it administers; it cannot engraft additional requirements not contemplated by the legislature. A taxpayer-claimant should not be required to submit additional documents beyond what is required by the law; the taxpayer-claimant should enjoy the exemption it has, by law, always been entitled to. Hence, once the cooperative has sufficiently shown that it has satisfied the requirements under Section 109(1) of the NIRC for the exemption from VAT on its sale of refined sugar (*i.e.*, that it is duly registered with the CDA and it is the producer of the sugar cane from which refined sugar is derived), its exemption from the advance payment of VAT should automatically be granted and recognized.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Ed Oliver Yulo Tan for respondent.

D E C I S I O N

BRION, *J.*:

Before us is the petition for review on *certiorari*[1] (under Rule 45 of the Rules of Court) filed by the Commissioner of Internal Revenue (*CIR*) to assail the June 5, 2013 decision[2]

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[1] *Rollo,* pp. 10-28.

[2] Penned by CTA Associate Justice Erlinda P. Uy and concurred in by CTA Associate Justices Juanito C. Castañeda, Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen Ringpis-Liban. CTA Presiding Justice Roman G. Del Rosario issued a separate concurring and dissenting opinion. *Id.* at 156-176.

and the October 30, 2013 resolution[3] of the Court of Tax Appeals (CTA) *en banc* in CTA EB No. 846 (CTA Case No. 7995).

In the assailed decision and resolution, the CTA *en banc* affirmed the decision[4] and resolution[5] of the CTA Second Division (*CTA division*).

The Facts

By law, the CIR is empowered, among others, to act on and approve claims for tax refunds or credits.

The respondent United Cadiz Sugar Farmers Association Multi-purpose Cooperative (*UCSFA-MPC*) is a multi-purpose cooperative with a Certificate of Registration issued by the Cooperative Development Authority (*CDA*) dated January 14, 2004.[6]

In accordance with Revenue Regulations (*RR*) No. 20-2001, the Bureau of Internal Revenue (*BIR*) issued BIR Ruling No. RR12-08-2004,[7] otherwise known as the "Certificate of Tax Exemption" in favor of UCSFA-MPC.

In November 2007, BIR Regional Director Rodita B. Galanto of BIR Region 12 - Bacolod City required UCSFA-MPC to pay in advance the value-added tax (*VAT*) before her office could issue the Authorization Allowing Release of Refined Sugar (*AARRS*) from the sugar refinery/mill. This was the first instance that the Cooperative was required to do so. This prompted the cooperative to confirm with the BIR[8] whether it is exempt from

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[3] *Id.* at 178-190.

[4] *Id*. at 64-86.

[5] *Id*. at 97-102.

[6] Certificate of Registration marked as Exhibit "C" in the CTA. See *rollo*, p. 157.

[7] Dated March 2, 2004. Referred to as BIR Ruling No. DA-013-2004 in the CTA *en banc* decision and the present petition.

[8] In its letter dated January 9, 2008.

the payment of VAT pursuant to Section 109(1) of the National Internal Revenue Code (*NIRC*).[9]

The BIR responded favorably to UCSFA-MPC's query. In BIR Ruling No. ECCP-015-08,[10] the CIR[11] ruled that the cooperative "is considered as the **actual producer** of the members' sugarcane production, because it primarily provided the various inputs (fertilizers), capital, technology transfer, and farm management." (*emphasis supplied*) The CIR thus confirmed that UCSFA-MPC's sale of produce to members and non-members is **exempt from the payment of VAT**.

As a result, Regional Director Galanto no longer required the advance payment of VAT from UCSFA-MPC and began issuing AARRS in its favor, thereby allowing the cooperative to withdraw its refined sugar from the refinery. But, in November 2008, the administrative legal opinion notwithstanding, Regional Director Galanto, again demanded the payment of advance VAT from UCSFA-MPC. Unable to withdraw its refined sugar from the refinery/mill for its operations, UCSFA-MPC was forced to pay advance VAT under protest.

On November 11, 2009, UCSFA-MPC filed an administrative claim for refund with the BIR, asserting that it had been granted tax exemption under Section 61 of Republic Act No. (*RA*) 6938,

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[9] SEC. 109. *Exempt Transactions*. — (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

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(l) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of their produce, whether in its original state or processed form, to non-members; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;

[10] Dated January 25, 2008.

[11] Through then Assistant Commissioner James H. Roldan.

otherwise known as the Cooperative Code of the Philippines (*Cooperative Code*),[12] and Section 109(1) of the NIRC.[13]

On November 16, 2009, it likewise filed a judicial claim for refund before the CTA division. During the trial, UCSFA-MPC presented, among other documents, its Certificates of Registration[14] and Good Standing[15] issued by the CDA; Certificate of Tax Exemption,[16] and BIR Ruling No. ECCP-015-08 issued by the BIR,[17] as well as its Summary of VAT Payments Under Protest, Certificates of Advance Payment, official receipts, and payment forms to substantiate its claim.

The CTA division ruled in UCSFA-MPC's favor,[18] thus upholding the cooperative's exemption from the payment of VAT; the division held that the amount of ₱3,469,734.00 representing advance VAT on 34,017 LKG bags of refined sugar withdrawn from the refinery, was illegally or erroneously collected by the BIR. The CIR moved but failed to obtain reconsideration of the CTA division ruling.

The CIR then sought recourse before the CTA *en banc*. In its assailed decision,[19] the CTA *en banc* affirmed the CTA division's ruling and ruled that UCSFA-MPC successfully proved its entitlement to tax exemption through its Certificate of Tax Exemption and BIR Ruling No. ECCP-015-08 (which confirmed its status as a tax-exempt cooperative). The CTA *en banc* also held that both its administrative and judicial claims for refund were timely filed, having been filed within the two-year

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[12] Enacted on March 10, 1990.

[13] Formerly Section 109(r) prior to the amendment put into effect by RA 9337 in 2005.

[14] *Supra* note 6.

[15] Exhibit "D" in the CTA.

[16] Exhibit "E" in the CTA.

[17] Exhibit "G" in the CTA.

[18] In its decision dated August 16, 2011, *rollo* pp. 64-86.

[19] *Supra* note 2.

prescriptive period,[20] in accordance with the requirements of Sections 204(C) and 229 of the NIRC.

In denying the CIR's motion for reconsideration,[21] the CTA *en banc* further ruled that the payment of VAT on sales necessarily includes the exemption from the payment of advance VAT. It also struck down the argument questioning the validity of UCSFA-MPC's Certificate of Good Standing for having been raised belatedly and thus considered waived. Finally, it also held that as a tax-exempt cooperative, UCSFA-MPC is not required to file monthly VAT declarations. The presentation of these documents is therefore not essential in proving its claim for refund.

These developments gave rise to the present petition.

The Court's Ruling

We find the petition unmeritorious.

We have consistently ruled that claims for tax refunds, when based on statutes granting tax exemption, partake of the nature of an exemption.[22] Tax refunds and exemptions are exceptions rather than the rule and for this reason are highly disfavored.[23] Hence, in evaluating a claim for refund, the rule of strict interpretation applies.

This rule requires the claimant to prove not only his entitlement to a refund, but also his due observance of the reglementary periods within which he must file his administrative and judicial

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[20] *Supra* note 4, citing *Gibbs and Gibbs vs. Commissioner of Internal revenue and Court of Tax Appeals* (G.R. No. L-17406, November 29, 1965, 15 SCRA 318).

[21] *Supra* note 3.

[22] *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010, 624 SCRA 340, 358 citing *Commissioner of Internal Revenue vs. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, July 21, 2008, 559 SCRA 160.

[23] *Philippine Long Distance Company vs. City of Bacolod*, G.R. No. 149179, July 15, 2005, 463 SCRA 528, 536.

claims for refund.[24] Non-compliance with these *substantive* and *procedural* due process requirements results in the denial of the claim.[25] It is then essential for us to discuss each requirement and evaluate whether these have been duly complied with in the present case.

Procedural requirements: Present claim for refund was timely filed.

UCSFA-MPC s claim for refund – grounded as it is on payments of advance VAT alleged to have been **illegally and erroneously** collected from November 15, 2007 to February 13, 2009 – is governed by Sections 204(C)[26] and 229[27] of the NIRC.

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[24] See *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*, G.R. 184823, October 6, 2010, 632 SCRA 422.

[25] *Id*.

[26] SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may — x x x x (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

[27] SEC. 229. Recovery of Tax Erroneously or Illegally Collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund

These provisions are clear: within two years from the date of payment of tax, the claimant must first file an **administrative claim** with the CIR[28] before filing its **judicial claim** with the courts of law.[29] Both claims must be filed within a two-year reglementary period.[30] Timeliness of the filing of the claim is mandatory and jurisdictional. The court[31] cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.

In the present case, the court *a quo* found that while the judicial claim was filed merely five days after filing the administrative claim, both claims were filed within the two-year reglementary period. Thus, the CTA correctly exercised jurisdiction over the judicial claim filed by UCSFA-MPC.

Substantive requirements: UCSFA MPC proved its entitlement to refund

As mentioned, the rule on strict interpretation requires the claimant to sufficiently establish his entitlement to a tax refund. If the claimant asserts that he should be refunded the amount of tax he has previously paid because he is exempted from paying the tax,[32] he must point to the specific legal provision of law

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or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Also see *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014, 725 SCRA 130, 141.

[28] See Section 204, NIRC, *supra* note 26.

[29] See Section 229, *id., supra* note 27.

[30] See *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84, January 14, 2015, sc.judiciary.gov.ph.

[31] Section 7(a)(1) and (2) of R.A. No. 1125, as amended by R.A. No. 9282, vests upon the CTA the exclusive appellate jurisdiction to review by appeal decisions and inaction of the CIR in cases involving refunds of internal revenue taxes.

[32] See *Mactan Cebu International Airport Authority v. Marcos*, 261 SCRA 667 (1996), citing Agpalo, *Statutory Construction*, (1990 ed.), p. 217.

granting him the exemption. His right cannot be based on mere implication.[33]

In this case, the cooperative claims that it is exempted — based on Section 61 of R.A. 6938 and Section 109(1) of the NIRC — from paying advance VAT when it withdraws refined sugar from the refinery/mill as required by RR. No. 6-2007. UCSFA-MPC thus alleges that the amounts of advance VAT it paid under protest from November 15, 2007 to February 13, 2009, were illegally arid erroneously collected.

UCSFA-MPC's sale of refined sugar is VAT-exempt.

As a general rule under the NIRC, a seller shall be liable for VAT[34] on the sale of goods or properties based on the gross selling price or gross value in money of the thing sold.[35] However, certain transactions are exempted from the imposition of VAT.[36] One exempted transaction is the sale of agricultural food products in their original state.[37] Agricultural food products that have undergone simple processes of preparation or preservation for the market are nevertheless considered to be in their original state.[38]

Sugar is an agricultural food product. Notably, tax regulations differentiate between *raw sugar* and *refined sugar*.[39]

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[33] See *Quezon City v. ABS-CBN Broadcasting Corporation*, G.R. No. 166408, October 6, 2008, 567 SCRA 496; *Commissioner of Internal Revenue vs. A.D. Guerrero*, G.R. No. L-20942, September 22, 1967, 21 SCRA 190.

[34] See Section 105, NIRC.

[35] See Section 106, *id.*

[36] See Section 109, *id.*

[37] See Section 109(A), *id.*

[38] *Id.*

[39] According to RR No. 16-2005, "[S]ugar whose content of sucrose by weight, in the dry state, has a polarimeter reading of 99.5° and above are presumed to be refined sugar." On the other hand, under RR Nos. 6-2007 and 13-2008, raw sugar "refers to sugar whose content of sucrose by weight in dry state, corresponds to a polarimeter reading of less than 99.5°.

For internal revenue purposes, the sale of *raw cane sugar* is exempt from VAT[40] because it is considered to be in its original state.[41] On the other hand, *refined sugar* is an agricultural product that can no longer be considered to be in its original state because it has undergone the refining process; its sale is thus subject to VAT.

Although the sale of refined sugar is generally subject to VAT, such transaction may nevertheless qualify as a VAT-exempt transaction if the sale is made by a cooperative. Under Section 109(1) of the NIRC,[42] *sales by agricultural cooperatives* are exempt from VAT provided the following conditions concur, *viz*:

First, the seller must be an agricultural cooperative duly registered with the CDA.[43] An agricultural cooperative is "duly registered" when it has been issued a **certificate of registration by the CDA**. This certificate is conclusive evidence of its registration.[44]

Second, the cooperative must sell either:

1) exclusively to its members; or

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[40] *Supra* note 37.

[41] *Id.*

[42] SEC. 109. Exempt Transactions. — (1) Subject to the provisions of subsection (2) hereof, the following transactions shall be exempt from the value-added tax: xxx (1) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of their produce, whether in its original state or processed form, to non-members; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce; xxx

[43] *Id.*

[44] Article 17 of the Cooperative Code provides, "A certificate of registration issued by the Cooperative Development Authority under its official seal shall be conclusive evidence that the cooperative therein mentioned is duly registered unless it is proved that the registration thereof has been cancelled.'' See also Section 2, RR No. 20-2001.

2) to both members and non-members, *its produce*, whether in its original state or processed form.[45]

The second requisite differentiates cooperatives according to its customers. If the cooperative transacts only with members, all its sales are VAT-exempt, regardless of what it sells. On the other hand, if it transacts with both members and non-members, the product sold must be the cooperative's own produce in order to be VAT-exempt. Stated differently, if the cooperative only sells its produce or goods that it manufactures on its own, its entire sales is VAT-exempt.[46]

A cooperative is the producer of the sugar if it owns or leases the land tilled, incurs the cost of agricultural production of the sugar, and produces the sugar cane to be refined.[47] It should not have merely purchased the sugar cane from its planters-members.[48]

UCSFA-MPC satisfies these requisites in the present case.

First, UCSFA-MPC presented its Certificate of Registration issued by the CDA. It does not appear in the records that the CIR ever objected to the authenticity or validity of this certificate. Thus, the certificate is conclusive proof that the cooperative is duly registered with the CDA.[49]

While its certificate of registration is sufficient to establish the cooperative's due registration, we note that it also presented the Certificate of Good Standing that the CDA issued. This further corroborates its claim that it is duly registered with the CDA.

Second, the cooperative also presented BIR Ruling No. ECCP-015-08, which states that UCSFA-MPC "is considered as the

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[45] *Supra* note 42.

[46] CITE specific provision of the LAW and/or CASE.

[47] Section 4(a), RR No. 13-2008.

[48] Section 4(b), RR No. 13-2008.

[49] *Supra* note 44.

actual producer of the members' sugar cane production because it primarily provided the various productions inputs (fertilizers), capital, technology transfer, and farm management." It concluded that the cooperative "has **direct participation** in the sugar cane production of its farmers-members."

Thus, the BIR itself acknowledged and confirmed that UCSFA-MPC is the producer of the refined sugar it sells. Under the principle of equitable estoppel,[50] the petitioner is now precluded from unilaterally revoking its own pronouncement and unduly depriving the cooperative of an exemption clearly granted by law.

With the UCSFA-MPC established as a duly registered cooperative and the **producer** of sugar cane, its sale of refined sugar is exempt from VAT, whether the sale is made to members or to non-members.

The VAT-exempt nature of the sales made by agricultural cooperatives under the NIRC is consistent with the tax exemptions granted to qualified cooperatives under the

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[50] In *Commissioner of Internal Revenue v. San Roque Power Corporation*, (G.R. No. 187485, February 12, 2013, 690 SCRA 336, 460), it was ruled that, "where the Commissioner, through a general interpretative rule issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA, in these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code." *Republic v. Court of Appeals* (G.R. No. 116111, January 21, 1999, 301 SCRA 366), as cited in the case, describes the principle of equitable estoppel: "Estoppel against the public are little favored. They should not be invoked except in rare and unusual circumstances and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations x x x, the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals."

Cooperative Code which grants cooperatives exemption from sales tax[51] on transactions with members and non-members.[52]

These conclusions reduce the issue in the case to whether the granted exemption also covers the *payment* of advance VAT upon withdrawal of refined sugar from the refinery or mill.

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[51] Section 2(f), RR No. 20-2001, issued to implement Sections 61 and 62 of the Cooperative Code, clarifies that "sales tax" as referred to in the Cooperative Code shall mean VAT or percentage tax.

[52] Cooperatives enjoy exemption from tax under Articles 61 and 62 of the Cooperative Code of the Philippines, *viz*:

> Article 61. Tax Treatment of Cooperatives. — Duly registered cooperatives under this Code which do not transact any business with non-members or the general public **shall not be subject to any government taxes and fees imposed under the Internal Revenue Laws and other tax laws**. Cooperatives not falling under this article shall be governed by the succeeding section.
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> Article 62. Tax and Other Exemptions. — Cooperatives transacting business with both members and non-members shall not be subject to tax on their transactions to members. Notwithstanding the provisions of the law or regulation to the contrary, such cooperatives dealing with non-members shall enjoy the following tax exemptions: (1) Cooperatives with accumulated reserves and undivided net savings of not more than Ten million pesos (₱10,000,000.00) **shall be exempt from all national, city, provincial, municipal or barangay taxes of whatever name and nature**. Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally as certified by the Department of Trade and Industry. All tax-free importations shall not be transferred to any person until after five (5) years, otherwise, the cooperative and the transferee or assignee shall be solidarity liable to pay twice the amount of the tax and/or duties thereon. (2) Cooperatives with accumulated reserves and undivided net savings of more than Ten million pesos (₱10,000,000.00) shall pay the following taxes at the full rate: xxx (b) Sales Tax: <u>On sales to non members</u>: Provided, however, That all cooperatives, regardless of classification, are exempt from the payment of income and sales taxes for a period of ten (10) years. (emphasis supplied)

*Exemption from VAT on **sale** of refined sugar by an agricultural cooperative includes the exemption from the requirement of **advance payment** thereof.*

The CTA *en banc* ruled that the cooperative is exempted from the **payment of advance VAT**.[53] It also ruled that the exemption from the payment of VAT on sales necessarily includes the exemption from the payment of advance VAT.[54]

The CIR argues that the exemption granted by the Cooperative Code and NIRC, on which the Certificate of Tax Exemption and BIR Ruling No. ECC-015-08 issued in favor of UCSFA-MPC were based, **only covers VAT on the sale of produced sugar**. It does not include the **exemption from the payment of advance VAT in the withdrawal of refined sugar** from the sugar mill.[55]

The CIR's argument fails to persuade us.

As we discussed above, the sale of refined sugar by an agricultural cooperative is exempt from VAT. To fully understand the difference between VAT on the sale of refined sugar and the advance VAT upon withdrawal of refined sugar, we distinguish between the tax liability that arises from the **imposition of VAT** and the **obligation of the taxpayer to pay** the same.

Persons liable for VAT *on the sale of goods* shall pay the VAT due, in general, on a monthly basis. VAT accruing from the sale of goods in the current month shall be payable the following month.[56] However, there are instances where VAT

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[53] *Supra* note 2.

[54] *Supra* note 3.

[55] *Rollo*, p. 16.

[56] Section 114 of the NIRC requires persons liable to pay VAT, as defined under Section 105 thereof, shall file a quarterly return reflecting the amount of his gross sales or receipts within 25 days following the close of the taxable

is required to be paid in advance,[57] such as in the sale of refined sugar.[58]

To specifically address the policies and procedures governing the advance payment of VAT on the sale of refined sugar, RR Nos. 6-2007 and 13-2008 were issued.

Under these regulations, VAT on the sale of refined sugar that, under regular circumstances, is payable within the month following the actual sale of refined sugar, shall nonetheless be paid in advance before the refined sugar can even be withdrawn from the sugar refinery/mill by the sugar owner. Any advance VAT paid by sellers of refined sugar shall be *allowed as credit* against their output tax on the actual gross selling price of refined sugar.[59]

Recall in this regard that VAT is a transaction tax imposed at every stage of the distribution process: on the sale, barter, exchange, or lease of goods or services.[60] Simply stated, VAT generally arises because an actual sale, barter, or exchange has been consummated.

In the sugar industry, raw sugar is processed in a refinery/mill which thereafter transforms the raw sugar into refined sugar. The refined sugar is then withdrawn or taken out of the refinery/mill and sold to customers.[61] Under this flow, the withdrawal of refined sugar evidently takes place prior to its sale.

The VAT implications of the **withdrawal** of refined sugar from the sugar refinery/mill and the actual **sale** of refined sugar

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quarter. However, VAT-registered persons shall pay the VAT on a monthly basis.

[57] Section 4.114-1(B), RR No. 16-2005.

[58] Section 4.114-1(B)(I), *id.*

[59] Section 9, RR No. 6-2007.

[60] De Leon, De Leon, Jr., *The National Internal Revenue Code Annotated*, Vol. II (2003).

[61] Available at http://www.sra.gov.ph/wp-content/gallery/banner-slideshow/Sugar-Industry2.PNG.

are different. While the sale is the actual transaction upon which VAT is imposed, the withdrawal gives rise to the obligation to pay the VAT due, albeit in advance. Therefore, the requirement for the advance payment of VAT for refined sugar creates a special situation: While the transaction giving rise to the imposition of VAT — the actual sale of refined sugar — has not yet taken place, the VAT that would be due from the subsequent sale is, nonetheless, already required to be paid earlier, which is before the withdrawal of the goods from the sugar refinery/mill.

To be clear, the transaction subject to VAT is still the sale of refined sugar. The withdrawal of sugar is not a separate transaction subject to VAT. It is only the payment thereof that is required to be made in advance.

While the payment of advance VAT on the sale of refined sugar is, in general, required before these goods may be withdrawn from the refinery/mill, cooperatives are exempt from this requirement because they are cooperatives.

Revenue regulations specifically provide that such withdrawal shall not be subject to the payment of advance VAT if the following requisites are present, *viz*:

First, the withdrawal is made by a **duly accredited and registered agricultural cooperative in good standing**.[62] It was later clarified that a cooperative is in good standing if it is a holder of a **certificate of good standing** issued by the CDA.[63]

Second, the cooperative should also be the **producer** of the sugar being withdrawn.[64]

Third, the cooperative withdrawing the refined sugar should subsequently sell the same to either its members or another agricultural cooperative.[65]

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[62] Section 4(a) and (b), RR No. 6-2007.

[63] Section 4(a), RR No. 13-2008.

[64] Section 4(a) and (b), RR No. 6-2007.

[65] *Id.*

In sum, the sale of refined sugar by an agricultural cooperative duly registered with the CDA is exempt from VAT. A qualified cooperative also enjoys exemption from the requirement of advance payment of VAT upon withdrawal from the refinery/mill. The agricultural cooperative's exemption from the requirement of advance payment is a logical consequence of the exemption from VAT of its sales of refined sugar. We elaborate on this point as follows:

First, the VAT required to be paid in advance (upon withdrawal) is the same VAT to be imposed on the subsequent sale of refined sugar. If the very transaction (sale of refined sugar) is VAT-exempt, there is no VAT to be paid in advance because, simply, there is no transaction upon which VAT is to be imposed.

Second, any advance VAT paid upon withdrawal shall be allowed as credit against its output tax arising from its sales of refined sugar. If all sales by a cooperative are VAT-exempt, no output tax shall materialize. It is simply absurd to require a cooperative to make advance VAT payments if it will not have any output tax against which it can use/credit its advance payments.

Thus, we sustain the CTA *en banc*'s ruling that if the taxpayer is exempt from VAT on the sale of refined sugar, necessarily, it is also exempt from the advance payment of such tax.

Tax regulations cannot impose additional requirements other than what is required under the law as a condition for tax exemption.

Insisting that UCSFA-MPC does not enjoy exemption from the payment of advance VAT, the CIR questions the cooperative's compliance with tax regulations that require cooperatives to make additional documentary submissions to the BIR prior to the issuance of a certificate of tax exemption.

According to the CIR, RR No. 13-2008 requires an agricultural producer cooperative duly registered with the CDA to be in good standing before it can avail of the exemption from the

advance payment of VAT. It claims that the cooperative failed to present any certificate of good standing. While it did present a certificate of good standing, the cooperative only acquired this certificate on August 25, 2009. Hence, it was not exempt from advance payment of VAT during the period subject of its refund, or between November 15, 2007 to February 15, 2009.[66]

We disagree with this CIR submission.

First, the CTA observed that the petitioner questioned the cooperative's certificate of good standing for the first time in its motion for reconsideration filed before the CTA *en banc*. Thus, the CTA *en banc* was correct in ruling that under the Rules of Court the argument is deemed waived, having been belatedly raised. No new issue in a case can be raised in a pleading, which issue, by due diligence, could have been raised in previous pleadings.[67]

Second, the certificate of good standing is one of the requirements for the issuance of a certificate of tax exemption under RR No. 20-2001.

Article 2(d) of the Cooperative Code defines a certificate of tax exemption as "the ruling granting exemption to the cooperative" issued by the BIR. In turn, under RR No. 20-2001, the cooperative shall file a letter-application for the issuance of certificate of tax exemption, attaching thereto its certificates of registration and good standing duly issued by the CDA.[68]

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[66] *Rollo*, pp. 18-19.

[67] CTA *en banc* decision citing *Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue*, G.R. No. 157594, March 9, 2010, 614 SCRA 526, 561.

[68] SEC. 6. DOCUMENTS TO BE ATTACHED TO THE LETTER-APPLICATION FOR THE ISSUANCE OF TAX EXEMPTION CERTIFICATE. — A Letter-Application signed by the President/General Manager of the Cooperative, or his duly authorized representative, should be submitted to the Legal Division of the Revenue Region having jurisdiction over the principal place of business of the cooperative, attaching thereto the following documents:

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The certificate of tax exemption shall remain valid so long as the cooperative is "in good standing" as ascertained by the CDA.[69]

In line with the presumption of regularity in the performance of duties of public officers, the issuance of the certificate of tax exemption in favor of UCSFA-MPC presupposes that the cooperative submitted to the BIR the complete documentary requirements for application, including its certificate of good standing. Simply stated, when the cooperative's certificate of tax exemption was issued in 2004, it had already obtained its certificate of good standing from the CDA.

The fact that its certificate of good standing was dated August 25, 2009, should not be detrimental to UCSFA-MPC's case. As it correctly points out, a certificate of good standing is renewed and issued annually by the CDA. Its renewal simply shows that it has remained to be in good standing with the CDA since its original registration. More importantly, no evidence was presented to show that either the certificate of registration or certificate of good standing had been previously revoked.

Third, as discussed earlier, the exemption from VAT on the sale of refined sugar carries with it the exemption from the payment of advance VAT before the withdrawal of refined sugar from the refinery/mill.

Section 109(1) of the NIRC clearly sets forth only two requisites for the exemption of the sale of refined sugar from VAT. Tax regulations implementing Sections 61 and 62 of the Cooperative Code as well as Section 109(1) of the NIRC must be read together, and read as well to be consistent with the

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b) Certified true copy of the Certificate of Registration issued by the CDA;

x x x x x x x x x

e) Original copy of the Certificate of Good Standing from the CDA;

[69] SEC. 7. VALIDITY OF TAX EXEMPTION CERTIFICATE. — The Tax Exemption Certificate shall be valid during such period that the cooperative is in good standing as ascertained by the CDA on an annual basis.

laws from which they have been derived. Thus, RR 20-2001 must be understood to implement the same principle as the Cooperative Code and the NIRC and not add to the existing requirements provided by these laws.

We must remember that regulations may not enlarge, alter, or restrict the provisions of the law it administers; it cannot engraft additional requirements not contemplated by the legislature.[70] A taxpayer-claimant should not be required to submit additional documents beyond what is required by the law; the taxpayer-claimant should enjoy the exemption it has, by law, always been entitled to.

Hence, once the cooperative has sufficiently shown that it has satisfied the requirements under Section 109(1) of the NIRC for the exemption from VAT on its sale of refined sugar (*i.e.*, that it is duly registered with the CDA and it is the producer of the sugar cane from which refined sugar is derived), its exemption from the advance payment of VAT should automatically be granted and recognized.

On these bases, we reject the CIR's insistence that RR No. 13-2008 requires the submission of a certificate of good standing as a condition to a cooperative's exemption from the requirement of advance payment of VAT. In the same vein, the petitioner's argument that the submission of monthly VAT declarations and quarterly VAT returns is essential to a claim for tax refund must also fail.

The Certificate of Tax Exemption and BIR Ruling No. ECCP-015-2008 have not been revoked.

Finally, the CIR questions the validity of the certificate of exemption and BIR Ruling No. ECCP-015-08 used by UCSFA-MPC to prove its exemption from tax. Citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian*

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[70] *Commissioner of Internal Revenue vs. Central Luzon Drug*, G.R. No. 159647, April 15, 2005, 456 SCRA 414.

Contractor Mindanao, Inc.,[71] the CIR insists that the BIR rulings on which the cooperative anchors its exemption were, in the first place, deemed revoked when it filed an Answer to the cooperative's judicial claim for refund before the CTA Division.[72]

On the other hand, UCSFA-MPC points out that, while the case cited held that the filing of an answer by the CIR is a revocation of prior rulings issued in favor of the taxpayer-claimant, it has a recognized exception: the principle of non-retroactivity of rulings under Section 246 of the NIRC.[73]

We agree with UCSFA-MPC.

The basic rule is that if any BIR ruling or issuance promulgated by the CIR is subsequently revoked or nullified by the CIR herself or by the court, the revocation/nullification cannot be applied retroactively to the prejudice of the taxpayers. Hence, even if we consider that the CIR had revoked the rulings previously issued in favor of UCSFA-MPC upon the filing of her answer, it cannot effectively deprive UCSFA-MPC of its rights under the rulings prior to their revocation.

We note that, as pointed out by UCSFA-MPC, this principle was recognized as an exception in the very case the CIR cited, although the CIR opted to omit this portion of the cited case.

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[71] G.R. No. 153205, January 22, 2007, 512 SCRA 124.

[72] *Rollo*, pp. 20-21.

[73] Section 246. Non-retroactivity of Rulings. — Any modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.

Being exempt from VAT on the sale of refined sugar and the requirement of advance payment of VAT, the amounts that UCSFA-MPC had paid from November 15, 2007 to February 13, 2009, were illegally and erroneously collected. Accordingly, a refund is in order.

WHEREFORE, we **DENY** the petition and accordingly **AFFIRM** the June 5, 2013 decision and the October 30, 2013 resolution of the CTA *en banc* in CTA EB No. 846.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 210428. December 7, 2016]

HEIRS OF PACIFICO GONZALES, REPRESENTED BY ROGER BANZUELA, *petitioners, vs.* **JUANITO DE LEON, JOSE CARAAN, SOLEDAD CARAAN, RESTITUTO CARAAN, GABRIEL REDONDO, CARLOS OPENA, PALERMO GARGAR, SOFRONIO CRUZAT, JUANITO OPENA, SAVINO CARCUM, JAIME MANIMTIM, MAXIMO MENDOZA, DOMINGO OPENA, JR., BENJAMIN TALA-TALA, GULLERMA ROSIA MENARA, NICANOR MATIENZO, SAVINO CARAAN, CELSO ROSITA, BEATRIZ MENDOZA, APOLINARIO BOBADILLA, DANIEL DE GUZMAN, NELIA ANDEZ, REY CLEOFE, FELINO ROSITA, VALERIANO ONTE, JUANITO OPENA, FLORENTINO SALAZAR,**

NICANOR SALAZAR, REYNALDO ONTE, JOCELYN DE LEON, EDGARDO CRUZ, LIGAYA CARAAN, JUAN AMANTE, LOLITA ENRIQUEZ, MERLINDA ROSITA, VICTORIANO ROSITA, MARILYN ROSITA, AURILLO CARLUM, DOMINGO MENDOZA AND CASAMIRA MENDOZA, *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW [CARP]); TWO CONDITIONS THAT MUST CONCUR IN ORDER FOR LAND TO BE CONSIDERED AS NOT AGRICULTURAL, AND THEREFORE OUTSIDE THE AMBIT OF THE CARP, CITED.—** This Court, in *Heirs of Luis A. Luna, et al. v. Afable, et al.*, identified the two conditions that must concur in order for land to be considered as not agricultural, and therefore outside the ambit of the CARP, to wit: 1. the land has been classified in town plans and zoning ordinances as residential, commercial or industrial; and the town plan and zoning ordinance embodying the land classification has been approved by the HLURB or its predecessor agency prior to 15 June 1988.

2. **ID.; ID.; FOR THE LAND TO BE PLACED UNDER THE COVERAGE OF CARP IS THAT THE LAND MUST EITHER BE PRIMARILY DEVOTED TO OR BE SUITABLE FOR AGRICULTURE.—** In *Holy Trinity Realty & Development Corporation v. Dela Cruz, et al.*, the Court had the occasion to rule that "(v)erily, the basic condition for land to be placed under the coverage of Republic Act No. 6657 is that **it must either be primarily devoted to or be suitable for agriculture**. Perforce, land that is not devoted to agricultural activity is outside the coverage of Republic Act No. 6657." x x x Also, Sec. 3 (b) of said law defines "agricultural activity" as "the cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry or fish, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by person whether natural or juridical. x x x Indeed, under the facts and the law obtaining herein, the above

landholdings of petitioners are not agricultural lands, have not been devoted into any agricultural activity, and the defendants have not given proof of any tenancy relationship in their favor over the same.

3. ID.; ID.; TENANCY RELATIONSHIP; THE BURDEN OF PROOF RESTS ON THE ONE CLAIMING TO BE A TENANT TO PROVE HIS AFFIRMATIVE ALLEGATION BY SUBSTANTIAL EVIDENCE; NOT ESTABLISHED IN CASE AT BAR.— Section 22 expressly provides who are the qualified beneficiaries of lands covered by the CARP: x x x Again, and even on the basis of the above parameters, the respondents failed to discharge the burden of proving that they are tenants or at least farmers/farmworkers or actual tillers directly working on the subject property. In *Quintos v. Dept. of Agrarian Reform Adjudication Board, et al.*, where the Court reversed and set aside the Decision and Resolution of the Court of Appeals, it stated that: The burden of proof rests on the one claiming to be a tenant to prove his affirmative allegation by substantial evidence. **His failure to show in a satisfactory manner the facts upon which he bases his claim would put the opposite party under no obligation to prove his exception or defense.** The rule applies to civil and administrative cases. x x x [T]he records of the case is bereft of any substantial evidence to support the respondents' claim that they are farmers/tillers of the subject property. x x x Moreover, in the earlier ejectment suit filed by the petitioners against the respondents, the MTC of Cabuyao, Laguna, after trial and after conducting an ocular inspection of the subject land, ordered the eviction of the respondents. As declared by the lower court, which was affirmed all the way up to this Court, "there was **no tenancy relationship** between the parties" x x x Thus, it would be the height of inequity and injustice if the petitioners herein be unjustly deprived of the subject properties when factual findings establish that the same are not agricultural and, therefore, beyond the ambit of R.A. No. 6657. After all, distributing the subject land to unqualified beneficiaries such as herein respondents will unjustly enrich them at petitioners' damage.

APPEARANCES OF COUNSEL

Ricardo J.M. Rivera Law Office for petitioners.

D E C I S I O N

PEREZ, *J.*:

Petitioners Heirs of Pacifico Gonzales seek a review of the Decision[1] dated 26 July 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 123466, which affirmed the Decision[2] dated 2 December 2011 of the Office of the President (OP) that the subject property is within the ambit of the Comprehensive Agrarian Reform Program (CARP) of the government.

Antecedents

Subject of the controversy is a parcel of land located at Sitio Guinting, Brgy. Casile, Cabuyao, Laguna covered by four (4) separate Transfer Certificates of Title (TCT) Nos. T-68211, T-28288, T-434931 and T-68212 of the Registry of Deeds of Calamba, Laguna with a total combined area of 49.8 hectares, registered under the name of Pacifico Gonzales, petitioners' predecessor-in-interest.

It appears that, based on the records provided by the Department of Agrarian Reform (DAR)-Provincial Agrarian Reform Office (PARO), the subject properties have Notices of Coverage under Republic Act (R.A.) No. 6657, otherwise known as the Comprehensive Agrarian Reform Law, dated 13 February 1995 and 18 October 2000, respectively.

On 19 April 2001, the Department of Environment and Natural Resources (DENR) issued Inspection Report[3] declaring the subject properties exempt from CARP coverage on the following grounds:

1. The land is more than 18% in slope;
2. It is not irrigated;

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[1] *Rollo*, pp. 45-51; Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Mario V. Lopez and Samuel H. Gaerlan concurring.

[2] *Id.* at 192-196.

[3] *Id.* at 273.

3. 70% of the land is not cultivated;
4. It is not planted to rice and corn;
5. That other appropriate government agencies had already been consulted, their approval sought and was granted.

Inspecting Officer Errol C. Africano of the DENR-Community Environment and Natural Resources Office (CENRO) in Los Baños, Laguna then later executed a Certification subscribed on 12 January 2012[4] affirming the fact that he officially prepared and submitted the said Inspection Report.

The Municipal Planning and Development Coordinator (MPDC) of Cabuyao, Laguna issued a Certification dated 18 July 2002 classifying the subject properties as a municipal park. This property was earlier zoned as a municipal park based on Municipal Ordinance No. 110-54, Series of 1979, approved by the Housing and Land Use Regulatory Board (HLURB) on 24 June 1980 under Board Resolution No. 38-2, Series of 1980, long before the Notice of Coverage was issued by the DAR on 13 February 1995 and 18 October 2000.

On 30 July 2002, the Municipal Agrarian Reform Office (MARO)-Region IV, through Job A. Candanido, issued a Certification[5] certifying that the properties of the petitioners are not covered by the Operation Land Transfer (OLT) pursuant to Presidential Decree No. 27.

On 24 September 2002, the petitioners filed a complaint for Ejectment against the respondents before the Municipal Trial Court (MTC) of Cabuyao, Laguna docketed as Civil Case No. 940.

Meanwhile, on 13 August 2003, the late Luningning Gonzales filed an Application for Exemption/Clearance[6] pursuant to DAR Administrative No. 04, Series of 2003. In support of the application, the petitioners submitted the following documents:

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[4] *Id.* at 274.

[5] *Id.* at 272.

[6] *Id.* at 72-81.

1. Sworn Application for Exemption of Clearance pursuant to DAR Administrative No. 04, Series of 2003;
2. Special Power of Attorney executed by the petitioners appointing Roger Banzuela as their attorney-in-fact to represent them in their Application for Exemption of Clearance with DAR;
3. Certified true copies of the TCTs of the subject landholdings;
4. Copies of Tax Declarations covering the applied properties;
5. MPDC Certification dated July 18, 2002, that the subject properties were zoned as municipal park based on Municipal Ordinance No. 110-54, Series of 1979, approved by the HLURB on June 25, 1980 under Board Resolution No. 38-2, Series of 1980;
6. National Irrigation Administrative (NIA), Region IV Certification dated December 6, 2001, that the subject properties are not irrigable lands and not covered by an irrigation project with funding commitment;
7. MARO Certification issued on July 30, 2002 that the subject property is not covered by Operation Land Transfer pursuant to Presidential Decree No. 27;
8. Affidavit of Undertaking executed on July 8, 2003 by Roger Banzuela relative to the payment of disturbance compensation, posting of billboard and tenancy;
9. Lot plan and vicinity map of the applied properties; and
10. Affidavit of Undertaking dated June 9, 2005 executed by Luningning Gonzales (widow of the late Pacifico Gonzales), which states, among others, that the landowners are willing to pay disturbance compensation in the form of a relocation site for occupants within the applied properties.

On 2 August 2006, the MTC of Cabuyao, Laguna rendered a decision in favor of the late Luningning Gonzales in Civil Case No. 940, thus:

WHEREFORE, judgment is rendered in favor of plaintiff and against [respondents]. Accordingly, [respondents] and all persons claiming rights under them are ordered:

1. to vacate the subject premises and peacefully surrender possession thereof to plaintiff;

2. to pay plaintiff the amount of ₱43,000.00 as reasonable monthly rental from September 7, 2002 until they completely vacate the subject premises; [and]

3. to pay plaintiff the sum of ₱400,000.00 as attorney's fees and litigation related expenses and the cost of the suit.[7]

The MTC held that the evidence presented by the respondents failed to prove the essential requisites of tenancy relationship between plaintiff and respondents, because: (1) the MPDC classified the subject parcels of land as a municipal park; (2) there is no evidence of (a) plaintiff's consent to the tenancy relationship, and (b) defendants' status as farmers-beneficiaries; (3) the DENR *Inspection Report* and the *Affidavit* of Inspection Officer Errol C. Africano proved that the subject property is outside CARP coverage; and (4) defendants failed to prove (a) actual cultivation of the subject properties, and (b) harvest-sharing with the landowners.

On 11 September 2006, the respondents appealed to the Regional Trial Court (RTC) of Biñan, Laguna, assailing the MTC's assumption of jurisdiction over the complaint, maintaining the existence of a tenancy relationship and their status as *bonafide* tenants and farmer-beneficiaries. On 17 May 2007, the RTC rendered a decision[8] affirming *in toto* the decision of the MTC.

Aggrieved, respondents herein filed a Petiton for Review under Rule 42 with the CA assailing the MTC Decision and the RTC Order. Finding said petition not meritorious, the CA affirmed the 17 May 2007 Decision and 30 October 2008 Order of the RTC in Civil Case No. B-7066.[9]

Respondents went up to this Honorable Court, which denied the petition for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise of the Court's discretionary appellate jurisdiction.[10]

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[7] *Id.* at 250.

[8] *Id.* at 251-254.

[9] *Id.* at 256-271.

[10] *Id.* at 181.

Rulings of the DAR

In his Order dated 19 September 2006, then DAR OIC-Secretary Nasser C. Pangandaman (OIC-Secretary Pangandaman) acted on the application of the late Luningning Gonzales and ruled as follows:

The Director of Special Concerns Staffs, Department of Agrarian Reform, in a letter dated 13 April 2005 requested for the early resolution of the instant application and the conduct of an ocular inspection of the applied properties. The said request was based on the letter of the Samahang ng Farmer Beneficiaries ng Sitio Guintang, Casile, Cabuyao, Laguna addressed to the Special Concerns Staffs Office. These farmers are allegedly occupants and tillers of the subject landholdings.

On 19 May 2005, the Center for Land Use Policy, Planning and Implementation (CLUPPI) Inspection Team conducted an ocular inspection on the subject properties and found the following:

- The applied properties are contiguous, and with dominantly rolling to steep topography and located at the boundary of Cabuyao, Laguna and Tagaytay, Cavite;
- The land uses of the landholdings are residential and agricultural with approximately 70 families therein. The agricultural areas are planted with pineapple, coconuts and bananas;
- No irrigation system nor irrigable lands is seen within the applied properties and the adjacent or surrounding areas;
- Accessible to any type of land transportation and 25 to 30 kilometers away from the town proper of Cabuyao, Laguna; and
- The residential houses are built with lumber materials and others are made up of mixture concrete and lumber materials. There exist an ongoing construction of residential houses in the area by the occupants.

Based on the records provided by the DAR Provincial Agrarian Reform Office the applied properties have Notices of Coverage under Republic Act (R.A.) No. 6657 dated 13 February 1995 and 18 October 2000, respectively.

Department of Justice (DOJ) Opinion No. 44, Series of 1990, which states that lands already re-classified for commercial, industrial or residential use duly approved by the HLURB prior to the effectivity of R.A. No. 6657 on 15 June 1998, no longer need any conversion clearance. A proper interpretation of the said DOJ Opinion includes re-classification for "some other urban purposes."

In this case, the subject landholdings were re-classified as municipal park as certified by the MPDC of Cabuyao, Laguna, ratified by the HLURB prior to the effectivity of R.A. No. 5567 on 15 June 1988. Since a municipal park is a re-classification which falls under the term "some other urban purpose" it necessarily follows that the same is not within the ambit of the Comprehensive Agrarian Reform Program.

WHEREFORE, in the light of the foregoing premises, the instant Application for Exemption Clearance pursuant to DAR Administrative Order No. 4, Series of 2003 based on DOJ Opinion No. 44, Series of 1990 is hereby **APPROVED**, subject to the following conditions:

- Disturbance compensation shall be paid to affected tenants, farmworkers, or bonafide occupants, if any, in such amount or kind as may be mutually agreed and approved by the DAR within sixty (60) days from the date of receipt by the applicants of this Order, proof of such payment to be furnished the CLUPPI Secretariat within five (5) days from the expiration of the aforementioned 60-day period;
- The applicants shall allow duly authorized representatives of the DAR free and unhampered access to the subject properties for the purpose of monitoring compliance with the terms and conditions hereof; and
- The DAR reserves the right to cancel or withdraw this Order for misrepresentation of facts integral to its issuance and/or for violation of the law and applicable rules and regulations in land use exemption.

ACCORDINGLY, the Notices of Coverage dated 13 February 1995 and 18 October 2000, respectively, are hereby **LIFTED**.[11]

The respondents, however, moved for reconsideration of the said Order. On 19 June 2007, the same OIC-Secretary

[11] *Id.* at 68-70.

Pangandaman issued an Order granting said motion for reconsideration under the following reasons:

On 07 March 2007, the CLUPPI Committee-B in its 40th Meeting deliberated the said Motion for Reconsideration taking into account the Ocular Inspection Report, the issues raised by the [respondents and Comments of the [petitioners] on the Motion for Reconsideration. The Committee recommended to grant the Motion for Reconsideration based on the ground that the Supreme Court's Decision in G.R. Nos. 112526 and 118838, in the case of Sta. Rosa Realty Development Corporation (SRRDC) vs. Amante, et al., was adopted and applicable to the instant case.

The Amended Decision pages 24 and 25 stated that SRRDC cites the case of Natalia Realty, Inc vs. DAR, wherein it was ruled that lands not devoted to agricultural activity and not classified as mineral or forest by the DENR and its predecessor agencies, and not classified in town plans and zoning ordinances as approved by the HLURB and its preceding competent authorities prior to the enactment of R.A. No. 6657 on June 15, 1988, are outside the coverage of the CARP. Said ruling, however, finds no application in the present case. As previously stated, the Municipal Ordinance No. 110-54 of the Municipality of Cabuyao did not provide for any retroactive application nor did it convert existing agricultural lands into residential, commercial, industrial, or institutional. Consequently, the subject property remains agricultural in nature and therefore within the coverage of the CARP.

Accordingly, the 16 May 2005 Supreme Court Decision became final and executory on 4 September 2006. Said Decision annulled the classification of landholdings in Barangay Casile Cabuyao, Laguna prior to 15 June 1998 and declared the same as still agricultural.

WHEREFORE, premises considered, the Motion for Reconsideration of the DAR Order dated 19 September 2006 filed by Juanito De Leon, et. al., is hereby **GRANTED** and the DAR Order dated 19 September 2006 is hereby **REVOKED**. The Notices of Coverage dated 13 February 1995 and 18 October 2000 are hereby upheld."[12] (Underlining supplied)

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[12] *Id.* at 102-104.

Ruling of the Office of the President

Petitioners made a timely appeal[13] to the OP on 27 September 2007 as well as submitted the required Draft Decision.[14] On 2 December 2011, the OP rendered a Decision[15] affirming the DAR's appealed Order of 19 June 2007. The OP held that:

> The proceedings before the regular courts being cited by appellants (herein petitioners) do not bind the DAR in the disposition of the instant case. In fact, a more recent Certification from the DENR dated 5 January 2005, is a matter of record, stating that on the basis of a series of surveys conducted on 7, 8, 9, 10, 15 and 16 December 2004, the topographical condition of the subject properties fall below the eighteen percent (18%) slope. The DAR, referring to the aforecited case of SRRDC vs. Amante (supra), went on to explain in the 19 June 2006 Order, that:
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> > Accordingly, the 16 May 2005 Supreme Court Decision became final and executory on 04 September 2006. Said Court Decision annulled the classification of landholdings in Barangay Casile, Cabuyao, Laguna prior to 15 June 1988 and declared the same as still agricultural.[16]

A timely Motion for Reconsideration was filed by the petitioners, but was also denied by the OP in its Resolution[17] dated 27 January 2012.

Hence, petitioners appealed[18] to the CA by Petition for Review under Rule 43 of the 1997 Rules of Civil Procedure the above OP ruling. The CA required the respondents to file their comment thereto but never did so the case was declared submitted for decision.[19]

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[13] *Id.* at 106-120.

[14] *Id.* at 135-148.

[15] *Id.* at 192-196.

[16] *Id.* at 195.

[17] *Id.*at 212.

[18] *Id.* at 212-241.

[19] *Id.* at 243-245; Resolution dated 13 June 2013 of the CA.

Ruling of the Court of Appeals

On 26 July 2013, the CA rendered its questioned Decision, which affirmed the decision of the OP, holding that at the time Barangay Casile was classified into a municipal park it was already agricultural,[20] and since Municipal Ordinance No. 110-54 dated 3 November 1979 did not provide for the retroactivity of Barangay Casile's classification, the enactment of said ordinance should not affect the nature of the land. Thus, Barangay Casile remains an agricultural area. It continued to declare that since the subejct parcels of land are all situated in Barangay Casile, accordingly, they are agricultural lands. Thus, the subject parcels of land are covered under the CARP.

Petitioners' Motion for Reconsideration was denied. Hence, this appeal by Petition for Review on *Certiorari*.

The Issues

Essentially, the petitioners relied on issues summarized as follows:

I. Whether or not the subject properties are agricultural.

II. Whether or not there is a tenancy relationship between the petitioners and the respondents which would entitle the latter as "qualified beneficiaries" relative to the Department of Agrarian Reform's inclusion of the subject properties under the coverage of the Comprehensive Agrarian Reform Program.

Ruling

We find merit in the petition.

On the first issue, the petitioners contend that in the CA Decision, its discussion on the determination of whether or not the subject parcels of land is agricultural failed to touch on the arguments they have been pointing out all along.

Petitioners stressed that the land is **more than 18% in slope**, it is **not irrigated**, **70% thereof is not cultivated**, and is **not**

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[20] *Sta. Rosa Realty Development Corp. v. Amante*, 493 Phil. 570 (2005).

planted to rice and corn, as clearly stated in the 19 April 2001 Inspection Report issued by the DENR through its Community Environmental and Natural Resources Office. Accordingly, the findings of the Inspecting Officer, Mr. Errol C. Africano (Inspecting Officer Africano), affirmed that the subject land is not an agricultural land; hence, by express provision of law, excluded from the coverage of the Comprehensive Agrarian Reform Law. Section 10 thereof states that:

> Sec 10. *Exemptions and Exclusions*. — Lands actually, directly and exclusively used and found to be necessary for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watersheds, and mangroves, national defense, school sites and campuses including experimental farm stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production centers, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and **all lands with eighteen percent (18%) slope and over, except those already developed shall be exempt from the coverage of the Act.** (Emphasis and underlining supplied)

In *Luz Farms v. Hon. Secretary of the Dep't. of Agrarian Reform*,[21] this Court had ruled that agricultural lands are only those which are arable and suitable.

Bearing this in mind, the assertion of petitioners that the subject land may not be considered agricultural at all since it is not arable and suitable for agriculture cannot be disregarded. After all, the findings of DENR Inspecting Officer Africano that the subject land is not irrigated, 70% thereof is not cultivated, and is not planted to rice and corn, remain unrefuted.

The OP based its 2 December 2011 Decision on a "**more recent Certification from the DENR dated 5 January 2005**,

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[21] 270 Phil. 151, 159 (1990).

is a matter of record, stating that on the basis of a series of surveys conducted on 7, 8, 9, 10, 15 and 16 December 2004, the topographical condition of the subject properties fall below the eighteen percent (18%) slope." However, petitioners argue that **this alleged certification was never presented**. The 19 June 2007 Order of the DAR did not utilize any such alleged certification from the DENR certification dated 5 January 2005. It cannot be gainsaid that it would be unfair to use evidence against the petitioners which was never shown or presented to them.

Furthermore, in a Certification[22] dated 6 December 2001, Regional Irrigation Manager Baltazar H. Usis of the National Irrigation Administration Office of the Regional Irrigation Manager Region IV, Pila, Laguna, certified that the subject property has been found to be **NOT IRRIGABLE LANDS** and not covered by any irrigation project with funding commitment.

The Court is not inclined to set aside the credible evidence presented by the petitioners where the veracity of such reports have been attested to by the concerned government agencies, or the same were not disputed, invalidated or struck down as being issued beyond or outside the authority of the concerned officials.

Petitioners convincingly argued as well that the subject landholding is not agricultural for said property was earlier zoned as a municipal park based on Municipal Ordinance No. 110-54, Series of 1979, approved by the HLURB on 25 June 1980 under Board Resolution No. 38-2, Series of 1980. Undoubtedly, this re-classification cannot just be overturned by a simple statement from then OIC-Secretary Pangandaman, sans any viable evidence, that the subject Ordinance "did not provide for any retroactive application," thereby resulting in the inconclusive or baseless declaration that "the subject property remains agricultural in nature and therefore within the coverage of the CARP."

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[22] *Id.* at 95.

This Court, in *Heirs of Luis A. Luna, et al. v. Afable, et al.*,[23] identified the two conditions that must concur in order for land to be considered as not agricultural, and therefore outside the ambit of the CARP, to wit:

1. the land has been classified in town plans and zoning ordinances as residential, commercial or industrial; and
2. the town plan and zoning ordinance embodying the land classification has been approved by the HLURB or its predecessor agency prior to 15 June 1988.[24]

There is no doubt that, measured using the said standard as provided in the *Heirs of Luna, et al.* case, Municipal Ordinance No. 110-54, Series of 1979, approved by the HLURB on 25 June 1980 under Board Resolution No. 38-2, Series of 1980, clearly established that the subject property of petitioners is outside the CARP coverage. The act of the local legislative body of Cabuyao, Laguna cannot just be ignored. In the said decision, the Court further clarified that:

> It is undeniable that local governments have the power to reclassify agricultural into non-agricultural lands. Section 3 of RA No. 2264 (The Local Autonomy Act of 1959) specifically empowers municipal and/or city councils to adopt zoning and subdivision ordinances or regulations in consultation with the National Planning Commission. By virtue of a zoning ordinance, the local legislature may arrange, prescribe, define, and apportion the land within its political jurisdiction into specific uses based not only on the present, but also on the future projection of needs. It may, therefore, be reasonably presumed that when city and municipal boards and councils approved an ordinance delineating an area or district in their cities or municipalities as residential, commercial, or industrial zone pursuant to the power granted to them under Section 3 of the Local Autonomy Act of 1959, they were, at the same time, reclassifying any agricultural lands within the zone for non-agricultural use; hence, ensuring the implementation of and compliance with their zoning ordinances.

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[23] 702 Phil. 146 (2013).

[24] *Id.* at 167.

The regulation by local legislatures of land use in their respective territorial jurisdiction through zoning and reclassification is an exercise of police power. The power to establish zones for industrial, commercial and residential uses is derived from the police power itself and is exercised for the protection and benefit of the residents of a locality. Ordinance No. 21 of the Sangguniang Bayan of Calapan was issued pursuant to Section 3 of the Local Autonomy Act of 1959 and is, consequently, a valid exercise of police power by the local government of Calapan.

The second requirement — that a zoning ordinance, in order to validly reclassify land, must have been approved by the HLURB prior to 15 June 1988 — is the result of Letter of Instructions No. 729, dated 9 August 1978. According to this issuance, local governments are required to submit their existing land use plans, zoning ordinances, enforcement systems and procedures to the Ministry of Human Settlements — one of the precursor agencies of the HLURB — for review and ratification.[25]

The CA posits that Municipal Ordinance No. 110-54 dated 3 November 1979, which was approved by the HLURB on 25 June 1980 under Board Resolution No. 38-2, Series of 1980, that classified Barangay Casile into a municipal park had no retroactive application,[26] citing the case of *Sta. Rosa Realty Development Corp. v. Amante*.[27] However, the ruling of the Court in *KASAMAKA-Canlubang, Inc. v. Laguna Estate Development Corporation*,[28] where the petitioner therein argued that the municipal zoning ordinances classifying the disputed lands to non-agricultural did not change the nature and character of said lands from being agricultural, much less affect the legal relationship of the farmers and workers of the Canlubang Sugar Estate then existing prior to the granting of the order of conversion and the passage of the municipal zoning ordinances, squarely contravenes such stand. As held therein:

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[25] *Id.* at 167-169.

[26] *Rollo*, p. 50.

[27] *Supra* note 20.

[28] G.R. No. 200491, 9 June 2014, 725 SCRA 498.

In the case at bar, however, no such arrangement exists. Apart from a mere statement that the lands in dispute was once part of the vast portion of the Canlubang Sugar Estate, wherein a large number of farmworkers tilled the land, petitioner did not present any supporting evidence that will show an indication of a leasehold arrangement.

x x x x x x x x x

Had petitioner presented substantial eyidence proving the existence of an agricultural tenancy arrangement, We could have given probative value to petitioner's argument that municipal ordinances cannot affect nor discontinue legal rights and relationships previously acquired over the lands herein.[29]

Incidentally, on the matter of the existence of any agricultural tenancy arrangement, it must be emphasized that the ejectment case filed against herein respondents put the matter to rest. To reiterate, it was established therein that no proof was ever presented to show the existence of such tenancy relationship between petitioners and respondents.

This being so, the respondents have no vested right over the property of petitioners before, during or after the issuance of the above Ordinance. As held in the case of *Heirs of Dr. Deleste, et al. v. Land Bank of the Phils., et.al.*,[30] the Court decreed that:

Verily, vested rights which have already accrued cannot just be taken away by the expedience of issuing a local zoning ordinance reclassifying an agricultural land into a residential/commercial area x x x.

x x x x x x x x x

This, however, raises the issue of whether vested rights have actually accrued in the instant case. In this respect, We reckon that under PD 27, tenant-farmers of rice and corn lands were "deemed owners" of the land they till as of October 21, 1972. This policy, intended to emancipate the tenant-farmers from the bondage of the soil, is given effect by the following provision of the law:

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[29] *Id.* at 514-515.

[30] 666 Phil. 350 (2011).

> The tenant farmer, whether in land classified as landed estate or not, shall be **deemed owner** of a portion constituting a family size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated. (Emphasis in the original)

It should be clarified that even if under PD 27, tenant-farmers are "deemed owners" as of October 21, 1972, this is not to be construed as automatically vesting upon these tenant-farmers absolute ownership over the land they were tilling. Certain requirements must also be complied with, such as payment of just compensation, before full ownership is vested upon the tenant-farmers. This was elucidated by the Court in *Association of Small Landowners in the Philippines, Inc. v. Sec. of Agrarian Reform*:

> It is true that P.D. No. 27 expressly ordered the emancipation of tenant-farmer as October 21, 1972 and declared that he shall "*be deemed the owner*" of a portion of land consisting of a family-sized farm except that no title to the land owned by him was to be actually issued to him unless and until he had become a full-pledged member of a duly recognized farmers cooperative. **It was understood, however, that full payment of the just compensation also had to be made first, conformably to the constitutional requirement.**
>
> When E.O. No. 228, categorically stated in its Section 1 that:
>
> > All qualified farmer-beneficiaries are now *deemed full owners* as of October 21, 1972 of the land they acquired by virtue of Presidential Decree No. 27.
>
> **it was obviously referring to lands already validly acquired under the said decree, after proof of full-pledged membership in the farmers cooperatives and full payment of just compensation.** Hence, it was also perfectly proper for the Order to also provide in its Section 2 that the "lease rentals paid to the landowner by the farmer-beneficiary after October 21, 1972 (pending transfer of ownership after full payment of just compensation), shall be considered as advance payment for the land."
>
> The CARP Law, for its part, conditions the transfer of possession and ownership of the land to the government on receipt by the landowner of the corresponding payment or the

> deposit by the DAR of the compensation in cash or LBP bonds with an accessible bank. **Until then, title also remains with the landowner. No outright change of ownership is contemplated either.** (Emphasis in the original)

Prior to compliance with the prescribed requirements, tenant-farmers have, at most, an inchoate right over the land they were tilling. In recognition of this, a CLT is issued to a tenant-farmer to serve as a provisional title of ownership over the landholding while the lot owner is awaiting full payment of [just compensation] or for as long as the [tenant-farmer] is an amortizing owner. "This certificate proves inchoate ownership of an agricultural land primarily devoted to rice and corn production. It is issued in order for the tenant-farmer to acquire the land" he was tilling.

Concomitantly, with respect to the LBP and the government, tenant-farmers cannot be considered as full owners of the land they are tilling unless they have fully paid the amortizations due them. This is because it is only upon such full payment of the amortizations that EPs may be issued in their favor.

In *Del Castillo v. Orciga*, We explained that land transfer under PD 27 is effected in two (2) stages. The first stage is the issuance of a CLT to a farmer-beneficiary as soon as the DAR transfers the landholding to the farmer-beneficiary in recognition that said person is its deemed owner. And the second stage is the issuance of an EP as proof of full ownership of the landholding upon full payment of the annual amortizations or lease rentals by the farmer-beneficiary.

In the case at bar, the CLTs were issued in 1984. Therefore, for all intents and purposes, it was only in 1984 that private respondents, as farmer-beneficiaries, were recognized to have an inchoate right over the subject property prior to compliance with the prescribed requirements. Considering that the local zoning ordinance was enacted in 1975, and subsequently approved by the HSRC in 1978, private respondents still had no vested rights to speak of during this period, as it was only in 1984 that private respondents were issued the CLTs and were deemed owners.

The same holds true even if EPs and OCTs were issued in 2001, since reclassification had taken place twenty-six (26) years prior to their issuance. Undeniably, no vested rights accrued prior to reclassification and its approval. Consequently, the subject property,

particularly Lot No. 1407, is outside the coverage of the agrarian reform program.[31] Emphasis omitted)

Applying the same to the instant case, when the subject landholding of petitioners was reclassified as a municipal park in 1979, the respondents, as claimed by the petitioners, "had **nothing** yet."[32] To be clear, they have no accrued vested rights therein prior to reclassification of the subject properties and even after approval thereof.

Moreover, petitioners' subject landholdings are not the same property which is involved in the *Sta. Rosa Dev't. Corp.* case wherein the Court declared the property involved therein as agricultural for the following reasons:

> Before Barangay Casile was classified into a municipal park by the local government of Cabuyao, Laguna in November 1979, it was part of a vast property popularly known as the Canlubang Sugar Estate. SRRDC claimed that in May 1979, "the late Miguel Yulo allowed the employees of the Yulo group of companies to cultivate a maximum area of one hectare each subject to the condition that they should not plant crops being grown by the Canlubang Sugar Estate, like coconuts and coffee, to avoid confusion as to ownership of crops. (*Rollo*, G.R. No. 11383, Memorandum to Respondents, p. 625). The consolidation and subdivision plan surveyed for SRRDC on March 10-15, 1984 (Exhibit "5", Folder of Exhibits) also show that the subject property is already agricultural at the time the municipality of Cabuyao enacted the zoning ordinance, and such ordinance should not affect the nature of the land. More so since the municipality of Cabuyao did not even take any step to utiliize the property as a park."[33] (Italics omitted)

However, no similar evidence was presented in the case at bar. No evidence that petitioners (or their predecessors-in-interest) ever allowed any of the respondents to plant crops on the subject parcels of land; and no similar consolidation and

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[31] *Id.* at 375-381.

[32] *Rollo*, p. 38.

[33] *Sta. Rosa Realty Development Corp. v. Amante*, *supra* note 20 at 595.

subdivision plans were submitted. Even assuming the properties involved in the present case were part of the Canlubang Sugar Estate before, it does not mean they were similarly planted with crops or sugar, much less that herein respondents were the one planting therein. In fact, not a portion of these properties were planted with sugar considering the sloping configuration of the land.[34]

In *Holy Trinity Realty & Development Corporation v. Dela Cruz, et al.*,[35] the Court had the occasion to rule that "(v)erily, the basic condition for land to be placed under the coverage of Republic Act No. 6657 is that i**t must either be primarily devoted to or be suitable for agriculture**. Perforce, land that is not devoted to agricultural activity is outside the coverage of Republic Act No. 6657."

Sec. 3 (c) of R.A. No. 6657 (The Comprehensive Agrarian Reform Act), provides that:

(c) Agricultural Land refers to land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land.

Also, Sec. 3 (b) of said law defines "agricultural activity" as "the cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry or fish, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by person whether natural or juridical.

Further, Section 4 thereof states that:

Sec. 4. *Scope*. — The Comprehensive Agrarian Reform Law of 1989 shall cover, regardless of tenurial arrangement and commodity produced, all public and private agricultural lands, as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture.

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[34] *Rollo*, p. 33.

[35] G.R. No. 200454, 22 October 2014, 739 SCRA 229, 255.

More specifically the following lands are covered by the Comprehensive Agrarian Reform Program:

(a) All alienable and disposable lands of the public domain devoted to or suitable for agriculture. No reclassification of forest or mineral lands to agricultural lands shall be undertaken after the approval of this Act until Congress, taking into account ecological, developmental and equity considerations, shall have determined by law, the specific limits of the public domain.

(b) All lands of the public domain in excess of the specific limits as determined by Congress in the preceding paragraph;

(c) All other lands owned by the Government devoted to or suitable for agriculture; and

(d) **All private lands devoted to or suitable for agriculture** regardless of the agricultural products raised or that can be raised thereon. (Emphasis and underlining supplied)

Indeed, under the facts and the law obtaining herein, the above landholdings of petitioners are not agricultural lands, have not been devoted into any agricultural activity, and the defendants have not given proof of any tenancy relationship in their favor over the same.

As to the second issue, since the subject land is clearly not agricultural, the herein respondents' claim that they are tenants, or at least, tillers of the subject land, as already discussed, should not be given credence at all.

Section 22 expressly provides who are the qualified beneficiaries of lands covered by the CARP:

Sec. 22. *Qualified Beneficiaries*. — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same barangay, or in the absence thereof, landless residents of the same municipality in the following order of priority:

(a) agricultural lessees and share tenants;
(b) regular farmworkers;
(c) seasonal farmworkers;
(d) other farmworkers;
(e) actual tillers or occupants of public lands;

(f) collectives or cooperatives of the above beneficiaries; and
(g) others directly working on the land.

Again, and even on the basis of the above parameters, the respondents failed to discharge the burden of proving that they are tenants or at least farmers/farmworkers or actual tillers directly working on the subject property.

In *Quintos v. Dept. of Agrarian Reform Adjudication Board, et al.*,[36] where the Court reversed and set aside the Decision and Resolution of the Court of Appeals, it stated that:

> The burden of proof rests on the one claiming to be a tenant to prove his affirmative allegation by substantial evidence. **His failure to show in a satisfactory manner the facts upon which he bases his claim would put the opposite party under no obligation to prove his exception or defense.** The rule applies to civil and administrative cases.[37] (Emphasis and underlining supplied)

In the Decision of the OP dated 2 December 2011, which was practically just a verbatim reproduction of the Order dated 19 June 2007 of the then OIC-Secretary Pangandaman, it partly reads as follows:

> Based on the PARO's Report, there are thirty-six (36) identified potential beneficiaries.

It bears stressing that the **alleged PARO Report was never presented to the petitioners nor a copy thereof was furnished to them**. The petitioners were, likewise, not heard on this matter. No evidence was shown or presented by PARO as the basis of such Report. In any case, the declaration was even **tentative and uncertain**. The alleged "PARO Report" as quoted, did not categorically say that there were 36 beneficiaries. It merely stated there were 36 "**potential beneficiaries**," clearly signifying uncertainty and indefiniteness.[38]

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[36] 726 Phil. 367 (2014).

[37] *Id.* at 375.

[38] *Rollo*, p. 102.

The OP maintained in its 27 January 2012 Resolution that "tenancy relations is not material under the CARP" and therefore, the alleged failure of the respondents to establish the existence of a tenancy relationship is, likewise, immaterial. This statement is clearly contrary to law and jurisprudence. Instead, this is even an admission of the absence of such relationship, which is a pre-requisite to any grant of entitlement in favor of the respondents under R.A. No. 6657.

Nevertheless, the records of the case is bereft of any substantial evidence to support the respondents' claim that they are farmers/tillers of the subject property. The mere presence of pineapple, coconuts, and bananas within the areas, as averred by DAR, citing the non-existent *CLUPPI Inspection Report*, does not necessarily establish that respondents are farmworkers or actual tillers therein. DAR also made mention of the attendance of backyard hog raising within the subject property. As pointed out earlier, in the *Luz Farms* case, the Court held that "[i]t is evident from the foregoing discussion that Section II of R.A. No. 6657 which includes "private agricultural lands devoted to commercial livestock poultry and swine raising" in the definition of of "commercial farms" is invalid."[39]

Moreover, in the earlier ejectment suit filed by the petitioners against the respondents, the MTC of Cabuyao, Laguna, after trial and after conducting an ocular inspection of the subject land, ordered the eviction of the respondents. As declared by the lower court, which was affirmed all the way up to this Court, "there was **no tenancy relationship** between the parties" and this is due to the following findings:

(1) x x x x x x x x x

(2) The consent of the plaintiff to the alleged tenancy relationship with the defendants was not sufficiently established in the instant case. There is **no showing that the defendants are farmer-beneficiaries** as declared by DAR as the proper certification was not issued by the said office x x x;

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[39] *Supra* note 21 at 160.

(3) x x x x x x x x x

(4) The defendants **have not shown that they have personally cultivated the land allegedly under their management**. They have not submitted affidavits or other evidences attesting to such fact x x x;

(5) The defendants **have not sufficiently shown that there is sharing of harvest between them and the plaintiff**. It is essential that together with the other requisites of tenancy relationship, the agricultural tenant must prove that he transmitted the landowner's share of the harvest. They have not submitted their affidavits attesting to such fact". (Emphasis supplied. Annex "Y" of the Petition)

As discussed earlier, this finding was affirmed by both the RTC and the CA. In the RTC Decision, the court held:

The court *a quo* granted the complaint for ejectment and denied the defense of the defendants for the **defendants failed to prove that the property is an agricultural land and the presence of tenancy relationship** to this case, which the court finds to be in order especially so that the evidence for the plaintiff as enumerated by the court a quo in its decision's number 1 to 5, page 3 proved it otherwise.[40] x x x

While in the CA Decision dated 12 November 2009 in CA-G.R. SP No. 106951, the said court discussed the herein respondents' failed evidence on tenancy, as follows:

Indeed, the foregoing case presents a dearth of evidence to prove petitioners' contention of tenancy. In a vain attempt to prove their claim, they proffered in evidence, the Sinumpaang Salaysay of a certain Pedro de Sagun, the purported caretaker of the subject properties entrusted with the receipt of tax payments from petitioners. This piece of evidence does not constitute proof of tenancy as payment of taxes is not among the above-stated essential requisites. At best, it only proves petitioners' payment of their share in land taxes, nothing more. Moreover, **petitioners' status as farmer-beneficiaries remains a contentious issue**. For while there appears on record petitioners Applications to Purchase and Farmer's Undertaking relative to the

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[40] *Rollo*, p. 253.

subject properties, there is nothing to indicate the approval of said application. As aptly observed by the MTC, **the record fails to establish petitioners' status as farmer-beneficiaries**. Certainly these pieces of evidence cannot sustain a finding of tenancy. Further, **neither is there any proof of the elemental act of cultivation, consent of the landowner and harvest-sharing**. We reiterate that to establish a tenancy relationship, concrete and independent evidence, aside from self-serving statements, is needed to prove personal cultivation, sharing of harvests, or consent of the landowner, and the lone fact of one's working on another's landholding does not raise the presumption of agricultural tenancy. No such evidence exists in this case.[41] (Emphasis and underlining supplied)

The aggrieved respondents sought relief from the Court by way of a Petition for Review on *Certiorari* which, however, was denied for failure of the herein respondents to sufficiently show any reversible error in the assailed judgment to warrant the exercise of the Court's discretionary appellate jurisdiction.[42]

To recall, in the *Holy Trinity* case, the Court stressed that:

> It is not difficult to see why Republic Act No. 6657 requires agricultural activity in order to classify land as agricultural. **The spirit of agrarian reform laws is not to distribute lands *per se*, but to enable the landless to own land for cultivation. This is why the basic qualification laid down for the intended beneficiary is to show the willingness, aptitude and ability to cultivate and make the land as productive as possible.** This requirement conforms with the policy direction set in the 1987 Constitution to the effect that agrarian reform laws shall be founded on the right of the landless farmers and farmworkers to own, directly or collectively, the lands they till.[43] (Emphasis and underlining supplied)

Thus, it would be the height of inequity and injustice if the petitioners herein be unjustly deprived of the subject properties when factual findings establish that the same are not agricultural and, therefore, beyond the ambit of R.A. No. 6657. After all,

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[41] *Id.* at 174.

[42] *Id.* at 214-241.

[43] *Supra* note 35 at 256.

distributing the subject land to unqualified beneficiaries such as herein respondents will unjustly enrich them at petitioners' damage. The Court emphasized in *Loria v. Muñoz, Jr.*[44] that:

> The principle of unjust enrichment has two conditions. First, a person must have been benefited without a real or valid basis or justification. Second, the benefit was derived at another person's expense or damage.[45]

Indeed, and based thereon, the petitioners will end up suffering more and being unjustly deprived of their property with nary any rhyme nor reason, much to their damage and prejudice.

The Court in *Gelos v. Court of Appeals*,[46] quoting Justice Alicia Sempio-Diy, enunciates that "[it has been declared that] the duty of the court to protect the weak and the underprivileged should not be carried out to such an extent as deny justice to the landowner whenever truth and justice happen to be on his side."

By the same token, the Court in *Land Bank of the Philippines v. Court of Appeals, Pedro L. Yap, et al.*,[47] asserts that:

As eloquently stated by Justice Isagani Cruz:

> [S]ocial justice or any justice for that matter is for the deserving, whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in case of reasonable doubt, we are called upon to tilt the balance in favor of the poor, to whom the Constitution fittingly extends its sympathy and compassion. But never is it justified to prefer the poor simply because they are poor, or to reject the rich simply because they are rich, for justice must always be served, for poor and rich alike, according to the mandate of the law.

Suffice it to say, the taking of the subject property by blatantly ignoring the facts and the law that are clearly not supportive

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[44] G.R. No. 187240, 15 October 2014, 738 SCRA 397.

[45] *Id.* at 408.

[46] 284 Phil. 114, 124 (1992).

[47] 319 Phil. 246, 249-250 (1995).

of the cause of the respondents would be tantamount to an oppressive and unlawful act of the state against herein petitioners.

WHEREFORE, in light of the foregoing, the Court hereby **GRANTS** the instant petition and **REVERSED** and **SET ASIDE** the Decision dated 26 July 2013 of the Court of Appeals, including the Decision dated 2 December 2011 rendered by the Office of the President and the 19 June 2007 Order issued by the Department of Agrarian Reform. In turn, the Court thus **REINSTATES** the 19 September 2006 Order of the Department of Agrarian Reform.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 210617. December 7, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ORLANDO FERNANDEZ *y* ABARQUIZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; THE *CORPUS DELICTI* IN CASES INVOLVING DANGEROUS DRUGS IS THE PRESENTATION OF THE DANGEROUS DRUG ITSELF.— Time and again, in every prosecution for illegal sale of dangerous drugs, the following elements should first be established: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing

sold and the payment. Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti* which means the actual commission by someone of the particular crime charged. The *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself.

2. ID.; ID.; ID.; PROCEDURAL LAPSES IN THE HANDLING OF THE SEIZED DRUGS ARE NOT *IPSO FACTO* FATAL TO THE PROSECUTION'S CAUSE, PROVIDED THAT THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED; CASE AT BAR.— [T]he chain of custody of the confiscated drugs, paraphernalia and other seized items was evidently in accordance with the mandate of Section 21, Article II of the Implementing Rules and Regulations of RA 9165, x x x As enunciated in the case of *People v. Guzon*, the rule includes the *proviso* that procedural lapses in the handling of the seized drugs are not *ipso facto* fatal to the prosecution's cause, provided that the integrity and the evidentiary value of the seized items are preserved. In the case at bench, notwithstanding the fact that PO3 Baruelo was not able to immediately mark the confiscated items at the place of arrest, such procedural lapse is found to be not detrimental to the prosecution's case. Nonetheless, PO3 Baruelo has complied with the required marking at the nearest police station as it was more practicable at that time. The persons, whose presence is required in Section 21 of the IRR, were also present during the physical inventory and taking of the photograph of the confiscated items. In view of the foregoing, this Court has taken cognizance of the fact that a testimony of a perfect chain is not always the standard because it is almost always impossible to obtain. Moreover, the saving clause provided in the IRR rather applies in this case since the police officers credibly showed the effort to preserve the integrity of the dangerous drugs according to the letters of the law and that the identity of the dangerous drugs can be ascertained with moral certainty that the confiscated items were the same as those presented in court.

3. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; DENIAL AS A DEFENSE CRUMBLES IN THE LIGHT OF THE WITNESS' POSITIVE IDENTIFICATION OF THE ACCUSED-APPELLANT.—

> Mere denial of the appellant of the charge against him is inherently a weak defense and has always been viewed upon with disfavor by the courts due to the ease with which it can be concocted. Inherently weak, denial as a defense crumbles in the light of positive identification of the appellant as in this case.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

This is an appeal filed by herein appellant Orlando Fernandez *y* Abarquiz (Fernandez) from the Decision[1] of the Court of Appeals (CA) in CA G.R. CR-HC No. 05626, dated 26 July 2013, affirming the Decision[2] of the Regional Trial Court of Dagupan City (RTC-Dagupan City) in Criminal Case No. 2009-0659-D, dated 9 May 2012, convicting the appellant for Violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).[3]

The appellant was charged in an Information[4] that reads:

> That on or about the 18th day of November 2009, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the [herein appellant FERNANDEZ], did then and there, willfully, unlawfully and criminally, sell and deliver to a customer Methamphetamine Hydrochloride (*Shabu*) contained in one (1) heat-sealed plastic sachet, weighing more or less 0.13 gram, without authority to do so.

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[1] *Rollo*, pp. 2-15; penned by Associate Justice Mario V. Lopez with Associate Justices Jose C. Reyes, Jr. and Samuel H. Gaerlan, concurring.

[2] Records, pp. 121-126; penned by Judge Genoveva Coching-Maramba.

[3] Known as the "Comprehensive Dangerous Drugs Act of 2002."

[4] Records, p. 1.

Contrary to [Section 5, Article II, RA 9165].

On arraignment,[5] the appellant pleaded NOT GUILTY to the crime charged. At the pre-trial conference, the parties stipulated as follows:

1. Identity of the [herein appellant] as the same [appellant] who was arraigned and pleaded not guilty to the commission of the crime charged.

2. That the [appellant] was arrested at Gonzales Street, Bonuan Boquig, Dagupan City, at 4:55 in the afternoon of [18 November 2009].[6]

Following the pre-trial conference, trial on the merits ensued, where the prosecution presented the following witnesses: (1) Police Senior Inspector Emelda Roderos (PSI Roderos), the Forensic Chemist who examined the specimen subject of the buy-bust operation;[7] (2) Police Inspector Apollo Calimlim (PI Calimlim), the duty investigator who prepared the Spot Report, the Affidavit of Statement and the Request for Laboratory Examination of the seized items;[8] (3) PO1 Mario Mondero (PO1 Mondero);[9] (4) Police Chief Inspector Froilan Lopez (PCI Lopez), the team leader of the buy-bust operation against the appellant;[10] (5) Police Officer 3 Christopher Baruelo (PO3 Baruelo), the designated poseur-buyer and the one who prepared the buy-

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[5] *Id.* at 29-30; per RTC Order dated 20 April 2010 and Certificate of Arraignment also dated 20 April 2010.

[6] *Id.* at 36-37; per Pre-Trial Order dated 29 April 2010.

[7] *Id.* at 49-50; her testimony was, however, dispensed with per stipulation of the parties as contained in the RTC Order dated 20 May 2010.

[8] TSN, 3 September 2010, p. 3; Testimony of PI Apollo Calimlim; records, p. 70, later, however, his testimony was dispensed with per RTC Order dated 3 September 2010.

[9] Records, p. 79; his testimony was dispensed with per RTC Order dated 16 December 2010.

[10] *Id.* at 85; his testimony was also dispensed with per RTC Order dated 20 January 2011.

bust money;[11] and (6) PO3 Noel Domalanta (PO3 Domalanta), the assigned arresting officer;[12] and.

The testimonies of the aforesaid witnesses established that:

At around 10:00 a.m. of 18 November 2009, the members of the Provincial Anti-Illegal Drug Special Operations Task Group (PAIDSOTG) were summoned by their action officer PCI Lopez to come to their office at Lingayen, Pangasinan, for instruction and briefing as regards the buy-bust operation that they would be conducting against one Orlando Fernandez *y* Abarquiz (aka "Tatay Lando"), the herein appellant, who is a suspected *shabu* vendor, in Gonzales St., Bonuan Boquig, Dagupan City (target area).[13] During the briefing, PCI Lopez acted as the team leader, PO3 Baruelo was assigned as the poseur-buyer, PO3 Domalanta was tasked to act as the arresting office, and the four other members of PAIDSOTG, namely: PO3 Dizon Santos (PO3 Santos), PO1 Mondero, Senior Police Officer 2 Ravago (SPO2 Ravago) and SPO1 Flash Ferrer (SPO1 Ferrer), were the designated back-up officers. PO3 Baruelo then prepared the buy-bust money, *i.e.*, ₱500.00 peso-bill, marked with his initials "CFB," which was placed before the serial number, and photocopied the same.[14]

Thereafter, or at around 4:55 in the afternoon of even date, the above-named PAIDSOTG members, together with a confidential agent, proceeded to the target area. Upon arrival thereat, PO3 Baruelo and the confidential agent went directly in front of the appellant's house, particularly, near the fence, and waited for him. The rest of the buy-bust team, on the other hand, strategically positioned themselves within a five (5) meter radius therefrom. Later, when the appellant arrived, the confidential agent introduced to him PO3 Baruelo as a user

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[11] TSN, 18 August 2010, p. 4; Testimony of PO3 Christopher Baruelo.

[12] TSN, 3 September 2010, p. 6; Testimony of PO3 Noel Domalanta.

[13] *Supra* note 11 at 3-4.

[14] *Id.* at 3-6, 8; *supra* note 12, Testimony of PO3 Noel Domalanta.

and a buyer of *shabu*. The appellant then asked PO3 Baruelo how much drugs he was willing to buy to which the latter responded "₱500.00." Thereupon, the appellant handed to PO3 Baruelo one (1) plastic sachet containing the suspected *shabu*. In turn, the latter gave the former the ₱500.00 marked money as payment therefor.[15]

At this juncture, PO3 Baruelo purposely scratched his head, which was their pre-arranged signal that the sale transaction has already been consummated, giving cue to PO3 Domalanta to make the necessary arrest. The appellant tried to escape but PO3 Domalanta chased him and successfully caught him and placed him under arrest. The appellant was then informed of his constitutional rights. Thereafter, PO3 Domalanta bodily searched the appellant and recovered from him the following: (a) one cal. 22 homemade gun; (b) one piece glass tube; (c) several aluminum foil strips; (d) one bundle of empty plastic sachets; (e) two lighters; and (f) the ₱500.00 peso marked money used in the buy-bust operation. PO3 Domalanta later turned over to PO3 Baruelo the seized items.[16]

Afterwards the appellant and the seized items were brought to PCP6 Bonuan, Tondaligan, Dagupan City, Pangasinan. It was PO3 Baruelo who was in possession of the seized items during this period. Upon reaching the said place, PO3 Baruelo marked the seized items with his initials "CFB." In particular, the drug paraphernalias, *i.e.*, one bundle of empty plastic sachets, several aluminum foil strips, one piece glass tube water pipe and two lighters, recovered from the appellant during his arrest were marked "CFB-2," "CFB-3," "CFB-4," and "CFB-5," respectively while the plastic sachet containing suspected *shabu* subject of the sale transaction was marked with "CFB-1."[17]

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[15] *Id.* at 4-5; *id.* at 5-9, 12-13.

[16] *Id.* at 5-6; *id.* at 7, 14.

[17] *Id.* at 6, 9, 11-12, 14; *id.* at 9; records, pp. 3-4; Joint Affidavit of Arrest and Seizure dated 19 November 2009; records, p. 5; Receipt/Inventory of Items Seized dated 18 November 2009.

Thereafter, an inventory[18] and photographed of the seized items were made in the presence of the appellant and other witnesses, namely: Barangay Kagawad Ramil C. Soy of Barangay Bonuan Tondaligan; Cipriano R. Cayabyab, Chief of the CVO of Barangay Bonuan Boquig; and Peha Lagao of GMA 7, representative from the media.[19]

The buy-bust team, thereafter, returned to their office in Lingayen, Pangasinan, for further investigation by PI Calimlim, the duty investigator who prepared the Request for Laboratory Examination of the seized items, which request was signed by PCI Lopez. At this time, it was still PO3 Baruelo who was in possession of the seized items. Meanwhile, PO3 Baruelo and PO3 Domalanta prepared the affidavit of arrest. The seized items were then handed by PO3 Baruelo to PO1 Mondero. After which, PO1 Mondero, together with PI Calimlim, brought the Request for Laboratory Examination and the seized items to the Philippine National Police (PNP) Crime Laboratory in Lingayen, Pangasinan.[20] The same was received by PO2 Tajon.[21]

The qualitative laboratory examination was performed by Forensic Chemist PSI Roderos on 19 November 2009, which confirmed that the contents of the plastic sachet and improvised water pipe confiscated from the appellant were *methamphetamine hydrochloride*, commonly known as *shabu*.[22]

The defense, on the other hand, presented the appellant as its sole witness, who denied the accusation against him and offered a different set of facts, thus:

The appellant averred that at around 4:30 in the afternoon of 18 November 2009, he was taking a rest in front of his house in Gonzales

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[18] Records, p. 5; *id.*

[19] *Supra* note 17.

[20] *Supra* note 11 at 12; *supra* note 8; *supra* note 12 at 16; *supra* note 8; RTC Order dated 3 September 2010.

[21] Records, p. 6; per PAIDSOTG Memorandum dated 18 November 2009.

[22] *Id.* at 47 & 11; per Chemistry Report No. D-090-2009-U dated 19 November 2009.

St., Bgy. Bonuan Boquig, Dagupan City, when a man suddenly approached him and asked if he knows a person who sells *shabu*. The man even told him that in case he could give a referral, he would be given a certain amount as his commission. The appellant then remembered someone from the Muslim area where he used to pasture his cow. Thus, he accompanied the man to the cemetery and pointed to him the person who sells *shabu*.[23]

The man and the alleged *shabu* seller then negotiated. The man again approached the appellant and they went back in front of the latter's house. Afterwards, the man handed the appellant a ₱500.00-peso bill as the latter's commission. Upon receiving the said amount, the appellant was already apprehended by several persons by making him face the ground and by handcuffing him. Afterwards, the appellant was boarded on a mobile and was brought to the police station.[24]

The appellant further alleged that when he was frisked nothing was retrieved from him. As such, he was forced to admit that he was selling prohibited drugs. The appellant likewise avowed that the plastic sachets and other items really came from the man who previously negotiated with the alleged *shabu* seller. The appellant also stated that those who arrested him introduced themselves as members of the PAIDSOTG.[25]

On 9 May 2012, the trial court rendered a Decision[26] that reads:

WHEREFORE, judgment is hereby rendered finding [herein appellant **Fernandez**], GUILTY beyond reasonable doubt with Violation of [Section 5, Article II] of RA 9165 x x x and is hereby sentenced to suffer life imprisonment and to pay a fine in the amount of Five Hundred Thousand ([₱500,000.00]) pesos.

The subject plastic sachet of *shabu* is hereby ordered disposed of in accordance with law.

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[23] TSN, 20 September 2011, pp. 3-4; Testimony of Orlando Fernandez.

[24] *Id.* at 4.

[25] *Id.* at 5.

[26] *Supra* note 2.

With cost against said [appellant].

SO ORDERED.[27]

The trial court did not give weight on the testimony of the appellant that he was only an agent who referred the buyer to the alleged *shabu* seller, who actually sold the prohibited drugs. The defense that the ₱500.00-peso bill retrieved from him was only a commission fee was unbelievable especially when it was uncorroborated by any evidence or testimony from other witness.[28]

On appeal, the CA affirmed the trial court's Decision.[29]

The CA ruled that the elements of illegal sale of dangerous drugs were clearly established. It explained that what is material is the proof that the transaction or sale actually took place coupled with the presentation in court of the *corpus delicti*. The prosecution established that the illegal drug was sold to the poseur-buyer PO3 Baruelo who, in exchange of the drugs contained in a plastic sachet, gave a marked ₱500.00-peso bill to the appellant, which was, upon apprehension, retrieved from his pocket.[30]

The CA also stated that the defense of the appellant that the police officers failed to mark, photograph and inventory the seized items immediately after the arrest was bereft of merit. Such failure does not automatically impair the reliability of the chain of custody of the seized items as long as their integrity and evidentiary value are preserved by the apprehending team.[31]

Aggrieved by the aforesaid CA Decision, the appellant went to this Court, once again, raising the failure of the prosecution to establish the unbroken chain of custody, as well as the failure

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[27] *Id.* at 126.

[28] *Id.* at 125.

[29] *Supra* note 1 at 14.

[30] *Id.* at 7.

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

of the police officers to mark, photograph and inventory the confiscated items as required by Section 21, Article II of RA 9165, thus, casting doubt on the guilt of the appellant.

After a careful examination of the records, this Court affirms the CA Decision as the errors alleged herein by the appellant are bereft of merit.

Time and again, in every prosecution for illegal sale of dangerous drugs, the following elements should first be established: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment. Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti* which means the actual commission by someone of the particular crime charged. The *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself.[32]

In this case, the prosecution has clearly established the foregoing elements as presented in the testimony of PO3 Baruelo who represented himself as the poseur-buyer in the buy-bust operation. PO3 Baruelo categorically identified the appellant as the seller of the dangerous drugs contained in a plastic sachet who handed him the said plastic sachet upon giving him the ₱500.00-peso bill.[33] This testimony was corroborated by the presentation in court of the *corpus delicti* which was the dangerous drugs itself.

Contrary to the averment of the appellant, the chain of custody of the confiscated drugs, paraphernalia and other seized items was evidently in accordance with the mandate of Section 21, Article II of the Implementing Rules and Regulations of RA 9165, which provides:

(a) The **apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and**

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[32] 687 Phil. 593, 603 (2012); citing 663 Phil. 147, 157 (2011).

[33] *Supra* note 11 at 4-5.

confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; **or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures;** *Provided, further*, that **non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]** (Emphasis supplied.)

As enunciated in the case of *People v. Guzon*,[34] the rule includes the *proviso* that procedural lapses in the handling of the seized drugs are not *ipso facto* fatal to the prosecution's cause, provided that the integrity and the evidentiary value of the seized items are preserved.

In the case at bench, notwithstanding the fact that PO3 Baruelo was not able to immediately mark the confiscated items at the place of arrest, such procedural lapse is found to be not detrimental to the prosecution's case. Nonetheless, PO3 Baruelo has complied with the required marking at the nearest police station as it was more practicable at that time. The persons, whose presence is required in Section 21 of the IRR, were also present during the physical inventory and taking of the photograph of the confiscated items.[35]

In view of the foregoing, this Court has taken cognizance of the fact that a testimony of a perfect chain is not always the standard because it is almost always impossible to obtain.[36] Moreover, the saving clause provided in the IRR rather applies

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[34] 719 Phil. 441, 453 (2013); citing 686 Phil. 1024, 1037 (2012).

[35] *Supra* note 17.

[36] 698 Phil. 204, 220 (2012).

in this case since the police officers credibly showed the effort to preserve the integrity of the dangerous drugs according to the letters of the law and that the identity of the dangerous drugs can be ascertained with moral certainty that the confiscated items were the same as those presented in court.[37]

Upon confiscation, PO3 Baruelo and PO3 Domalanta brought the seized items to PCP6 Bonuan Tondaligan where the initials of PO3 Baruelo were marked on each item. Thereafter, an inventory receipt was prepared in the presence of the persons required by law to be there during inventory and photograph of the seized items. The Affidavit of Arrest and the Request for Laboratory Examination were then prepared by PO3 Baruelo and PI Calimlim, respectively, while the seized items were brought by PO2 Mondero, who was then authorized to transport them in Lingayen, Pangasinan. The plastic sachet and the improvised water pipe were examined by Forensic Chemist PSI Roderos, whose examination yielded positive result to methamphetamine hydrochloride or *shabu*.

The other seized items such as the one bundle of empty plastic sachet[s], several strips of aluminum foil and two lighters, on the other hand, were left in the custody of PO3 Baruelo before their presentation and submission to the court's custody.[38]

Finally, mere denial of the appellant of the charge against him is inherently a weak defense and has always been viewed upon with disfavor by the courts due to the ease with which it can be concocted. Inherently weak, denial as a defense crumbles in the light of positive identification of the appellant as in this case.[39] Also, the initial claim of the appellant that he only served as a referring agent of the buyer to the alleged *shabu* seller in the Muslim area, who was the real seller of dangerous drugs is of no moment. The elements of the crime, as enumerated in

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[37] 599 Phil. 416 (2009).

[38] *Supra* note 11 at 15.

[39] 727 Phil. 587, 606 (2014).

Section 5, Article II of RA 9165,[40] were clearly proven by the prosecution. And, even assuming that the appellant merely acted as a referring agent in the sale of the dangerous drugs, the same also constitutes a violation of the law as the latter does not render persons serving as brokers with impunity.

WHEREFORE, the instant appeal is **DISMISSED**. Accordingly, the Court of Appeals Decision dated 26 July 2013 in CA-G.R. CR-HC No. 05626 is hereby **AFFIRMED**. No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 210656. December 7, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROSARIO BAYOT MAHINAY,** *accused-appellant.*

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[40] **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**.

[*] Designated as Additional Member in lieu of Associate Justice Francis H. Jardeleza per Raffle dated 21 March 2016.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS ACT OF 2002); CHAIN OF CUSTODY RULE; IN A BUY-BUST OPERATION, NON-COMPLIANCE WITH THE RIGID PROCEDURAL RULES DOES NOT OBLITERATE THE FACT OF THE ILLEGAL TRANSACTION BETWEEN THE ACCUSED-APPELLANT AND THE POSEUR BUYER.—** Fundamentally, non-compliance of the procedure for provided by law does not automatically exonerate the accused of his criminal liability for the offense committed. x x x The Court of Appeals, in its decision, has religiously elaborated the unbroken links in the chain of custody of the seized articles from herein accused-appellant, *viz*: The **first and second links** in the chain of custody are the seizure and marking of the seized items and its turnover to the investigation officer. x x x The **third link** in the chain is the turnover by the apprehending officers of the marked illegal drugs to the laboratory examination. x x x The **fourth link** in the chain is the turnover and submission of the marked illegal drugs from the forensic chemist to the court. x x x In the seizure of dangerous drugs and its custody, what is of primordial importance is the untainted integrity and preserved evidentiary value of the seized articles as such would determine the innocence or guilt of the accused. x x x As previously stated, non-compliance with the rigid procedural rules of Section 21 of R.A. No. 9165 does not obliterate the fact of the illegal transaction between the accused-appellant and the poseur buyer.

2. **ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS, CITED.—** Well-established is the rule that in order for the prosecution to successfully prosecute an accused for illegal sale of dangerous drugs, the identity of the buyer and the seller must first be established, followed by the object and consideration of the sale and finally the delivery of the thing sold and the payment therefor. Accordingly, what is of utmost importance is the proof of the consummation of the sale or whether the transaction indeed transpired.

3. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS, CITED.—** [F]or an accused to be convicted of the crime of illegal possession of dangerous drugs, the following

must be shown: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

4. ID.; ID.; ID.; ID.; PRESENTATION OF INFORMANT AS WITNESS IN COURT IS NOT AN INDISPENSABLE ELEMENT TO A SUCCESSFUL PROSECUTION OF DRUG RELATED OFFENSES.—Jurisprudence dictates that presentation of the informant assets as witness in court is not an indispensable element to a successful prosecution since their testimonies are merely corroborative and cumulative. Moreover, the ratio behind such non-presentation is the need to conceal their identity so as to protect them for their valuable service to the law enforcement and not to mention a possible liquidation in the hands of drugs syndicates and their allies.

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.*:

On appeal is the 24 May 2013 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 00911 which affirmed *in toto* the 29 January 2008 Decision[2] of conviction rendered by the Regional Trial Court of Cebu, in Criminal Case No. CBU-73919, for violation of Sections 5,[3] Article II of Republic Act

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[1] Penned by Associate Justice Justice Maria Elisa Sempio-Diy with Associate Justices Edgardo L. Delos Santos and Pamela Ann Abella Maxino concurring; CA *rollo*, pp. 111-125.

[2] Penned by Presiding Judge Gabriel T. Ingles; *id.* at 131-139.

[3] 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)

(R.A.) No. 9165 otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."[4]

The Facts

On 6 July 2005, Rosario Bayot Mahinay (accused-appellant) is charged with the crime of selling dangerous drugs in violation of Section 5, Article II of R.A. No. 9165 docketed as Criminal Case No. CBU-73919. The accusatory portion of the information reads:

> That on or about the 25th day of June at about 4:30 o'clock in the afternoon more or less, at Sitio Mananga, Tabunoc, Talisay City, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and without authority of law, did then and there sell, deliver or give away to a poseur buyer, Ten (10) sticks of MARIJUANA Cigarettes, weighing 1.79 grams, a dangerous drug without license of prescription from any competent authority.
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> CONTRARY TO LAW.[5]

Upon arraignment on 23 August 2005, accused-appellant entered a negative plea anent the charge pressed against him. Pre-trial is likewise terminated on the same date. Thereafter, trial on the merits followed.[6]

Version of the Prosecution

In attestation to the information filed against the accused-appellant, the prosecution presented as witnesses, SPO4 Reynaldo

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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.

[4] An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, As Amended, Providing Funds therefor, and for Other Purposes.

[5] Records, p. 1.

[6] *Id.* at p. 28.

Vitualia (SPO4 Vitualia), the buy-bust operation head, PSI David Alexander T. Patriana (PSI Patriana), the Forensic Chemist who examined the subject specimen, and PO3 Ramil Navarro (PO3 Navarro), who was in the buy-bust operation team. The testimonies of the presented witnesses are encapsulated as follows:

On 25 June 2005, at around 4:00 in the afternoon, while on duty at the police station at Sitio Mananga, Tabunoc, Talisay City, Cebu, Senior Police Officer 4, Reynaldo Vitualia (SPO4 Vitualia) with his team members PO3 Remberto Empeynado (PO3 Empeynado), PO3 Ramil Navarro (PO3 Navarro), PO2 Alexis Racaza (PO2 Racaza), SPO1 Archimedes Judilla (SPO1 Judilla) and POl Marciano Parayday (PO1 Parayday), received an information from their unnamed asset that one Rosario Bayot Mahinay is allegedly engaged in the sale of marijuana near the Mananga Bridge. After receipt of such information, the team conducted a briefing at Talisay City Police Station as regards the intended buy-bust operation against herein accused-appellant as the subject.[7]

As agreed, a civilian asset designated as poseur buyer will proceed to the subject while the team is strategically positioned to monitor the transaction. At around 4:30 in the afternoon, approximately 15 meters away from the accused-appellant and the poseur buyer, the team witnessed the poseur buyer handed over the marked ₱100 bill to the accused-appellant. Consequently, the accused-appellant handed over the sticks of marijuana to the poseur buyer.[8]

The poseur buyer performed the pre-arranged signal of scratching his head to notify the team that the transaction had transpired. At that juncture, the team immediately rushed towards the accused-appellant to arrest him.[9] The accused-appellant attempted to run as the team of police officers was rushing

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[7] TSN of SPO4 Vitualia, 13 June 2006, p. 3.

[8] *Id.* at 4.

[9] TSN of SPO4 Vitualia, 28 November 2006, p. 6.

towards him.[10] In the course of apprehension, the team noticed another person who threw marijuana cigarette sticks on the ground while in the act of fleeing the scene. The team likewise arrested said man and identified him only by his family name Vergas, and a separate action was filed against him.[11]

After being apprehended, the marked ₱100.00 bill was recovered from the accused-appellant by SPO4 Vitualia. The accused-appellant was apprised of the charge against him and was recited of his constitutional rights.[12]

In less than two minutes, ten (10) sticks of marijuana cigarettes were recovered from the buy-bust operation and were personally received by SPO4 Vitualia as turned over by the poseur buyer. Immediately thereafter, SPO4 Vitualia marked all the marijuana cigarette sticks and labeled them respectively as "RBM-1" to "RBM-10," in representation of the initials of the accused-appellant's name. The marked articles were offered in evidence and were collectively marked as Exhibit "A" (Exh. "A").[13]

SPO4 Vitualia then prepared a letter request for laboratory examination[14] and brought the same to the PNP Crime Laboratory to be examined. Said request letter was signed by him on behalf of Mr. Audie Villacin who was their Chief of Police at that time.[15]

Upon submission of the letter request for examination and the marijuana cigarette sticks to the PNP Crime Laboratory. PSI Patriana testified that the subject marijuana cigarette sticks were indeed the ones he examined. He narrated in depth the procedure of examination that he conducted upon the submitted specimen. He executed thereafter a report titled as "Chemistry

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[10] *Id.* at 7.

[11] TSN of SPO4 Vitualia, 13 June 2006, p. 9.

[12] TSN, 23 January 2007, p. 5.

[13] TSN of SPO4 Vitualia, 13 June 2006, p. 5.

[14] Exhibits "B", "B-1" and "B-3", RTC records, p. 105.

[15] *Id.* at p. 4.

Report No. D-905-2005"[16] which yielded positive results and identified the same as marijuana.[17]

Version of the Defense

To refute the allegations impressed upon and prove innocence of the accused-appellant, the defense presented him as lone witness.

The accused-appellant narrated that he was waiting alone in Mananga Bridge for his daughter who was delivering hanging rice ("*palitaw*") at Tabunok Market. Suddenly, two unknown persons approached him and handed him a ₱100 bill intended to buy marijuana. Upon receipt of the money, he immediately returned the same to them.[18]

He recalled that one of the two persons was standing, and the other was sitting down. Suddenly, the person standing announced that there were police officers rushing towards them; thus, prompting the one seated to run away and throw a small plastic on the ground.[19]

In a span of two minutes, the police officers arrived and arrested the accused-appellant and the one seated who threw a small plastic on the ground. Both of them were frisked and handcuffed. Accused-appellant was apprised of the charge against him but he disaffirmed the same. He insisted that he is not engaged in selling marijuana. After which, he was brought to a police station in Talisay City. In his direct examination, he testified that he buys scrap iron with his brother for a living. He claimed that the evidence was planted on him.[20]

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[16] Exhibit "C", records, p. 106.

[17] TSN of David Alexander Patriana, 9 January 2007, p. 4.

[18] TSN of Rosario Mahinay, 23 October 2007, p. 3.

[19] *Id.* at p. 4.

[20] *Id.* at p. 5.

The Ruling of the Trial Court

In weighing the evidence and testimonies adduced, the trial court rendered a decision[21] on 29 January 2008, finding accused-appellant guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165. It ruled that the prosecution has sufficiently satisfied all the elements to convict an accused. Moreover, the trial court held that there is a presumption of regularity in the performance of the functions of the police officers in answer to the allegation of the accused that there is an ill-motive on the part of the police officers manifested by the planting evidence on the accused. The dispositive portion is set forth as follows:

> In sum, the testimonies of officers Vitualia (sic] and Navarro coupled with the presentation of the 10 sticks of marijuana (Exh. "A") and even the marked money (Exh. "F") are sufficient to establish the fact that accused did sell to a poseur buyer the said dangerous drug for ₱100.00
>
> Foregoing considered this court finds the accused GUILTY as charged and hereby sentences him to Life Imprisonment and to pay a fine of ₱500,000.00.
>
> The ten sticks of marijuana (Exh. "A") are confiscated in favor of the state for proper disposition.
>
> SO ORDERED.[22]

On appeal,[23] the accused-appellant contended that the court *a quo* erred in convicting him and finding him guilty beyond reasonable doubt due to the non-compliance with the required procedure on the seizure and custody of drugs as embodied in Section 21, Paragraph 1, Article II of R.A. No. 9165.

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[21] Records, pp. 131-139.

[22] *Id.* at 139.

[23] *Id.* at 142.

The Ruling of the Court of Appeals

The appellate court affirmed *in toto* the ruling of the trial court. It held that the essential elements in illegal sale of drugs as stated in the title of the offense are satisfactorily complied with as gleaned from the records. The appellate court expounded that the integrity and evidentiary value of the seized articles have been preserved as evidenced by the unbroken link in the chain of custody of the seized illegal drugs from the commencement of the buy-bust operation, to the seizure of the subject articles and recovery of marked money and the forensic examination conducted until the submission of the same to the court. Such uninterrupted series of events is enough to determine the guilt of the accused.

Further, the Court of Appeals held that non-compliance with the procedural requirements as regards the inventory and taking of photographs is not fatal to the admissibility of evidence so long as there are justifiable grounds for non-compliance and that its integrity is preserved, the elements are sufficiently shown in the present case.

The dispositive portion of the decision of the Court of Appeals is shown as follows:

> WHEREFORE, the instant appeal is DENIED. The Decision dated June 29, 2008 of the RTC is affirmed *in toto*.
>
> SO ORDERED.[24]

On appeal,[25] the accused-appellant submitted his lone assigned error states that the appellate court erred in affirming *in toto* the decision of the trial court finding him guilty beyond reasonable doubt of the offense charged against him.

Our Ruling

Accused-appellant has consistently argued that the court *a quo* and the Court of Appeals have erroneously found him guilty

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[24] CA *rollo*; *id.* at p. 124.

[25] *Id.* at 126.

beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165, grounded on the failure of the police officers to comply with procedural requirements of Section 21 of R.A. No. 9165; thus, his belief for acquittal.

He averred that the police officers who executed the buy-bust operation failed to make an inventory of the seized marijuana cigarette sticks as well as to take photographs of the same immediately after confiscation, thereby, failing to establish the unbroken links in the chain of custody of the seized articles *ergo* the absence of the *corpus delicti* or the body of the crime.

We are not persuaded.

Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165 states the manner of conducting the physical inventory and photographs of the seized items. The provision reads as follows:

> (1) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; ***Provided further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**. (Emphasis supplied)
>
> x x x x x x x x x

Apparent from the above-quoted proviso is the clear allowance of the law for non-compliance of the procedure in handling seized articles. Fundamentally, non-compliance of the procedure

for provided by law does not automatically exonerate the accused of his criminal liability for the offense committed.[26]

In *People v. Montevirgen*,[27] this Court held:

> In other words, the failure of the prosecution to show that the police officers conducted the required physical inventory and take photograph of the objects confiscated does not *ipso facto* render inadmissible in evidence the items seized. There is a *proviso* in the implementing rules stating that when it is shown that there exist justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved, the seized items can still be used in determining the guilt or innocence of the accused. (Underscoring supplied)

Further as held in *People v. Glenn Salvador*[28] citing *People v. Kamad*:[29]

> There are links that must be established in the chain of custody in a buy-bust situation, namely: "first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and, fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court."

The Court of Appeals, in its decision,[30] has religiously elaborated the unbroken links in the chain of custody of the seized articles from herein accused-appellant, *viz*:

> The **first and second links** in the chain of custody are the seizure and marking of the seized items and its turnover to the investigation officer.

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[26] *People v. Bulotano*, G.R. No. 190177, 11 June 2014, 726 SCRA 276, 296.

[27] 723 Phil. 534, 544 (2013).

[28] 726 Phil. 389, 405 (2014).

[29] 624 Phil. 289, 304 (2010).

[30] CA *rollo*, pp. 116-118.

As categorically presented in SPO4 Vitualia's testimony, the ten (10) *marijuana* sticks recovered from the poseur buyer remained in his custody from the moment it was turned over to him until he has marked the same as "RBM-1" to "RBM-10" immediately after the accused-appellant's arrest. Following which is the execution of a letter-request for its examination in the PNP Crime Laboratory.

The **third link** in the chain is the turnover by the apprehending officers of the marked illegal drugs to the laboratory examination.

The submission of the confiscated articles to the PNP Crime Laboratory is supported by the documentary evidence in PSI Patriana's report filed as "Chemistry Report No. D-905-2005" marked as Exhibit "C," which shows that the subject articles are examined and yielded positive results. The letter request for examination executed by SPO4 Vitualia was stamped as "received" by the PNP Crime Laboratory on 26 June 2005 at 10:01 A.M. and was received by the officer on duty, PO3 Horca.

The **fourth link** in the chain is the turnover and submission of the marked illegal drugs from the forensic chemist to the court.

This link is supported by PSI Patriana's testimony where he elaborated the procedure of the examination of the confiscated articles and stating that the same obtained positive results. Such results gave due credence to the seized articles and qualified the same to be offered in evidence in court.

In the seizure of dangerous drugs and its custody, what is of primordial importance is the untainted integrity and preserved evidentiary value of the seized articles as such would determine the innocence or guilt of the accused.[31] Present jurisprudence dictates that:

In the present case, as contrary to the claim of appellant, the totality of the evidence presented by the prosecution leads to an unbroken chain of custody of the confiscated item from appellant. *Though there*

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[31] *People v. Mylene Torres*, 710 Phil. 398, 400 (2013).

were deviations from the required procedure, i.e., making physical inventory and taking photograph of the seized item, still, the integrity and the evidentiary value of the dangerous drug seized from appellant were duly proven by the prosecution to have been properly preserved; its identity, quantity and quality remained untarnished. (Italics supplied)[32]

As previously stated, non-compliance with the rigid procedural rules of Section 21 of R.A. No. 9165 does not obliterate the fact of the illegal transaction between the accused-appellant and the poseur buyer.

Well-established is the rule that in order for the prosecution to successfully prosecute an accused for illegal sale of dangerous drugs, the identity of the buyer and the seller must first be established, followed by the object and consideration of the sale and finally the delivery of the thing sold and the payment therefor.[33]

Accordingly, what is of utmost importance is the proof of the consummation of the sale or whether the transaction indeed transpired.[34]

In the instant case, prosecution witness PO3 Navarro testified that he saw the poseur buyer handed over the marked ₱100 bill to the accused-appellant and the latter in turn handed over to the former ten (10) sticks of marijuana cigarettes. Thereafter, the poseur buyer acted out the pre-arranged signal to inform the team that the sale has already been consummated and the team immediately rushed towards them and arrested the accused-appellant.

Conversely, for an accused to be convicted of the crime of illegal possession of dangerous drugs, the following must be shown: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession

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[32] *Id.*

[33] *People v. Unisa*, 674 Phil. 89, 108 (2011).

[34] *People v. Mylene Torres*, *supra* note 32, at 407.

is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[35]

As culled from the facts, the marijuana cigarette sticks were given by the accused-appellant to the poseur buyer and was subsequently turned over by the latter to SPO4 Vitualia thus establishing accused-appellant's possession of the subject article.

The pertinent provisos of the offense charged and definition of the dangerous substance subject herein, state:

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. (Emphasis supplied)

x x x **x x x** **x x x**

ARTICLE I

Definition of terms

Section 3. ***Definitions*****.** As used in this Act, the following terms shall mean:**(v) Cannabis or commonly known as "Marijuana" or "Indian Hemp" or by its any other name. - Embraces every kind, class, genus, or specie of the plant *Cannabis sativa L.*** including, but not limited to, *Cannabis americana, hashish, bhang, guaza, churrus* and *ganjab*, and **embraces every kind, class and character of marijuana, whether dried or fresh and flowering, flowering or fruiting tops, or any part or portion of the plant and seeds thereof, and all its geographic varieties, whether as a reefer, resin, extract, tincture or in any form whatsoever**. (Emphasis ours)

x x x **x x x** **x x x**

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[35] *People v. Abedin*, 685 Phil. 552, 563 (2012).

The afore-quoted provisions of law explicitly provide that illegal selling of any dangerous drug embraces all of its kind regardless of quantity, character and form. In the instant case, the prohibited drug recovered from accused-appellant is a 1.79-gram of marijuana formed as cigarette sticks, a kind of drug classified as illegal and dangerous as defined under Article I, Section 3, paragraph (v) in relation to the first paragraph Section 5 of R.A. No. 9165.

Contrariwise, for the position of the defense to succeed, clear and convincing evidence must be given to surmount the presumption of regularity in the performance of functions of the police officers.[36] However, accused-appellant failed to provide such degree of proof required to overcome the presumption of regularity.

Too, accused-appellant failed to prove that there lies an ill-motive on the part of the police officers to press charges. Likewise, he failed to substantiate his allegation that they planted evidence on him as corroborated by his own testimony and that it was his first time to see them and had no quarrel with them in the past.[37]

Lastly, in the accused-appellant's brief,[38] he contended that non- presentation of the civilian asset who acted as poseur buyer violates his right to be confronted with the person who implicated him.[39]

As aptly held by the Court of Appeals, the presentation of an asset as witness is insignificant in the prosecution of the offense.[40] Jurisprudence dictates that presentation of the informant assets as witness in court is not an indispensable element to a successful prosecution since their testimonies are

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[36] *People v. Del Monte*, 575 Phil. 576, 588-589 (2008).

[37] TSN of Rosario Mahinay, 23 October 2007, p. 6.

[38] CA *rollo*, pp. 31-43.

[39] *Id.* at p. 39.

[40] *Id.* at 119.

merely corroborative and cumulative. Moreover, the ratio behind such non-presentation is the need to conceal their identity so as to protect them for their valuable service to the law enforcement and not to mention a possible liquidation in the hands of drugs syndicates and their allies.[41]

In sum, we affirm the decision of the appellate court affirming *in toto* the decision of the court *a quo* finding accused-appellant guilty beyond reasonable doubt of illegally selling dangerous dnugs in violation of Section 5, Article II, of Republic Act No. 9165.

WHEREFORE, the instant appeal is **DISMISSED**. Accordingly, the decision of the Court of Appeals dated 24 May 2013 in CA-G.R. CR-H.C. No. 00911 is hereby **AFFIRMED *in toto***.

SO ORDERED.

Carpio,[*] *Velasco, Jr., Peralta*, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 210810. December 7, 2016]

RICARDO DEL POSO *y* DELA CERNA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[41] *People v. Capco*, 17 September 2009, G.R. No. 183088, 600 SCRA 204, 212, citing *People v. Peñaflorida*, 574 Phil. 269, 280 (2008).

[*] Designated as Additional member per Raffle dated 17 August 2016.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED IN A PETITION FOR REVIEW ON *CERTIORARI*; EXCEPTIONS, CITED.—** Under Rule 45, Section 1 of the Rules of Court, only questions of law may be raised in a Petition for Review on *Certiorari*: x x x As an exception to the rule, questions of fact may be raised in a Rule 45 Petition if any of the following is present: (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. A question of fact exists "when the doubt or difference arises as to the truth or the falsehood of alleged facts." On the other hand, a question of law exists "when the doubt or difference arises as to what the law is on a certain state of facts."

2. **CRIMINAL LAW; REPUBLIC ACT NO. 7610 (AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES); ELEMENTS FOR VIOLATION OF REPUBLIC ACT NO. 7610, ESTABLISHED IN CASE AT BAR.—** The prosecution was able to prove the elements of the violation of Section 10 of R.A. No. 7610 otherwise known as "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes," namely: (1) the minority of VVV; (2) the acts constituting physical abuse, committed by petitioner against VVV; and (3) the said acts are clearly punishable under R.A. No. 7610. As aptly ruled by the CA citing the factual findings of the RTC, all the elements of the crime charged are

present, x x x Hence, we see no reason not to affirm the factual findings of the trial court. Equally, settled is the rule that factual findings of the trial court are entitled to respect and are not to be disturbed on appeal, unless some facts or circumstances of weight and substance, having been overlooked or misinterpreted, might materially affect the disposition of the case. Not one of the exceptions is present in this case.

3. ID.; REVISED PENAL CODE; MITIGATING CIRCUMSTANCES; LACK OF INTENTION TO COMMIT SO GRAVE A WRONG; THE MITIGATING CIRCUMSTANCE OF LACK OF INTENTION TO COMMIT SO GRAVE A WRONG CAN BE TAKEN INTO ACCOUNT ONLY WHEN THE FACTS PROVEN SHOW THAT THERE IS A NOTABLE AND EVIDENT DISPROPORTION BETWEEN THE MEANS EMPLOYED TO EXECUTE THE CRIMINAL ACT AND ITS CONSEQUENCES; NOT ESTABLISHED IN CASE AT BAR.— As to the contention of petitioner that the mitigating circumstance of lack of intention to commit so grave a wrong should have been appreciated, this Court finds it unmeritorious. It is a hornbook doctrine that this mitigating circumstance can be taken into account only when the facts proven show that there is a notable and evident disproportion between the means employed to execute the criminal act and its consequences. The facts found by the trial court and the CA show that petitioner intended the natural consequence of his act. The observation of the OSG that petitioner's intention of inflicting such harm should be judged in accordance with his previous acts of abusing the victim, of regarding VVV as a mere adoptive child who is not his blood relative and petitioner's evident superiority of physique as a fully grown man inflicting harm upon a 9-year-old victim, and thus, when petitioner pressed the hot iron upon the body of the victim, it must be presumed that his intention was to physically abuse her since such act was sufficient to produce the evil which resulted from such act is also worth noting.

4. ID.; ID.; ID.; PASSION OR OBFUSCATION; THE MITIGATING CIRCUMSTANCE OF PASSION OR OBFUSCATION ONLY APPLIES IF THE ACT OF THE VICTIM IS BOTH UNLAWFUL AND SUFFICIENT TO PRODUCE SUCH CONDITION OF MIND; NOT PRESENT IN CASE AT BAR.— The mitigating circumstance of passion

or obfuscation only applies if the act of the victim is both unlawful and sufficient to produce such condition of mind. A child who fell asleep while attending to a business establishment is not an offense at all and could not give rise to an impulse sufficiently powerful to naturally produce a justified diminution of an adult's self-control.

APPEARANCES OF COUNSEL

Valmonte Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated January 28, 2014 of petitioner Ricardo Del Poso y Dela Cerna seeking the reversal of the Decision[1] dated July 22, 2013 of the Court of Appeals (*CA*), which affirmed the Decision[2] dated July 1, 2011 of the Regional Trial Court (*RTC*), Branch 38, Manila in Criminal Case No. 05-239429 convicting petitioner of violation of Section 10 (a) of Republic Act (*R.A.*) No. 7610.

The facts follow.

The victim, VVV[3] was given by her biological mother to the petitioner when she was 7 years old and the latter then acted as her guardian. On September 10, 2005, when VVV was 9

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[1] Penned by Associate Justice Marlene Gonzales-Sison, with the concurrence of Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon.

[2] Penned by Presiding Judge Ma. Celestina C. Mangrobang.

[3] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (533 Phil. 703, 709 [2006]) wherein this Court resolved to withhold the real name of the victims-survivors and to use fictitious initials instead to represent them in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or

years old, petitioner ordered her to attend to petitioner's photocopying business. While attending the business, VVV fell asleep. When petitioner saw VVV asleep, the former became furious and laid VVV on top of an ironing board and placed a heated flat iron on her. When VVV tried to evade the heat emanating from the flat iron, her forehead, right elbow, left cheek, left buttock and back got burned. Thereafter, petitioner got her down from the ironing board and ordered her to sleep. The following morning, petitioner's wife saw the burns on VVV and told petitioner not to do it again. Later on, VVV went to her Lola Ma. Luisa to watch TV and the latter, and several other people, saw the burns prompting Lola Ma. Luisa to bring VVV to the Barangay Hall where the incident was put on blotter. Thereafter, VVV was brought to the hospital and then to the police station. Hence, an Information was filed against petitioner, which reads as follows:

> That on or about September 10, 2005, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully, and knowingly commit cruelty and abusive acts upon VVV, a minor, 9 years old, by then and there injuring the said minor on the forehead, right cheek, abdomen and at her right forearm with a hot flat iron, inflicting upon her multiple 1st degree burns, which debases and demeans the intrinsic worth and dignity of said VVV as a human being, an act prejudicial to her normal growth and development, to her damage and prejudice.
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> Contrary to law.

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compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act; Sec. 44 of Republic Act No. 9262, otherwise known as Anti-Violence Against Women and Their Children Act of 2004; and Sec. 40 of A.M. No. 04-10-11-SC, known as Rule on Violence Against Women and Their Children effective November 15, 2004.

The prosecution presented seven (7) witnesses, namely: Anielyn Barnes, the Social Worker-on-case; SPO2 Susan Mendez of Station VI, the investigator; Redentor Torres, a Barangay Kagawad; VVV, herself; Laura Delos Santos, Records Custodian of the Ospital ng Maynila; Nanette Repalpa, a social worker who took custody of the victim; and Dr. Martin Joseph Cabahog. VVV, during her testimony, also narrated the other acts of physical abuse that petitioner had inflicted on her prior to the incident which became the basis of the present case.

Petitioner, on the other hand, claimed that the incident happened accidentally. According to him, on that particular day, he just came from work when he saw VVV playing under a table and to teach her a lesson, he tried to scare her with a hot flat iron. Petitioner was then not aware that VVV was hurt as there were no marks on her. The marks only became evident the following morning. Petitioner claimed that he applied medication on VVV's burns.

The RTC found petitioner guilty beyond reasonable doubt of violation of Section 10 (a) of R.A No. 7610 in its Decision dated July 1, 2011, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the Court finds that the prosecution has proven the guilt of the accused beyond reasonable doubt from the crime of violation of Section 10 (a) of RA 7610, "The Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act" and hereby sentences Ricardo Del Poso y Cerna to suffer the penalty of four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor*, as maximum.
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> SO ORDERED.

Petitioner filed his appeal with the CA and the latter court, in its Decision dated July 22, 2013, dismissed the same appeal and affirmed the Decision of the RTC, the dispositive portion of which reads:

> WHEREFORE, premises considered, the appeal filed by appellant is hereby DENIED. The Decision dated 1 July 2011 and Order dated

27 October 2011 RTC, (NCJR) Branch 38, Manila in Crim. Case No. 05-239429 are AFFIRMED.

SO ORDERED.[4]

Hence, the present petition.

The grounds relied upon by petitioner are the following:

I. THE HONORABLE COURT OF APPEALS ERRED IN CONVICTING THE PETITIONER WHEN THE MINOR CHILD-COMPLAINANT ADMITTED THAT SHE SUSTAINED THE BURNS WHEN SHE TRIED TO EVADE THE HEATED IRON THAT (PETITIONER) WAS HOLDING OVER HER WHILE LYING ON THE IRONING BOARD JUST TO SCARE HER AS A WAY OF CHASTENING HER, WHICH THE COURT FOUND IN ITS ASSAILED DECISION. [EQUALLY] OF WEIGHT, WHICH IT LIKEWISE FOUND AND WHICH IT UNCEREMONIOUSLY DISREGARDED IS THE RELATION OF THE PARTIES ESTABLISHED BY FATE.

II. ASSUMING THE HONORABLE COURT OF APPEALS IS CORRECT, IT ERRED WHEN IT REFUSED TO APPRECIATE IN FAVOR OF THE PETITIONER THE MITIGATING CIRCUMSTANCES OF NO INTENTION TO COMMIT SO GRAVE A WRONG AS THAT COMMITTED DESPITE THE PARALLEL CASE OF PEOPLE V. ENRIQUEZ, 58 PHIL. 536 IN WHICH IT WAS HELD THAT TO BE PRESENT, PASSION AND OBFUSCATION AND SUCH OTHER CIRCUMSTANCES ANALOGOUS THERETO.

III. HENCE, THE HONORABLE COURT OF APPEALS ERRED IN NOT MODIFYING THE SENTENCE OF THE PETITIONER TO ONE DEGREE LOWER.[5]

Petitioner insists that the CA erred in convicting him when the minor admitted that she sustained the burns when she tried to evade the heated iron that he was holding over her while

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[4] *Rollo*, p. 41.

[5] *Id*. at 13.

lying on the ironing board just to scare her as a way of chastening her. He also claims that assuming the CA is correct, it still erred in refusing to appreciate the mitigating circumstances of no intention to commit so grave a wrong as that committed and passion and/or obfuscation, thus, also erring in not modifying his sentence to another degree lower.

The Office of the Solicitor General (*OSG*), in its Comment[6] dated June 19, 2014, argues that the trial court and the CA correctly convicted the petitioner for violation of R.A. No. 7610. It also avers that the trial court correctly denied appreciation of the mitigating circumstances of passion and/or obfuscation and lack of intention to commit so grave a wrong, and as such properly applied the corresponding penalty without any mitigating circumstance.

In its Reply[7] dated October 8, 2014, petitioner reiterates the arguments and issues he presented in his petition.

The petition is unmeritorious.

Under Rule 45, Section 1 of the Rules of Court, only questions of law may be raised in a Petition for Review on *Certiorari*:

> Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, 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 may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

As an exception to the rule, questions of fact may be raised in a Rule 45 Petition if any of the following is present:

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[6] *Id*. at 60-92.

[7] *Id*. at 99-106.

(1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[8]

A question of fact exists "when the doubt or difference arises as to the truth or the falsehood of alleged facts."[9] On the other hand, a question of law exists "when the doubt or difference arises as to what the law is on a certain state of facts."[10] A close reading of the issues presented by petitioner shows that they are all factual in nature, and thus, does not fall within the scope of a petition for review under Rule 45 of the Rules of Court nor do they fall within the exceptions to the general rule.

Nevertheless, even if this Court should disregard such infirmity, the petition still fails to impress.

Section 10 of R.A. No. 7610 otherwise known as "An Act Providing for Stronger Deterrence and Special Protection Against

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[8] *Pagsibigan v. People,* 606 Phil. 233, 241-242 (2009) [Per *J*. Carpio, First Division]. See *Medina v. Asistio, Jr.*, G.R. No. 75450, November 8, 1990, 191 SCRA 218, 223 [Per *J*. Bidin, Third Division] where this court enumerated for the first time the instances when the findings of fact by the trial courts and the Court of Appeals were passed upon and reviewed in a Rule 45 Petition.

[9] *Benito v. People,* G.R. No. 204644, February 11, 2015, 750 SCRA 450, 460, citing *Sesbreno v. Honorable Court of Appeals,* 310 Phil. 671, 679 (1995) [Per *J*. Quiason, First Division], *Bernardo v. Court of Appeals*, G.R. No. 101680, December 7, 1992, 216 SCRA 224, 232 (1992) [Per *J*. Campos, Jr., Second Division].

[10] *Id*.

Child Abuse, Exploitation and Discrimination, and for Other Purposes," provides the following:

ARTICLE VI

Other Acts of Abuse

SECTION 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. –

(a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of prision mayor in its minimum period.

Section 3 of the same law defines child abuse as –

3 (b) "Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1) Psychological and **physical abuse**, neglect, cruelty, sexual abuse and emotional maltreatment;

(2) **Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being**.

The prosecution was able to prove the elements of the violation of the said law, namely: (1) the minority of VVV; (2) the acts constituting physical abuse, committed by petitioner against VVV; and (3) the said acts are clearly punishable under R.A. No. 7610. As aptly ruled by the CA citing the factual findings of the RTC, all the elements of the crime charged are present, thus:

We agree with the trial court when it ruled that the prosecution have established the elements of child abuse in this case, to wit: (a) the victim's minority; (b) the acts constituting physical and psychological abuse when accused employed the use of a heated flat iron; and (c) said excessive acts of rebuke and chastening are clearly punishable under RA No. 7610. This is clearly shown in the evidence

it presented during trial particularly the testimonies of its witnesses and that of the minor victim, VVV, who gave a clear, consistent, and credible account of the events on September 10, 2010, in a straightforward and candid manner. Settled is the rule that when the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. Hence, We see no reason not to affirm the factual findings of the trial court. Equally, settled is the rule that factual findings of the trial court are entitled to respect and are not to be disturbed on appeal, unless some facts or circumstances of weight and substance, having been overlooked or misinterpreted, might materially affect the disposition of the case. Not one of the exceptions is present in this case.[11]

In *Araneta v. People*,[12] this Court discussed the nature of the crime of child abuse as defined in R.A. No. 7610, thus:

Republic Act No. 7610 is a measure geared towards the implementation of a national comprehensive program for the survival of the most vulnerable members of the population, the Filipino children, in keeping with the Constitutional mandate under Article XV, Section 3, paragraph 2, that **The State shall defend the right of the children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development**. This piece of legislation supplies the inadequacies of existing laws treating crimes committed against children, namely, the Revised Penal Code and Presidential Decree No. 603 or the Child and Youth Welfare Code. As a statute that provides for a mechanism for strong deterrence against the commission of child abuse and exploitation, the law has stiffer penalties for their commission, and a means by which child traffickers could easily be prosecuted and penalized. Also, the definition of child abuse is expanded to encompass not only those specific acts of child abuse under existing laws but includes also other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development.

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[11] *Rollo*, p. 37.

[12] 578 Phil. 876 (2008).

Article VI of the statute enumerates the other acts of abuse. Paragraph (a) of Section 10 thereof states:

> Article VI
>
> OTHER ACTS OF ABUSE
>
> SEC. 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Childs Development.
>
> (a) Any person who shall commit **any other acts of abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development** including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period.

As gleaned from the foregoing, the provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, *i.e.*, (a) child abuse, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. Contrary to petitioner's assertion, an accused can be prosecuted and be convicted under Section 10(a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein. The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts.

Moreover, it is a rule in statutory construction that the word or is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, the use of or in Section 10(a) of Republic Act No. 7610 before the phrase **be responsible for other conditions prejudicial to the child's development** supposes that there are four punishable acts therein. First, the act of child abuse; second, child cruelty; third, child exploitation; and fourth, being responsible for conditions prejudicial to the child's development. The fourth penalized act cannot be interpreted, as petitioner suggests, as a qualifying condition for the three other acts, because an analysis

of the entire context of the questioned provision does not warrant such construal.

The subject statute defines children as persons below eighteen (18) years of age; or those over that age but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.[13]

As to the contention of petitioner that the mitigating circumstance of lack of intention to commit so grave a wrong should have been appreciated, this Court finds it unmeritorious. It is a hornbook doctrine that this mitigating circumstance can be taken into account only when the facts proven show that there is a notable and evident disproportion between the means employed to execute the criminal act and its consequences.[14] The facts found by the trial court and the CA show that petitioner intended the natural consequence of his act. The observation of the OSG that petitioner's intention of inflicting such harm should be judged in accordance with his previous acts of abusing the victim, of regarding VVV as a mere adoptive child who is not his blood relative and petitioner's evident superiority of physique as a fully grown man inflicting harm upon a 9-year-old victim, and thus, when petitioner pressed the hot iron upon the body of the victim, it must be presumed that his intention was to physically abuse her since such act was sufficient to produce the evil which resulted from such act is also worth noting.[15]

Applying the same set of facts, petitioner is also not entitled to the application of the mitigating circumstance of passion and/or obfuscation. The mitigating circumstance of passion or obfuscation only applies if the act of the victim is both unlawful and sufficient to produce such condition of mind.[16] A child

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[13] *Araneta v. People, supra*, at 883-886. (Emphases ours)

[14] *People v. Amit*, 143 Phil. 48, 50 (1970).

[15] *Rollo*, pp. 86-87.

[16] See *People v. Takbobo*, G.R. No. 102984, June 30, 1993, 224 SCRA 134, 142.

who fell asleep while attending to a business establishment is not an offense at all and could not give rise to an impulse sufficiently powerful to naturally produce a justified diminution of an adult's self-control. As correctly ruled by the CA:

> Going now to the theory of appellant that the trial court committed error when it did not appreciate the mitigating circumstances of passion and/or obfuscation and lack of intent to commit so grave a wrong, the same deserves scant consideration.
>
> To be entitled to the mitigating circumstance [of] passion and/or obfuscation the following elements must be present: (1) there should be an act both unlawful and sufficient to produce such condition of mind; (2) the act that produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity. These elements are not present here. There was no unlawful and sufficient act on VVV's part which sufficiently provoked passion and/or obfuscation on appellant's side. As correctly observed by the trial court, the dozing off of VVV when she was ordered to watch over the Xerox machine for possible clients is not an unlawful act sufficient to produce passion and raging anger, even to a disciplinarian foster parent. Hence, appellant cannot successfully claim that he was blinded by passion and obfuscation.[17]

Hence, the trial court and the CA correctly imposed the penalty by not considering the mitigating circumstances claimed by petitioner. Section 10 (a) of R.A. No. 7610 imposes the penalty of *prision mayor* in its minimum period. Applying the Indeterminate Sentence Law, the trial court did not err when it imposed the penalty of 4 years, 9 months and 11 days of *prision correccional*, as minimum, to 6 years, 8 months and 1 day of *prision mayor*, as maximum.

WHEREFORE, the Petition for Review on Certiorari under Rule 45 dated January 28, 2014 of Ricardo Del Poso *y* Dela Cerna is **DENIED** for lack merit and the Decision dated July 22, 2013, dismissing petitioner's appeal and affirming the Decision dated July 1, 2011 of the Regional Trial Court,

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[17] *Rollo*, p. 40. (Emphases omitted)

Branch 38, Manila in Criminal Case No. 05-239429, convicting petitioner of violation of Section 10 (a) of R.A No. 7610 and imposing upon petitioner the indeterminate penalty of imprisonment of four (4) years, nine (9) months and eleven (11) days of *prision correccional*, as minimum, to six (6) years, eight (8) months and one (1) day of *prision mayor*, as maximum, is **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 211731. December 7, 2016]

NATIONAL POWER CORPORATION, *petitioner, vs.* **SPOUSES CONCHITA MALAPASCUA-MALIJAN AND LAZARO MALIJAN,** *respondents.*

[G.R. No. 211818. December 7, 2016]

CONCHITA MALAPASCUA-MALIJAN AND HEIRS OF LAZARO MALIJAN, *petitioners, vs.* **NATIONAL POWER CORPORATION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; INHERENT POWERS OF THE STATE; POWER OF EMINENT DOMAIN; JUST

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[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza per Raffle dated October 1, 2014.

COMPENSATION; THE NEED TO ESTABLISH THE TIME OF THE TAKING IS NECESSARY IN ORDER TO ACCURATELY DETERMINE THE AMOUNT OF JUST COMPENSATION.— Highly instructive is the case of *Secretary of the Department of Public Works and Highways, et al. v. Spouses Heracleo and Ramona Tecson,* where this Court addressed situations in which the government took control and possession of properties for public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages. This Court ruled that just compensation is the value of the property at the time of taking and that is what is controlling for purposes of compensation, x x x Clearly, the need to establish the time of the taking is necessary in order to accurately determine the amount of just compensation. x x x It is settled that the taking of private property for public use, to be compensable, need not be an actual physical taking or appropriation. Indeed, the expropriator's action may be short of acquisition of title, physical possession, or occupancy but may still amount to a taking. Compensable taking includes destruction, restriction, diminution, or interruption of the rights of ownership or of the common and necessary use and enjoyment of the property in a lawful manner, lessening or destroying its value. It is neither necessary that the owner be wholly deprived of the use of his property, nor material whether the property is removed from the possession of the owner, or in any respect changes hands.

2. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; EXEMPLARY DAMAGES ARE DESIGNED BY OUR CIVIL LAW TO PERMIT THE COURTS TO RESHAPE BEHAVIOUR THAT IS SOCIALLY DELETERIOUS IN ITS CONSEQUENCE BY CREATING NEGATIVE INCENTIVES OR DETERRENTS AGAINST SUCH BEHAVIOUR; NOT APPLICABLE IN CASE AT BAR.— Under Article 2229 of the Civil Code, "[e]xemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." As this court has stated in the past: "Exemplary damages are designed by our civil law to permit the courts to reshape behaviour that is socially deleterious in

its consequence by creating negative incentives or deterrents against such behaviour." It must be remembered that in this case, it was NAPOCOR who filed a complaint for eminent domain, albeit after a long period of time. This means that NAPOCOR does not have any intention of causing any harm to the landowners nor its action can be considered as socially deleterious in its consequence.

3. ID.; ID.; ATTORNEY'S FEES; THE AWARD OF ATTORNEY'S FEES IS UNWARRANTED IN THE ABSENCE OF FACTUAL AND LEGAL JUSTIFICATION.— The award of attorney's fees is also unwarranted because of the lack of factual and legal justification. An award of attorney's fees has always been the exception rather than the rule. To start with, attorney's fees are not awarded every time a party prevails in a suit. Nor should an adverse decision *ipso facto* justify an award of attorney's fees to the winning party. The policy of the Court is that no premium should be placed on the right to litigate. Too, such fees, as part of damages, are assessed only in the instances specified in Article 2208 of the Civil Code. Indeed, attorney's fees are in the nature of actual damages. But even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, attorney's fees may still be withheld where no sufficient showing of bad faith could be reflected in a party's persistence in a suit other than an erroneous conviction of the righteousness of his cause. And lastly, the trial court must make *express* findings of fact and law that would bring the suit within the exception. What this demands is that the factual, legal or equitable justifications for the award must be set forth not only in the *fallo* but also in the text of the decision, or else, the award should be thrown out for being speculative and conjectural.

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

1. POLITICAL LAW; INHERENT POWERS OF THE STATE; POWER OF EMINENT DOMAIN; THE FAILURE TO INITIATE THE COMPLAINT FOR EXPROPRIATION BEFORE THE GOVERNMENT ASSUMES POSSESSION OVER THE SUBJECT LOT DOES NOT AMOUNT TO A VALID EXERCISE OF EMINENT DOMAIN.— I maintain my postulation in *Secretary of Public Works and Highways v.*

Spouses Tecson (*Tecson Case*) that a legitimate exercise of eminent domain presupposes that the filing of the complaint for expropriation preceded the actual taking. This is pursuant to the twin constitutional mandates that *"[n]o person shall be deprived of x x x property without due process of law"* and that *"[p]rivate property shall not be taken for public use without just compensation."* x x x The due process requirement, in the context of expropriation, dictates that there be sufficient notice to the landowner before the government can assume possession of his or her land. The filing of the complaint satisfies this notice requirement. Thus, until the condemnation proceeding is initiated, the government does not yet have any valid authority to intrude on the property, regardless of whether or not its intended purpose is for the public good. The failure to initiate the complaint for expropriation before the government assumes possession over the subject lot does not amount to a valid exercise of eminent domain.

2. ID.; ID.; ID.; JUST COMPENSATION; THE VALUATION OF THE PROPERTY SHOULD BE RECKONED FROM THE DATE OF FILING OF THE COMPLAINT FOR EXPROPRIATION, SINCE, IT WAS ONLY THEN THAT THE INTENTION OF THE STATE TO EXPROPRIATE BECAME MANIFEST.— The government's right of eminent domain is not a panacea that licenses it to proceed as it pleases in taking property, for constitutional safeguards rein in the exercise of this otherwise boundless inherent power of the state. As an alternative, I respectfully propose that **the valuation of the property should be reckoned from the date of filing of the complaint for expropriation on October 25, 2005**. It was only then when the government could have validly sought the consent of the landowners to enforce a lawful taking for a public purpose; it was only then when the intention of the state to expropriate became manifest. The proposition is in line with our ruling in *National Power Corporation v. Court of Appeals* (*NPC v. CA*) wherein the Court enumerated the circumstances that must be present in the taking of property for purposes of eminent domain: x x x Hence, in *NPC v. CA*, the determination of just compensation was based on the price of the property in 1992, when the government sued for expropriation, rather than in 1978, the date of actual taking.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Raul L. Oreo for Conchita Malapascua-Malijan, *et al.*

D E C I S I O N

PERALTA, *J.*:

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated May 11, 2014 of Conchita Malapascua-Malijan and Heirs of Lazaro Malijan in G.R. No. 211818 which seeks to set aside the Decision[1] dated June 13, 2012 of the Court of Appeals (*CA*) and its subsequent Resolution dated March 12, 2014 reversing the Decision[2] dated February 22, 2008 of the Regional Trial Court (*RTC*), Branch 6, Tanauan City, Batangas in an expropriation case, and the Petition for Review on *Certiorari* under Rule 45 dated April 21, 2014 of National Power Corporation that seeks the modification of the same Decision dated June 13, 2012 of the CA.

The facts follow.

National Power Corporation (*NAPOCOR*) sought to expropriate a 3,907-square-meter portion of a property owned by the Spouses Conchita Malapascua-Malijan and Lazaro Malijan (*the Spouses Malijan*) located at Barangay San Felix, Sto. Tomas, Batangas and covered by Tax Declaration No. 15032. An expropriation case was, therefore, filed with the RTC, Branch 6 of Tanauan City, Batangas.

The Spouses Malijan did not interpose any objection to the expropriation of the property, hence, the sole issue that needed to be resolved was the determination of the just compensation.

In an Order dated August 22, 2007, the RTC created a Board of Commissioners that would recommend the amount of just

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[1] Penned by Associate Justice Francisco P. Acosta, with the concurrence of Associate Justices Magdangal M. De Leon and Angelita A. Gacutan.

[2] Penned by Judge Arcadio I. Manigbas.

compensation. In the Commissioner's Report submitted by the same Board, the recommended price of the property was ₱3,500.00 per square meter or a total amount of Thirteen Million Six Hundred Seventy-Four Thousand Five Hundred Pesos (₱13,674,500.00). Such amount of just compensation was based on the ocular inspection made on the property; the local market condition; and the standards set in Section 5 of the Implementing Rules and Regulations (*IRR*) of Republic Act (*R.A.*) No. 8974. In view of the presence and proliferation of the several commercial and industrial establishments near the subject property, the Commissioners found it more prudent and reasonable to appraise the property as commercial or industrial.

It was also shown in the Commissioner's Report that at present the property is being used as main access road leading to NAPOCOR's Mak-ban Geothermal Power Plant.

NAPOCOR opposed the Board's recommendation for being excessive, unconscionable, exorbitant and without legal basis and claimed that they entered the subject property in 1972. Based on the provisions of Section 4, Rule 67 of the Rules of Court, the just compensation of the property should be based on the value of the property at the time of the taking of the same or the filing of the complaint, whichever came first, thus:

> Rule 67, Section 4. x x x payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

According to NAPOCOR, the taking of the property occurred in 1972 whereas the institution of the complaint was made thirty-four (34) years after, hence, the just compensation should be based on the value of the property in 1972.

The Spouses Malijan, on the other hand, argued that the above-cited provision merely applies in situations wherein the time of the taking coincides with the filing of the complaint and that since NAPOCOR is claiming the exception provided in Section 4, Rule 67 of the Rules of Court, it has the burden of proving its claim that its occupancy and use was the direct cause of the increase in valuation. The Spouses Malijan claimed that

NAPOCOR has belatedly argued that it entered the property in 1972 and that such fact was not alleged in the complaint.

The RTC, on February 22, 2008, rendered its Decision denying NAPOCOR's plea that the just compensation be based on the value of the property in 1972, thus:

> WHEREFORE, premises considered, judgment is hereby rendered condemning the 3,907-square-meter portion of the property of the Spouses Conchita Malapascua-Malijan and Lazaro Malijan covered by Tax Declaration No. 15032 which is the subject matter of this case in favor of plaintiff National Power Corporation and thus ordering the plaintiff to pay the defendants-owners the amount of PhP3,500.00 per square meter or a total amount of Thirteen Million Six Hundred Seventy-Four Thousand Five Hundred Pesos (PhP13,676,500.00) representing the just compensation of the affected area.
>
> SO ORDERED.

NAPOCOR elevated the case to the CA insisting that it is not liable for the payment of just compensation in the amount of ₱3,500.00 per square meter or a total amount of ₱13,676,500.00 pertaining to the affected area of the subject property; instead, it is only liable for an amount equivalent to the fair market value of the same property at the time it was taken in 1972. On June 13, 2012, the CA rendered the assailed Decision in favor of NAPOCOR, thus:

> WHEREFORE, in view of the foregoing, the instant Appeal is GRANTED. Accordingly, the challenged Decision dated 22 February 2008 is hereby SET ASIDE.
>
> The Regional Trial Court of Tanauan City, Batangas, Branch 6, is hereby DIRECTED to immediately determine the just compensation due to appellees Spouses Lazaro and Conchita Malijan based on the fair market value of the subject property at the time it was taken in 1972 with legal interest at the rate of six (6%) percent *per annum* from the time of taking until full payment is made.
>
> Appellant National Power Corporation is ORDERED to pay appellees the amounts of ₱200,000.00 as exemplary damages and ₱100,00.00 as attorney's fees.
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> SO ORDERED.

Hence, the present petitions.

Conchita Malapascua-Malijan and the heirs of Lazaro Malijan, in their petition, raised the following arguments:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED UNDER THE LAW IN HOLDING THAT THE SUBJECT PROPERTY WAS TAKEN IN 1972, AS THE COMPLAINT FOR EXPROPRIATION ITSELF IS BEREFT OF ANY SUCH ALLEGATION. ADDITIONALLY, THERE IS NO EVIDENCE ON RECORD THAT WILL SHOW THAT RESPONDENT HAS COMPLETELY TAKEN THE PROPERTY UNDER WARRANT OR COLOR OF LEGAL AUTHORITY SO AS TO OUST THE OWNER OF ALL BENEFICIAL ENJOYMENT OF THE PROPERTY.

II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED UNDER THE LAW WHEN IT HELD IN THE QUESTIONED DECISION THAT JUST COMPENSATION BE BASED IN 1972 WHEN THE SUBJECT PROPERTY WAS ALLEGEDLY TAKEN.

III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED UNDER THE LAW WHEN IT APPLIED THE CASE OF EUSEBIO V. LUIS TO JUSTIFY ITS DECISION, SIMPLY BECAUSE, THERE IS NO SIMILARITY OF THE FACTUAL MILIEU IN THE EUSEBIO CASE WITH THE INSTANT CASE. ON THE CONTRARY, THE INSTANT CASE IS MORE IN ALL FOURS WITH THE HEIRS OF MATEO PINDACAN, ET AL. V. ATO.

NAPOCOR, on the other hand, assigned the following error in its petition:

THE AWARD OF EXEMPLARY DAMAGES AND ATTORNEY'S FEES TO RESPONDENT-SPOUSES LAZARO AND CONCHITA MALIJAN IS WITHOUT ANY FACTUAL AND LEGAL BASIS.

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45.[3] This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive

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[3] Rules of Court, Rule 45, Sec. 1.

on the parties and upon this [c]ourt"[4] when supported by substantial evidence.[5] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.[6]

This court's Decision in *Cheesman v. Intermediate Appellate Court*[7] distinguished questions of law from questions of fact:

> As distinguished from a question of law — which exists "when the doubt or difference arises as to what the law is on a certain state of facts" – "there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts;" or when the "query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."[8]

Seeking recourse from this Court through a petition for review on *certiorari* under Rule 45 bears significantly on the manner by which this Court shall treat findings of fact and evidentiary matters. As a general rule, it becomes improper for this court to consider factual issues: the findings of fact of the trial court, as affirmed on appeal by the Court of Appeals, are conclusive on this court. "The reason behind the rule is that [this] Court is not a trier of facts and it is not its duty to review, evaluate, and weigh the probative value of the evidence adduced before the lower courts."[9]

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[4] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phils.), Inc*., 364 Phil. 541, 546 (1999) [Per *J*. Pardo, First Division].

[5] *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per *J*. Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per *J*. Bellosillo, First Division]; and *Padilla v. Court of Appeals*, 241 Phil. 776, 781 (1988) [Per *J*. Paras, Second Division].

[6] *Bank of the Philippine Islands v. Leobrera*, 461 Phil. 461, 469 (2003) [Per *J*. Ynares-Santiago, Special First Division].

[7] 271 Phil. 89 (1991) [Per *J*. Narvasa, Second Division].

[8] *Cheesman v. Intermediate Appealte Court, supra*, at 97-98.

[9] *Frondarina v. Malazarte*, 539 Phil. 279, 290-291 (2006) [Per *J*. Velasco, Third Division].

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded.[10] At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:[11]

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[12]

In this case, the findings of the CA are contrary to those of the trial court, therefore, there is a need for this Court to finally settle the issues presented before it.

This Court shall first resolve the petition filed by Conchita Malapascua-Malijan and the heirs of Lazaro Malijan.

Conchita Malapascua-Malijan, *et al.*, insist that there is no single evidence on record that would show that NAPOCOR had completely taken the property in 1972. Thus, they argue that NAPOCOR is in estoppel to make a belated claim of taking in its Comment and Opposition to the Commissioner's Report. Furthermore, they claim that the right of way that NAPOCOR had been enjoying was only due to the long tolerance on their

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[10] *Remedios Pascual v. Benito Burgos, et al.*, G.R. No. 171722, January 11, 2016.

[11] 269 Phil. 225 (1990) [Per *J.* Bidin, Third Division].

[12] *Medina v. Mayor Asistio, Jr., supra*, at 232.

part and not by complete dominion by NAPOCOR to the exclusion of others.

Highly instructive is the case of *Secretary of the Department of Public Works and Highways, et al. v. Spouses Heracleo and Ramona Tecson*[13] where this Court addressed situations in which the government took control and possession of properties for public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages. This Court ruled that just compensation is the value of the property at the time of taking and that is what is controlling for purposes of compensation, thus:

> Just compensation is "the fair value of the property as between one who receives, and one who desires to sell, x x x fixed at the time of the actual taking by the government." This rule holds true when the property is taken before the filing of an expropriation suit, and even if it is the property owner who brings the action for compensation.[14]

The issue in this case is not novel.

In Forfom Development Corporation [Forfom] v. Philippine National Railways [PNR],[15] PNR entered the property of Forfom in January 1973 for public use, that is, for railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service without initiating expropriation proceedings.[16] In 1990, Forfom filed a complaint for recovery of possession of real property and/or damages against PNR. In Eusebio v. Luis,[17] respondent's parcel of land was taken in 1980 by the City of Pasig and used as a municipal road now

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[13] G.R. No. 179334, July 1, 2013, 700 SCRA 243.

[14] *Republic v. Court of Appeals,* G.R. No. 147245, March 31, 2005, 454 SCRA 516, 527.

[15] G.R. No. 124795, December 10, 2008, 573 SCRA 350, 366-367.

[16] *Forfom Development Corporation v. Philippine National Railways, supra* note 31, at 366.

[17] G.R. No. 162474, October 13, 2009, 603 SCRA 576, 583.

known as A. Sandoval Avenue in Pasig City without the appropriate expropriation proceedings. In 1994, respondent demanded payment of the value of the property, but they could not agree on its valuation prompting respondent to file a complaint for reconveyance and/or damages against the city government and the mayor. In Manila International Airport Authority v. Rodriguez,[18] in the early 1970s, petitioner implemented expansion programs for its runway necessitating the acquisition and occupation of some of the properties surrounding its premises. As to respondent's property, no expropriation proceedings were initiated.*lawphil* In 1997, respondent demanded the payment of the value of the property, but the demand remained unheeded prompting him to institute a case for *accion reinvindicatoria* with damages against petitioner. In Republic v. Sarabia,[19] sometime in 1956, the Air Transportation Office (ATO) took possession and control of a portion of a lot situated in Aklan, registered in the name of respondent, without initiating expropriation proceedings. Several structures were erected thereon including the control tower, the Kalibo crash fire rescue station, the Kalibo airport terminal and the headquarters of the PNP Aviation Security Group. In 1995, several stores and restaurants were constructed on the remaining portion of the lot. In 1997, respondent filed a complaint for recovery of possession with damages against the storeowners where ATO intervened claiming that the storeowners were its lessees.

The Court in the above-mentioned cases was confronted with common factual circumstances where the government took control and possession of the subject properties for public use without initiating expropriation proceedings and without payment of just compensation, while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages. The Court thus determined the landowners' right to the payment of just compensation and, more importantly, the amount of just compensation. The Court has uniformly ruled that just compensation is the value of the property at the time of taking that is controlling for purposes of compensation. In Forfom, the payment of just compensation was reckoned from the time of taking in 1973; in Eusebio, the Court fixed the just compensation by determining the value of the property at the time of taking in 1980;

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[18] 518 Phil. 750, 757 (2006).

[19] G.R. No. 157847, August 25, 2005, 468 SCRA 142.

in MIAA, the value of the lot at the time of taking in 1972 served as basis for the award of compensation to the owner; and in Republic, the Court was convinced that the taking occurred in 1956 and was thus the basis in fixing just compensation. As in said cases, just compensation due respondents in this case should, therefore, be fixed not as of the time of payment but at the time of taking, that is, in 1940.

The reason for the rule has been clearly explained in Republic v. Lara, et al.,[20] and repeatedly held by the Court in recent cases, thus:

> x x x "The value of the property should be fixed as of the date when it was taken and not the date of the filing of the proceedings." For where property is taken ahead of the filing of the condemnation proceedings, the value thereof may be enhanced by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time it is taken to the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken x x x.[21]

Clearly, the need to establish the time of the taking is necessary in order to accurately determine the amount of just compensation. NAPOCOR claims that the taking occurred in 1972. The RTC has acknowledged 1972 as the time of the taking but ruled that the just compensation must be determined at the time of the filing of the complaint because it did not deem appropriate that NAPOCOR should be given undue advantage by declaring that the just compensation be based on the property's value in 1972. It ruled:

Given the fact that plaintiff entered the subject property in 1972, however, the Court is not convinced that plaintiff NAPOCOR should be given undue advantage by declaring that the just compensation

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[20] 96 Phil. 170 (1954).

[21] *Republic v. Lara, et al., supra*, at 177-178.

of the property be based on its value in that year. The court wonders why after a period of more than three decades it is only now that the plaintiff is pursuing the expropriation of the subject property. The plaintiff has tended to imply that the property has not yet been taken by the plaintiff through its allegations in paragraphs 5 and 8 in its Complaint and its prayer therein to enter and take possession of the property but it opposes the recommendation made by the Board of Commissioners contending that the property was taken in 1972 and thus the just compensation must be based at that time of the taking.

The inconsistency in the claims of the plaintiff is further shown by the survey plan attached to the complaint as Annex "B". It shows that as early as 1980, when the survey plan was prepared, the plaintiff has really intended to use that portion of property of the defendant as access road. Although it has been alleged that the plaintiff has attempted to negotiate with the defendants on the price of the property (paragraph 7, Complaint), the lapse of time it filed the present complaint has made the real intention of the plaintiff doubtful. It would seem, as in this case of NAPOCOR v. CA and Mangondato, G.R. No. 113194, March 11, 1996, that NAPOCOR has neglected and/or refused to exercise the power of eminent domain by letting 34 years to pass before it filed the instant complaint, and after it has already taken possession and made use of the defendant's property.

In *Heirs of Mateo Pidacan and Romana Eigo v. ATO*, G.R. No. 162779, June 15, 2007, it was held that as a rule, the determination of just compensation in eminent domain cases is reckoned from the time of taking. It was however said that the application of the said rule would lead to grave injustice. In that case it was noted that the Air Transportation Office has been using the property of therein petitioners since 1948 without having instituted the proper expropriation proceedings. It was then held that to peg the value of the property at the time of the taking in 1948, despite the exponential increase in its value considering the lapse of over half a century, would be iniquitous. Thus, the Supreme Court said, "We cannot allow the ATO to conveniently invoke the right of eminent domain to take advantage of the ridiculously low value of the property at the time of the taking that it arbitrarily chooses to the prejudice of the petitioners."

x x x x x x x x x

Clearly, the plaintiff will be given undue advantage if it will be declared that the just compensation will be based on the value of the

property in 1972, at the time it entered the property because as early as that time it could have filed its complaint for expropriation and then pay the just compensation. But it chose to file the instant complaint only after more than thirty years of occupying the land. It would seem now that if that will always be the case, the NAPOCOR can conveniently occupy a property, utilize it for public purpose and then later file a complaint for expropriation and pay the value of the property at the time of its occupancy. Following the ruling in the above-cited cases of *Heirs of Mateo Pidacan and Romano Eigo v. ATO* and *NAPOCOR v. CA* and Mangondato, it would be unfair and unjust to declare that the just compensation of the subject property be based on its value in 1972 despite the considerable increase of the value of the property from the time it was occupied by the plaintiff up to the time the case for expropriation of the same was filed.

The CA also acknowledged the findings of the RTC that the taking happened in 1972, hence, its ruling that the just compensation must be computed at the time of the taking, thus:

Evidently, it is thus clear that the court a quo gravely erred in ruling that "the [appellant] will be given undue advantage if it will be declared that the just compensation will be based on the value of the property in 1972 ..." However, We do not close Our eyes on the court a quo's observation that if it had ruled for the appellant, the latter "can conveniently occupy a property, utilize it for public purpose and then later file a complaint for expropriation and pay the value of the property at the time of the occupancy. In this view, and in line with the pronouncement of the Supreme Court in several expropriation cases, this Court recognizes the damage the appellee has incurred when the appellant took possession of the subject property without the benefit of the expropriation proceedings. Consequently, justice and equity dictate that the appellant be held liable for damages for taking the appellee's property without payment of just compensation.

As insisted by Conchita Malapascua-Malijan, *et al.*, it was not established that the taking happened in 1972. This is, however, belied by their own admission, as found by the RTC, that the right-of-way was already in existence for about thirty years, thus:

x x x They commented that the plaintiff had belatedly argued that it entered the property in 1972. They pointed out that it was not

alleged in the complaint that the plaintiff entered the property in 1972. It was also in the latter's comment /opposition to the commissioner's report that it alleged that the entry to the property was made on that year and claim that the just compensation must be based on the value of the property in that time of entry. Incidentally, the defendant admitted that the right of way was in existence for about thirty years now. (Order dated June 22, 2007).

In fact, Conchita Malapascua-Malijan, *et al*. argued in their petition that although there was an admission that the right-of-way was in existence for about thirty years, their admission refers only to the existence of the right-of-way, but not the fact of the complete taking. They then proceeded to discuss that the right-of-way that NAPOCOR was enjoying was only due to the long tolerance on their part and not by the complete dominion of NAPOCOR to the exclusion of others. Such argument is misleading.

It is settled that the taking of private property for public use, to be compensable, need not be an actual physical taking or appropriation.[22] Indeed, the expropriator's action may be short of acquisition of title, physical possession, or occupancy but may still amount to a taking.[23] Compensable taking includes destruction, restriction, diminution, or interruption of the rights of ownership or of the common and necessary use and enjoyment of the property in a lawful manner, lessening or destroying its value.[24] It is neither necessary that the owner be wholly deprived

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[22] *National Power Corporation v. Heirs of Makabangkit Sangkay*, G.R. No. 165828, August 24, 2011, citing 29A CJS, *Eminent Domain*,§82, citing *Stearns v. Smith*, D.C.Tex, 551 F. Supp. 32; *Wright v. Shugrue*, 425 A.2d 549, 178 Conn. 710; *Horstein v. Barry*, App., 560 A.2d 530; and *Gasque v. Town of Conway*, 8 S.E.2d 871, 194 S.C. 15.

[23] *Id.*, citing *United States v. General Motors Corporation*, III., 65 S Ct. 357, 323 US 373, 89 L. Ed. 311; and *Midwest Video Corporation v. F.C.C.*, C.A.8, 571 F.2d 1025, affirmed 99 S.Ct. 1435, 440 US 689, 59 L. E.2d 692.

[24] *Id.*, citing *United States v. Dickinson*, W.Va., 67 S.Ct. 1382, 331 US 745, 91 L.Ed. 1789; *Portsmouth Harbor Land & Hotel Co. v. United States*, Ct.CI., 43 S.Ct. 135, 260 US 327, 67 L.Ed. 287; *Bernstein v. Bush*, 177 P.2d 913, 29 C.2d 773.

of the use of his property,[25] nor material whether the property is removed from the possession of the owner, or in any respect changes hands.[26]

Thus, there exists no reversible error on the part of the CA when it ruled that just compensation must be computed at the time of the taking in 1972.

It is noteworthy that the CA, in its Decision dated June 13, 2012, aside from directing the RTC to immediately determine the just compensation due to the Spouses Malijan based on the fair market value of the subject property at the time of the taking in 1972, it also imposed the payment of a legal interest at the rate of six percent (6%) *per annum* from the time of the taking until full payment is made. This is in accordance with this Court's ruling in Secretary of the *Department of Public Works and Highways, et al. v. Spouses Heracleo and Ramona Tecson*[27] which discussed the proper rate of interest to be applied in similar cases, thus:

> On this score, a review of the history of the pertinent laws, rules and regulations, as well as the issuances of the Central Bank (*CB*) or Bangko Sentral ng Pilipinas (*BSP*) is imperative in arriving at the proper amount of interest to be awarded herein.
>
> On May 1, 1916, **Act No. 2655**[28] took effect prescribing an interest rate of six percent (6%) or such rate as may be prescribed by the Central Bank Monetary Board (*CB-MB*) for loans or forbearance of money, in the absence of express stipulation as to such rate of interest, to wit:

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[25] *Id*., citing *Eaton v. Boston, C. & M.R. Co.*, 51 N.H.504; *Lea v. Louisville, & N.R. Co*., 188 S. W. 215, 135 Tenn. 560.

[26] *Id.*, citing *Frustuck v. City of Fairfax*, 28 Cal. Rptr. 357, 212 C.A.2d 345; *Midgett v. North Carolina State Highway Commission*, 132 S.E.2d 599, 260 N.C. 241; *Morrison v. Clakamas Country*, 18 P.2d 814, 141 Or. 564.

[27] G.R. No. 179334, April 21, 2015 (Reso).

[28] An Act Fixing Rates of Interest on Loans Declaring the Effect of Receiving or Taking Usurious Rates and For Other Purposes.

> Section 1. The rate of interest for the loan or forbearance of any money goods, or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, ***shall be six per centum per annum or such rate as may be prescribed by the Monetary Board of the Central Bank of the Philippines for that purpose in accordance with the authority hereby granted***.

Sec. 1-a. The Monetary Board is hereby authorized to prescribe the maximum rate or rates of interest for the loan or renewal thereof or the forbearance of any money, goods or credits, and to change such rate or rates whenever warranted by prevailing economic and social conditions.

In the exercise of the authority herein granted, the Monetary Board may prescribe higher maximum rates for loans of low priority, such as consumer loans or renewals thereof as well as such loans made by pawnshops finance companies and other similar credit institutions although the rates prescribed for these institutions need not necessarily be uniform. The Monetary Board is also authorized to prescribe different maximum rate or rates for different types of borrowings, including deposits and deposit substitutes, or loans of financial intermediaries.

Under the aforesaid law, any amount of interest paid or stipulated to be paid in excess of that fixed by law is considered usurious, therefore unlawful.[29]

On July 29, 1974, the CB-MB, pursuant to the authority granted to it under the aforequoted provision, issued Resolution No. 1622. On even date, **Circular No. 416** was issued, implementing MB Resolution No. 1622, increasing the rate of interest for loans and forbearance of money to twelve percent (12%) per annum, thus:

> By virtue of the authority granted to it under Section 1 of Act No. 2655, as amended, otherwise known as the "Usury Law," the Monetary Board, in its Resolution No. 1622 dated July 29, 1974, has prescribed that the rate of interest for the loan or forbearance of any money, goods or credits and ***the rate allowed in judgments, in the absence of express contract***

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[29] *Spouses Puerto v. Court of Appeals*, 432 Phil. 743, 752 (2002).

as to such rate of interest, shall be twelve per cent (12%) per annum.

The foregoing rate was sustained in CB **Circular No. 905**[30] which took effect on December 22, 1982, particularly Section 2 thereof, which states:

Sec. 2. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, ***shall continue to be twelve per cent (12%) per annum***.

Recently, the BSP Monetary Board (*BSP-MB*), in its Resolution No. 796 dated May 16, 2013, approved the amendment of Section 2 of Circular No. 905, Series of 1982, and accordingly, issued **Circular No. 799**, Series of 2013, effective July 1, 2013, the pertinent portion of which reads:

> The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:

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[30] CB Circular 905 was issued by the Central Bank's Monetary Board pursuant to P.D. 1684 empowering them to prescribe the maximum rates of interest for loans and certain forbearances, to wit:

> Sec. 1. Section 1-a of Act No. 2655, as amended, is hereby amended to read as follows:
>
> Sec. 1-a. The Monetary Board is hereby authorized to prescribe the maximum rate of interest for the loan or renewal thereof or the forbearance of any money, goods or credits, and to change such rate or rates whenever warranted by prevailing economic and social conditions: Provided, That changes in such rate or rates may be effected gradually on scheduled dates announced in advance. In the exercise of the authority herein granted, the Monetary Board may prescribe higher maximum rates for loans of low priority, such as consumer loans or renewals thereof as well as such loans made by pawnshops, finance companies and other similar credit institutions although the rates prescribed for these institutions need not necessarily be uniform. The Monetary Board is also authorized to prescribed different maximum rate or rates for different types of borrowings, including deposits and deposit substitutes, or loans of financial intermediaries.

> ***Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.***
>
> Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.
>
> This Circular shall take effect on 01 July 2013.

Accordingly, the prevailing interest rate for loans and forbearance of money is six percent (6%) per annum, in the absence of an express contract as to such rate of interest.

In summary, the interest rates applicable to loans and forbearance of money, in the absence of an express contract as to such rate of interest, for the period of 1940 to present are as follows:

Law, Rule and Regulations, BSP Issuances	**Date of Effectivity**	**Interest Rate**
Act No. 2655	May 1, 1916	6%
CB Circular No. 416	July 29, 1974	12%
CB Circular No. 905	December 22, 1982	12%
CB Circular No. 799	July 1, 2013	6%

It is important to note, however, that interest shall be compounded at the time judicial demand is made pursuant to Article 2212[31] of the Civil Code of the Philippines, and sustained in *Eastern Shipping Lines v. Court of Appeals*,[32] then later on in *Nacar v. Gallery Frames*,[33] save for the reduction of interest rate to 6% for loans or forbearance of money, thus:

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[31] Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

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

[33] 716 Phil. 267 (2013).

> 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 6% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.[34]

Anent the award of exemplary damages and attorney's fees, subject of NAPOCOR's petition, wherein it seeks their non-inclusion or deletion in the CA's disposition, this Court finds the same to be meritorious.

Under Article 2229 of the Civil Code, "[e]xemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." As this court has stated in the past: "Exemplary damages are designed by our civil law to permit the courts to reshape behaviour that is socially deleterious in its consequence by creating negative incentives or deterrents against such behaviour."[35]

It must be remembered that in this case, it was NAPOCOR who filed a complaint for eminent domain, albeit after a long period of time. This means that NAPOCOR does not have any intention of causing any harm to the landowners nor its action can be considered as socially deleterious in its consequence. Furthermore, the cases cited by the CA to justify the award of exemplary damages and attorney's fees are inapplicable in this case, as correctly pointed out by NAPOCOR, through the Office of the Solicitor General, thus:

> It must be noted that the Court of Appeals, in holding petitioner liable for payment of exemplary damages and attorney's fees to

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[34] *Nacar v. Gallery Frames, supra.*

[35] *Nancy S. Montinola v. Philippine Airlines*, G.R. No. 198656, September 8, 2014, 734 SCRA 439, citing *Mecenas v. Court of Appeals*, 259 Phil. 556, 574 (1989) [Per *J.* Feliciano, Third Division].

respondents-spouses Malijan, used as basis this Honorable Court's ruling in Manila International Airport Authority (MIAA) v. Rodgriguez, as cited in City of Iloilo v. Contreras-Besna.

In said MIAA case, the landowner instituted an *accion reinvindicatoria* with damages against MIAA. This Honorable Court ordered MIAA to pay exemplary damages and attorney's fees to the landowner for occupying the latter's property for more than twenty (20) years without the benefit of expropriation proceedings and without exerting efforts to ascertain the ownership of the lot and negotiating with the owner thereof. According to this Honorable Court, such omissions on the part of MIAA constitute "wanton and irresponsible acts which should be suppressed and corrected.

With all due respect, said MIAA case does not squarely apply to the present case, First, this case is a complaint for eminent domain initiated by petitioner and not an *accion reinvindicatoria* with damages filed by respondens-spouses. Second, there is no evident showing of bad faith or arbitrariness on the part of petitioner in occupying a portion of respondents-spouses' property. As opposed to said MIAA case., petitioner herein had been negotiating with respondents-spouses as early as 1972 for the acquisition of an easement of right-of-way over a portion of their property. It was after failing to reach an agreement with respondents- spouses for over thirty (30) years that petitioner was constrained to file a complaint for eminent domain in 2005. Definitely, there is no bad faith or wanton conduct that can be imputed to petitioner that would warrant the imposition of exemplary damages and attorney's fees inasmuch as petitioner exerted serious and continuous efforts to negotiate with respondents-spouses for the taking of their property, but to no avail.

Neither does the City of Iloilo case apply because the facts therein are not on all fours with those of the present case. In the City of Iloilo case, the City of Iloilo initiated a complaint for eminent domain against the landowner sometime in 1981. After a writ of possession was issued in its favor, the City of Iloilo took physical possession of the property in the middle of 1985. However, it was discovered that despite the order of expropriation becoming final, the City of Iloilo did not deposit the required amount for the expropriation of the property. The expropriation proceedings remained dormant, and for over twenty-five (25) years, there was no indication whatsoever that the City of Iloilo compensated the landowner for the taking of his property. Indisputably, the existence of bad faith on the part of

the City of Iloilo in taking possession of the landowner's property is glaring, thus warranting the imposition of exemplary damages and attorney's fees.[36]

The award of attorney's fees is also unwarranted because of the lack of factual and legal justification. An award of attorney's fees has always been the exception rather than the rule. To start with, attorney's fees are not awarded every time a party prevails in a suit.[37] Nor should an adverse decision *ipso facto* justify an award of attorney's fees to the winning party.[38] The policy of the Court is that no premium should be placed on the right to litigate.[39] Too, such fees, as part of damages, are assessed only in the instances specified in Article 2208[40] of the Civil

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[36] *Rollo* (G.R. No. 211731), pp. 27-28.

[37] *Ballesteros v. Abion*, February 9, 2006, 143361, 482 SCRA 23, 39; *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*, G.R. No. 138088, January 23, 2006, 479 SCRA 404; *Filipinas Broadcasting Network, Inc. v. Ago Medical and Educational Center-Bicol Christian College of Medicine*, G.R. No. 141994, January 17, 2005, 448 SCRA 413.

[38] *"J" Marketing Corporation v. Sia, Jr.*, 349 Phil. 513, 518.

[39] *Frias v. San Diego-Sison*, G.R. No. 155223, April 3, 2009, 520 SCRA 244, 259-260; *Country Bankers Insurance Corporation v. Lianga Bay and Community Multi-purpose Cooperative, Inc*., G.R. No. 136914, January 25, 2002, 374 SCRA 653; *Ibaan Rural Bank, Inc. v. Court of Appeals*, G.R. No. 123817, December 17, 1999, 321 SCRA 88; *Morales v. Court of Appeals,* G.R. No. 117228, June 19, 1997, 274 SCRA 282, 309; *Philippine Air Lines v. Miano*, G.R. No. 106664, March 8, 1995, 242 SCRA 235, 240; *Firestone Tire & Rubber Co. of the Phils. v. Ines Chaves & Co., Ltd*., No. L-17106, October 19, 1966, 18 SCRA 356, 358.

[40] Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;

Code. Indeed, attorney's fees are in the nature of actual damages.[41] But even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, attorney's fees may still be withheld where no sufficient showing of bad faith could be reflected in a party's persistence in a suit other than an erroneous conviction of the righteousness of his cause.[42] And lastly, the trial court must make *express* findings of fact and law that would bring the suit within the exception. What this demands is that the factual, legal or equitable justifications for the award must be set forth not only in the *fallo* but also in the text of the decision, or else, the award should be thrown out for being speculative and conjectural.[43]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated May 11, 2014 of Conchita Malapascua-Malijan and Heirs of Lazaro Malijan in G.R. No. 211818 is **DENIED** for lack of merit, while the Petition for Review on *Certiorari* under Rule 45 dated April 21, 2014 of

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(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[41] *Fores v. Miranda*, 105 Phil. 266.

[42] *Felsan Realty & Development Corporation v. Commonwealth of Australia*, G.R. No. 169656, October 11, 2007, 535 SCRA 618, 631-632; *ABS-CBN Broadcasting Corporation v. Court of Appeals*, G.R. No. 128690, January 21, 1999, 301 SCRA 572, 601.

[43] *Villanueva v. Salvador*, G.R. No. 139436, January 25, 2006, 480 SCRA 39, 52; *Mindex Resources Development v. Morillo*, G.R. No. 138123, March 12, 2002, 379 SCRA 144, 157; *Valiant Machinery & Metal Corporation v. NLRC*, G.R. No. 105877, January 25, 1996, 252 SCRA 369; *Scott Consultants and Resource Development Corporation v. Court of Appeals*, G.R. No. 112916, March 16, 1995, 242 SCRA 393, 406.

the National Power Corporation is **GRANTED**. Consequently, the Decision dated June 13, 2012 of the Court of Appeals and its subsequent Resolution dated March 12, 2014, reversing the Decision dated February 22, 2008 of the Regional Trial Court, Branch 6, Tanauan City, Batangas, are **AFFIRMED** with the modification that the award of exemplary damages and attorney's fees is **DELETED**.

SO ORDERED.

Bersamin,* *Perez,* and *Reyes, JJ.*, concur.

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

DISSENTING OPINION

VELASCO, JR., *J.*:

Regrettably, I am unable to concur with the conclusions of the *ponencia*.

I maintain my postulation in *Secretary of Public Works and Highways v. Spouses Tecson*[1] (*Tecson Case*) that a legitimate exercise of eminent domain presupposes that the filing of the complaint for expropriation preceded the actual taking. This is pursuant to the twin constitutional mandates that *"[n]o person shall be deprived of x x x property without due process of law"*[2] and that *"[p]rivate property shall not be taken for public use without just compensation."*[3] As I have discussed in my Dissenting Opinion in the *Tecson Case*:

x x x The Constitution requires that the act of deprivation should be preceded by compliance with procedural due process, part and

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* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 22, 2014.

[1] G.R. No. 179334, April 21, 2015.

[2] Sec. 1, Article III of the 1987 Philippine Constitution.

[3] Sec. 9, *id.*

parcel of which includes the filing of an expropriation case. This is so because by filing the action for expropriation, the government, in effect, serves notice that it is taking title and possession of the property. Hence, without an expropriation suit, private property is being taken without due notice to the landowner, in violation of his constitutional right.

x x x x x x x x x

It behoves the state to commence the necessary proceedings since the adverted constitutional provisions, as couched, place on the government the correlative burden of proving compliance with the imperatives of due process and just compensation prescribed under Secs. 1 and 9, Art. III of the Constitution. x x x

x x x x x x x x x

The need for the government to commence condemnation proceedings as required has far-reaching ramifications that are legal as they are practical. Aside from operating as due notice to the landowner, initiating the case likewise entitles the government to acquire possession of the property, subject to the posting of a deposit. Thus, absent an expropriation case, the requirement of posting a deposit will not come into play and, consequently, the right of the government to acquire possession over the subject land will never arise.

The due process requirement, in the context of expropriation, dictates that there be sufficient notice to the landowner before the government can assume possession of his or her land. The filing of the complaint satisfies this notice requirement. Thus, until the condemnation proceeding is initiated, the government does not yet have any valid authority to intrude on the property, regardless of whether or not its intended purpose is for the public good. The failure to initiate the complaint for expropriation before the government assumes possession over the subject lot does not amount to a valid exercise of eminent domain.

In this case, it must be emphasized that though the National Power Corporation (NPC) filed a complaint for expropriation on October 25, 2005, the actual taking of the property commenced much earlier in 1972. By simple arithmetic, thirty-three (33) years have already elapsed from the time the landowners were deprived of possession of their property until the government

took responsibility for its actions. This, to my mind, miserably fails to satisfy the due process requirement and is instead a circumvention of the Constitutional mandates, constitutive of unlawful taking.

I cannot therefore, in good conscience, agree with the conclusion that the landowners' entitlement to just compensation in this case should be reckoned from the date of taking in 1972, for the simple reason that the taking at that time was still unlawful. When possession over the property was wrestled from the Spouses Malijan, the government then had no color of authority to do the same. The government's right of eminent domain is not a panacea that licenses it to proceed as it pleases in taking property, for constitutional safeguards rein in the exercise of this otherwise boundless inherent power of the state.

As an alternative, I respectfully propose that the **valuation of the property should be reckoned from the date of filing of the complaint for expropriation on October 25, 2005**. It was only then when the government could have validly sought the consent of the landowners to enforce a lawful taking for a public purpose; it was only then when the intention of the state to expropriate became manifest.

The proposition is in line with our ruling in *National Power Corporation v. Court of Appeals*[4] (*NPC v. CA*) wherein the Court enumerated the circumstances that must be present in the taking of property for purposes of eminent domain:

> (1) the expropriator must enter a private property;
> (2) the entrance into private property must be for more than a momentary period;
> **(3) the entry into the property should be under warrant or color of legal authority;**
> (4) the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and
> (5) the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.

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[4] G.R. No. 113194, March 11, 1996, 254 SCRA 577.

Hence, in *NPC v. CA*, the determination of just compensation was based on the price of the property in 1992, when the government sued for expropriation, rather than in 1978, the date of actual taking. As we have cautioned therein:

> If We decree that the fair market value of the land be determined as of 1978, then **We would be sanctioning a deceptive scheme** whereby NAPOCOR, for any reason other than for eminent domain would occupy another's property and when later pressed for payment, first negotiate for a low price and then conveniently expropriate the property when the landowner refuses to accept its offer claiming that the taking of the property for the purpose of eminent domain should be reckoned as of the date when it started to occupy the property and that the value of the property should be computed as of the date of the taking despite the increase in the meantime in the value of the property. (emphasis added)

It is this holding in *NPC v. CA* that should be upheld in the case at bar. To rule otherwise would not only be grossly unfair to the landowner, but would also be tantamount to countenancing the **fatal omission** of the NPC when it filed its complaint for expropriation. Aptly pointed out by the Spouses Malijan was that **nowhere in the complaint was it ever mentioned that the government has already been occupying the land as early as 1972**. Such ultimate fact should have been alleged by the state in its initiatory pleading for it to be allowed to establish the claim that the valuation for just compensation should be reckoned from that year. Hoisting this argument belatedly, after the court-appointed commissioners have already come up with a report, ought to then preclude the court from determining just compensation based on the date of actual taking. The date of filing should then be controlling in this case.

Lack of opposition on the part of the Spouses Malijan cannot so casually be construed as acquiescence with the government's deed, for their inaction may merely be due to lack of options. We must take heed of the foreshadowing so eloquently pronounced in *Alfonso v. City of Pasay*:[5]

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[5] *Alfonso v. Pasay,* No. L-12754, January 30, 1960.

This Tribunal does not look with favor on the practice of the Government or any of its branches, of taking away property from a private landowner, especially a registered one, without going through the legal process of expropriation or a negotiated sale and paying for said property without delay. The private owner is usually at a great and distinct disadvantage. He has against him the whole Government, central or local, that has occupied and appropriated his property, summarily and arbitrarily, sometimes, if not more often, against his consent. There is no agreement as to its price or its rent. In the meantime, the landowner makes requests for payment, rent, or even some understanding, patiently waiting and hoping that the Government would soon get around to hearing and granting his claim. The officials concerned may promise to consider his claim and come to an agreement as to the amount and time for compensation, but with the not infrequent government delay and red tape, and with the change in administration, specially local, the claim is pigeon holed and forgotten and the papers lost, mislaid, or even destroyed as happened during the last war. And when finally losing patience and hope, he brings a court action and hires a lawyer to represent him in the vindication of his valid claim, he faces the government represented by no less than the Solicitor General or the Provincial Fiscal or City Attorney, who blandly and with self-assurance, invokes prescription. The litigation sometimes drags on for years. In our opinion, **that is neither just nor fair**. When a citizen, because of this practice loses faith in the government and its readiness and willingness to pay for what it gets and appropriates, in the future said citizen would not allow the Government to even enter his property unless condemnation proceedings are first initiated, and the value of the property, as provisionally ascertained by the Court, is deposited, subject to his disposal. This would mean delay and difficulty for the Government, but all of its own making. (emphasis added)

It is in view of the foregoing circumstances that I withhold my concurrence from the decision of the majority.

THIRD DIVISION

[G.R. No. 214470. December 7, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESUS MAYOLA *y* PICAR,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS; ESTABLISHED IN CASE AT BAR.— Under paragraph 1 (a) of Article 266-A of the RPC, the elements of rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation. In this case, all the elements of the crime charged in the Information are present. Private complainant AAA positively identified appellant as the perpetrator. Her clear and straightforward testimony, corroborated by the medical findings show beyond reasonable doubt that AAA was already in a non-virginal state after she was raped. When the victim's testimony is corroborated by the physical findings of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge. x x x Anent the second element, it was duly proven and uncontested that appellant is the father of private complainant. When the offender is the victim's father, as in this case, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter, his moral ascendancy or influence over the latter substitutes for violence and intimidation.

2. ID.; ID.; ID.; FAILURE OF THE VICTIM TO SHOUT OR SEEK HELP DOES NOT NEGATE RAPE.— A person accused of a serious crime such as rape will tend to escape liability by shifting the blame on the victim for failing to manifest resistance to sexual abuse. However, this Court has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help does not negate rape. Even lack of resistance will not imply that the victim has consented to the sexual act, especially when that person was intimidated into submission by the accused. In cases where the rape is committed by a relative such as a father, stepfather, uncle, or common-law spouse, moral influence or ascendancy takes the place of violence.

3. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; MOTIVES, SUCH AS RESENTMENT, HATRED OR REVENGE NEVER SWAYED THE COURT FROM GIVING FULL CREDENCE TO THE TESTIMONY OF A MINOR RAPE VICTIM.— Appellant's claim of ill motive on the part of private complainant AAA as the prime reason the latter has accused him of committing the crime is untenable. It is highly unthinkable for the victim to falsely accuse her father solely by reason of ill motives or grudge. Furthermore, motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim.

4. ID.; ID.; ID.; DENIAL AND ALIBI; BARE ASSERTIONS OF THE DEFENSES OF DENIAL AND ALIBI CANNOT OVERCOME THE CATEGORICAL TESTIMONY OF THE VICTIM.— It must be remembered that as to appellant's defense of denial and alibi, bare assertions thereof cannot overcome the categorical testimony of the victim. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. On the otherhand, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of commission.

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 of the Decision[1] dated May 21, 2014 of the Court of Appeals (*CA*) dismissing appellant Jesus Mayola y

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with the concurrence of Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan.

Picar's appeal and affirming the Decision[2] dated September 11, 2009 of the Regional Trial Court (*RTC*), Branch 55, Alaminos City, Pangasinan in Criminal Case No. 4758-A for the crime of qualified rape as defined and penalized under Article 266-A (1) (a) in relation to Article 266-B (1) of the Revised Penal Code (*RPC*), as amended by Republic Act (*R.A.*) No. 8353.

The facts follow.

Appellant is the father of AAA,[3] the private complainant. The appellant, AAA, and her 3 siblings, CCC, DDD and EEE, lived in an 18-square-meter single room house in Brgy. Telbang, Alaminos City, Pangasinan. Her mother was then working as a househelper in Manila. According to AAA, appellant had sexual intercourse with her every other day since 2001 when she was just 13 years old. Her mother knew what the appellant did to her, but the former could not help her and the latter was afraid to report the incident to the authorities. In the evening of December 30, 2004, AAA and her brother CCC slept on a bamboo bed beside appellant while her sisters DDD and EEE slept on the floor. Appellant went on top of her and inserted his penis into her vagina when her siblings were already asleep. Appellant

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[2] Penned by Presiding Judge Elpidio N. Abella.

[3] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (533 Phil. 703, 709 [2006]), wherein this Court resolved to withhold the real name of the victims-survivors and to use fictitious initials instead to represent them in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX.''

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act; Sec. 44 of Republic Act No. 9262, otherwise known as Anti-Violence Against Women and Their Children Act of 2004; and Sec. 40 of A.M. No. 04-10-11-SC, known as Rule on Violence Against Women and Their Children effective November 15, 2004.

only stopped what he was doing when CCC woke up. Appellant then went at the back of their house, gathered the chairs, arranged them to form a makeshift bed, and called for her. AAA cried as she heeded appellant's call. AAA eventually was fed up with appellant's repeated violation of her chastity and told him not to do it again. AAA's sister, BBB, FFF and her uncle GGG accompanied her in reporting the incident to the Alaminos City Police Station where she was first investigated by the Chief of Police and later on by a policewoman. On January 2, 2005, she went to the Western Pangasinan District Hospital for medical examination. Based on medical findings, AAA was found to have nonporous introitus, old hymenal laceration at five o'clock and 7 o'clock positions. The vagina also admitted 2 fingers with slight difficulty and there was no bleeding when AAA was subjected to internal examination. Hence, an Information was filed against appellant, which reads as follows:

> That on or about December 30, 2004 in the evening in Barangay Telbang, Alaminos City, Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force, threat and intimidation did then and there wilfully, unlawfully and feloniously did (sic) lie and succeeded (sic) in having carnal knowledge of AAA, his fifteen (15) year-old daughter, despite her resistance and pleas for mercy, to her damage and prejudice.
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> Contrary to Article 266-A of the Revised Penal Code, as Amended.

Aside from the testimony of AAA, Dr. Ma. Teresa G. Sanchez, AAA's sisters BBB and DDD also testified against appellant.

Appellant, on the other hand, denied that he had sexual intercourse with AAA. He claimed that his children's hard feelings towards him for severely punishing them when they were at fault motivated them in filing a complaint.

The RTC found appellant guilty beyond reasonable doubt of the crime charged, thus:

> WHEREFORE, in view of the foregoing consideration, this Court finds accused JESUS MAVOLA y PICAR GUILTY beyond reasonable doubt of the crime of rape as charged in the Information, and hereby sentences him to suffer the penalty of *reclusion perpetua*, to indemnify the offended party the amount of ₱75,000.00; to pay moral damages

to the victim in the amount of ₱75,000.00, and ₱25,000.00 as exemplary damages.

SO ORDERED.[4]

Subsequently, appellant filed an appeal with the CA and the latter, on May 21, 2014, affirmed the Decision of the RTC with modification as to the award of damages, thus:

> WHEREFORE, premises considered, the Decision dated September 11, 2009 of the RTC, Branch 55, Alaminos City, Pangasinan in Criminal Case No. 4758-A is hereby AFFIRMED with MODIFICATION. Accused-appellant JESUS MAYOLA y PICAR is found GUILTV beyond reasonable doubt of the crime of qualified rape, and sentenced to *reclusion perpetua* without eligibility for parole. He is ordered to pay the victim AAA Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Thirty Thousand Pesos (₱30,000.00) as exemplary damages, with interest at the rate of 6% *per annum* from the date of finality of this judgment until fully paid.
>
> SO ORDERED.[5]

Appellant's motion for reconsideration having been denied, the present appeal was filed with this Court.

In its Manifestation[6] dated February 6, 2015, appellant informed this Court that he is adopting all the defenses and arguments he raised in the Brief for the Accused-Appellant filed with the CA.

Appellant assigns this lone error:

> THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

According to appellant, had it been true that private complainant AAA felt violated since she was thirteen (13) years

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[4] *CA rollo*, p. 24.

[5] *Rollo*, p. 10.

[6] *Id*. at 19-24.

old, then she would not have slept side by side with the appellant; thus, such behavior is not in accordance with one who is a victim of sexual abuse. He further questions private complainant's delay in reporting the incident. He also claims that there is ill-motive on the part of the private complainant in filing the rape charge against him.

Under paragraph 1 (a) of Article 266-A of the RPC, the elements of rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation.

In this case, all the elements of the crime charged in the Information are present. Private complainant AAA positively identified appellant as the perpetrator. Her clear and straightforward testimony, corroborated by the medical findings show beyond reasonable doubt that AAA was already in a non-virginal state after she was raped. When the victim's testimony is corroborated by the physical findings of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[7] As ruled by the CA:

> Private complainant AAA positively identified accused-appellant Mayola as her abuser. She did not waver on the material points of her testimony and maintained the same even on cross-examination.
>
> Moreover, private complainant AAA's testimony is corroborated by the result of her medical examination which showed the presence of "old hymenal laceration at five (5) o'clock and seven (7) o'clock position" in her private part. This finding is consistent with her declaration that accused-appellant Mayola had been raping her since she was thirteen (13) years old.
>
> It is also worthy to note that when private complainant AAA relived her ordeal at the witness stand, she broke down in tears several times. This only bolsters her credibility. Her emotional anguish is consistent with the ruling of the Supreme Court that the crying of a victim during her testimony is evidence of the truth of the rape charges, for

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[7] *People v. Estoya*, 700 Phil. 490, 499 (2012), citing *People v. Dizon*, 453 Phil. 858, 883 (2003).

the display of such emotion indicates the trauma she suffered while under the evil control of her tormentor.[8]

Anent the second element, it was duly proven and uncontested that appellant is the father of private complainant. When the offender is the victim's father, as in this case, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter, his moral ascendancy or influence over the latter substitutes for violence and intimidation.[9]

Appellant questions the behavior of private complainant AAA as not being the proper behavior of a victim of sexual abuse. Such contention deserves scant consideration. A person accused of a serious crime such as rape will tend to escape liability by shifting the blame on the victim for failing to manifest resistance to sexual abuse.[10] However, this Court has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help does not negate rape.[11] Even lack of resistance will not imply that the victim has consented to the sexual act, especially when that person was intimidated into submission by the accused.[12] In cases where the rape is committed by a relative such as a father, stepfather, uncle, or common-law spouse, moral influence or ascendancy takes the place of violence.[13] Thus, the CA correctly ruled that:

There has never been any uniformity or consistency of behavior to be expected from those who had the misfortune of being sexually

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[8] *Rollo*, p. 7.

[9] *People v. Flagrante*, G.R. No. 182521, February 9, 2011, 642 SCRA 566, 579-580.

[10] *People v. Pareja*, 724 Phil. 759, 778 (2014).

[11] *Id.*

[12] *Id.*

[13] *People v. Pacheco*, G.R. No. 187742, April 20, 2010, 618 SCRA 606, 615.

molested. The Supreme Court has pointed out that some of them have found the courage early on to publicly denounce the abuses they experienced, but still there were others who have opted to initially keep their harrowing ordeals to themselves and to just move on with their lives as if nothing had happened, until the limits of their tolerance were reached. Also, the immature and inexperienced could not be expected to measure up to the same standard of conduct and reaction that would be expected from adults whose maturity in age and experience could have brought them to stand up more quickly to their interest. Lastly, long silence and delay in reporting the crime of rape to the proper authorities have not always been considered as an indication of a false accusation.

The delay in reporting the incident is also not a factor in diminishing the value of private complainant AAA's testimony. In *People v. Ogarte*,[14] this Court ruled that the rape victim's deferral in reporting the crime does not equate to falsification of the accusation, thus:

> The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.

Therefore, the CA correctly ruled that:

> There has never been any uniformity or consistency of behaviour to be expected from those who had the misfortune of being sexually molested. The Supreme Court has pointed out that some of them have found the courage early on to publicly denounce the abuses they experienced, but still there were others who have opted to initially keep their harrowing ordeals to themselves and to just move on with their lives as if nothing had happened, until the limits of their tolerance

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[14] G.R. No. 182690, May 30, 2011, 649 SCRA 395, 412.

were reached. Also, the immature and inexperienced could not be expected to measure up to the same standard of conduct and reaction that would be expected from adults whose maturity in age and experience could have brought them to stand up more quickly to their interest. Lastly, long silence and delay in reporting the crime of rape to the proper authorities have not always been considered as an indication of a false accusation.[15]

Appellant's claim of ill motive on the part of private complainant AAA as the prime reason the latter has accused him of committing the crime is untenable. It is highly unthinkable for the victim to falsely accuse her father solely by reason of ill motives or grudge."[16] Furthermore, motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim.[17] In *People v. Manuel*,[18] this Court ruled:

> Evidently, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her being. It is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.

It must be remembered that as to appellant's defense of denial and alibi, bare assertions thereof cannot overcome the categorical testimony of the victim. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. On the otherhand, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of commission.[19]

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[15] *Rollo*, p. 8.

[16] *People v. Zafra*, G.R. No. 197363, June 26, 2013, 700 SCRA 106, 120.

[17] *People v. Mangitngit*, 533 Phil. 837, 852 (2006).

[18] 358 Phil. 664, 674 (1998).

[19] *People v. Abulon*, 557 Phil. 428, 448 (2007).

As to the penalty imposed, the RTC and the CA were correct in imposing the penalty of *reclusion perpetua*, instead of death by virtue of R.A. No. 9346, as the rape is qualified by private complainant AAA's minority and appellant's paternity. However, in the award of damages, a modification must be made per *People v. Ireneo Jugueta*.[20] Where the penalty imposed is Death but reduced to *reclusion perpetua* because of R.A. No. 9346, the amounts of damages shall be as follows:

1. Civil Indemnity – ₱100,000.00
2. Moral Damages – ₱100,000.00
3. Exemplary Damages – ₱100,000.00

WHEREFORE, the appeal of Jesus Mayola y Picar is **DISMISSED** for lack of merit and the Decision dated May 21, 2014 of the Court of Appeals, affirming the Decision dated September 11, 2009 of the Regional Trial Court, Branch 55, Alaminos City, Pangasinan in Criminal Case No. 4758-A convicting appellant of the crime of qualified rape defined and penalized under Article 266-A (1) (a) in relation to Article 266-B (1) of the Revised Penal Code, as amended by R.A. No. 8353, and imposing the penalty of *Reclusion Perpetua* without eligibility for parole, is **AFFIRMED** with the **MODIFICATION** that the award of damages must be in this manner per *People v. Ireneo Jugueta*:[21] ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, with legal interest on all damages awarded at the rate of 6% per annum from the date of the finality of this Decision until fully paid.

SO ORDERED.

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

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[20] G.R. No. 202124, April 5, 2016.

[21] *Id*.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated February 1, 2016.

THIRD DIVISION

[G.R. No. 216061. December 7, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NAPOLEON BENSURTO, JR.** ***y*** **BOLOHABO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS; WHEN THE OFFENDER IS THE VICTIM'S FATHER, THERE NEED NOT BE ACTUAL FORCE, THREAT OR INTIMIDATION BECAUSE WHEN A FATHER COMMITS THE ODIOUS CRIME OF RAPE AGAINST HIS OWN DAUGHTER WHO WAS ALSO A MINOR AT THE TIME OF COMMISSION OF THE OFFENSE, HIS MORAL ASCENDANCY OR INFLUENCE OVER THE LATTER SUBSTITUTES FOR VIOLENCE AND INTIMIDATION; CASE AT BAR.— Under paragraph 1 (a) of Article 266-A of the RPC, the elements of rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation. However, when the offender is the victim's father, as in this case, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter who was also a minor at the time of the commission of the offenses, his moral ascendancy or influence over the latter substitutes for violence and intimidation. All the elements, therefore, are present. The clear and straightforward testimony of AAA, as corroborated by the medical findings show beyond reasonable doubt that AAA was already in a non-virginal state after she was raped. When the victim's testimony is corroborated by the physical findings of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.

2. ID.; ID.; ID.; DELAY IN PROSECUTING THE OFFENSE IS NOT AN INDICATION OF A FABRICATED CHARGE.— The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant

the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DISCREPANCIES REFERRING ONLY TO MINOR DETAILS AND COLLATERAL MATTERS DO NOT AFFECT THE VERACITY OR DETRACT FROM THE ESSENTIAL CREDIBILITY OF A WITNESS' DECLARATIONS, AS LONG AS THESE ARE COHERENT AND INTRINSICALLY BELIEVABLE ON THE WHOLE.— [T]his Court has ruled that discrepancies referring only to minor details and collateral matters do not affect the veracity or detract from the essential credibility of a witness' declarations, as long as these are coherent and intrinsically believable on the whole. Furthermore, it is an accepted doctrine in rape cases that in the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence.

4. ID.; ID.; ID.; THE RECANTATION, LIKE ANY OTHER TESTIMONY, IS SUBJECT TO THE TEST OF CREDIBILITY BASED ON THE RELEVANT CIRCUMSTANCES, INCLUDING THE DEMEANOR OF THE RECANTING WITNESS ON THE STAND.— Mere retraction by a prosecution witness does not necessarily vitiate her original testimony. As a rule, recantation is viewed with disfavor firstly because the recantation of her testimony by a vital witness of the State like AAA is exceedingly unreliable, and secondly, because there is always the possibility that such recantation may later be repudiated. Indeed, to disregard testimony solemnly given in court simply because the witness recants it ignores the possibility that intimidation or monetary considerations may have caused the recantation. Court proceedings, in which testimony upon oath or affirmation is required to be truthful under all circumstances, are trivialized by the recantation. The trial in which the recanted testimony was given is made a mockery, and the investigation is placed

at the mercy of an unscrupulous witness. Before allowing the recantation, therefore, the court must not be too willing to accept it, but must test its value in a public trial with sufficient opportunity given to the party adversely affected to cross-examine the recanting witness both upon the substance of the recantation and the motivations for it. The recantation, like any other testimony, is subject to the test of credibility based on the relevant circumstances, including the demeanor of the recanting witness on the stand.

5. ID.; ID.; DENIAL AND ALIBI; BARE ASSERTIONS OF DENIAL AND ALIBI CANNOT OVERCOME THE CATEGORICAL TESTIMONY OF THE VICTIM.— Anent appellant's defense of denial and alibi, bare assertions thereof cannot overcome the categorical testimony of the victim. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. On the other hand, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of commission.

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 of the Court of Appeals' (CA) Decision[1] dated March 28, 2014 dismissing appellant's appeal and affirming the Joint Decision[2] dated November 28, 2011 of the Regional Trial Court, Branch 48, Masbate City, in Criminal Cases Nos. 10225-26 convicting appellant of two (2) counts of the crime

[1] Penned by Associate Justice Isaias P. Dicdican, with the concurrence of Associate Justices Michael P. Elbinias and Victoria Isabel A. Paredes.

[2] Penned by Presiding Judge Arturo Clemente B. Revil.

of qualified rape defined and penalized under Article 266-A (1) (a), in relation to Article 266-B (1) of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353.

The facts follow.

The victim, AAA,[3] was born on July 10, 1991, and sometime in February 1999, when she was only 9 years old, she was left alone by her adoptive mother, BBB, in their house, together with appellant, her father (as indicated in the birth certificate presented before the court). While she was sleeping in her room, appellant entered thereat with a rope in his hand. AAA was awakened by the presence of her father who proceeded to tie her feet. Appellant then pulled AAA's underwear to her feet and immediately laid on top of her. Thereafter, appellant undressed himself and then forced his penis into AAA's vagina. After appellant satisfied his carnal desires, he threatened AAA not to tell anyone about the incident or else he would kill her and her mother. Fearing for her life, as well as her mother, AAA never told anyone about the incident. The said incident, however, was repeated sometime in June 2000. After appellant ordered their househelper to go home, he instructed AAA to

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[3] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (533 Phil. 703, 709 [2006]), wherein this Court resolved to withhold the real name of the victims-survivors and to use fictitious initials instead to represent them in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA", "BBB", "CCC", and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act; Sec. 44 of Republic Act No. 9262, otherwise known as Anti-Violence Against Women and Their Children Act of 2004; and Sec. 40 of A.M. No. 04-10-11-SC, known as Rule on Violence Against Women and Their Children effective November 15, 2004.

sleep in his room. Left alone with only her father as companion, she was forced to accede to her father's demand. While in the appellant's room, the latter pulled down AAA's underwear and again sexually abused her despite her pleas not to. Appellant again told her not to tell anyone under the threat of death upon her and her mother. AAA was only able to relate the incident to her mother in November 2000. Subsequently, AAA and her mother went to Edna Romano, the Rural Health Midwife of Cabitan, Mandaon, Masbate to seek assistance. Romano, thereafter, accompanied BBB and AAA to the Mandaon Medicare Community Hospital where AAA was examined by Dr. Napoleon Villasis. Based on the examination, AAA was found to have hymenal tears at 10 o'clock position. Hence, two (2) Informations were filed against appellant, which read as follows:

Criminal Case No. 10225

That sometime in the month of February, 1999 at Barangay Cabitan, Municipality of Mandaon, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his 9-year-old daughter, [AAA], against her will.

CONTRARY TO LAW.

Criminal Case No. 10226

That sometime in the month of June 2000 at Barangay Cabitan, Municipality of Mandaon, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with his 9-year-old daughter, [AAA], against her will.

CONTRARY TO LAW.

AAA testified during the trial, as well as Dr. Napoleon Villasis, Edna Romano and BBB, AAA's mother.

Appellant offered denial, alibi and no ill motive as defenses. According to him, all the accusations against him were mere fabrications of his wife who only forced AAA to file the two criminal cases and testify against him. He added that he knew

about the illicit affair of his wife with a certain Relino Retudo, hence, his wife was only trying to escape from him for fear that he would kill her together with her paramour.

After more than 7 years since AAA testified in court, the latter retracted her previous testimony that she was raped by appellant. Testifying for the defense, AAA narrated that she was not raped by her father and was merely being dictated by her mother to fabricate the rape charges against appellant so as to allow her mother to live freely together with her paramour.

The RTC, on November 28, 2011, convicted the appellant on both counts of rape, the dispositive portion of the Joint Decision reads as follows:

> WHEREFORE, premises considered, the Court finds, accused Napoleon [Bensurto] y Bolohabo GUILTY of:
>
> 1. Qualified Rape in Criminal Case No. 10225, defined and penalized under Article 266-A of the Revised Penal Code for which he is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay "AAA" ₱75,000.00 as moral damages and ₱50,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency;
>
> 2. Qualified Rape in Criminal Case No. 10226, defined and penalized under Article 266-A of the Revised Penal Code for which he is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay "AAA" ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱50,000.00 as exemplary damages without subsidiary imprisonment in case of insolvency;
>
> The period of detention of accused Napoleon [Bensurto, Jr.] y Bolohabo shall be credited in his favor.
>
> The Provincial Jail Warden of the Provincial Jail, Masbate is directed to immediately transfer Napoleon [Bensurto Jr.] y Bolohabo to the National Bilibid Prison, Muntinlupa City.
>
> SO ORDERED.[4]

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[4] CA *rollo*, p. 20.

Notwithstanding the recantation of AAA, the RTC gave credence to her earlier testimony wherein she clearly narrated how the appellant raped her.

On appeal, the CA, in its Decision dated March 28, 2014, dismissed the same with the following disposition:

> WHEREFORE, in view of the foregoing premises, the instant appeal is hereby ordered DENIED and, consequently, DISMISSED. The appealed Joint Decision rendered by Branch 48 of the Regional Trial Court of the Fifth Judicial Region in Masbate City dated November 28, 2011 in Criminal Cases Nos. 10225-26 is hereby AFFIRMED,
>
> SO ORDERED.[5]

According to the CA, the presence of healed lacerations is consistent with and corroborative of AAA's testimony that she had indeed been raped by the appellant months before the date of examination. The CA added that the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to do conclude, having the opportunity to observe the witnesses' demeanor and deportment on the stand and the manner in which they gave their testimony. It was also adjudged that it was not adequately and convincingly shown that the trial court had overlooked or disregarded significant facts and circumstances which, when considered, would have affected the outcome of the case or justify a departure from the assessments and findings of the trial court. Furthermore, it ruled that a recantation or an affidavit of desistance is viewed with suspicion and reservation. According to the CA, it is worth noting that the recantation was made only seven years from the date of her last testimony in open court, when AAA was already 19 years old and, as noted by the trial court, unemployed. It was also ruled that the failure of AAA to shout for help or resist the sexual advances of the appellant is not equivalent to consent. Lastly, the CA ruled that long silence and delay in reporting the crime is not an indication that the accusations are false.

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[5] *Rollo*, p. 14.

Hence, the present appeal where appellant insists that the prosecution was not able to prove his guilt beyond reasonable doubt.

The appeal has no merit.

Under paragraph 1 (a) of Article 266-A of the RPC, the elements of rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation. However, when the offender is the victim's father, as in this case, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter who was also a minor at the time of the commission of the offenses, his moral ascendancy or influence over the latter substitutes for violence and intimidation.[6] All the elements, therefore, are present. The clear and straightforward testimony of AAA, as corroborated by the medical findings show beyond reasonable doubt that AAA was already in a non-virginal state after she was raped. When the victim's testimony is corroborated by the physical findings of penetration, there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge.[7]

The appellant claims that the medical evidence, with respect to the lacerations on the hymen of AAA, failed to convincingly corroborate the crime of rape as the cause of the same was not determined with possibility. This is a flawed argument. The medical report revealed that AAA suffered hymenal lacerations at 10 o'clock position and it must be emphasized that the said examination was made in November 2000, or months after the incidents of rape occurred in February of 1999 and June of 2000. Thus, the CA was correct when it ruled that the presence of such healed lacerations is consistent with and corroborative of AAA's testimony that she had indeed been raped by appellant

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[6] *People v. Flagrante*, G.R. No. 182521, February 9, 2011, 642 SCRA 566, 579-580.

[7] *People v. Estoya*, 700 Phil. 490, 499 (2012), citing *People v. Dizon*, 453 Phil. 858, 883 (2003).

months before the date of the medical examination.[8] The healed lacerations on the victim's hymen do not disprove that accused-appellant raped the victim and cannot serve to acquit him.[9] Proof of hymenal laceration is not even an element of rape, so long as there is enough proof of entry of the male organ into the *labia* of the *pudendum* of the female organ.[10]

Appellant also contends that the testimony of AAA is full of inconsistencies and, hence, should not be given credence, however, this Court has ruled that discrepancies referring only to minor details and collateral matters do not affect the veracity or detract from the essential credibility of a witness' declarations, as long as these are coherent and intrinsically believable on the whole.[11] Furthermore, it is an accepted doctrine in rape cases that in the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence.[12]

As to the retraction of AAA, this Court has ruled that when a rape victim's testimony is straightforward and marked with consistency despite gruelling examination, it deserves full faith and confidence and cannot be discarded. If such testimony is clear, consistent and credible to establish the crime beyond reasonable doubt, a conviction may be based on it, notwithstanding its subsequent retraction. Mere retraction by a prosecution witness does not necessarily vitiate her original testimony.[13] As a rule, recantation is viewed with disfavor firstly because the recantation of her testimony by a vital witness of

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[8] *Rollo*, p. 9.

[9] *People v. Pacheco*, 632 Phil. 624, 634 (2010).

[10] *People v. Cruz*, 612 Phil. 726, 734 (2009), citing *People v. Jumawid*, 606 Phil. 816, 823 (2009).

[11] See *People v. Laog*, 674 Phil. 444, 463 (2011), citing *People v. Suarez*, G.R. Nos. 153573-76, April 15, 2005, 456 SCRA 333, 345.

[12] *People v. Aguilar*, G.R. No. 177749, December 17, 2007, 540 SCRA 509, 522-523.

[13] *People v. Bulagao*, G.R. No. 184757, October 5, 2011, 658 SCRA 746, 755.

the State like AAA is exceedingly unreliable, and secondly, because there is always the possibility that such recantation may later be repudiated. Indeed, to disregard testimony solemnly given in court simply because the witness recants it ignores the possibility that intimidation or monetary considerations may have caused the recantation.[14] Court proceedings, in which testimony upon oath or affirmation is required to be truthful under all circumstances, are trivialized by the recantation. The trial in which the recanted testimony was given is made a mockery, and the investigation is placed at the mercy of an unscrupulous witness. Before allowing the recantation, therefore, the court must not be too willing to accept it, but must test its value in a public trial with sufficient opportunity given to the party adversely affected to cross-examine the recanting witness both upon the substance of the recantation and the motivations for it.[15] The recantation, like any other testimony, is subject to the test of credibility based on the relevant circumstances, including the demeanor of the recanting witness on the stand. In that respect, the finding of the trial court on the credibility of witnesses is entitled to great weight on appeal unless cogent reasons necessitate its re-examination, the reason being that the trial court is in a better position to hear first-hand and observe the deportment, conduct and attitude of the witnesses.[16] In this regard, the CA was correct with the following findings:

> In the case at bench, the determination by the trial court of the credibility of "AAA's" accusations and recantation is facilitated by the fact that her recantation was made in open court, by testifying for the defense. Unlike in cases where recantations were made in affidavits, the trial court in this case had the opportunity to see the demeanor of "AAA" not only when she narrated the sordid details of the alleged rape by her "adoptive" father, but also when she claimed that she made up the previous rape charges upon the ill advice of her "adoptive" mother.

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[14] *People v. Teodoro*, 704 Phil. 335, 357 (2013).

[15] *People v. Ballabare*, G.R. No. 108871, November 19, 1996, 264 SCRA 350, 361.

[16] *People v. Terrible*, G.R. No. 140635, November 18, 2002, 392 SCRA 113, 118.

As such, it is difficult to overlook the fact that the trial court convicted accused-appellant even after examining the young witness as she made a complete turnaround and admitted to perjury. The legal adage that the trial court is in the best position to assess the credibility of witnesses thus finds an entirely new significance in this case where "AAA" was subjected to gruelling cross examinations, redirect examinations and re-cross examinations both as a prosecution and defense witness. Still, the trial court found that the private complainant's testimony for the prosecution was the one that was worthy of belief.

Even if we disregard the elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, it is clear which of the narrations of "AAA" was sincere and which was concocted. As found by the trial court, "AAA's" testimony for the prosecution was clear, candid, and filled with emotions. It is worth noting that the recantation was made only seven years from the date of her last testimony in open court, when "AAA" was already nineteen (19) years old and, as noted by the trial court, unemployed.

Verily, the trial court gave credence to the testimony of "AAA" when she was presented as witness for the prosecution. The RTC found that her clear narration of how the crime of rape on two counts was committed and her categorical statement that the accused-appellant committed said crime, are sufficient to warrant the conviction of the appellant for two counts of rape.[17]

Another point raised in this appeal is AAA's lack of resistance if indeed it was true that she was subjected to sexual abuse because according to appellant, such absence of resistance tarnished AAA's testimony. Such argument, however, deserves scant consideration. In *People v. Enrique Quintos*,[18] this Court ruled that resistance or the absence thereof does not carry any weight in proving the crime of rape, thus:

In any case, resistance is not an element of the crime of rape. It need not be shown by the prosecution. Neither is it necessary to convict an accused. The main element of rape is "lack of consent."

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[17] *Rollo*, pp. 12-13.

[18] G.R. No. 199402, November 12, 2014, 740 SCRA 179, 199-200.

"Consent," "resistance," and "absence of resistance" are different things. Consent implies agreement and voluntariness. It implies willfulness. Similarly, resistance is an act of will. However, it implies the opposite of consent. It implies disagreement.

Meanwhile, absence of resistance only implies passivity. It may be a product of one's will. It may imply consent. However, it may also be the product of force, intimidation, manipulation, and other external forces.

Thus, when a person resists another's sexual advances, it would not be presumptuous to say that that person does not consent to any sexual activity with the other. That resistance may establish lack of consent. Sexual congress with a person who expressed her resistance by words or deeds constitutes force either physically or psychologically through threat or intimidation. It is rape.

Lack of resistance may sometimes imply consent. However, that is not always the case. While it may imply consent, there are circumstances that may render a person unable to express her resistance to another's sexual advances. Thus, when a person has carnal knowledge with another person who does not show any resistance, it does not always mean that that person consented to such act. Lack of resistance does not negate rape.

Hence, Article 266-A of the Revised Penal Code does not simply say that rape is committed when a man has carnal knowledge with or sexually assaults another by means of force, threat, or intimidation. It enumerates at least four other circumstances under which rape may be committed: (1) by taking advantage of a person's deprived reason or unconscious state; (2) through fraudulent machination; (3) by taking advantage of a person's age (12 years of age) or demented status; and (4) through grave abuse of authority. Article 266-A recognizes that rape can happen even in circumstances when there is no resistance from the victim.

Resistance, therefore, is not necessary to establish rape, especially when the victim is unconscious, deprived of reason, manipulated, demented, or young either in chronological age or mental age.

This Court is also not persuaded by appellant's contention that AAA's delay in reporting the crime indicates that the accusations against him are false. The failure of complainant to disclose her defilement without loss of time to persons close

to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated.[19] Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists.[20] They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.[21]

Anent appellant's defense of denial and alibi, bare assertions thereof cannot overcome the categorical testimony of the victim. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. On the other hand, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of commission.[22]

As to the penalty imposed, the RTC and the CA were correct in imposing the penalty of *reclusion perpetua* instead of death by virtue of R.A. No. 9346, as the rape is qualified by private complainant AAA's minority and appellant's paternity. However, in the award of damages, a modification must be made per *People v. Ireneo Jugueta*.[23] Where the penalty imposed is Death but reduced to *reclusion perpetua* because of R.A. No. 9346, the amounts of damages shall be as follows:

1. Civil Indemnity - ₱100,000.00
2. Moral Damages - ₱100,000.00
3. Exemplary Damages - ₱100,000.00

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[19] *People v. Ogarte*, G.R. No. 182690, May 30, 2011, 649 SCRA 395, 412.

[20] *Id.*

[21] *Id.*

[22] *People v. Abulon*, 557 Phil. 428, 448 (2007).

[23] G.R. No. 202124, April 5, 2016.

WHEREFORE, the appeal of Napoleon Bensurto, Jr. *y* Bolohabo is **DISMISSED** for lack of merit and the Decision dated March 28, 2014 of the Court of Appeals, affirming the Joint Decision dated November 28, 2011 of the Regional Trial Court, Branch 48, Masbate City, in Criminal Cases Nos. 10225-26, convicting appellant of two (2) counts of the crime of qualified rape defined and penalized under Article 266-A (1) (a) in relation to Art. 266-B (1) of the Revised Penal Code, as amended by R.A. No. 8353 and imposing on each count, the penalty of *Reclusion Perpetua* without eligibility for parole is **AFFIRMED** with the **MODIFICATION** that the award of damages on each count must be in this manner per *People v. Ireneo Jugueta*:[24] ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, with legal interest on all damages awarded at the rate of 6% *per annum* from the date of the finality of this Decision until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), Perez, Reyes, and *Perlas-Bernabe*,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 218014. December 7, 2016]

EDDIE CORTEL *y* CARNA and YELLOW BUS LINE, INC., *petitioners, vs.* **CECILE GEPAYA-LIM,** *respondent.*

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[24] *Id.*

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated February 9, 2015.

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTIONS REGARDING THE CAUSE OF THE VEHICULAR ACCIDENT AND THE PERSON RESPONSIBLE FOR IT ARE FACTUAL QUESTIONS WHICH THE SUPREME COURT CANNOT PASS UPON, PARTICULARLY WHEN THE FINDINGS OF THE TRIAL COURT AND THE COURT OF APPEALS ARE COMPLETELY IN ACCORD.— The rule is that the factual findings of the trial court, when affirmed by the Court of Appeals, are binding and conclusive upon this Court. It is also settled that questions regarding the cause of vehicular accident and the persons responsible for it are factual questions which this Court cannot pass upon, particularly when the findings of the trial court and the Court of Appeals are completely in accord. While there are exceptions to this rule, the Court finds no justification that would make the present case fall under the exceptions.

2. CRIMINAL LAW; REVISED PENAL CODE; CRIMINAL NEGLIGENCE; DOCTRINE OF *RES IPSA LOQUITUR*; ELEMENTS, CITED.— The elements of *res ipsa loquitur* are: (1) the accident is of such character as to warrant an inference that it would not have happened except for the defendant's negligence; (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured.

3. CIVIL LAW; QUASI-DELICT; WHEN AN EMPLOYEE CAUSES DAMAGE DUE TO HIS OWN NEGLIGENCE WHILE PERFORMING HIS OWN DUTIES, THERE ARISES A PRESUMPTION THAT THE EMPLOYER IS NEGLIGENT, WHICH CAN BE REBUTTED ONLY BY PROOF OF OBSERVANCE BY THE EMPLOYER OF THE DILIGENCE OF A GOOD FATHER OF A FAMILY IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEES.— The rule is when an employee causes damage due to his own negligence while performing his own duties, there arises a presumption that his employer is negligent. This presumption can be rebutted only by proof of observance by

the employer of the diligence of a good father of a family in the selection and supervision of its employees. In this case, we agree with the trial court and the Court of Appeals that Yellow Bus Line failed to prove that it exercised due diligence of a good father of a family in the selection and supervision of its employees. Cortel's certificates of attendance to seminars, which Yellow Bus Line did not even present as evidence in the trial court, are not enough to prove otherwise.

APPEARANCES OF COUNSEL

R.A.V. Saguisag, Sr. for petitioners.
Romeo T. Eramis for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Petitioners Eddie Cortel y Carna (Cortel) and Yellow Bus Line, Inc. (Yellow Bus Line) assail the 16 October 2014 Decision[1] and 21 April 2015 Resolution[2] of the Court of Appeals Cagayan de Oro City in CA-G.R. CV No. 02980. The Court of Appeals affirmed with modification the Judgment,[3] dated 27 April 2012, of the Regional Trial Court of Midsayap, Cotabato, Branch 18 (trial court), finding petitioners jointly and severally liable to the heirs of SPO3 Robert C. Lim (Lim) for the latter's death.

The Antecedent Facts

The Court of Appeals narrated the facts as follows:

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[1] *Rollo*, pp. 32-44. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Edward B. Contreras and Rafael Antonio M. Santos concurring.

[2] *Id.* at 64-66.

[3] *Id.* at 67-79. Penned by Presiding Judge George C. Jabido.

On 29 October 2004, Cortel was driving a bus, operated by Yellow Bus Line, which was on its way from Marbel, Koronadal to Davao City. At around 9:45 in the evening, as the bus was traversing Crossing Rubber in the Municipality of Tupi, South Cotabato, Cortel noticed two trucks with glaring headlights coming from the opposite direction. Cortel stated that he was driving at a speed of 40 to 50 kilometers per hour. He claimed that upon noticing the trucks, he reduced his speed to 20 kilometers per hour. However, the bus hit a black motorcycle which allegedly had no tail light reflectors. The impact dragged the motorcycle at a distance of three meters before it came to a full stop. Lim, who was riding the motorcycle, was thrown upward and then slammed into the bus, hitting the base of its right windshield wiper. The motorcycle got entangled with the broken bumper of the bus. According to Cortel, Lim was wearing a black jacket and was riding without a helmet at the time of the accident.

Felix Larang (Larang), the bus conductor, alighted from the bus to aid Lim. Larang gave instructions to Cortel to move back to release Lim and the motorcycle from the front bumper of the bus. Two bystanders proceeded to the scene to assist Lim. After reversing the bus and freeing Lim and the motorcycle, Cortel drove the bus away and went to a nearby bus station where he surrendered to authorities. Cortel claimed that he left the scene of the incident because he feared for his life.

Respondent Cecile Gepaya-Lim, Lim's widow, filed a complaint for damages against petitioners. The case was docketed as Civil Case No. 05-010.

During trial, SPO4 Eddie S. Orencio (SPO4 Orencio), the officer who investigated the incident, testified that Lim was driving a DT Yamaha 125 black motorcycle when the accident took place. Cortel's bus and the motorcycle were going in the same direction. SPO4 Orencio testified that that the bus bumped the motorcycle from behind. The motorcycle's engine and chassis were severely damaged, while its rear rim was totally damaged by the accident.

Yellow Bus Line presented and offered in evidence photographs showing that the bus' right front windshield and wiper were damaged. The bus' lower right side bumper was also perforated. During the preliminary conference, Yellow Bus Line also presented Cortel's certificates showing that he attended the following seminars: (1) Basic Tire Care Seminar; (2) Basic Tire Knowledge and Understanding Retreading; and (3) Traffic Rules and Regulations, Defensive Driving and Road Courtesy Seminar. However, the certificates were not offered in evidence during trial.

The Decision of the Trial Court

In its 27 April 2012 Judgment, the trial court established that Cortel was at fault. The trial court found that the bus was running fast when it bumped the motorcycle ridden by Lim. The trial court ruled that the accident is the proximate cause of Lim's death. The trial court also ruled that Yellow Bus Line failed to present sufficient evidence to prove that it exercised due diligence in the selection and supervision of Cortel.

The dispositive portion of the trial court's decision reads:

> WHEREFORE, premises considered, the Court hereby renders judgment against Defendants Eddie Cortel y Carna and likewise against the owners of the Yellow Bus Line, Inc., numbered bus with Body No. A-96, and bearing Plate No. LWE-614, with PDL No. L05-30-002730; thus pursuant to [A]rticles 2176 and 2180 of the Civil Code of the Philippines[,] said Defendants are ordered to pay jointly and severally to the plaintiffs the following amount:
>
> In favor of the heirs of Robert C. Lim represented by Cecil[]e Gepaya Lim as the surviving spouse, and with [a] living child, the death compensation of One Hundred Fifty Thousand Pesos (₱150,000.00), plus x x x[:]
>
> a) Funeral and burial expenses of Fifty Thousand Pesos (₱50,000.00);
> b) [C]ompensation for loss of earning capacity in the amount of ₱100,000.00;
> (c) x x x Damages [to] the motorcycle in the amount of [Fifteen Thousand Pesos] (₱15,000.00);

d) Attorney's fees of Fifteen Thousand Pesos (₱15,000.00);
e) Costs of suit.

SO ORDERED.[4]

Petitioners appealed from the trial court's decision.

The Decision of the Court of Appeals

In its 16 October 2014 Decision, the Court of Appeals applied the doctrine of *res ipsa loquitor*.

The Court of Appeals ruled that Lim died because of the collision between the bus driven by Cortel and the motorcycle Lim was riding. The Court of Appeals ruled that both vehicles were driving in the same lane and were headed towards the same direction. The Court of Appeals noted that vehicles running on highways do not normally collide unless one of the drivers is negligent. The Court of Appeals further ruled that Cortel had exclusive control and management of the bus he was driving. The Court of Appeals found no evidence that Lim had any contributory negligence in the accident that resulted to his death. The Court of Appeals ruled that petitioners failed to prove that the motorcycle had no headlights or that Lim was not wearing a helmet. The Court of Appeals stated that even if the motorcycle was black and Lim was wearing a black jacket, these were not prohibited by traffic rules and regulations. The Court of Appeals noted that upon impact, Lim's body was thrown upward, indicating that Cortel was driving at high speed. The damages to the motorcycle and the bus also disproved Cortel's allegation that he was only driving at the speed of 20 kilometers per hour.

The Court of Appeals ruled that Yellow Bus Line failed to exercise the care and diligence of a good father of a family in its selection and supervision of its employees. The Court of Appeals ruled that the certificates presented by Yellow Bus Line were not admissible in evidence because the police officer who allegedly signed them was not presented before the trial

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[4] *Id*. at 79.

court. In addition, Yellow Bus Line did not offer the certificates as evidence during trial.

The Court of Appeals modified the amount of damages awarded to the heirs of Lim. Using the formula set by this Court in *The Heirs of Poe v. Malayan Insurance Company, Inc.*[5] and *Villa Rey Transit, Inc. v. Court of Appeals*,[6] the Court of Appeals recomputed Lim's lost earning capacity, as follows:

Life expectancy = 2/3 x [80 – age of deceased at the time of death]
2/3 x [80-41]
2/3 x [39]

FORMULA – NET EARNING CAPACITY (NEC)

If:

Age at time of death of Robert Lim = 41
Monthly Income at time of death = ₱13,715.00
Gross Annual Income (GAI) = [(₱13,715.00) (12)] = ₱164,580.00
Reasonable/Necessary Living Expenses (R/NLE) – 50% of GAI = ₱82,290

NEC = [2/3 (80-41)] [164,580-82,290]
= [2/3 (39)] [82,290]
= [26] [82,290]
= ₱2,139,540.00[7]

Thus, the Court of Appeals found that the award of ₱100,000 as death compensation given by the trial court to the heirs of Lim was inadequate. However, the Court of Appeals reduced the amount of death indemnity from ₱150,000 to ₱50,000. The Court of Appeals deleted the ₱15,000 awarded by the trial court for the damages to the motorcycle for absence of proof but awarded ₱25,000 for funeral and burial expenses. In addition, the Court of Appeals awarded ₱100,000 as moral damages to the heirs of Lim. The dispositive portion of the Court of Appeals' decision reads:

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[5] 602 Phil. 564 (2009).

[6] 142 Phil. 494 (1970).

[7] *Rollo*, p. 41.

WHEREFORE, the Judgment dated 27 April 2012 of the Regional Trial Court (Branch 18), 12th Judicial Region, Midsayap, Cotabato, is AFFIRMED with MODIFICATION. Defendant[]-appellants Eddie Cortel and Yellow Bus Line, Inc. are hereby ordered to pay jointly and severally plaintiff-appellee Cecile Gepaya-Lim the following:

(1) Funeral and burial expenses of ₱25,000.00;
(2) Actual damages for loss of earning capacity of ₱2,139,540.00;
(3) Moral damages amounting to ₱100,000.00;
(4) Death indemnity of ₱50,000.00; and
(5) Attorney's fees of ₱15,000.00

After this decision becomes final and executory, interest at 12% *per annum* shall additionally be imposed on the total obligation until full payment.

No costs.

SO ORDERED.[8]

Petitioners filed a motion for reconsideration. The Court of Appeals denied the motion in its 21 April 2015 Resolution.

Hence, the recourse before this Court.

The Issue

Whether the Court of Appeals committed a reversible error in affirming with modifications the decision of the trial court.

The Ruling of this Court

We deny the petition.

Petitioners want this Court to review the factual findings of both the trial court and the Court of Appeals. Petitioners allege that the trial court and the Court of Appeals erred in concluding that the bus driven by Cortel was running fast when the accident occurred and in applying the doctrine of *res ipsa loquitur* in this case.

The rule is that the factual findings of the trial court, when affirmed by the Court of Appeals, are binding and conclusive

[8] *Id.* at 43-44.

upon this Court.[9] It is also settled that questions regarding the cause of vehicular accident and the persons responsible for it are factual questions which this Court cannot pass upon, particularly when the findings of the trial court and the Court of Appeals are completely in accord.[10] While there are exceptions to this rule, the Court finds no justification that would make the present case fall under the exceptions.

As pointed out by the Court of Appeals, the result of the collision speaks for itself. If, indeed, the speed of the bus was only 20 kilometers per hour as Cortel claimed, it would not bump the motorcycle traveling in the same direction with such impact that it threw its rider upward before hitting the base of its right windshield wiper. If Cortel was driving at 20 kilometers per hour, the bus would not drag the motorcycle for three meters after the impact. The Court of Appeals likewise considered the damages sustained by both the motorcycle and the bus which indicated that Cortel was driving fast at the time of the accident. As regards petitioners' allegation that Lim was equally negligent because he was riding without a helmet and the motorcycle had no tail lights, the Court of Appeals correctly found that it was self-serving because petitioner did not present any evidence to prove this allegation.

We agree that *res ipsa loquitur* applies in this case. The Court explained this doctrine as follows:

> While negligence is not ordinarily inferred or presumed, and while the mere happening of an accident or injury will not generally give rise to an inference or presumption that it was due to negligence on defendant's part, under the doctrine of *res ipsa loquitur*, which means, literally, the thing or transaction speaks for itself, or in one jurisdiction, that the thing or instrumentality speaks for itself, the facts or circumstances accompanying an injury may be such as to raise a

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[9] *Bormaheco, Inc. v. Malayan Insurance Company, Inc.*, 639 Phil. 322 (2010).

[10] *DST Movers Corporation v. People's General Insurance Corporation*, G.R. No. 198627, 13 January 2016.

presumption, or at least permit an inference of negligence on the part of the defendant, or some other person who is charged with negligence.

x x x [W]here it is shown that the thing or instrumentality which caused the injury complained of was under the control or management of the defendant, and that the occurrence resulting in the injury was such as in the ordinary course of things would not happen if those who had its control or management used proper care, there is sufficient evidence, or, as sometimes stated, reasonable evidence, in the absence of explanation by the defendant, that the injury arose from or was caused by the defendant's want of care.

x x x x x x x x x

The *res ipsa loquitur* doctrine is based in part upon the theory that the defendant in charge of the instrumentality which causes the injury either knows the cause of the accident or has the best opportunity of ascertaining it and that the plaintiff has no such knowledge, and therefore is compelled to allege negligence in general terms and to rely upon the proof of the happening of the accident in order to establish negligence. The inference which the doctrine permits is grounded upon the fact that the chief evidence of the true cause, whether culpable or innocent, is practically accessible to the defendant but inaccessible to the injured person.[11]

The elements of *res ipsa loquitur* are: (1) the accident is of such character as to warrant an inference that it would not have happened except for the defendant's negligence; (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured.[12]

In this case, Cortel had the exclusive control of the bus, including its speed. The bus and the motorcycle were running

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[11] *Malayan Insurance Company, Inc. v. Alberto*, 680 Phil. 813, 824-825 (2012).

[12] *Josefa v. Manila Electric Company*, G.R. No. 182705, 18 July 2014, 730 SCRA 126.

in the same traffic direction and as such, the collision would not have happened without negligence on the part of Cortel. It was established that the collision between the bus and the motorcycle caused Lim's death. Aside from bare allegations that petitioners failed to prove, there was nothing to show that Lim had contributory negligence to the accident.

The rule is when an employee causes damage due to his own negligence while performing his own duties, there arises a presumption that his employer is negligent.[13] This presumption can be rebutted only by proof of observance by the employer of the diligence of a good father of a family in the selection and supervision of its employees. In this case, we agree with the trial court and the Court of Appeals that Yellow Bus Line failed to prove that it exercised due diligence of a good father of a family in the selection and supervision of its employees. Cortel's certificates of attendance to seminars, which Yellow Bus Line did not even present as evidence in the trial court, are not enough to prove otherwise.

We sustain the Court of Appeals in its award of loss of earning capacity and damages to respondent. The increase in the award for loss of earning capacity is proper due to the computation of the award in accordance with the following formula:

Net earning capacity = Life Expectancy x [Gross Annual Income - Living Expenses (50% of gross annual income)], where life expectancy = 2/3 (80 - the age of the deceased).[14]

We note that the Court of Appeals clearly intended to award to respondent temperate damages amounting to ₱25,000 for burial and funeral expenses, instead of the ₱15,000 representing the actual damage to the motorcycle awarded by the trial court, because no evidence was presented to prove the same. However, the term "temperate damages" was inadvertently omitted in the dispositive portion of the Court of Appeals' decision although

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[13] *Davao Holiday Transport Services Corporation v. Emphasis*, G.R. No. 211424, 26 November 2014, 743 SCRA 299.

[14] *People v. Casas*, G.R. No. 212565, 25 February 2015, 752 SCRA 94.

it was stated that the amount was for funeral and burial expenses. We reduce the interest rate to 6% *per annum* on all damages awarded from the date of finality of this Decision until fully paid.

WHEREFORE, we **DENY** the petition. We **AFFIRM** with **MODIFICATION** the 16 October 2014 Decision and 21 April 2015 Resolution of the Court of Appeals Cagayan de Oro City in CA-G.R. CV No. 02980. We **ORDER** petitioners Eddie Cortel y Carna and Yellow Bus Line, Inc. to pay jointly and severally respondent Cecile Gepaya-Lim the following:

(1) Award for loss of earning capacity amounting to ₱2,139,540;
(2) Temperate damages amounting to ₱25,000;
(3) Death indemnity amounting to ₱50,000;
(4) Moral damages amounting to ₱100,000; and
(5) Attorney's fees amounting to ₱15,000

We impose an interest rate of 6% *per annum* on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.

Brion, del Castillo, Mendoza, and *Leonen, JJ.*, concur.

SECOND DIVISION

[G.R. No. 218333. December 7, 2016]

MARINA'S CREATION ENTERPRISES and JERRY B. ALFONSO, *petitioners, vs.* **ROMEO V. ANCHETA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; REGULAR EMPLOYMENT; THE TEST OF

DETERMINING THE REGULAR STATUS OF AN EMPLOYMENT IS WHETHER THE EMPLOYEE PERFORMS WORK WHICH IS USUALLY NECESSARY OR DESIRABLE IN THE USUAL BUSINESS OR TRADE OF THE EMPLOYER.— Article 280 of the Labor Code provides for the two types of regular employees, to wit: (1) employees who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, and (2) employees who have rendered at least one year of service, whether such service is continuous or broken, with respect to the activity in which they are employed. In *De Leon v. National Labor Relations Commission*, this Court held that the test of determining the regular status of an employee is whether the employee performs work which is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of the activity to the business.

2. ID.; ID.; TERMINATION OF EMPLOYMENT BY EMPLOYER; THE RULES IMPOSED UPON THE EMPLOYER NOT TO TERMINATE THE EMPLOYEE UNTIL THERE IS A CERTIFICATION BY THE COMPETENT PUBLIC HEALTH AUTHORITY THAT THE EMPLOYEE'S DISEASE IS OF SUCH NATURE OR AT SUCH STAGE THAT IT CANNOT BE CURED WITHIN A PERIOD OF SIX (6) MONTHS EVEN WITH PROPER MEDICAL TREATMENT.— The Implementing Rules of the Labor Code impose upon the employer the duty not to terminate an employee until there is a certification by a competent public health authority that the employee's disease is of such nature or at such a stage that it cannot be cured within a period of six months even with proper medical treatment. In this case, Marina terminated Ancheta from employment without seeking a prior certification from a competent public health authority that Ancheta's disease is of such nature or at such a stage that it cannot be cured within a period of six months even with proper medical treatment. Hence, Ancheta was illegally dismissed by Marina.

3. ID.; ID.; ID.; ILLEGAL DISMISSAL; AN EMPLOYEE WHO WAS UNJUSTLY DISMISSED FROM WORK SHALL BE ENTITLED TO REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND OTHER PRIVILEGES, OR THE AWARD OF SEPARATION PAY IF REINSTATEMENT IS NOT POSSIBLE.— In *Reyes v. R.P. Guardians Security Agency, Inc.*, this Court held that an employee who was unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, and to his full backwages, inclusive of allowances and to his other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of actual reinstatement. If reinstatement is not possible, the award of separation pay is proper. Notably, backwages and separation pay are separate and distinct reliefs available to Ancheta who was illegally dismissed by Marina.

APPEARANCES OF COUNSEL

Celino Celino & Celino for petitioners.
Public Attorney's Office for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on certiorari[1] assailing the 2 June 2014 Decision[2] and the 4 March 2015 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 130120.

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[1] *Rollo*, pp. 12-37. Under Rule 45 of the 1997 Rules of Court.

[2] *Id*. at 40-52. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Stephen C. Cruz and Eduardo B. Peralta, Jr. concurring.

[3] *Id*. at 53-54.

The Facts

Petitioner Marina's Creation Enterprises (Marina) is engaged in the business of making shoes and bags. In January 2010, Marina hired respondent Romeo V. Ancheta (Ancheta) as a sole attacher in Marina. In March 2011, Ancheta suffered an intra-cranial hemorrhage (stroke) and was placed under home care. On 12 May 2011, Ancheta suffered a second stroke and was confined at St. Victoria Hospital in Marikina City for four days. On 26 May 2011, Ancheta filed a Sickness Notification with the Social Security System (SSS) and was paid sickness benefits in the amount of Eight Thousand One Hundred Pesos (₱8,100). The physician who physically examined Ancheta stated that Ancheta would be fit to resume work after ninety (90) days or on 12 August 2011.[4]

On 13 August 2011, Ancheta reported for work. Marina, however, wanted Ancheta to submit a new medical certificate before he could resume his work in Marina. Ancheta did not comply and was not able to resume his work in Marina. On 8 November 2011, Ancheta filed a complaint with the Labor Arbiter against Marina and its registered owner Jerry B. Alfonso for illegal dismissal and non-payment of separation pay.

In his Position Paper,[5] Ancheta alleged that after he recovered from his illness he reported for work in Marina but was advised by Marina to just wait for the company's call. When Ancheta went back to Marina, he was told to take more rest. Ancheta claimed that Marina had employed two new workers as his replacement. Ancheta alleged that he was not served a notice for his termination and a subsequent notice for hearing as mandated by the Labor Code. Ancheta claimed he was illegally dismissed by Marina.

In its Position Paper,[6] Marina claimed that Ancheta was employed on a piece rate basis and was not terminated but instead

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[4] *Id*. at 131.

[5] *Id*. at 109-111.

[6] *Id*. at 104-108.

was refused job assignments due to his failure to submit a medical clearance showing that he was fit to resume his work. Marina claimed that the medical certificate was a precautionary measure imposed by the company to avoid any incident that could happen to Ancheta who already had a pre-existing medical condition. Marina alleged that Ancheta did not present any evidence to prove that he was illegally dismissed.

The Decision of the Labor Arbiter

In a Decision dated 25 July 2012,[7] the Labor Arbiter dismissed Ancheta's complaint for illegal dismissal and non-payment of separation pay. The Labor Arbiter ruled that Ancheta failed to convincingly prove that he was illegally dismissed. The Labor Arbiter found no positive or overt act on the part of Marina that would support Ancheta's claim of illegal dismissal.

The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, a decision is hereby rendered dismissing the instant complaint.

SO ORDERED.[8]

The Decision of the National Labor Relations Commission

In a Decision dated 14 January 2013,[9] the National Labor Relations Commission (NLRC) affirmed the ruling of the Labor Arbiter. The NLRC ruled that Ancheta was not able to establish the fact that he was dismissed by Marina.[10] The NLRC held that Ancheta, who was the employee of Marina, had to first establish the fact of his dismissal before the burden could be shifted to Marina, the employer, to prove that his dismissal was legal.

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[7] *Id*. at 97-100. Penned by Labor Arbiter Romelita N. Rioflorido.

[8] *Id*. at 100.

[9] *Id*. at 89-93. Penned by Commissioner Dolores M. Peralta-Beley, with Presiding Commissioner Leonardo L. Leonida and Commissioner Mercedes R. Posada-Lacap concurring.

[10] *Id*. at 92.

The NLRC held that Marina's requirement of having Ancheta submit another medical certificate before he could resume work was reasonable. The NLRC ruled that Marina cannot be faulted for refusing to admit Ancheta back to work in the absence of a new medical certificate because it was in the mutual interest of Ancheta and Marina that Ancheta would be medically found capable of withstanding the rigors of work.

The dispositive portion of the Decision states:

> WHEREFORE, premises considered, judgment is rendered DISMISSING complainant's Appeal for lack of merit. The Decision of Labor Arbiter Romelita N. Rioflorido dated 25 July 2012 is AFFIRMED in toto.
>
> SO ORDERED.[11]

Ancheta filed a motion for reconsideration with the NLRC which was denied on 28 February 2013.[12]

Ancheta filed with the CA a petition for certiorari[13] dated 17 May 2013.

The Decision of the CA

In a Decision dated 2 June 2014,[14] the CA reversed the decision of the NLRC. The CA ruled that Ancheta was illegally dismissed by Marina. The CA held that the fact of Ancheta's dismissal was established through Marina's own admission in its position paper that the company had refused to give Ancheta job assignments due to Ancheta's failure to submit a medical certificate.

The CA ruled that the absence of a medical certificate did not justify Marina's refusal to furnish Ancheta work assignments. The CA considered the certification by Ancheta's examining

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[11] *Id*. at 93.

[12] *Id*. at 94-96.

[13] *Id*. at 147-160. Under Rule 65 of the Rules of Court.

[14] *Id*. at 40-52.

physician attached to Ancheta's SSS Sickness Notification as proof that Ancheta was fit to resume his work in Marina on 12 August 2011. The CA held that according to the Implementing Rules of the Labor Code, it was Marina and not Ancheta who had the burden of proving that Ancheta's disease could not be cured within a period of at least six months in order to justify Ancheta's dismissal. Finally, the CA ruled since Ancheta was illegally dismissed, Ancheta was entitled to backwages and separation pay from Marina.

The dispositive portion of the Decision states:

> WHEREFORE, the petition is GRANTED. The *Decision* dated January 14, 2013 and *Resolution* dated February 28, 2013 of the NLRC in NLRC NCR Case No. 11-16716-11/NLRC LAC No. 09-002716-12 are ANNULLED and SET ASIDE. Private respondents Marina's Creation and Jerry Alfonso are hereby ordered to PAY petitioner Romeo Ancheta: (1) full backwages computed from the date of his dismissal up to the finality of this decision; and (2) separation pay equivalent to one month pay for every year of service. For this purpose, let this case be REMANDED to the Labor Arbiter for the computation of backwages and separation pay in accordance with this *Decision*.
>
> SO ORDERED.[15]

Marina filed a motion for reconsideration[16] with the CA which was denied on 4 March 2015.[17]

Hence, this petition by Marina.

The Issue

The issue in this case is whether Ancheta was illegally dismissed by Marina.

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[15] *Id*. at 51.

[16] *Id*. at 55-71.

[17] *Id*. at 53-54.

The Ruling of this Court

We deny the petition.

Article 280 of the Labor Code provides for the two types of regular employees, to wit: (1) employees who have been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, and (2) employees who have rendered at least one year of service, whether such service is continuous or broken, with respect to the activity in which they are employed. In *De Leon v. National Labor Relations Commission*,[18] this Court held that the test of determining the regular status of an employee is whether the employee performs work which is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade.[19] Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of the activity to the business.[20]

Applying Article 280 of the Labor Code, Ancheta was a regular employee of Marina. Ancheta, who was working in Marina as a sole attacher, was performing work that was usually necessary or desirable in the usual business or trade of Marina which was engaged in the business of making shoes and bags. Moreover, Ancheta had been performing work as a sole attacher in Marina since January 2010 up to March 2011 when he suffered his first stroke. Thus, Ancheta had acquired regular employment status by performing work in Marina for at least one year.

In its petition, Marina argues that the company's action of requiring Ancheta to undergo a medical examination and to

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[18] 257 Phil. 626 (1989).

[19] *Id*.

[20] *Id*.

submit a medical certificate was a valid exercise of management prerogative. Marina's contention is not correct. Article 279 of the Labor Code provides: "In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this title. x x x." Since Ancheta was a regular employee of Marina, Ancheta's employment can only be terminated by Marina based on just or authorized causes provided in the Labor Code. In its position paper, Marina admitted that the company had refused to give Ancheta work assignments until Ancheta submitted a new medical certificate. It is Marina's position that Ancheta's employment would not continue if Ancheta would not submit a new medical certificate. Marina's action in refusing to accept Ancheta notwithstanding the medical certificate attached to Ancheta's SSS Sickness Notification stating that Ancheta was physically fit to resume his work in Marina on 12 August 2011 amounts to an illegal dismissal of Ancheta. Book VI, Rule I, Section 8 of the Implementing Rules of the Labor Code provides:

> Section 8. *Disease as a ground for dismissal*. – Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, **the employer shall not terminate his employment unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment**. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave. The employer shall reinstate the employee to his former position immediately upon the restoration of his normal health. (Emphasis supplied)

The Implementing Rules of the Labor Code impose upon the employer the duty not to terminate an employee until there is a certification by a competent public health authority that the employee's disease is of such nature or at such a stage that it cannot be cured within a period of six months even with proper medical treatment. In this case, Marina terminated Ancheta from employment without seeking a prior certification from a competent public health authority that Ancheta's disease is of

such nature or at such a stage that it cannot be cured within a period of six months even with proper medical treatment. Hence, Ancheta was illegally dismissed by Marina.

Finally, the CA did not err in awarding Ancheta full backwages and separation pay. In *Reyes v. R.P. Guardians Security Agency, Inc.*,[21] this Court held that an employee who was unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, and to his full backwages, inclusive of allowances and to his other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of actual reinstatement. If reinstatement is not possible, the award of separation pay is proper.[22] Notably, backwages and separation pay are separate and distinct reliefs available to Ancheta who was illegally dismissed by Marina.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 2 June 2014 Decision and the 4 March 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 130120.

SO ORDERED.

Brion, del Castillo, Mendoza, and *Leonen, JJ.,* concur.

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[21] 708 Phil. 598 (2013).

[22] *Id*.

SECOND DIVISION

[G.R. No. 218345. December 7, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **THE ESTATE OF VIRGINIA SANTOS, REPRESENTED BY PACIFICO SANTOS,** *respondent.*

SYLLABUS

1. CIVIL LAW; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); REQUISITES FOR AN ORIGINAL REGISTRATION OF TITLE, CITED.— In *Republic of the Philippines vs. Cortez,* the Court explained that applicants for original registration of title to land must first establish compliance with the provisions of either Section 14(1) or Section 14(2) of P.D. No. 1529. x x x Under Section 14(1), applicants for registration of title must sufficiently establish the following: first, that the land or property forms part of the disposable and alienable lands of the public domain; second, that the applicant and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the same; and third, that it is under a *bona fide* claim of ownership since June 12, 1945, or earlier.

2. ID.; ID.; ID.; THE FIRST REQUISITE ONLY ENTAILS THAT THE PROPERTY SOUGHT TO BE REGISTERED BE ALIENABLE AND DISPOSABLE AT THE TIME OF FILING OF THE APPLICATION FOR REGISTRATION; NOT ESTABLISHED IN CASE AT BAR.— The first requisite of Section 14(1) only entails that the property sought to be registered be alienable and disposable at the time of the filing of the application for registration. x x x The present rule is that to prove the alienability and disposability of the land sought to be registered, an application for original registration must be accompanied by (1) a City Environment and Natural Resources Office (*CENRO*) or Provincial Environment and Natural Resources Officer (*PENRO*) Certification; and (2) a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. Clearly, the annotation on the subdivision plan and the certification from the FMS (Forest Management Services)

fall short of these requirements. The judicial notice by the appellate court of the cadastral survey submitted in *Sta. Ana Victoria* will not cure respondent estate's shortcomings. In *Spouses Latip vs. Chua*, it was ruled that a court cannot take judicial notice of any fact which, in part, was dependent on the existence or non-existence of a fact of which the court has no constructive knowledge. x x x Accordingly, the CA erred in taking judicial notice of the identity and location of subject land. Its declaration that the subject land was alienable and disposable based merely on the declaration in *Sta. Ana Victoria* was erroneous.

3. ID.; ID.; ID.; UNSUBSTANTIATED CLAIM OF CULTIVATION OF LAND DOES NOT SUFFICE TO PROVE OPEN, CONTINUOUS, EXCLUSIVE, AND NOTORIOUS POSSESSION AND OCCUPATION OF THE PUBLIC LAND APPLIED FOR IN THE CONCEPT OF AN OWNER.— Aside from the alienable and disposable character of the land sought to be registered, the applicant must also prove that he/she and/or his/her predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the land under a bona fide claim of ownership since June 12, 1945, or earlier. Possession is open when it is patent, visible, apparent, notorious, and not clandestine. It is continuous when uninterrupted, unbroken and not intermittent or occasional. It is exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit. And it is notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood. x x x It needs to be pointed out, however, that in *Republic vs. Remman Enterprises, Inc.* (*Remman*), the Court held that for purposes of land registration under Section 14(1) of P.D. No. 1529, proof of specific acts of ownership must be presented to substantiate the claim of open, continuous, exclusive, and notorious possession and occupation of the land subject of the application. "Applicants for land registration cannot just offer general statements which are mere conclusions of law rather than factual evidence of possession. Actual possession consists in the manifestation of acts of dominion over it of such nature as a party would actually exercise over his own property." In a plethora of cases, the Court has repeatedly held that unsubstantiated claims of cultivation of land do not suffice to

prove open, continuous, exclusive, and notorious possession and occupation of the public land applied for in the concept of an owner.

4. ID.; ID.; ID.; THE DECLARATION OF ALIENABILITY AND DISPOSABILITY IS NOT ENOUGH IN ORDER FOR A PIECE OF LAND TO BE ACQUIRED BY PRESCRIPTION SINCE THERE MUST BE AN EXPRESS DECLARATION THAT THE PUBLIC DOMINION PROPERTY WAS NO LONGER INTENDED FOR PUBLIC SERVICE OR THE DEVELOPMENT OF THE NATIONAL WEALTH OR THAT THE PROPERTY HAD BEEN CONVERTED INTO PATRIMONIAL.— In *Heirs of Mario Malabanan vs. Republic* (*Malabanan*), the Court explained that when Section 14(2) of P.D. No. 1529 stated that persons "who have acquired ownership over private lands by prescription under the provisions of existing laws," it unmistakably referred to the Civil Code as a valid basis for the registration of lands. The Civil Code is the only existing law that specifically allows the acquisition of private lands by prescription, including patrimonial property belonging to the State. Section 14(2) explicitly refers to the principles on prescription, as set forth in the Civil Code. In this regard, the Civil Code makes it clear that patrimonial property of the State may be acquired by private persons through prescription. This is brought about by Article 1113, which provides that all things which are *within the commerce of man* are susceptible to prescription, and that property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription. This does not necessarily mean, however, that when a piece of land is declared alienable and disposable, it can already be acquired by prescription. In *Malabanan*, this Court ruled that declaration of alienability and disposability was not enough — there must be an express declaration that the public dominion property was no longer intended for public service or the development of the national wealth or that the property had been converted into patrimonial, x x x The classification of the subject property as alienable and disposable land of the public domain does not change its status as property of the public dominion under Article 420(2) of the Civil Code. Thus, it is insusceptible to acquisition by prescription. Hence, respondent estate failed to prove that acquisitive prescription had begun to run against the State, much less that it had acquired title to the subject property by virtue thereof.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Daniel Balaoing Valdez for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a Petition for Review on *Certiorari* seeking to reverse and set aside the May 22, 2015 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CV No. 100999, which affirmed the April 5, 2013 Amended Order[2] of the Metropolitan Trial Court, Branch 74, Taguig City (*MeTC*) in LRC Case No. 326, a land registration case under Section 14 of Presidential Decree (*P.D.*) No. 1529.

The Antecedents

On October 9, 2006, the Application for Land Registration[3] of a parcel of land identified as Lot No. 10839-C (*subject land*) located at P. Burgos St., Sta. Ana, Taguig City, with an area of 3,942 square meters and an assessed value of ₱82,400.00, was filed by respondent Estate of Virginia Santos (*respondent estate*), through its administrator, Pacifico Santos (*Pacifico*). The subject land was a subdivision of Lot No. 10839 described under survey Plan Csd-00-000352 (Subdivision Plan of Lot No. 10839, MCadm 590-D, Taguig Cadastral Mapping).

Together with its application for registration, respondent estate submitted the following documents: (1) Letters of Administration[4] showing that Pacifico was appointed as the administrator of

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[1] Penned by Associate Justice Agnes Reyes-Carpio with Associate Justice Rosmari D. Carandang and Associate Justice Maria Elisa Sempio Diy, concurring; *rollo*, pp. 49-57.

[2] Penned by Presiding Judge Donna B. Pascual; *id.* at 141-147.

[3] Records, pp. 1-4.

[4] *Id.* at 5.

the estate of Virginia Santos (*Virginia*); (2) Oath of Office of Pacifico;[5] (3) Subdivision Plan[6] of Lot No. 10839, MCadm 590-D, Taguig Cadastral Mapping (Csd-00-000352) with the annotation that the survey was inside L.C. Map No. 2623 Proj. No. 27-B classified as alienable/disposable by the Bureau of Forest Development on January 03, 1968; (4) Technical Description of Lot No. 10839-C, Csd-00-000352;[7] (5) Certification in Lieu of Surveyor's/Geodetic Engineer's Certificate[8] issued by the Land Survey Records Section, Department of Environment and Natural Resources (*DENR*), National Capital Region; (6) Tax Declaration (*T.D.*) No. FL-013-01057;[9] and (7) Extrajudicial Settlement of Estate by Sole Heir of the Late Alejandro Santos,[10] dated March 27, 1975.

Respondent estate alleged that the late Virginia was the only child and heir of Alejandro Santos (*Alejandro*), who was the owner of the subject land during his lifetime. It further asserted that on March 27, 1975, or after Alejandro's death, Virginia executed an Extrajudicial Settlement of Estate by Sole Heir of the Late Alejandro Santos (*Extrajudicial Settlement*) and appropriated the subject land for herself. Respondent estate further alleged that Virginia, by her and through her predecessor-in-interest, had been in open, continuous, exclusive, and adverse possession of the property in the concept of owner for more than thirty (30) years.[11]

On October 9, 2006, the MeTC issued a notice of hearing setting the case for initial hearing on February 7, 2007.[12]

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[5] *Id.* at 6.

[6] *Id.* at 7.

[7] *Id.* at 8.

[8] *Id.* at 9.

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

[10] *Id.* at 12-19.

[11] *Id.* at 2.

[12] *Id.* at 20.

On April 30, 2007, petitioner Republic of the Philippines (*Republic)*, through the Office of the Solicitor General (*OSG*), filed its Opposition[13] to the Application, raising the following grounds: that neither the applicant nor the predecessors-in-interest of Virginia had been in open, continuous, exclusive, and notorious possession and occupation of the subject land for a period of not less than thirty (30) years; that the tax declarations and/or tax payment receipts attached to the application did not constitute competent and sufficient evidence of a *bona fide* acquisition of the land applied for; that the claim of ownership in fee simple on the basis of a Spanish title or grant could no longer be availed of by the applicant; and that the subject land was a portion of the public domain belonging to the Republic and not subject to private appropriation.

On July 12, 2007, the Land Registration Authority (*LRA*) submitted its Report[14] stating that the subject property, as plotted, did not appear to overlap with any previously plotted decreed properties and that it was not in a position to verify whether or not the aforesaid land was already covered by a land patent and previously approved isolated surveys.

Thereafter, trial ensued.

To support its allegation of possession and occupation, respondent estate presented Romualdo B. Flores (*Romualdo*) who testified that Virginia owned the subject land; that he had been tilling the land since 1970; that his father, Sixto Cuevas Flores (*Sixto*), tilled the land for Alejandro even before the Japanese occupation in 1941; and that he knew this for a fact as he was already nine (9) years old and attained the age of reason at that time. Respondent estate also offered in evidence several tax declarations covering Lot No. 10839, the earliest of which was T.D. No. 6532 issued on August 19, 1949.[15]

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[13] *Id.* at 188-189.

[14] *Id.* at 197.

[15] *Id.* at 242.

The MeTC Ruling

In its August 31, 2011 Decision,[16] the MeTC denied respondent estate's application for registration of the subject land. It opined that respondent estate failed to present sufficient evidence to establish its claim of possession and ownership over the subject land. The MeTC reasoned that mere casual cultivation of portions of the subject land did not constitute sufficient basis for a claim of ownership. It did not give much weight either to the tax declarations offered in evidence as it stated that these documents were mere indication of claim of ownership and not ownership itself.[17]

The MeTC added that respondent estate failed to prove the alienable and disposable character of the subject land. It opined that the certification at the dorsal portion of the survey plan was not the kind of evidence contemplated in an application for original registration of title to land. The decretal portion of the decision, thus, reads:

> WHEREFORE, all premises considered, the instant application for registration of land filed by the Estate of Virginia Santos represented by Pacifico S. Santos, is hereby denied.
>
> SO ORDERED.[18]

On September 16, 2011, respondent estate filed its Motion for Reconsideration (With Alternative Motion for New Trial).[19] On February 24, 2012, the MeTC granted the motion and allowed respondent estate to present further evidence in support of its application. In granting the motion, the MeTC explained that respondent committed mistake or excusable negligence which ordinary prudence could not have guarded against xxx."[20]

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[16] Penned by the Presiding Judge Maria Paz R. Reyes-Yson; *id.* at 294-302.

[17] *Id.* at 299.

[18] *Id.* at 301.

[19] *Id.* at 303-306.

[20] *Id.* at 321-322.

Respondent estate presented, among others, Felino Flores (*Felino*), who, through his judicial affidavit,[21] testified that he had been tilling the subject land for Virginia and her estate since 1979; that before him, his father, Romualdo, tilled the land from 1969 until he took over in 1979; that before his father, his grandfather, Sixto, tilled the land even before the Second World War; and that such claim was an accepted fact in their family history.

On April 5, 2013, the MeTC issued the Order[22] granting the subject application. In completely reversing itself, the trial court stated that the tax declarations submitted by respondent estate and the certification appearing at the dorsal portion of the survey plan of Lot No. 10839, showing that the land was disposable and alienable, were already sufficient to establish respondent estate's claim over the property as well as the alienable and disposable character of the subject land.

On the same day, the MeTC issued the Amended Order[23] correcting the dispositive portion of the earlier order where the area of the subject property was omitted:

> WHEREFORE, all premises considered, this Court hereby confirms the title of applicant ESTATE OF VIRGINA M. SANTOS, represented herein by the duly appointed administrator, PACIFICO M. SANTOS, Filipino, of legal age, married to Priscilla Santos and a resident of No. 93 P. Mariano Street, Ususan, Taguig City over the subject parcel of land designated as Lot 10839-C, as shown on subdivision plan Csd-00-000352, being a portion of Lot 10839, MCadm-590-D, Taguig Cadastral Mapping, situated at Barangay Sta. Ana, Taguig City, Metro Manila consisting of **Three Thousand Nine Hundred Forty Two (3,942) Square Meters, more or less and hereby order the registration thereof in its name**.
>
> After finality of this Decision and upon payment of the corresponding taxes due on the said lot, let an Order for the issuance of decree of registration be issued.

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[21] *Id.* at 331-334.

[22] *Id.* at 361-367.

[23] *Id.* at 368-374.

SO ORDERED.[24] [Emphasis and underscoring in the original]

Aggrieved, the Republic, through the OSG, elevated an appeal to the CA.[25]

The CA Ruling

In its assailed Decision, dated May 22, 2015, the CA dismissed the Republic's appeal and affirmed the Amended Order, dated August 5, 2013 of the MeTC. The appellate court noted that the cadastral survey in this case was the same cadastral survey in the case of *Natividad Sta. Ana Victoria vs. Republic*[26] (*Sta. Ana Victoria*), wherein the Court granted the application for registration of property. The CA concluded that it could not take a view contrary to the ruling in the aforesaid case. It also concurred with the trial court that the DENR certification at the dorsal portion of the subdivision plan of Lot No. 10839 was sufficient evidence to prove the character of Lot No. 10839-C as alienable and disposable.

The appellate court further ratiocinated that the alleged discrepancies in the area of the property applied for could be explained by the fact that the subject land was a subdivision of Lot No. 10839. It also found that respondent estate was able to prove its open, continuous, exclusive, and notorious possession in the concept of owner. Relying again on *Sta. Ana Victoria*, the CA held that a tax declaration issued in 1949 could be accepted as proof of open, continuous, exclusive, and notorious possession and occupation in the concept of an owner. The dispositive portion of the said decision states:

WHEREFORE, the appeal is DISMISSED. The Amended Order dated April 5, 2013 of the Regional Trial Court (*sic*), Branch 74, Taguig City in LRC Case No. 326, is AFFIRMED.

SO ORDERED.[27]

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[24] *Id.* at 373-374.

[25] *Id.* at 375-376.

[26] 666 Phil. 519 (2011).

[27] *Rollo*, p. 56.

Hence, this petition, anchored on the following

GROUNDS

I

THE COURT OF APPEALS GRAVELY ERRED IN TAKING "JUDICIAL NOTICE" OF A "CADASTRAL SURVEY" SUBMITTED IN A DIFFERENT CASE ENTITLED "*STA. ANA VICTORIA VS. REPUBLIC*" TO PROVE, DURING THE APPEAL PROCEEDINGS, THE DATE WHEN THE SUBJECT LAND WAS FIRST DECLARED ALIENABLE AND DISPOSABLE.

II

THE COURT OF APPEALS GRAVELY ERRED IN GRANTING THE SUBJECT APPLICATION FOR LAND REGISTRATION DESPITE THE EXISTENCE OF DOUBT IN THE TOTAL AREA OF THE PARCEL OF LAND BEING APPLIED FOR REGISTRATION.

III

THE COURT OF APPEALS GRAVELY ERRED IN RELYING ON THE *STA. ANA VICTORIA* CASE AND IN UTTERLY DISREGARDING THAT THERE IS ABSENCE OF EVIDENCE TO PROVE POSSESSION AND OCCUPATION BY RESPONDENT OR ITS PREDECESSORS-IN-INTEREST SINCE JUNE 12, 1945, OR EARLIER.[28]

The Republic argues, *first*, that the CA gravely erred in its over-reliance on *Sta. Ana Victoria*. It posits that although the CA could take judicial notice of *Sta. Ana Victoria*, it could not hastily rule that the subject land was also alienable and disposable based merely on the allegation that the subject property and the property registered in the said case belonged to the same cadastral survey. *Second*, the Republic asserts that respondent estate failed to establish its open, exclusive, continuous and notorious possession and occupation under a *bona fide* claim of ownership over the subject land since June 12, 1945, or earlier. It contends that the tax declarations submitted by respondent

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[28] *Id.* at 26.

estate were considered not proofs of ownership. Moreover, the earliest tax declaration submitted by respondent estate was for the year 1949, short of the required possession under the law. *Lastly*, the Republic insists that respondent estate's witnesses merely gave shady statements on the supposed ownership of Virginia and Alejandro, without showing any manifestation of acts of dominion over the property.

In its Comment,[29] respondent estate countered that judicial decisions of this Court, including the findings of facts which were integral parts thereof, formed part of the legal system which all other courts were bound to follow and be familiar with. It asserted that since the subject land emanated from the same cadastral survey declared as alienable and disposable in *Sta. Ana Victoria*, the subject property must likewise be declared as alienable and disposable. It further advanced that the contents of the certification at the dorsal portion of the survey plan and the technical description of the property enjoyed the presumption of their accuracy.

With regard to possession and occupation, respondent estate averred that its witnesses testified on the identity of the property, the crops planted thereon, and the three generations of tenancy agreement involving the subject land. It claimed that these testimonies were further supplemented by the tax declarations it presented, which showed that Virginia and her predecessor-in-interest were in possession of the subject land for more than fifty (50) years.

In its Reply,[30] the Republic reiterated its position that respondent estate failed to adduce sufficient evidence of possession and occupation on or before June 12, 1945; and that the appellate court erred in concluding that the subject land was declared alienable and disposable based merely on the facts sustained in *Sta. Ana Victoria*.

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[29] *Id.* at 223-227.

[30] *Id.* at 235-243.

The Court's Ruling

Essentially, the Court is asked to resolve the issue of whether the CA erred in granting respondent estate's application for registration despite its failure to comply with the requirements for original registration of title to/and under Section 14 of P.D. No. 1529.

The petition is meritorious.

At the onset, the Court notes that there was some confusion as to what law on which the application for registration of the subject land was based. As per examination of respondent estate's application, it would seem that the basis for their application was Section 14(2) of P.D. No. 1529 considering its allegation of possession and occupation in the concept of owner for more than thirty (30) years. The MeTC, and later the appellate court, however, granted the application under Section 14(1) of the same law making reference to June 12, 1945, or prior thereto, as the earliest date of possession and occupation. Thus, the Court deems it proper to discuss respondent estate's application for registration of title to the subject property *vis-a-vis* the provisions of Section 14(1) and (2) of P.D. No. 1529.

*Respondent Estate Failed to Comply with the Requirements under **Section 14(1)** of P.D. No. 1529*

In *Republic of the Philippines vs. Cortez*,[31] the Court explained that applicants for original registration of title to land must first establish compliance with the provisions of either Section 14(1) or Section 14(2) of P.D. No. 1529. Section 14(1) provides that:

Sec. 14. Who may apply. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

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[31] 726 Phil. 212 (2014).

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

Under Section 14(1), applicants for registration of title must sufficiently establish the following: first, that the land or property forms part of the disposable and alienable lands of the public domain; second, that the applicant and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the same; and third, that it is under a *bona fide* claim of ownership since June 12, 1945, or earlier.

The first requisite of Section 14(1) only entails that the property sought to be registered be alienable and disposable at the time of the filing of the application for registration.[32]

In this case, to prove that the subject land formed part of the alienable and disposable lands of the public domain, respondent estate relied on the annotation on the subdivision plan of Lot No. 10839 and on the certification issued by Rodelina M. De Villa, Forester II of the Forest Management Services (FMS) of the DENR, which both stated that the subject land was verified to be "within the alienable and disposable land under Project No. 27-B, Taguig Cadastral Mapping as per LC Map No. 2623."[33]

These pieces of evidence, however, would not suffice. The present rule is that to prove the alienability and disposability of the land sought to be registered, an application for original registration must be accompanied by (1) a City Environment and Natural Resources Office (*CENRO*) or Provincial Environment and Natural Resources Officer (*PENRO*) Certification; and (2) a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.[34] Clearly, the

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[32] *Naguit v. Republic*, 489 Phil. 405, 414 (2005).

[33] *Rollo*, p. 203.

[34] *Republic v. De Guzman Vda. De Joson*, G.R. No. 163767, March 10, 2014, 718 SCRA 228.

annotation on the subdivision plan and the certification from the FMS fall short of these requirements.[35]

The judicial notice by the appellate court of the cadastral survey submitted in *Sta. Ana Victoria* will not cure respondent estate's shortcomings.

In *Spouses Latip vs. Chua*,[36] it was ruled that a court cannot take judicial notice of any fact which, in part, was dependent on the existence or non-existence of a fact of which the court has no constructive knowledge.[37]

In this case, in concluding that the subject land formed part of the alienable and disposable lands of the public domain, the CA, in effect, assumed and took judicial notice that it was located within L.C. Map No. 2623. This is, however, erroneous considering that the CA had no constructive knowledge as to the location of the subject land and the technical boundaries of L.C. Map No. 2623. Furthermore, the CA erred in assuming the identity and location of the subject land because such matter was still under dispute. In fact, the Republic relentlessly raised this issue even during the trial arguing that the identity of the land in question was doubtful. This position was further reiterated by the Republic in its Reply when it argued that respondent estate failed to prove that the subject property was actually covered by the same cadastral survey submitted in *Sta. Ana Victoria*.

Accordingly, the CA erred in taking judicial notice of the identity and location of subject land. Its declaration that the subject land was alienable and disposable based merely on the declaration in *Sta. Ana Victoria* was erroneous.

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[35] *Republic v. Sese*, G.R. No. 185092, June 4, 2014, 724 SCRA 592; *Republic v. Santos*, G.R. No. 191516, June 4, 2014, 724 SCRA 660.

[36] 619 Phil. 155 (2009).

[37] *Id.* at 166.

Proof of Possession

Aside from the alienable and disposable character of the land sought to be registered, the applicant must also prove that he/she and/or his/her predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the land under a bona fide claim of ownership since June 12, 1945, or earlier. Possession is open when it is patent, visible, apparent, notorious, and not clandestine. It is continuous when uninterrupted, unbroken and not intermittent or occasional. It is exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit. And it is notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood.[38] Respondent estate in this case also failed to prove this requirement.

Respondent estate presented several tax declarations in the name of Virginia and Alejandro. The earliest of these tax declarations, however, dates back to 1949 only, short of the requirement that possession and occupation under a bona fide claim of ownership should be since June 12, 1945 or earlier.

Respondent also offered the testimonies of Romualdo and Felino to prove that Virginia's predecessor-in-interest had been in possession and occupation under a bona fide claim of ownership since June 12, 1945. Romualdo testified as follows:

Atty. Valdez

Q. At the time you started to farm the property, please describe the condition thereof?
A. It was being farmed and planted to rice, sir.

Q. Who planted it with rice?
A. My father, Sixto Cuevas Flores, sir.

Q. Since when did your father start tilling the land?
A. He started tilling the land even before the Japanese time in 1942?

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[38] *Republic v. Gielczyk*, 720 Phil. 385, 403 (2013).

Q. How do you know?
A. I have already reached the age of reason at the time being nine (9) years old in 1941, sir.[39]

It needs to be pointed out, however, that in *Republic vs. Remman Enterprises, Inc.*[40] (*Remman*), the Court held that for purposes of land registration under Section 14(1) of P.D. No. 1529, proof of specific acts of ownership must be presented to substantiate the claim of open, continuous, exclusive, and notorious possession and occupation of the land subject of the application. "Applicants for land registration cannot just offer general statements which are mere conclusions of law rather than factual evidence of possession. Actual possession consists in the manifestation of acts of dominion over it of such nature as a party would actually exercise over his own property."[41]

In a plethora of cases, the Court has repeatedly held that unsubstantiated claims of cultivation of land do not suffice to prove open, continuous, exclusive, and notorious possession and occupation of the public land applied for in the concept of an owner. In *Remman*, the Court denied the application for original registration of title to land located in Taguig City as the testimony of the applicant's witness lacked specifics as to the nature of the alleged cultivation. It was observed that:

> Although Cerquena testified that the respondent and its predecessors-in-interest cultivated the subject properties, by planting different crops thereon, his testimony is bereft of any specificity as to the nature of such cultivation as to warrant the conclusion that they have been indeed in possession and occupation of the subject properties in the manner required by law. There was no showing as to the number of crops that are planted in the subject properties or to the volume of the produce harvested from the crops supposedly planted thereon.[42] (Underscoring supplied)

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[39] TSN, March 28, 2007, pp. 5-6.

[40] 727 Phil. 608 (2014).

[41] *Id.* at 625.

[42] *Id.* at 625-626.

In *Aranda vs. Republic of the Philippines*,[43] the Court held that mere statements regarding cultivation of land would not establish possession in the concept of an owner, stating that:

> x x x And even assuming that Lucio actually planted rice and corn on the land, such statement is not sufficient to establish possession in the concept of owner as contemplated by law. Mere casual cultivation of the land does not amount to exclusive and notorious possession that would give rise to ownership. Specific acts of dominion must be clearly shown by the applicant.[44] (Underscoring supplied)

In *Republic vs. Candy Maker, Inc.*,[45] the Court did not give credit to the unsupported claim of the respondent-applicant's predecessor-in-interest that he and his father cultivated the property applied for since 1937 by planting palay during the rainy season and vegetables during the dry season. The Court emphasized the importance of showing specific acts of dominion by the applicant or his predecessors-in-interest, to wit:

> Fourth. When he testified on October 5, 2001, Antonio Cruz declared that he was "74 years old." He must have been born in 1927, and was thus merely 10 years old in 1937. It is incredible that, at that age, he was already cultivating the property with his father. Moreover, no evidence was presented to prove how many cavans of palay were planted on the property, as well as the extent of such cultivation, in order to support the claim of possession with a bona fide claim of ownership. (Underscoring supplied)

Similarly in this case, assuming the veracity of the claim that Alejandro and/or Virginia cultivated the subject land through Romualdo and Sixto, the Court finds that the same could only be considered as a mere casual cultivation because his testimony was bereft of any specificity to warrant the conclusion that Alejandro and/or Virginia had been indeed in possession and occupation of the subject land. Romualdo's statements failed to show the nature of the cultivation and the volume of crops

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[43] 671 Phil. 651, 660 (2011).

[44] *Id.* at 660-661.

[45] 525 Phil. 358, 380 (2006).

planted and harvested on the property. Respondent estate, therefore, failed to satisfy the requisite exclusivity and notoriety of the possession and occupation of the property because exclusive dominion and conspicuous possession over the subject land were not established.

Felino's testimony during the new trial of this case was likewise insufficient to prove the required possession and occupation since June 12, 1945 or earlier. Felino's pertinent testimony in his judicial affidavit was as follows:

> Atty. Valdez
>
> Q. Since when did you start tilling the property?
> A. In 1979 at the age of 17.
>
> Q. Before you, who cultivated the property, if any?
> A. Romualdo Flores, my father then as tenant of the owner.
>
> Q. Since when did Romualdo cultivate or till the property?
> A. Since 1969.
>
> Q. As tenant, up to when did your father till the property?
> A. Up to 1979 when I took over.
>
> Q. In 1969 when Romualdo took over, who was cultivating or tilling the property, if any?
> A. Sixto Flores, his father and my grandfather.
>
> Q. Since when did Sixto start to cultivate the property?
> A. Before the Second World War.
>
> Q. How do you know when you were born only in 1962?
> A. It is an accepted fact in our family history. I heard my parents and grandparents talk about it very, very often. Everyone assumes it to be true. Besides during the days of my grandfather Sixto, there was not much source of livelihood of the people but the farm. Many people worked or derived their income from the farms.

Clearly, Felino failed to convincingly show that he had personal knowledge of the ownership or possession over Lot No. 10839-C on or before June 12, 1945 having been born only in 1962. He also talked of how his father and grandfather cultivated the land based on their family stories which were

not substantiated. Hence, the above testimony of Felino does not deserve any credit for being hearsay.

From all the foregoing, the subject land cannot be registered in the name of Virginia and/or her estate under Section 14(1) of P.D. No. 1529 for respondent estates failure to prove its alienable and disposable character, and its possession and occupation from June 12, 1945 or earlier.

Respondent Failed to Comply with the Requirements under ***Section 14(2)*** *of P.D. No. 1529*

The subject land cannot also be registered under Section 14(2) of P.D. No. 1529, which states:

> (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

In *Heirs of Mario Malabanan vs. Republic*[46] (*Malabanan*), the Court explained that when Section 14(2) of P.D. No. 1529 stated that persons "who have acquired ownership over private lands by prescription under the provisions of existing laws," it unmistakably referred to the Civil Code as a valid basis for the registration of lands. The Civil Code is the only existing law that specifically allows the acquisition of private lands by prescription, including patrimonial property belonging to the State.

Section 14(2) explicitly refers to the principles on prescription, as set forth in the Civil Code. In this regard, the Civil Code makes it clear that patrimonial property of the State may be acquired by private persons through prescription. This is brought about by Article 1113, which provides that all things which are *within the commerce of man* are susceptible to prescription, and that property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription.[47]

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[46] 605 Phil. 244, 274 (2009).

[47] *Id.*

This does not necessarily mean, however, that when a piece of land is declared alienable and disposable, it can already be acquired by prescription. In *Malabanan*, this Court ruled that declaration of alienability and disposability was not enough — there must be an express declaration that the public dominion property was no longer intended for public service or the development of the national wealth or that the property had been converted into patrimonial, thus:

> (2) In complying with Section 14(2) of the Property Registration Decree, consider that under the Civil Code, prescription is recognized as a mode of acquiring ownership of patrimonial property. However, public domain lands become only patrimonial property not only with a declaration that these are alienable or disposable. There must also be an express government manifestation that the property is already patrimonial or no longer retained for public service or the development of national wealth, under Article 422 of the Civil Code. And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run.[48] (Underscoring supplied)

In this case, and as already stated, respondent estate merely relied on the annotation on the subdivision plan of Lot No. 10839 and on the certification issued by FMS-DENR which certified the subject land to be "within the alienable and disposable land under Project No. 27-B, Taguig Cadastral Mapping as per LC Map No. 2623." No certification or any competent evidence, however, was ever presented to the effect that the subject land, or even the lands covered by L.C. Map No. 2623, were no longer intended for public service or for the development of the national wealth pursuant to Article 422 of the Civil Code. The classification of the subject property as alienable and disposable land of the public domain does not change its status as property of the public dominion under Article 420(2) of the Civil Code. Thus, it is insusceptible to acquisition by prescription. Hence, respondent estate failed to prove that acquisitive prescription had begun to run against the State, much

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[48] *Id.*

less that it had acquired title to the subject property by virtue thereof.

In fine, respondent failed to satisfy all the requisites for registration of title to land under either Sections 14(1) or (2) of P.D. No. 1529. Respondent's application for original registration of imperfect title over Lot No. 10839-C must be denied.

Without Prejudice

This denial, however, is without prejudice. As the FMS-DENR certified the subject land to be "within the alienable and disposable land under Project No. 27-B, Taguig Cadastral Mapping as per LC Map No. 2623," the respondent must be given the opportunity to present the required evidence. This is but fair and reasonable because a property within an alienable and disposable land must be deemed to be of the same status and condition. As earlier stated, however, the respondent must prove that the subject property was actually covered by the same cadastral survey and that they and their predecessors in interest were in possession and ownership since June 12, 1945 or earlier.

WHEREFORE, the petition is **GRANTED**. The May 22, 2015 Decision of the Court of Appeals in CA-G.R. CV No. 100999 is hereby **REVERSED** and **SET ASIDE**.

The Application for Registration of the Estate of Virginia Santos in LRC Case No. 326 is **DENIED**, without prejudice.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 219638. December 7, 2016]

MARCELINO REPUELA AND CIPRIANO REPUELA, SUBSTITUTED BY CARMELA REPUELA, MERLINDA R. VILLARUEL, WILLIAM REPUELA, ROSITA P. REPUELA, CRISTINA R. RAMOS, ORLANDO REPUELA, JUNNE REPUELA, AND OSCAR REPUELA, *petitioners, vs.* **ESTATE OF THE SPOUSES OTILLO LARAWAN AND JULIANA BACUS, REPRESENTED BY NANCY LARAWAN MANCAO, GALILEO LARAWAN AND SOCRATES LARAWAN,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; EQUITABLE MORTGAGE; FOR A PRESUMPTION OF AN EQUITABLE MORTGAGE TO ARISE, TWO REQUISITES MUST FIRST BE SATISFIED, NAMELY: THAT THE PARTIES ENTERED INTO A CONTRACT DENOMINATED AS A CONTRACT OF SALE, AND THAT THEIR INTENTION WAS TO SECURE AN EXISTING DEBT BY WAY OF MORTGAGE.— An equitable mortgage is one which, although lacking in some formality, or form, or words, or other requisites demanded by a statute, reveals the intention of the parties to charge real property as security for a debt, and contains nothing impossible or contrary to law. For a presumption of an equitable mortgage to arise, two requisites must first be satisfied, namely: that the parties entered into a contract denominated as a contract of sale and that their intention was to secure an existing debt by way of mortgage. There is no single conclusive test to determine whether a deed of sale, absolute on its face, is really a simple loan accommodation secured by a mortgage. Article 1602, in relation to Article 1604 of the Civil Code, however, enumerates several instances when a contract, purporting to be, and in fact styled as, an absolute sale, is presumed to be an equitable mortgage. x x x Evident from Article 1602, the presence

of any of the circumstances set forth therein suffices for a contract to be deemed an equitable mortgage. No concurrence or an overwhelming number is needed. In other words, the fact that some or most of the circumstances mentioned are absent in a case will not negate the existence of an equitable mortgage.

2. ID.; ID.; ID.; A CONVEYANCE OF LAND, ACCOMPANIED BY REGISTRATION IN THE NAME OF THE TRANSFEREE AND THE ISSUANCE OF A NEW CERTIFICATE, IS NO MORE SECURED FROM THE OPERATION OF THIS EQUITABLE DOCTRINE THAN THE MOST INFORMAL CONVEYANCE THAT COULD BE DEVISED; CASE AT BAR.— Article 1602 (2) of the Civil Code provides that when the supposed vendor remains in possession of the property even after the conclusion of the transaction, the purported contract of sale is presumed to be an equitable mortgage. In general terms, possession is the holding of a thing or the enjoyment of a right, whether by material occupation or by the fact that the right is subjected to the will of the claimant. The gathering of the products of and the act of planting on the land constitute occupation, possession and cultivation. x x x The respondent's claim of possession, as supported by a transfer certificate of title and tax declaration of the subject property, both in the name of Spouses Larawan is, to the Court's mind, not persuasive. These documents do not prove actual possession. They do not rebut the overwhelming evidence of the Repuela brothers that they were in actual possession. The fact of registration in the name of Spouses Larawan does not change the picture. A conveyance of land, accompanied by registration in the name of the transferee and the issuance of a new certificate, is no more secured from the operation of this equitable doctrine than the most informal conveyance that could be devised. In an equitable mortgage, title to the property in issue, which has been transferred to the respondents actually remains or is transferred back to the petitioner as owner-mortgagor, conformably to the well-established doctrine that the mortgagee does not become the owner of the mortgaged property because the ownership remains with the mortgagor pursuant to Article 2088, of the Civil Code.

3. ID.; ID.; ID.; THE DECISIVE FACTOR IN EVALUATING WHETHER A DEED, ABSOLUTE IN FORM, IS A

MORTGAGE IS THE INTENTION OF THE PARTIES; CASE AT BAR.— From the attending circumstances of the case, it can be inferred that the real intention of the Repuela brothers was to secure their indebtedness from Spouses Larawan. x x x In other words, they surrendered the title to Spouses Larawan as security to obtain the much needed loan. It was never their intention to sell the subject property. As held in *Banga v. Sps. Bello,* in determining whether a deed, absolute in form, is a mortgage, the court is not limited to the written memorials of the transaction. "The decisive factor in evaluating such agreement is the intention of the parties, as shown not necessarily by the terminology used in the contract but by all the surrounding circumstances, such as the relative situation of the parties at that time, the attitude, acts, conduct, declarations of the parties, the negotiations between them leading to the deed, and generally, all pertinent facts having a tendency to fix and determine the real nature of their design and understanding."

4. ID.; ID.; THE BURDEN TO SHOW THAT THE OTHER PARTY FULLY UNDERSTOOD THE CONTENTS OF THE DOCUMENT RESTS UPON THE PARTY WHO SEEKS TO ENFORCE THE CONTRACT.— [W]here a party is unable to read or when the contract is in a language not understood by a party and mistake or fraud is alleged, the obligation to show that the terms of the contract had been fully explained to the said party who is unable to read or understand the language of the contract devolves on the party seeking to enforce it. Indeed, that burden to show that the other party fully understood the contents of the document rests upon the party who seeks to enforce the contract. If he fails to discharge this burden, the presumption of mistake, if not, fraud, stands unrebutted and controlling.

APPEARANCES OF COUNSEL

Herculene Raymund H. Rizon for petitioners.

Cabrera Sipalay Mayol Santos & Tabon Law for respondents.

D E C I S I O N

MENDOZA, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the May 29, 2014 Decision[1] and the June 10, 2015 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 03976, which reversed and set aside the February 23, 2011 Decision[3] of the Regional Trial Court (*RTC*), Seventh Judicial Region, Branch 7, Cebu City, in Civil Case No. CEB-28524, a case for Annulment of Documents, Quieting of Title, Redemption, Damages, and Attorney's Fees.

The Antecedents

Spouses Lorenzo and Magdalena Repuela owned Lot No. 3357 (*subject property*), situated in Lawaan III, Talisay City, Cebu, and covered by Transfer Certificate of Title (*TCT*) No. 5154. After they had passed away, their children Marcelino Repuela (*Marcelino*) and Cipriano Repuela (*Cipriano*) succeeded them as owners of the subject property.[4]

Cipriano and Marcelino (*Repuela brothers*) claimed that sometime in July 1963, after the death of their parents, they went to the house of Otillo Larawan (*Otillo*) to borrow ₱200.00 for Marcelino's fare to Iligan City; that to secure the loan, the spouses Otillo and Juliana Larawan (*Spouses Larawan*) required them to turn over the certificate of title for Lot No. 3357; that they were made to sign a purported mortgage contract but they were not given a copy of the said document; that Cipriano affixed his signature while Marcelino, being illiterate, just placed his thumb mark on the document; that they remained in possession

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[1] *Rollo*, pp. 50-64. Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Edgardo L. Delos Santos and Jhosep Y. Lopez, concurring.

[2] *Id.* at 81-83.

[3] *Id.* at 42-49. Penned by Judge Simeon P. Dumdum, Jr.

[4] *Id.* at 52.

of the land despite the mortgage and had been planting bamboos, corn, bananas, and papayas thereon and sharing the produce between them; and that they also paid the taxes due on the property.[5]

In October 2002, as recalled by Cipriano's daughter, Cristina Repuela Ramos (*Cristina*), she went to the City Treasurer's Office of Talisay City, upon the request of her father, to verify whether Spouses Larawan were paying the realty taxes on the mortgaged property. She learned that Spouses Larawan did not pay the taxes and the tax declaration on the subject property was already in their names as early as 1964; that in the Registry of Deeds of Cebu, TCT No. 5154 was already cancelled and a new certificate of title, TCT No. 10506, had been issued to Otillo; that Spouses Larawan were able to transfer the certificate of title to their names by virtue of the *Exta-judicial Declaration of Heirs and Sale* bearing the signature of her father Cipriano and the thumb mark of her uncle Marcelino; and that her father and uncle remembered that they were made to sign a blank document.

On January 17, 2003, Cipriano and Marcelino, on account of this predicament, were compelled to file a complaint before the RTC for the annulment of the Extrajudicial Declaration of Heirs and Sale and the cancellation of TCT No. 10506. During the trial, Catalina Burlas (*Burlas*), who lived next to the subject property, and Alma Abellanosa (*Abellanosa*), City Assessor of Talisay City, were also presented as witnesses for the Repuela brothers.[6]

Burlas testified that the Repuela brothers confided in her about Marcelino's desire to go to Iligan City but they had no money for his fare; that another neighbor referred the Repuela brothers to Otillo, who could lend them ₱200.00 but only upon the signing of a deed of mortgage and the surrender of the certificate of title as collateral; that Marcelino was able to leave

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

[6] *Id.* at 43.

for Iligan but he came back after three months to help Cipriano in cultivating the land; that she did not see any other person till the land except the Repuela brothers; and that she could not recall a time when Otillo, whom she personally knew, ever visited or cultivated the subject property.[7]

Abellanosa, as City Assessor, stated that based on the records of her office, Lot No. 3357 was declared for taxation purposes for the first time in 1961 when Tax Declaration No. 12543 was issued in the name of Lorenzo Repuela; that in 1964, Tax Declaration No. 24112 was issued in the name of Spouses Larawan on the basis of a deed of sale; and that the subsequent tax declarations had Spouses Larawan as the owners.[8]

For the Estate of Spouses Larawan, on the other hand, the transaction between the Repuela brothers and Otillo was a sale and not a mortgage of a parcel of land. The Estate also invoked laches on the part of the Repuela brothers for failing to file a complaint during the lifetime of Spouses Larawan. Galileo Larawan (*Galileo*), son of Spouses Larawan and the sole witness for the Estate, testified that he knew of the transaction between his father and the Repuela brothers because his father brought him along to the office of Atty. Celestino Bacalso (*Atty. Bacalso*), where the document entitled *Extrajudicial Declaration of Heirs and Sale* was prepared; that the said document was signed by Cipriano and thumbmarked by Marcelino which was witnessed by Hilario Bacalso and Fernando Abellanosa; that he witnessed the Repuela brothers affix their signature and thumbmark after Atty. Bacalso read and explained to them the contents of the document in the Cebuano dialect; that after the document was notarized, his father handed ₱2,000.00 to the Repuela brothers as consideration for the sale; and that he was only six (6) years old when these all happened.[9]

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[7] *Id.*

[8] *Id.* at 43-44.

[9] *Id.* at 44-46.

Galileo also pointed out that the new certificate of title, TCT No. 10506, in the name of Spouses Larawan, was issued by the Register of Deeds on August 20, 1963; that his mother paid the real estate taxes during her lifetime and, after her death, he himself made the payments; that he secured the tax declaration for the subject property from the office of the Talisay City Assessor; that their family had been in possession of the subject property and they had harvested and enjoyed the produce of the land such as bamboos, jackfruit and 100 coconut trees; and that there were no other persons claiming ownership over the land, as the Repuela brothers never offered to redeem the subject property from their family.[10]

The Ruling of the RTC

After the trial, the RTC decided in favor of the Repuela brothers. It held that the transaction between the parties was not a sale but an equitable mortgage. The testimony of Galileo for the respondent, who was admittedly just six (6) years old then, was "likely colored by the lens of adult perspective and self-interest." It believed the claim of Cipriano, who only had the benefit of a Grade One education, and the illiterate Marcelino, that they merely signed a document without knowing its nature. The trial court gave more credence to the claim of possession of the Repuela brothers because the same was affirmed by a disinterested person, Burlas, who had been living in the area since she was small and whose lot adjoined the subject property. According to her, only Cipriano and Marcelino cultivated the land and she never saw anyone, not even Otillo, work on the land.[11]

Moreover, it was the trial court's opinion that the evidence of possession weighed more on the side of the Repuela brothers than that of the Estate of Spouses Larawan. Their assertion of possession was bolstered by the fact that they too paid taxes on the property, an indication that they were still in possession

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[10] *Id.* at 45.

[11] *Id.* at 48.

of the subject property. Considering that they still possessed the subject property even after the execution of the sale, in the concept of an owner and continued paying the land taxes thereon, the RTC was of the view that the contract, entered into by the Repuela brothers and Otillo, was an equitable mortgage under Article 1602 of the Civil Code.[12] Thus, the RTC disposed:

> Hence, the Court:
>
> 1. Declares the sale in the document, "Extrajudicial Declaration of Heirs and Sale," signed by Cipriano and Marcelino Repuela in favor of Otillo Larawan and spouse on July 1, 1963, as in effect an equitable mortgage;
>
> 2. Gives Cipriano and Marcelino Repuela thirty (30) days from the finality of this decision to redeem the property in the amount of Two Thousand Pesos (₱2,000.00), with interest at the legal rate computed from the date of the filing of the Complaint; and
>
> 3. Directs defendants to pay plaintiffs:
>
> a. ₱20,000.00, as attorney's fees, and
> b. ₱20,000.00, as litigation expenses.
>
> Costs are assessed against the defendants.
>
> SO ORDERED.[13]

Not in conformity, the Estate of Spouses Larawan appealed the case to the CA.

The Ruling of the CA

On May 29, 2014, the CA reversed and set aside the February 23, 2011 Decision of the RTC for the following reasons:

> 1. The Repuela brothers failed to present any direct and positive proof to rebut the presumption of the document's due execution. They failed to prove any factual circumstance to point that the transaction covered therein was one of mortgage, or at the least, that such was their intention;

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[12] *Id.* at 48-49.

[13] *Id.* at 49.

2. The Repuela brothers had not proven continued possession of the subject property which would have given the impression that it was not sold but merely mortgaged;

3. None of the enumerated circumstances in Article 1602 of the Civil Code was present in order for the presumption of equitable mortgage to apply. Contrary to the factual finding of the trial court, the evidence did not show that they were still in possession of the property even after the execution of the document and that they continued paying the taxes on the property immediately after the execution of the deed; and,

4. Granting *arguendo* that the transaction was a mortgage, their cause of action was already barred by laches as 39 years had already elapsed before they asserted their rights over the subject property.[14]

The decretal portion of the CA decision reads:

WHEREFORE, premises considered, the instant appeal is **GRANTED**. The February 23, 2011 Decision of the RTC Branch 7 of Cebu City in Civil Case No. CEB-28524 is **REVERSED** and **SET ASIDE** and the complaint for *Annulment of Documents, Quieting of Title, Redemption, Damages and Attorney's Fees* is **DISMISSED**.

SO ORDERED.[15]

After their motion for reconsideration was denied by the CA in its Resolution, dated June 10, 2015, the heirs of the Repuela brothers (*petitioners*) filed the subject petition.

Issue

Whether the Extrajudicial Declaration of Heirs and Sale amounted to an equitable mortgage.

Petitioners explain that the Repuela brothers only filed the case in 2003 because they found no urgency to file it as there were no indications that their title and possession over the subject property were threatened. They claim that their predecessors-in-interest were in peaceful, open, continuous, and public

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[14] *Id.* at 60-63.

[15] *Id.* at 63.

possession as owners of the subject property from the time of the transaction in 1963 until the time when they decided to partition their property and learned, in the process, that the tax declaration and title of their lot were already transferred in the name of Spouses Larawan. They argue that considering that they, who were claiming to be the owners thereof, were in actual possession of the property, their right to seek reconveyance, which in effect sought to quiet the title to the property, never prescribed.[16]

Petitioners further argue that the existence of the *Extrajudicial Declaration of Heirs and Sale* was not enough proof that the Repuela brothers really intended to sell the property, and that the stipulations in the contract should be construed together with the parties' contemporaneous and subsequent acts as regards the execution of the contract. The same was true with the issuance of a new owner's TCT in favor of Spouses Larawan. It neither imports conclusive evidence of ownership nor proves that the agreement between the parties was one of sale. A conveyance by registration in the name of the transferee and the issuance of a new certificate is not secured from the operation of the equitable doctrine, to the effect that any conveyance intended as security for a debt would be held in effect to be a mortgage, than most informal conveyance that could be devised.[17]

The CA, according to petitioners, should have given more credence to the testimonies of the Repuela brothers, as corroborated and affirmed by the disinterested witness, Burlas, over that of Galileo, the lone witness for the respondent. As correctly observed by the trial court, Galileo was just six (6) years old when he supposedly witnessed the alleged transaction in the office of Atty. Bacalso, and so he could not have possibly known the nature of the executed contract. Echoing the RTC, they pointed out that a six-year old boy's curiosity and concerns could not have extended to things of this nature and that his

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[16] *Id.* at 29-30.

[17] *Id.* at 31.

recollection of events was likely colored by the lens of adult perspective and self-interest, as Galileo himself admitted that he did not read the document.[18]

Finally, they stress that the Repuela brothers remained in possession of the subject property even after the transaction and they also paid the taxes thereon for the years 1985 to 2002 on December 18, 2002. These circumstances surrounding the transaction entered into by and between the Repuela brothers and Otillo would naturally lead anyone to infer that this instance was espoused in Article 1602 of the Civil Code. This is in line with jurisprudence consistently holding that the presence of one, and not the confluence of several circumstances, is sufficient to prove that a contract of sale is one of an equitable mortgage.[19]

The Position of Respondent

In its *Comment*,[20] dated December 28, 2015, respondent Estate of Spouses Larawan (*respondent*) averred that the extrajudicial settlement and sale executed by the parties could not be presumed as an equitable mortgage. First, the said contract was "not a sale with right to repurchase" and the price of the sale was not unusually inadequate. Second, there is no documentary evidence that would support the claim of possession by the Repuela brothers, as lessee or otherwise, continuously from the execution of the document of sale until the filing of the case. Third, the third situation (when upon or after the expiration of the right to repurchase, another instrument extending the period of redemption or granting a new period was executed) wherein a contract shall be presumed to be an equitable mortgage is not applicable in the instant case. The Extrajudicial Declaration of Heirs and Sale did not provide for a right to repurchase. As such, there was no period of redemption to be extended or a new period to be executed. Fourth, there was no showing that

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[18] *Id.* at 34.

[19] *Id.* at 37.

[20] *Id.* at 92-114.

Otillo, as purchaser, retained for himself a part of the purchase price. He paid the amount of ₱2,000.00 as sale consideration to the Repuela brothers.[21] Fifth, there was no agreement in the contract of sale that the Repuela brothers, as vendors, bound themselves to pay the taxes on the thing sold. And finally, the Extrajudicial Declaration of Heirs and Sale was quite clear and specific that what was involved was a sale of the subject property. From the terms of the contract, no inference could be made that the real intention of the parties was to secure the payment of a debt or the performance of any other obligation.

The Court's Ruling

The Court finds merit in the petition.

An equitable mortgage is one which, although lacking in some formality, or form, or words, or other requisites demanded by a statute, reveals the intention of the parties to charge real property as security for a debt, and contains nothing impossible or contrary to law.[22]

For a presumption of an equitable mortgage to arise, two requisites must first be satisfied, namely: that the parties entered into a contract denominated as a contract of sale and that their intention was to secure an existing debt by way of mortgage.[23] There is no single conclusive test to determine whether a deed of sale, absolute on its face, is really a simple loan accommodation secured by a mortgage. Article 1602, in relation to Article 1604 of the Civil Code, however, enumerates several instances when a contract, purporting to be, and in fact styled as, an absolute sale, is presumed to be an equitable mortgage. Thus:

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

(1) When the price of a sale with right to repurchase is unusually inadequate;

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[21] *Id.* at 99.

[22] *Deheza-Inamarga v. Alano, et al.*, 595 Phil. 294, 302 (2008).

[23] *Lustan v. CA*, 334 Phil. 609, 615 (1997).

(2) When the vendor remains in possession as lessee or otherwise;

(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

(4) When the purchaser retains for himself a part of the purchase price;

(5) When the vendor binds himself to pay the taxes on the thing sold;

(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

In any of the foregoing case, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws.

x x x x x x x x x

ART. 1604. The provisions of Article 1602 shall also apply to a contract purporting to be an absolute sale. [Emphases and underscoring supplied]

Evident from Article 1602, the presence of any of the circumstances set forth therein suffices for a contract to be deemed an equitable mortgage. No concurrence or an overwhelming number is needed.[24] In other words, the fact that some or most of the circumstances mentioned are absent in a case will not negate the existence of an equitable mortgage.

In this case, it appears that two (2) instances enumerated in Article 1602 — possession of the subject property and inference that the transaction was in fact a mortgage attended the assailed transaction.

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[24] *Solitarios v. Jaque*, G.R. No. 199852, November 12, 2014, 740 SCRA 226, 235-236.

Possession as Lessee or otherwise

Article 1602 (2) of the Civil Code provides that when the supposed vendor remains in possession of the property even after the conclusion of the transaction, the purported contract of sale is presumed to be an equitable mortgage. In general terms, possession is the holding of a thing or the enjoyment of a right, whether by material occupation or by the fact that the right is subjected to the will of the claimant. The gathering of the products of and the act of planting on the land constitute occupation, possession and cultivation.[25]

In this case, petitioners insist that the Repuela brothers remained in possession of the subject property after the transaction, as was corroborated by a disinterested person, Burlas, who lived in the adjoining lot from the time she was a child. According to her, it was only the Repuela brothers who tilled the land and planted corn, bananas and camote. She never saw Otillo, whom she also knew, till or work on the land.

The respondent's claim of possession, as supported by a transfer certificate of title and tax declaration of the subject property, both in the name of Spouses Larawan is, to the Court's mind, not persuasive. These documents do not prove actual possession. They do not rebut the overwhelming evidence of the Repuela brothers that they were in actual possession. The fact of registration in the name of Spouses Larawan does not change the picture. A conveyance of land, accompanied by registration in the name of the transferee and the issuance of a new certificate, is no more secured from the operation of this equitable doctrine than the most informal conveyance that could be devised. In an equitable mortgage, title to the property in issue, which has been transferred to the respondents actually remains or is transferred back to the petitioner as owner-mortgagor, conformably to the well-established doctrine that the mortgagee does not become the owner of the mortgaged

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[25] *Go v. Bacaron*, 509 Phil. 323, 335 (2005).

property because the ownership remains with the mortgagor pursuant to Article 2088, of the Civil Code.[26]

Inference can be made that the transaction was an equitable mortgage

From the attending circumstances of the case, it can be inferred that the real intention of the Repuela brothers was to secure their indebtedness from Spouses Larawan. They needed money for Marcelino's fare so they went to the house of Otillo to borrow ₱200.00. Considering that Spouses Larawan would only agree to extend the loan if they would surrender their certificate of title over the subject property, they obliged in the belief that its purpose was only to secure their loan. In other words, they surrendered the title to Spouses Larawan as security to obtain the much needed loan. It was never their intention to sell the subject property.

As held in *Banga v. Sps. Bello*,[27] in determining whether a deed, absolute in form, is a mortgage, the court is not limited to the written memorials of the transaction. "The decisive factor in evaluating such agreement is the intention of the parties, as shown not necessarily by the terminology used in the contract but by all the surrounding circumstances, such as the relative situation of the parties at that time, the attitude, acts, conduct, declarations of the parties, the negotiations between them leading to the deed, and generally, all pertinent facts having a tendency to fix and determine the real nature of their design and understanding."[28]

There is a presumption of mistake

Granting that indeed Cipriano and Marcelino, signed and thumbmarked, respectively, the *Extrajudicial Declaration of*

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[26] *Solitarios v. Jaque*, *supra* note 24, at 250.

[27] 508 Phil. 633 (2005).

[28] *Id.* at 635.

Heirs and Sale, there is still reason to believe that they did so without understanding the real nature, effects and consequences of what they did as they were never explained to them. Cipriano, who only finished Grade One, and Marcelino, an illiterate, were in dire need of money. As such, the possibility that they affixed their conformity to the onerous contract to their detriment just to get the loan was not remote. In dire need as they were, they signed a document despite knowing that it did not express their real intention. "*Necessitous men are not, truly speaking, free men; but to answer a present emergency, will submit to any terms that the crafty may impose upon them.*" [29] For this reason, the Repuela brothers should be given the protection afforded by the Civil Code provisions on equitable mortgage.

As aptly explained in *Cruz v. Court of Appeals,*[30] the Court held:

> Vendors covered by Art. 1602 usually find themselves in an unequal position when bargaining with the vendees, and will readily sign onerous contracts to get the money they need. Necessitous men are not really free men in the sense that to answer a pressing emergency they will submit to any terms that the crafty may impose on them. This is precisely the evil that Art. 1602 seeks to guard against. The evident intent of the provision is to give the supposed vendor maximum safeguards for the protection of his legal rights under the true agreement of the parties.[31]

Besides, where a party is unable to read or when the contract is in a language not understood by a party and mistake or fraud is alleged, the obligation to show that the terms of the contract had been fully explained to the said party who is unable to read or understand the language of the contract devolves on the party seeking to enforce it. Indeed, that burden to show that the other party fully understood the contents of the document rests upon the party who seeks to enforce the contract. If he

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[29] *Labasan v. Lacuesta,* 175 Phil. 216, 221-222 (1978).

[30] *Cruz v. Court of Appeals*, 459 Phil. 264 (2003).

[31] *Id.* at 276.

fails to discharge this burden, the presumption of mistake, if not, fraud, stands unrebutted and controlling.[32] Respondent failed to overcome this burden.

In the case at bench, Galileo's testimony that he had witnessed the Repuela brothers affix their conformity after Atty. Bacalso read and explained to them the contents of the document in the Cebuano dialect, fails to convince this Court. As keenly observed by the RTC, Galileo was just six (6) years old when he witnessed the transaction in the office of Atty. Bacalso. To the Court's mind, Galileo could not have possibly known the nature of the purported contract, much less, perceived with certainty if the Repuela brothers were indeed apprised of the true nature of the said contract before they were made to sign and thumbmark it. For this reason, the presumption of mistake, if not fraud, shall remain.

Furthermore, it must be pointed out that the law accords the equitable- mortgage presumption in situations when doubt exists as to the true intent of the parties to the contract,[33] as in this case. Courts are generally inclined to construe one purporting to be a sale as an equitable mortgage, which involves a lesser transmission of rights and interests over the property in controversy.[34]

There was no prescription or laches

Contrary to the findings of the CA that petitioners' cause of action was already barred by laches because of the 39 years that had already lapsed before they asserted their rights over the property, the Court holds otherwise. In *Inamarga v. Alano*,[35] the Court considered the deed of sale as equitable mortgage and wrote:

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[32] *Mayor v. Belen*, 474 Phil. 630, 639 (2004).

[33] *Heirs of Soliva v. Severino, et al.*, G.R. No. 159611, April 22, 2015.

[34] *Agas v. Sabico*, 496 Phil. 729, 741 (2005).

[35] 595 Phil. 294 (2008).

xxx Where there is no consent given by one party in a purported contract, such contract was not perfected; therefore, there is no contract to speak of. The deed of sale relied upon by petitioner is deemed a void contract. This being so, the action based on said deed of sale **shall not prescribe** in accordance with Article 1410 of the Civil Code.[36] [Emphasis supplied]

Legal Interest

In the case of *Muñoz v. Ramirez*,[37] the Court stated that where it was established that the reciprocal obligations of the parties were under an equitable mortgage, reconveyance of the property should be ordered to the rightful owner therein upon the payment of the loan within 90 days from the finality of that decision.[38]

In the case at bench, the RTC ordered the Repuela brothers to pay their loan amounting to ₱2,000.00 with interest at the legal rate computed from the date of the filing of the complaint in order for them to repair the property.

In determining the legal rate applicable in this case, Circular No. 799, series of 2013, issued by the Office of the Governor of the Bangko Sentral ng Pilipinas on June 21, 2013, which was the basis of the Court in *Nacar v. Gallery Frames*,[39] provides that effective July 1, 2013, the rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum. Applying the foregoing, the rate of interest of 12% per annum on the obligation of the Repuela brothers shall apply from the date of the filing of the complaint on January 17, 2003 until June 30, 2013 only. From July 1, 2013 until fully paid, the legal rate of 6% per annum shall be applied to their unpaid obligation.

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[36] *Id.* at 303.

[37] 643 Phil. 267 (2010).

[38] *Id.* at 282.

[39] 716 Phil. 267, 282 (2013).

WHEREFORE, the petition is **GRANTED**. The assailed May 29, 2014 Decision and the June 10, 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 03976 are **SET ASIDE**. The February 23, 2011 Decision of the Regional Trial Court, Cebu City, Seventh Judicial Region, Branch 7 in Civil Case No. CEB-28524 is **REINSTATED** with **MODIFACATION** in that the 12% interest per annum shall only apply from January 17, 2003 until June 30, 2013 only, after which date and until fully paid, the mortgage indebtedness of Cipriano Repuela and Marcelino Repuela shall earn interest at 6% per annum.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 220546. December 7, 2016]

LUZON IRON DEVELOPMENT GROUP CORPORATION AND CONSOLIDATED IRON SANDS, LTD., *petitioners, vs.* **BRIDESTONE MINING AND DEVELOPMENT CORPORATION AND ANACONDA MINING AND DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL ACTIONS; FORUM SHOPPING; THE PROHIBITION ON FORUM SHOPPING SEEKS TO PREVENT THE POSSIBILITY THAT CONFLICTING DECISIONS WILL BE RENDERED BY TWO TRIBUNALS.— Forum shopping is committed when multiple

suits involving the same parties and the same causes of action are filed, either simultaneously or successively, for the purpose of obtaining a favorable judgment through means other than appeal or *certiorari*. The prohibition on forum shopping seeks to prevent the possibility that conflicting decisions will be rendered by two tribunals. In *Spouses Arevalo v. Planters Development Bank*, the Court elaborated that forum shopping vexed the court and warranted the dismissal of the complaints.

2. ID.; ID.; ID.; ELEMENTS, CITED; PRESENT IN CASE AT BAR.— There is forum shopping when the following elements are present: (a) identity of parties, or at least such parties representing 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 The requirement is only substantial, and not absolute, identity of parties; and there is substantial identity of parties when there is 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 other case*. x x x In *Yap v. Chua*, the Court ruled that identity of causes of action did not mean absolute identity. In the case at bench, both complaints filed before different *fora* involved similar facts and issues, the resolution of which depends on analogous evidence. Thus, the filing of two separate complaints by the petitioners with the RTC and the DENR clearly constitutes forum shopping.

3. ID.; ID.; SUMMONS; SERVICE UPON FOREIGN PRIVATE JURIDICAL ENTITY; THE RULE ON SUMMONS IS BROAD ENOUGH TO COVER CORPORATIONS WHICH HAVE TRANSACTED BUSINESS IN THE PHILIPPINES AND RECOGNIZES ADDITIONAL MODES BY WHICH SUMMONS MAY BE SERVED.— Section 12 of Rule 14 of the Revised Rules of Court provides that "[w]hen the defendant is a foreign private juridical entity which has **transacted business in the Philippines**, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines." The Rule on Summons, as it now reads, thus, makes

the question whether Consolidated Iron was "doing business in the Philippines" irrelevant as Section 12, Rule 14 of the Rules of Court was broad enough to cover corporations which have "transacted business in the Philippines." In fact, under the present legal milieu, the rules on service of summons on foreign private juridical entities had been expanded as it recognizes additional modes by which summons may be served as provided for under A.M. No. 11-3-6-SC.

4. CIVIL LAW; CONTRACTS; ARBITRATION CLAUSE; THE ARBITRATION CLAUSE BECOMES OPERATIVE, NOTWITHSTANDING THE LACK OF FORMAL REQUEST, WHEN THE PARTY HAS APPRAISED THE TRIAL COURT OF THE EXISTENCE OF AN ARBITRATION CLAUSE; CASE AT BAR.— In *Bases Conversion Development Authority v. DMCI Project Developers, Inc.*, the Court emphasized that the State favored arbitration, x x x Thus, consistent with the state policy of favoring arbitration, the present TPAA must be construed in such a manner that would give life to the arbitration clause rather than defeat it, if such interpretation is permissible. With this in mind, the Court views the interpretation forwarded by the petitioners as more in line with the state policy favoring arbitration. x x x The petitioners' failure to refer the case for arbitration, however, does not render the arbitration clause in the TPAA inoperative. In *Koppel, Inc. v. Makati Rotary Club Foundation, Inc. (Koppel)*, the Court explained that an arbitration clause becomes operative, notwithstanding the lack of a formal request, when a party has appraised the trial court of the existence of an arbitration clause, x x x As expounded in *Koppel*, however, a formal request is not the sole means of invoking an arbitration clause in a pending suit. Similar to the said case, the petitioners here made the RTC aware of the existence of the arbitration clause in the TPAA as they repeatedly raised this as an issue in all their motions to dismiss. As such, it was enough to activate the arbitration clause and, thus, should have alerted the RTC in proceeding with the case. Moreover, judicial restraint should be exercised pursuant to the competence-competence principle embodied in Rule 2.4 of the Special Rules of Court on Alternative Dispute Resolution. x x x Generally, the action of the court is stayed if the matter raised before it is subject to arbitration.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioners.
Lazaro Law Firm for respondents.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order (*TRO*) seeks to reverse and set aside the September 8, 2015 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. SP No. 133296, which affirmed the March 18, 2013[2] and September 18, 2013[3] Orders of the Regional Trial Court, Branch 59, Makati City (*RTC*), in the consolidated case for rescission of contract and damages.

The Antecedents.

On October 25, 2012, respondents Bridestone Mining and Development Corporation (*Bridestone*) and Anaconda Mining and Development Corporation (*Anaconda*) filed separate complaints before the RTC for rescission of contract and damages against petitioners Luzon Iron Development Group Corporation (*Luzon Iron*) and Consolidated Iron Sands, Ltd. (*Consolidated Iron*), docketed as Civil Case No. 12-1053 and Civil Case No. 12-1054, respectively. Both complaints sought the rescission of the Tenement Partnership and Acquisition Agreement (*TPAA*)[4] entered into by Luzon Iron and Consolidated Iron, on one hand, and Bridestone and Anaconda, on the other, for the assignment

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[1] Penned by Associate Justice Socorro B. Inting with Associate Justice Remedios A. Salazar-Fernando and Associate Justice Priscilla J. Baltazar-Padilla, concurring; *rollo*, pp. 6-14.

[2] Penned by Presiding Judge Winlove M. Dumayas; *id.* at 843-847.

[3] *Id.* at 922.

[4] *Id.* at 121-134.

of the Exploration Permit Application of the former in favor of the latter. The complaints also sought the return of the Exploration Permits to Bridestone and Anaconda.[5]

Thereafter, Luzon Iron and Consolidated Iron filed their Special Appearance with Motion to Dismiss[6] separately against Bridestone's complaint and Anaconda's complaint. Both motions to dismiss presented similar grounds for dismissal. They contended that the RTC could not acquire jurisdiction over Consolidated Iron because it was a foreign corporation that had never transacted business in the Philippines. Likewise, they argued that the RTC had no jurisdiction over the subject matter because of an arbitration clause in the TPAA.

On December 19, 2012, the RTC ordered the consolidation of the two cases.[7] Subsequently, Luzon Iron and Consolidated Iron filed their Special Appearance and Supplement to Motions to Dismiss,[8] dated January 31, 2013, seeking the dismissal of the consolidated cases. The petitioners alleged that Bridestone and Anaconda were guilty of forum shopping because they filed similar complaints before the Department of Environment and Natural Resources (*DENR*), Mines and Geosciences Bureau, Regional Panel of Arbitrators against Luzon Iron.

The RTC Orders

In its March 18, 2013 Order, the RTC denied the motions to dismiss, as well as the supplemental motion to dismiss, finding that Consolidated Iron was doing business in the Philippines, with Luzon Iron as its resident agent. The RTC ruled that it had jurisdiction over the subject matter because under clause 14.8 of the TPAA, the parties could go directly to courts when a direct and/or blatant violation of the provisions of the TPAA

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[5] *Id.* at 22-25.

[6] *Id.* at 195-215, 311-331.

[7] *Id.* at 26.

[8] *Id.* at 375-379.

had been committed. The RTC also opined that the complaint filed before the DENR did not constitute forum shopping because there was neither identity of parties nor identity of reliefs sought.

Luzon Iron and Consolidated Iron moved for reconsideration, but the RTC denied their motion in its September 18, 2013 Order.

Undaunted, they filed their petition for review with prayer for the issuance of a writ of preliminary injunction and/or TRO before the CA.

The CA Ruling

In its September 8, 2015 Decision, the CA *affirmed* the March 18, 2013 and September 18, 2013 RTC Orders in denying the motions to dismiss and the supplemental motions to dismiss. It agreed that the court acquired jurisdiction over the person of Consolidated Iron because the summons may be validly served through its agent Luzon Iron, considering that the latter was merely the business conduit of the former. The CA also sustained the jurisdiction of the RTC over the subject matter opining that the arbitration clause in the TPAA provided for an exception where parties could directly go to court.

Further, the CA also disregarded the averment of forum shopping, explaining that in the complaint before the RTC, both Consolidated Iron and Luzon Iron were impleaded but in the complaint before the DENR only the latter was impleaded. It stated that there was no identity of relief and no identity of cause of action.

Hence, this appeal raising the following:

ISSUES

I

WHETHER THE COURT OF APPEALS ERRED IN RULING THAT THE TRIAL COURT ACQUIRED JURISDICTION OVER THE PERSON OF CONSOLIDATED IRON;

II

WHETHER THE COURT OF APPEALS ERRED IN RULING THAT THE TRIAL COURT HAS JURISDICTION OVER THE SUBJECT MATTER OF THE CONSOLIDATED CASES; AND

III

WHETHER THE COURT OF APPEALS ERRED IN RULING THAT BRIDESTONE/ANACONDA WERE NOT GUILTY OF FORUM SHOPPING.[9]

Petitioners Luzon Iron and Consolidated Iron insist that the RTC has no jurisdiction over the latter because it is a foreign corporation which is neither doing business nor has transacted business in the Philippines. They argue that there could be no means by which the trial court could acquire jurisdiction over the person of Consolidated Iron under any mode of service of summons. The petitioners claim that the service of summons to Consolidated Iron was defective because the mere fact that Luzon Iron was a wholly-owned subsidiary of Consolidated Iron did not establish that Luzon Iron was the agent of Consolidated Iron. They emphasize that Consolidated Iron and Luzon Iron are two distinct and separate entities.

The petitioners further assert that the trial court had no jurisdiction over the consolidated cases because of the arbitration clause set forth in the TPAA. They reiterate that Luzon Iron and Consolidated Iron were guilty of forum shopping because their DENR complaint contained similar causes of action and reliefs sought. They stress that the very evil sought to be prevented by the prohibition on forum shopping had occurred when the DENR and the RTC issued conflicting orders in dismissing or upholding the complaints filed before them.

Position of Respondents

In their Comment/Opposition,[10] dated January 7, 2016, respondents Bridestone and Anaconda countered that the RTC

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[9] *Id.* at 34.

[10] *Id.* at 1272-1310.

validly acquired jurisdiction over the person of Consolidated Iron. They posited that Consolidated Iron was doing business in the Philippines as Luzon Iron was merely its conduit. Thus, they insisted that summons could be served to Luzon Iron as Consolidated Iron's agent. Likewise, they denied that they were guilty of forum shopping as the issues and the reliefs prayed for in the complaints before the RTC and the DENR differed.

Further, the respondents asserted that the trial court had jurisdiction over the complaints because the TPAA itself allowed a direct resort before the courts in exceptional circumstances. They cited paragraph 14.8 thereof as basis explaining that when a direct and/or blatant violation of the TPAA had been committed, a party could go directly to the courts. They faulted the petitioners in not moving for the referral of the case for arbitration instead of merely filing a motion to dismiss. They added that actions that are subject to arbitration agreement were merely suspended, and not dismissed.

Reply of Petitioners

In their Reply,[11] dated April 29, 2016, the petitioners stated that Consolidated Iron was not necessarily doing business in the Philippines by merely establishing a wholly-owned subsidiary in the form of Luzon Iron. Also, they asserted that Consolidated Iron had not been validly served the summons because Luzon Iron is neither its resident agent nor its representative in the Philippines. The petitioners explained that Luzon Iron, as a wholly-owned subsidiary, had a separate and distinct personality from Consolidated Iron.

The petitioners explained that Paragraph 14.8 of the TPAA should not be construed as an authority to directly resort to court action in case of a direct and/or blatant violation of the TPAA because such interpretation would render the arbitration clause nugatory. They contended that, even for the sake of argument, the judicial action under the said provisions was limited to issues or matters which were inexistent in the present case.

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[11] *Id.* at 1319-1347.

They added that a party was not required to file a formal request for arbitration before an arbitration clause became operational. Lastly, they insisted that the respondents were guilty of forum shopping in simultaneously filing complaints before the trial court and the DENR.

The Court's Ruling

The petition is impressed with merit.

Filing of complaints before the RTC and the DENR is forum shopping

Forum shopping is committed when multiple suits involving the same parties and the same causes of action are filed, either simultaneously or successively, for the purpose of obtaining a favorable judgment through means other than appeal or certiorari.[12] The prohibition on forum shopping seeks to prevent the possibility that conflicting decisions will be rendered by two tribunals.[13]

In *Spouses Arevalo v. Planters Development Bank*,[14] the Court elaborated that forum shopping vexed the court and warranted the dismissal of the complaints. Thus:

> Forum shopping is the act of litigants who repetitively avail themselves of multiple judicial remedies in different *fora*, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances; and raising substantially similar issues either pending in or already resolved adversely by some other court; or for the purpose of increasing their chances of obtaining a favorable decision, if not in one court, then in another. **The rationale against forum-shopping is that a party should not be allowed to pursue simultaneous remedies in two different courts, for to do so would constitute abuse of court**

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[12] *Vda. de Karaan v. Atty. Aguinaldo*, G.R. No. 182151, September 21, 2015.

[13] *Philippine Postal Corporation v. CA*, 722 Phil. 860 (2013).

[14] 68 Phil. 236 (2012).

processes which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.

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What is essential in determining the existence of forum-shopping is the vexation caused the courts and litigants by a party who asks different courts and/or administrative agencies to rule on similar or related causes and/or grant the same or substantially similar reliefs, in the process creating the possibility of conflicting decisions being rendered upon the same issues.

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We emphasize that the grave evil sought to be avoided by the rule against forum-shopping is the rendition by two competent tribunals of two separate and contradictory decisions. **To avoid any confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.** The acts committed and described herein can possibly constitute direct contempt.[15] [Emphases supplied]

There is forum shopping when the following elements are present: (a) identity of parties, or at least such parties representing 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.[16] All the above-stated elements are present in the case at bench.

First, there is identity of parties. In both the complaints before the RTC and the DENR, Luzon Iron was impleaded as defendant while Consolidated Iron was only impleaded in the complaint before the RTC. Even if Consolidated Iron was not impleaded in the DENR complaint, the element still exists. The requirement is only substantial, and not absolute, identity of parties; and

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[15] *Id.* at 25-251.

[16] *Heirs of Marcelo Sotto v. Palicte,* 726 Phil. 651 (2014).

there is substantial identity of parties when there is 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 other case*.[17] Consolidated Iron and Luzon Iron had a common interest under the TPAA as the latter was a wholly-owned subsidiary of the former.

Second, there is identity of causes of action. A reading of the complaints filed before the RTC and the DENR reveals that they had almost identical causes of action and they prayed for similar reliefs as they ultimately sought the return of their respective Exploration Permit on the ground of the alleged violations of the TPAA committed by the petitioners.[18] In *Yap v. Chua*,[19] the Court ruled that identity of causes of action did not mean absolute identity.

> Hornbook 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. xxx[20] [Emphases supplied]

In the case at bench, both complaints filed before different *fora* involved similar facts and issues, the resolution of which depends on analogous evidence. Thus, the filing of two separate

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[17] *Spouses Santos v. Heirs of Domingo Lustre*, 583 Phil. 118, 127 (2008).

[18] *Rollo*, pp. 528 and 612.

[19] 687 Phil. 392 (2012).

[20] *Id.* at 401.

complaints by the petitioners with the RTC and the DENR clearly constitutes forum shopping.

It is worth noting that the very evil which the prohibition against forum shopping sought to prevent had happened—the RTC and the DENR had rendered conflicting decisions. The trial court ruled that it had jurisdiction notwithstanding the arbitration clause in the TPAA. On the other hand, the DENR found that it was devoid of jurisdiction because the matter was subject to arbitration.

Summons were not validly served

Section 12 of Rule 14 of the Revised Rules of Court provides that "[w]hen the defendant is a foreign private juridical entity which has **transacted business in the Philippines**, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines."

The Rule on Summons, as it now reads, thus, makes the question whether Consolidated Iron was "doing business in the Philippines" irrelevant as Section 12, Rule 14 of the Rules of Court was broad enough to cover corporations which have "transacted business in the Philippines."

In fact, under the present legal milieu, the rules on service of summons on foreign private juridical entities had been expanded as it recognizes additional modes by which summons may be served. A.M No. 11-3-6-SC[21] thus provides:

> Section 12. Rule 14 of the Rules of Court is hereby amended to read as follows:
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> "SEC. 12. *Service upon foreign private juridical entity.* — When the defendant is a foreign private juridical entity which has

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[21] Amendment of Section 12, Rule 14 of the Rules of Court on Service Upon Foreign Private Juridical Entity.

transacted business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.

If the foreign private juridical entity is not registered in the Philippines or has no resident agent, service may, with leave of court, be effected out of the Philippines through any of the following means:

a) By personal service coursed through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs;

b) By publication once in a newspaper of general circulation in the country where the defendant may be found and by serving a copy of the summons and the court order by registered mail at the last known address of the defendant;

c) By facsimile or any recognized electronic means that could generate proof of service; or

d) By such other means as the court may in its discretion direct."

The petitioners are mistaken in arguing that it cannot be served summons because under Section 15, Rule 14 of the Rules of Court, extrajudicial service of summons may be resorted to only when the action is *in rem* or *quasi in rem* and not when the action is *in personam*. The premise of the petitioners is erroneous as the rule on extraterritorial service of summons provided in Section 15, Rule 14 of the Rules of Court is a specific provision dealing precisely with the service of summons on a defendant which does not reside and is not found in the Philippines.[22] On the other hand, Section 12, Rule 14 thereof, specifically applies to a defendant foreign private juridical entity which had **transacted business** in the Philippines. Both rules may provide for similar modes of service of summons, nevertheless, they should only be applied in particular cases,

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[22] *NM Rothschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company*, 677 Phil. 351, 370 (2011).

with one applicable to defendants which do not reside and are not found in the Philippines and the other to foreign private juridical entities which had transacted business in the Philippines.

In the case at bench, it is crystal clear that Consolidated Iron transacted business in the Philippines as it was a signatory in the TPAA that was executed in Makati. Hence, as the respondents argued, it may be served with the summons in accordance with the modes provided under Section 12, Rule 14 of the Rules of Court.

In *Atiko Trans, Inc. v. Prudential Guarantee and Assurance, Inc.*,[23] the Court elucidated on the means by which summons could be served on a foreign juridical entity, to wit:

> On this score, we find for the petitioners. Before it was amended by A.M. No. 11-3-6-SC, Section 12 of Rule 14 of the Rules of Court reads:
>
> > SEC. 12. *Service upon foreign private juridical entity*. — When the defendant is a foreign private juridical entity which has transacted business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.
>
> Elucidating on the above provision of the Rules of Court, this Court declared in *Pioneer International, Ltd. v. Guadiz, Jr.* that when the defendant is a foreign juridical entity, *service of summons* maybe made upon:
>
> **1. Its resident agent designated in accordance with law for that purpose**;
>
> 2. The government official designated by law to receive summons if the corporation does not have a resident agent; or,
>
> **3. Any of the corporation's officers or agents within the Philippines.**[24] [Emphasis supplied]

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[23] 671 Phil. 388 (2011).

[24] *Id.* at 399-400.

The Court, however, finds that Consolidated Iron was not properly served with summons through any of the permissible modes under the Rules of Court. Indeed, Consolidated Iron was served with summons through Luzon Iron. Such service of summons, however, was defective.

It is undisputed that Luzon Iron was never registered before the Securities and Exchange Commission (*SEC*) as Consolidated Iron's resident agent. Thus, the service of summons to Consolidated Iron through Luzon Iron cannot be deemed a service to a resident agent[25] under the first mode of service.

Likewise, the respondents err in insisting that Luzon Iron could be served summons as an agent of Consolidated Iron, it being a wholly-owned subsidiary of the latter. The allegations in the complaint must clearly show a connection between the principal foreign corporation and its alleged agent corporation with respect to the transaction in question as a general allegation of agency will not suffice.[26] In other words, the allegations of the complaint taken as whole should be able to convey that the subsidiary is but a business conduit of the principal or that by reason of fraud, their separate and distinct personality should be disregarded.[27] A wholly-owned subsidiary is a distinct and separate entity from its mother corporation and the fact that the latter exercises control over the former does not justify disregarding their separate personality. It is true that under the TPAA, Consolidated Iron wielded great control over the actions of Luzon Iron under the said agreement. This, nonetheless, does not warrant the conclusion that Luzon Iron was a mere conduit of Consolidated Iron. In *Pacific Rehouse Corporation v. CA*,[28] the Court ruled:

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[25] Section 128 of the Corporation Code.

[26] *French Oil Mill Machinery Co., Inc. v. CA*, 356 Phil. 780, 785 (1998).

[27] *Signetics Corporation v. CA*, 296-A Phil. 782, 792 (1993).

[28] 730 Phil. 325 (2014).

Albeit the RTC bore emphasis on the alleged control exercised by Export Bank upon its subsidiary E-Securities, "[c]ontrol, by itself, does not mean that the controlled corporation is a mere instrumentality or a business conduit of the mother company. **Even control over the financial and operational concerns of a subsidiary company does not by itself call for disregarding its corporate fiction.** There must be a perpetuation of fraud behind the control or at least a fraudulent or illegal purpose behind the control in order to justify piercing the veil of corporate fiction. Such fraudulent intent is lacking in this case.[29] [Emphasis supplied]

In the case at bench, the complaint merely contained a general statement that Luzon Iron was the resident agent of Consolidated Iron, and that it was a wholly-owned subsidiary of the latter. There was no allegation showing that Luzon Iron was merely a business conduit of Consolidated Iron, or that the latter exercised control over the former to the extent that their separate and distinct personalities should be set aside. Thus, Luzon Iron cannot be deemed as an agent of Consolidated Iron in connection with the third mode of service of summons.

To reiterate, the Court did not acquire jurisdiction over Consolidated Iron because the service of summons, coursed through Luzon Iron, was defective. Luzon Iron was neither the resident agent nor the conduit or agent of Consolidated Iron.

On the abovementioned procedural issues alone, the dismissal of the complaints before the RTC was warranted. Even granting that the complaints were not procedurally defective, there still existed enough reason for the trial court to refrain from proceeding with the case.

Controversy must be referred for arbitration

The petitioners insisted that the RTC had no jurisdiction over the subject matter because under Paragraph 15.1 of the TPAA, any dispute out of or in connection with the TPAA must be resolved by arbitration. The said provision provides:

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[29] *Id.* at 751.

If, for any reasonable reason, the Parties cannot resolve a material fact, material event or any dispute arising out of or in connection with this TPAA, including any question regarding its existence, validity or termination, within 90 days from its notice, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause 15.1.[30]

The RTC, as the CA agreed, countered that Paragraph 14.8 of the TPAA allowed the parties to directly resort to courts in case of a direct and/or blatant violation of the provisions of the TPAA. Paragraph 14.8 stated:

Each Party agrees not to commence or procure the commencement of any challenge or claim, action, judicial or legislative enquiry, review or other investigation into the sufficiency, validity, legality or constitutionality of (i) the assignments of the Exploration Permit Applications(s) (sic) to LIDGC, (ii) any other assignments contemplated by this TPAA, and/or (iii) or (sic) any agreement to which the Exploration Permit Application(s) may be converted, unless a direct and/or blatant violation of the provisions of the TPAA has been committed.[31]

In *Bases Conversion Development Authority v. DMCI Project Developers, Inc.*,[32] the Court emphasized that the State favored arbitration, to wit:

The state adopts a policy in favor of arbitration. Republic Act No. 9285 expresses this policy:

SEC. 2. *Declaration of Policy.* — It is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes. **Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial**

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[30] *Rollo*, pp. 131-132.

[31] *Id.* at 128.

[32] G.R. No. 173137, January 11, 2016.

justice and declog court dockets. As such, the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from time to time.

Our policy in favor of party autonomy in resolving disputes has been reflected in our laws as early as 1949 when our Civil Code was approved. Republic Act No. 876 later explicitly recognized the validity and enforceability of parties' decision to submit disputes and related issues to arbitration.

Arbitration agreements are liberally construed in favor of proceeding to arbitration. We adopt the interpretation that would render effective an arbitration clause if the terms of the agreement allow for such interpretation.[33] [Emphases supplied]

Thus, consistent with the state policy of favoring arbitration, the present TPAA must be construed in such a manner that would give life to the arbitration clause rather than defeat it, if such interpretation is permissible. With this in mind, the Court views the interpretation forwarded by the petitioners as more in line with the state policy favoring arbitration.

Paragraphs 14.8 and 15.1 of the TPAA should be harmonized in such a way that the arbitration clause is given life, especially since such construction is possible in the case at bench. A synchronized reading of the abovementioned TPAA provisions will show that a claim or action raising the sufficiency, validity, legality or constitutionality of: (a) the assignments of the EP to Luzon Iron; (b) any other assignments contemplated by the TPAA; or (c) any agreement to which the EPs may be converted, may be instituted only when there is a direct and/or blatant violation of the TPAA. In turn, the said action or claim is

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[33] *Id.*

commenced by proceeding with arbitration, as espoused in the TPAA.

The Court disagrees with the respondents that Paragraph 14.8 of the TPAA should be construed as an exception to the arbitration clause where direct court action may be resorted to in case of direct and/or blatant violation of the TPAA occurs. If such interpretation is to be espoused, the arbitration clause would be rendered inutile as practically all matters may be directly brought before the courts. Such construction is anathema to the policy favoring arbitration.

A closer perusal of the TPAA will also reveal that paragraph 14 and all its sub-paragraphs are general provisions, whereas paragraphs 15 and all its sub-clauses specifically refer to arbitration. When general and specific provisions are inconsistent, the specific provision shall be paramount and govern the general provision.[34]

The petitioners' failure to refer the case for arbitration, however, does not render the arbitration clause in the TPAA inoperative. In *Koppel, Inc. v. Makati Rotary Club Foundation, Inc. (Koppel)*,[35] the Court explained that an arbitration clause becomes operative, notwithstanding the lack of a formal request, when a party has appraised the trial court of the existence of an arbitration clause, *viz*:

xxx The operation of the arbitration clause in this case is not at all defeated by the failure of the petitioner to file a formal "*request*" or application therefor with the MeTC. We find that the filing of a "*request*" pursuant to Section 24 of R.A. No. 9285 is *not* the sole means by which an arbitration clause may be validly invoked in a pending suit.

Section 24 of R.A. No. 9285 reads:

SEC. 24. *Referral to Arbitration.* — A court before which an action is brought in a matter which is the subject matter of an arbitration

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[34] *TSPIC Corporation v. TSPIC Employees Union*, 568 Phil. 744, 785 (2008).

[35] 717 Phil. 337 (2013).

agreement shall, if at least one party so requests not later that the pre-trial conference, or upon the request of both parties thereafter, refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

The "*request*" referred to in the above provision is, in turn, implemented by Rules 4.1 to 4.3 of A.M. No. 07-11-08-SC or the *Special Rules of Court on Alternative Dispute Resolution* (Special ADR Rules):

RULE 4: REFERRAL TO ADR

Rule 4.1. *Who makes the request*. — A party to a pending action filed in violation of the arbitration agreement, whether contained in an arbitration clause or in a submission agreement, may request the court to refer the parties to arbitration in accordance with such agreement.

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Attention must be paid, however, to the salient wordings of Rule 4.1. It reads: "*[a] party to a pending action filed in violation of the arbitration agreement xxx may request the court to refer the parties to arbitration in accordance with such agreement.*"

In using the word "*may*" to qualify the act of filing a "request" under Section 24 of R.A. No. 9285, the Special ADR Rules clearly did not intend to limit the invocation of an arbitration agreement in a pending suit solely *via* such "*request.*" After all, non-compliance with an arbitration agreement is a valid defense to any offending suit and, as such, may even be raised in an answer as provided in our ordinary rules of procedure.

In this case, it is conceded that petitioner was not able to file a separate "*request*" of arbitration before the MeTC. **However, it is equally conceded that the petitioner, as early as in its *Answer with Counterclaim*, had already apprised the MeTC of the existence of the arbitration clause** in the *2005 Lease Contract* and, more significantly, of its desire to have the same enforced in this case. **This act of petitioner is enough valid invocation of his right to arbitrate. xxx**[36] [Emphases supplied; italics in the original]

It is undisputed that the petitioners Luzon Iron and Consolidated Iron never made any formal request for arbitration.

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[36] *Id.* at 359-360.

As expounded in *Koppel*, however, a formal request is not the sole means of invoking an arbitration clause in a pending suit. Similar to the said case, the petitioners here made the RTC aware of the existence of the arbitration clause in the TPAA as they repeatedly raised this as an issue in all their motions to dismiss. As such, it was enough to activate the arbitration clause and, thus, should have alerted the RTC in proceeding with the case.

Moreover, judicial restraint should be exercised pursuant to the competence-competence principle embodied in Rule 2.4 of the Special Rules of Court on Alternative Dispute Resolution.[37] The said provision reads:

> RULE 2.4. *Policy Implementing Competence-Competence Principle.* — The arbitral tribunal shall be accorded the first opportunity or competence to rule on the issue of whether or not it has the competence or jurisdiction to decide a dispute submitted to it for decision, including any objection with respect to the existence or validity of the arbitration agreement. **When a court is asked to rule upon issue/s affecting the competence or jurisdiction of an arbitral tribunal in a dispute brought before it, either before or after the arbitral tribunal is constituted, the court must exercise judicial restraint and defer to the competence or jurisdiction of the arbitral tribunal by allowing the arbitral tribunal the first opportunity to rule upon such issues.**
>
> Where the court is asked to make a determination of whether the arbitration agreement is null and void, inoperative or incapable of being performed, under this policy of judicial restraint, the court must make no more than a *prima facie* determination of that issue.
>
> Unless the court, pursuant to such *prima facie* determination, concludes that the arbitration agreement is null and void, inoperative or incapable of being performed, the court must suspend the action before it and refer the parties to arbitration pursuant to the arbitration agreement. [Emphasis supplied]

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[37] A.M. No. 07-11-08-SC.

Generally, the action of the court is stayed if the matter raised before it is subject to arbitration.[38] In the case at bench, however, the complaints filed before the RTC should have been dismissed considering that the petitioners were able to establish the ground for their dismissal, that is, violating the prohibition on forum shopping. The parties, nevertheless, are directed to initiate arbitration proceedings as provided under Paragraph 15.1 of the TPAA.

WHEREFORE, the petition is **GRANTED**. The September 8, 2015 Decision of the Court of Appeals in CA-G.R. SP No. 133296, affirming the March 18, 2013 and September 18, 2013 Orders of the Regional Trial Court, Branch 59, Makati City, is hereby **SET ASIDE**. The complaints in Civil Case Nos. 12-1053 and 12-1054 are **DISMISSED**. The parties, however, are **ORDERED** to commence arbitration proceedings pursuant to Paragraph 15.1 of the Tenement Partnership and Acquisition Agreement.

SO ORDERED.

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

Brion, J., on leave.

THIRD DIVISION

[G.R. No. 192925. December 9, 2016]

JOSE RIZAL L. REMO, REYNALDO G. PANALIGAN, TITA L. MATULIN, ISAGANI CASALME, CIPRIANO P. ROXAS, CESARIO S. GUTIERREZ, CELSO A.

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[38] Rule 4.5, A.M. No. 07-11-08-SC.

LANDICHO AND EDUARDO L. TAGLE, *petitioners, vs.* **THE HONORABLE SECRETARY OF JUSTICE AGNES VST DEVANADERA, HONORABLE JUDGE DANILO SANDOVAL, HONORABLE CITY PROSECUTOR CARLOS BALLELOS, BATANGAS II ELECTRIC COOPERATIVE, INC., RUPERTO H. MANALO, NATIONAL ELECTRIFICATION ADMINISTRATION, LOURDES CRUZ, VIRGINIA BORJA, EDGAR DE GUZMAN AND RODULFO CANLAS,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; ESTAFA OR SWINDLING; ELEMENTS, CITED.—** Any person who causes pecuniary damage upon another through any of the acts of abuse of confidence or of deceit, as enumerated in Article 315 of the RPC, commits the crime of estafa or swindling. One of such acts of *abuse of confidence* is that specified in Article 315(1)(b) of the RPC, x x x Broken down, estafa under Article 315(1)(b) of the RPC has the following elements: 1. That money, goods or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same; 2. That there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; 3. That such misappropriation or conversion or denial is to the prejudice of another; *and* 4. That there is a demand made by the offended party on the offender.

2. **ID.; ID.; ID.; ID.; WITHOUT PROOF OF MISAPPROPRIATION OR CONVERSION, THE FINDINGS THAT ESTAFA WAS COMMITTED CANNOT HOLD; CASE AT BAR.—** The first element of estafa under Article 315(1)(b) of the RPC is that the offenders must have received money, goods or other personal property—(a) in trust (b) on commission (c) for administration or (d) under any obligation involving the duty to make delivery of, or to return the same. This element is absent in this case since petitioners did *not* receive any of the funds of BATELEC II as such. x x x

This is so because petitioners—even in their capacities as directors of BATELEC II — do not acquire *juridical possession* of the funds of the cooperative. Juridical possession is the type of possession that is acquired by the transferee of a thing when he receives the same under the circumstances mentioned in Article 315(1)(b) of the RPC. When juridical possession is acquired, the transferee obtains such right over the thing that he can set up even against its owner. This is what petitioners lack. x x x The second element of estafa under Article 315(1)(b) of the RPC requires that there must be *misappropriation* or *conversion* of the money or property received by the offender or a denial on his part of such receipt. The terms misappropriation or conversion, in the context of the article on point, connotes *"an act of using or disposing of another's property as if it were one's own or of devoting it to a purpose or use different from that agreed upon*." This element was not established in this case: x x x Without proof of misappropriation or conversion, the finding that petitioners may have committed the crime of estafa under Article 315(1)(b), much less of syndicated estafa, obviously, cannot hold. As we have seen, the evidence of Manalo *et al*. only tends to establish that petitioners have committed various lapses and irregularities in approving the ITI and Supertrac contracts and that such lapses and irregularities, in turn, caused some prejudice to BATELEC II. Such evidence, by itself, is certainly not enough for purposes of criminal prosecution for estafa.

3. ID.; PRESIDENTIAL DECREE NO. 1689 (SYNDICATED ESTAFA); IN ESSENCE, SYNDICATED ESTAFA IS BUT THE COMMISSION OF ANY KIND OF ESTAFA AND OTHER FORMS OF SWINDLING WITH ADDITIONAL CONDITIONS; ELEMENTS, EXPLAINED.— The crime known as syndicated estafa, on the other hand, is set forth and penalized by Section 1 of PD No. 1689. x x x In essence, syndicated estafa is but the commission of any kind of estafa under Article 315 of the RPC (or other forms of swindling under Article 316) with two (2) additional conditions: *one*, the estafa or swindling was perpetrated by a "*syndicate*" and *two*, the estafa or swindling resulted in the "*misappropriation of money contributed by stockholders, or members of rural banks,*

cooperative, samahang nayon(s), or farmers association, or of funds solicited by corporations/associations from the general public." Thus, in *People v. Balasa*, we detailed the elements of syndicated estafa as follows: 1. Estafa or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code is committed; 2. The estafa or swindling is committed by a syndicate; *and* 3. The defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, *samahang nayon(s)*, or farmers associations, or of funds solicited by corporations/associations from the general public. x x x Dissecting the pronouncement in the case of [*Galvez v. Court of Appeals, et al.*] for our present purposes, however, we are able to come up with the following standards by which a group of purported swindlers may be considered as a syndicate under PD No. 1689: 1. They must be at least five (5) in number; 2. They must have formed or managed a rural bank, cooperative, "*samahang nayon*," farmer's association or any other corporation or association that solicits funds from the general public. 3. They formed or managed such association with the intention of carrying out an unlawful or illegal act, transaction, enterprise or scheme *i.e.*, they used the very association that they formed or managed as the means to defraud its own stockholders, members and depositors.

4. ID.; ID.; SYNDICATED ESTAFA IS PUNISHABLE BY LIFE IMPRISONMENT TO DEATH REGARDLESS OF THE VALUE OF THE DAMAGE OR PREJUDICE CAUSED.— The penalty for syndicated estafa under PD No. 1689 is significantly heavier than that of simple estafa under Article 315 of the RPC. The penalty imposable for simple estafa follows the schedule under Article 315 and is basically dependent on the value of the damage or prejudice caused by the perpetrator, but in no case can it exceed twenty (20) years imprisonment. Syndicated estafa, however, is punishable by life imprisonment to death regardless of the value of the damage or prejudice caused.

APPEARANCES OF COUNSEL

Ernesto P. Tabao for petitioners.
Office of the Solicitor General for public respondents.

D E C I S I O N

PEREZ, *J.*:

This case is an appeal[1] from the decision[2] dated 18 February 2010 and resolution[3] dated 16 July 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 110838.

The facts:

Prelude: BATELEC II, the Contracts, the NEA Audit

The Batangas II Electric Cooperative, Inc. (BATELEC II) is a cooperative engaged in the distribution and transmission of electric power to certain parts of the Batangas province.[4] It was organized and duly registered as a non-profit electric cooperative with the National Electrification Administration (NEA), pursuant to Presidential Decree (PD) No. 269, on 12 August 1977.

BATELEC II began its operations on 24 April 1978.

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In 2004, BATELEC II entered into two (2) contracts that required it to spend a total of ₱81,100,000.00.

The first contract was entered into by BATELEC II with the I-SOLV Technologies, Inc. (ITI),[5] as represented by its president

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[1] *Rollo*, pp. 12-83. The appeal was filed as a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

[2] *Id*. at 318-337. The decision was penned by Associate Justice Florito S. Macalino for the Eleventh Division of the Court of Appeals with Associate Justices Hakim S. Abdulwahid and Normandie B. Pizarro, concurring.

[3] *Id*. at 339-340. The resolution was penned by Associate Justice Florito S. Macalino for the Former Eleventh Division of the Court of Appeals with Associate Justices Hakim S. Abdulwahid and Normandie B. Pizarro, concurring.

[4] *Id*. at 422-425, 422, *see* Articles of Incorporation of BATELEC II.

[5] Now known as Smart Technologies, Incorporated.

Manuel Ferdinand Trinidad (Trinidad). The contract was for the enterprise-wide automation and computerization of BATELEC II. Pursuant to the said contract, BATELEC II obligated itself to pay an aggregate amount of ₱75,000,000.00[6] to ITI in exchange of the total computerization solutions to be provided by the latter.

The second contract, on the other hand, was with the Supertrac Motors Corporation (Supertrac) and it was for the procurement of ten (10) boom trucks by BATELEC II. Under such contract, BATELEC II agreed to pay the sum of ₱6,100,000.00 to Supertrac as consideration for the ten (10) boom trucks to be supplied by the latter.[7] Supertrac was represented in the contract by its president, Rodrigo B. Bangayan (Bangayan).

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In 2005, a NEA *audit report*[8] found the ITI and Supertrac contracts as having been replete with various irregularities and violations of NEA guidelines. Among the irregularities and anomalies noted in the said audit report were:[9]

A. *Re*: the ITI Contract

1. The decision to computerize BATELEC II was immediately implemented by the cooperative's directors without any documented comprehensive technical study or project design.

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[6] See *rollo*, p. 320. Payable in twenty-two (22) monthly installments at ₱3,500,000.00 for the first 21 months and ₱1,500,000.00 for the 22nd month.

[7] *Rollo*, p. 323.

[8] *Id.* at 511-549; the 2004 *Audit Report* issued by the NEA on 18 March 2005. The reports contains the results of the audit it conducted on the accounts and transactions of BATELEC II for the period of 1 April 2001 to 30 September 2004.

Rollo, pp. 511-549; excerpts of the audit is found in the NEA decision dated 5 October 2006 in NEA ADM. Case No. 01-05-05.

[9] *Id.*

2. The award of the computerization contract to ITI was not preceded by competitive bidding as required by NEA regulations.

3. The directors of BATELEC II directly participated in the award of the computerization contract to ITI. Such participation thus violates NEA Bulletin No. 35 under Prohibition No. 2, which states that the members of the board of directors of an electric cooperative "*[s]hould not xxx involve themselves on functions that [do not] inherently belong to [m]anagement such as, for example, material purchases and procurement. x x x they should not sit as members of the [electric cooperative]'s bid[s] and awards committee but should confine themselves to laying down policies for [m]anagement's guidance*."[10]

4. ITI is grossly unqualified to perform the ₱75,000,000.00 computerization contract:

    i. ITI was registered with the Securities and Exchange Commission (SEC) only on 6 April 2004 or just nine (9) days before the contract.

    ii. ITI is undercapitalized for the venture. Its authorized capital stock is only worth ₱1,000,000.00, of which only a quarter—or merely ₱250,000.00—has been subscribed. Of its subscribed capital stock, only ₱62,500.00 is actually paid.

5. The computerization contract was implemented without prior approval from the NEA.

B. *Re*: the SMC Contract

1. The boom trucks of Supertrac were overpriced. Supertrac sells a boom truck at ₱610,000.00 per unit. A similar boom truck sold by a similar company[11] only sells at ₱320,000.00.

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[10] CA *rollo*, pp. 171-176, 176; NEA Bulletin No. 35 dated 18 June 1990.

[11] The audit report identified the Star Motors Corporation.

2. The bidding process that preceded the award of the boom trucks contract to Supertrac appears to be rigged. There are indications that three (3) of the four (4) companies that participated in the bid *i.e.*, Supertrac, the Sapphire Motors Corporation (SMC) and the Road & Tracks Motor Corporation (RTMC), are actually related, if not totally the same, companies:

    i. The business address of the RTMC and the home address of one of its directors is the same as the home address of Bangayan—the president of Supertrac and the home addresses of two (2) directors of SMC.

    ii. Ms. Rosalinda Accad is both the director of Supertrac and SMC.

    iii. The delivery receipts nos. 3294, 3295, 3366 and 3337 that was issued by Supertrac to evidence its delivery of four (4) of the ten boom trucks to BATELEC II, were signed by Ms. Judith Sioco (Sioco) and approved by Ms. Ginalyn Valenton (Valenton). Sioco was also the signatory to the bid proposal of RTMC, while Valenton is also branch head of SMC.

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Spurred by the audit report's findings, some members-consumers of BATELEC II filed before the NEA an administrative complaint[12] charging the directors of the cooperative who approved the ITI and Supertrac contracts with gross mismanagement and corruption. Among those charged in the complaint were then BATELEC II directors and now herein petitioners Reynaldo G. Panaligan, Isagani S. Casalme, Cesario S. Gutierrez, Celso A. Landicho, Tita L. Matulin, Jose Rizal L. Remo, Cipriano P. Roxas and Eduardo L. Tagle.[13]

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[12] *Rollo,* pp. 506-510.

[13] The other directors of BATELEC II who were charged in the administrative complaint were Ruben Calinisan, Gerardo Hernandez, Ireneo Montecer, Tirso M. Ramos, Jr.

On 5 October 2006, the NEA rendered a decision ordering, among others, the removal of petitioners as directors of BATELEC II as well as the filing of appropriate criminal and civil actions against them by the remaining directors of BATELEC II.

On 9 October 2006, the NEA,[14] in conjunction with its decision, issued an order[15] directing the remaining directors[16] of BATELEC II, led by private respondent Ruperto H. Manalo (Manalo), to reorganize and elect a new set of officers for the cooperative immediately.

Pursuant to the 9 October 2006 order of the NEA, the remaining directors of BATELEC II conducted an election on 10 October 2006. In that election, Manalo was voted as new president of BATELEC II.[17]

The Criminal Complaint, the Resolution of the OCP and Criminal Cases No. 0503-2007 and 0504-2007

In the meantime, Manalo and the other private respondents[18] (Manalo *et al.*)—acting ostensibly for and on behalf of BATELEC II—filed a criminal complaint against petitioners, Trinidad and

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[14] *Via* then NEA Administrator Edita S. Bueno

[15] CA *rollo*, p. 740.

[16] Namely, private respondent Ruperto H. Manalo, Atty. Natalio M. Panganiban, Mr. Leovino O. Hidalgo, Mr. Gonzalo O. Bantugon, Mr. Adrian G. Ramos, Mr. Dakila P. Atienza and Mr. Michael Angelo C. Rivera.

[17] CA *rollo*, p. 741; *via* BATELEC II Board Resolution No. 001, s. 2006.

Petitioners would challenged the 9 October 2006 order of the NEA *via* a petition for *certiorari* with the CA. Such petition was dismissed by the CA through its decision dated 15 December 2006. Undeterred, petitioners appealed the CA's decision before this Court. This appeal was docketed as G.R. No. 175736.

On 12 April 2016, we issued a decision in G.R. No. 175736 denying petitioners' appeal and affirming the CA's decision as well as the NEA order. (*See* G.R. No. 175736, 12 April 2016)

[18] Namely, private respondents Lourdes C. Cruz, Virginia B. Borja, Edgar A. de Guzman and Rodulfo B. Gelas (Canlas, in other parts of the records).

Bangayan before the Office of the City Prosecutor (OCP) of Lipa City. The complaint was docketed in the OCP as I.S. Nos. 07-0552 to 0553.

The complaint accused petitioners, Trinidad and Bangayan of having committed the crime of *syndicated estafa* under Presidential Decree (PD) No. 1689 in relation to Article 315(1)(b) of the Revised Penal Code (RPC). Manalo *et al*. alleged that petitioners, Trinidad and Bangayan acted in conspiracy, and as a syndicate, to defraud BATELEC II by way of the highly irregular and anomalous ITI and Supertrac contracts.[19] According to Manalo *et al*., the implementation of such contracts have led to the misappropriation of millions and millions of pesos worth of funds of BATELEC II.

Preliminary investigation thereafter ensued.

On 9 November 2007, the OCP[20] issued a resolution[21] in I.S. Nos. 07-0552 to 0553. In the said resolution, the OCP found probable cause to hail petitioners to court albeit only for two (2) counts of *simple estafa* under Article 315(1)(b) of the RPC. The OCP, however, absolved Trinidad and Bangayan on the ground of lack of evidence against them. The dispositive portion of the resolution thus reads:[22]

WHEREFORE, premises considered, let informations for violation of Article 315 1 (b) of the Revised Penal Code for two (2) counts be filed in the proper court against [petitioners] Reynaldo G. Panaligan, Tita L. Matulin, Jose Rizal [L.] Remo, Isagani S. Casalme, Cipriano P. Roxas, Cesario S. Gutierrez, Celso A. Landicho and Eduardo L. Tagle.

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[19] *Rollo*, pp. 85-103, 89; *see* Resolution of the OCP dated 9 November 2007 in I.S. Nos. 07-0552 to 0553.

[20] Thru State Prosecutors Florencio D. Dela Cruz, Jr. and Nolibien N. Quiambao who were designated as acting city prosecutors of Lipa City under Department Order No. 713 dated 23 August 2007 of the Department of Justice.

[21] *Id*. at 85-103.

[22] *Id*. at 101.

The complaint against respondents Ferdinand Trinidad and Rodrigo Bangayan is hereby DISMISSED for insufficiency of evidence.

Pursuant to the OCP resolution, two (2) informations[23] for simple estafa under Article 315(1)(b) of the RPC were filed against petitioners before the Regional Trial Court (RTC) of Lipa City. Both informations were raffled to Branch 12, presided by Judge Danilo S. Sandoval (Judge Sandoval). The information pertaining to the estafa committed in relation with the ITI contract was docketed as Criminal Case No. 0503-2007 whereas that pertaining to the estafa committed in relation with the Supertrac contract was docketed as Criminal Case No. 0504-2007.

Petitions For Review Before the Justice Secretary and the Flip-Flopping Resolutions

The filing of the informations notwithstanding, petitioners and Manalo still filed their respective petitions for review assailing the OCP resolution before the Secretary[24] of the Department of Justice (DOJ).

In their petition for review,[25] petitioners challenged, among others, the OCP's finding of probable cause for simple estafa against them. Petitioners insist upon their absolute innocence of any crime and pray for the dismissal of the complaint against them.

In his petition for review, on the other hand, Manalo sought to question the OCP's absolution of Trinidad and Bangayan and also its downgrading of the indictable offense from syndicated estafa to simple estafa. Manalo maintained that petitioners, Trinidad and Bangayan should all be charged with the crime of syndicated estafa.[26]

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[23] *Rollo*, pp. 607-611, 659-661; both dated 9 November 2007.

[24] Then, Secretary Raul M. Gonzales.

[25] CA *rollo*, pp. 96-102; dated 26 November 2007.

[26] *Rollo*, pp. 136-161, 159; *see* Resolution of the DOJ Secretary dated 26 November 2008 in I.S. Nos. 07-0552 to 0553.

On **26 November 2008**, the DOJ Secretary issued a **resolution**[27] dismissing petitioners' petition for review for lack of merit and favoring Manalo's petition. The DOJ Secretary agreed with Manalo's assertion that petitioners, Trinidad and Bangayan should all be charged and be so charged with the crime of syndicated estafa. Thus, in his resolution, the DOJ Secretary ordered the modification of the OCP resolution and directed the filing in court of two (2) separate informations for syndicated estafa—one against petitioners and Trinidad and another against petitioners and Bangayan. The dispositive portion of the resolution accordingly provides:[28]

WHEREFORE, the assailed Resolution is hereby **MODIFIED** and that the Investigating State Prosecutors are directed to file Two (2) Separate Informations in Court, to wit:

1. Information for Syndicated Estafa under Presidential Decree 1689 in relation to Article 315 paragraph 1 (b) of the Revised Penal Code against [petitioners] Reynaldo Panaligan, Jose Rizal Remo, Tita Matulin, Isagani Casalme, Cipriano Roxas, Cesario Gutierrez, Celso Landicho, Eduardo [L.] Tagle and Manuel Ferdinand Trinidad.

2. Information for Syndicated Estafa under Presidential Decree 1689 in relation to Article 315 paragraph 1 (b) of the Revised Penal Code against [petitioners] Reynaldo Panaligan, Jose Rizal Remo, Tita Matulin, Isagani Casalme, Cipriano Roxas, Cesario Gutierrez, Celso Landicho, Eduardo L. Tagle and Rodrigo Bangayan.

SO ORDERED.

Petitioners, Trinidad and Bangayan all filed their respective motions for reconsideration from the above resolution.

On **28 January 2009**, the DOJ Acting Secretary issued a **resolution**[29] granting Trinidad's motion for reconsideration.

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[27] *Id*. at 131-161.

[28] *Id*. at 160.

[29] *Id*. at 690-693.

In the said resolution, the DOJ Secretary held that there is not enough evidence presented during the preliminary investigation that sufficiently establishes that Trinidad was in conspiracy with the petitioners.[30] Hence, in the resolution, the DOJ Secretary ordered the exclusion of Trinidad from the informations for syndicated *estafa* that were required to be filed pursuant to the 26 November 2008 resolution.

On 24 February 2009, petitioners filed a new motion praying for the resolution of the issues raised in their original motion for reconsideration (motion to resolve issues).[31]

On **6 May 2009**, the DOJ Secretary issued a **resolution**[32] granting Bangayan's motion for reconsideration. In the said resolution, the DOJ Secretary ordered the exclusion of Bangayan from the informations for syndicated *estafa* that were required to be filed pursuant to the 26 November 2008 resolution. The resolution based its absolution of Bangayan on the ground that he, like Trinidad, was not shown to have conspired with petitioners regarding the approval of the Supertrac contract.[33]

On **2 June 2009**, the DOJ Secretary issued an **order**[34] denying petitioners' motion for reconsideration.

On **4 June 2009**, however, the DOJ Secretary issued another **resolution**;[35] this time, acting upon the petitioners' motion to resolve issues. In this resolution, the DOJ Secretary ordered the charges to be filed against petitioners, pursuant to the 26 November 2008 resolution, to be downgraded from syndicated estafa to mere simple estafa under Article 315 paragraph 1 (b) of the RPC.

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[30] *Id*.

[31] *Id*. at 694-704.

[32] *Id*. at 208-211.

[33] *Id*.

[34] *Id*. at 729-732.

[35] *Id*. at 733-737.

Aggrieved by the 4 June 2009 resolution, Manalo *et al*. filed a motion for reconsideration.

On **28 July 2009**, the DOJ Secretary[36] issued a **resolution**[37] granting Manalo e*t al.*'s motion for reconsideration. In another flip flop, the DOJ Secretary opined that Trinidad and Bangayan should both be charged along with the petitioners and the charge against them ought to be syndicated estafa. Hence, in this resolution, the DOJ Secretary reverted back to the original disposition under the 26 November 2008 resolution and again required the filing of two (2) informations for syndicated estafa—one against petitioners and Trinidad and another against petitioners and Bangayan.

Trinidad and Bangayan each filed a motion for reconsideration from the 28 July 2009 resolution.[38]

The Amendment of the Informations, the Issuance of Warrants of Arrests and the Exclusion Anew of Trinidad and Bangayan

On the other hand, the OCP filed before the RTC amended informations in Criminal Case Nos. 0503-2007 and 0504-2007 on 7 October 2009.[39] The amended informations were filed in compliance with the 28 July 2009 resolution of the DOJ Secretary, thus:

1. In Criminal Case No. 0503-2007, the OCP filed an amended information for **syndicated estafa** under PD No. 1689 in relation to Article 315(1)(b) of the RPC against **petitioners and Trinidad**, *and*

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[36] Then Acting Secretary Agnes VST Devanadera.

[37] *Rollo*, pp. 756-777.

[38] *Id*. at 778-779; petitioners also filed their motion for reconsideration, but the same was denied by the DOJ Secretary *via* a resolution dated 28 September 2009.

[39] See CA *rollo*, pp. 363-367.

2. In Criminal Case No. 0504-2007, the OCP filed an amended information for **syndicated estafa** under PD No. 1689 in relation to Article 315(1)(b) of the RPC against **petitioners and Bangayan**.

On even date, the RTC, through Judge Sandoval, forthwith issued an order[40] admitting the amended informations and directing the issuance of warrants of arrest against the petitioners, Trinidad and Bangayan.

Subsequently, however, the DOJ Acting Secretary issued resolutions[41] granting the motions for reconsideration of Trinidad and Bangayan and ordered their exclusion anew from the amended informations. The RTC, for its part, eventually approved of such exclusion.

Petitioners' Certiorari to the CA, the Ruling of the CA and the Present Appeal

Upset by the turn of events, petitioners filed with the CA a petition for *certiorari*[42] challenging the validity of: (a) the 28 July 2009 resolution of the DOJ Secretary and (b) the warrants of arrest issued by the RTC in Criminal Case Nos. 0503-2007 and 0504-2007. This petition was docketed as CA-G.R. SP No. 110838.

Petitioners allege that the 28 July 2009 resolution of the DOJ Secretary and the warrants of arrest issued by the RTC have been products of grave abuse of discretion. They specifically claim:[43]

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[40] *Rollo*, pp. 420-421.

[41] *Id.* at 307-311 and 312-317; Bangayan's motion for reconsideration was granted *via* a resolution dated 12 October 2009; Trinidad's motion for reconsideration was granted *via* a resolution dated 12 November 2009.

[42] CA *rollo*, pp. 7-51.

[43] *Id*.

1. The DOJ Secretary gravely abused its discretion when it ordered the filing of informations for syndicated estafa, despite the fact that not all the elements of such crime, or even of simple estafa, has been established in this case:

    a. Manalo *et al.* presented no evidence establishing that petitioners misappropriated or converted funds of BATELEC II. The funds of BATELEC II were duly paid to Supertrac and ITI pursuant to the contracts and it was never shown that petitioners had been in conspiracy with either corporation.

    b. Even assuming the existence of estafa, petitioners cannot be considered as a "*syndicate*" pursuant to PD No. 1689 since they never formed themselves into a corporation or cooperative with the sole purpose of defrauding the public.

    c. Moreover, there is no evidence showing that the funds used in the Supertrac and ITI contracts were derived from contributions paid by members of BATELEC II.

2. Judge Sandoval likewise gravely abused his discretion when he issued the warrants of arrest almost immediately after the amended informations; relying merely on the resolution of the prosecutors and the DOJ Secretary and without making a personal determination of the existence of probable cause as required by the Constitution.

On 18 February 2010, the CA rendered a decision[44] in CA-G.R. SP No. 110838 dismissing the *certiorari* petition of petitioners. It ascribed no grave abuse of discretion either on the part of the DOJ Secretary for her 28 July 2009 resolution or on the part of Judge Sandoval for his warrants of arrest.

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[44] *Rollo*, pp. 318-337.

Petitioners moved for reconsideration, but the CA remained steadfast.[45]

Hence, this appeal.

OUR RULING

The facts upon which the DOJ Secretary premised its finding of probable cause against petitioners are clear and not disputed.

The petitioners were the directors of BATELEC II that approved, for the said cooperative, the contracts with ITI and Supertrac. The contracts required BATELEC II to pay a total of ₱81,000,000.00 to ITI and Supertrac in exchange for the system-wide computerization of the cooperative and for ten (10) boom trucks. It was, however, alleged that petitioners—in approving the ITI and Supertrac contracts—have committed undue haste, violated various NEA guidelines and paid no regard to the disadvantageous consequences of the said contracts to the interests of BATELEC II in general.

Meanwhile, it has been established that Trinidad and Bangayan—the presidents of ITI and Supertrac, respectively—have not been in conspiracy with petitioners insofar as the approval of the contracts were concerned.[46]

From the foregoing, the DOJ Secretary held that petitioners ought to be indicted for two counts of syndicated estafa under PD No. 1689 in relation to Article 315(1)(b) of the RPC.

We disagree.

Our review of the established facts *vis-a-vis* the applicable laws and jurisprudence had made it clear that such indictment could not have been based on any valid finding of probable cause: *first*, as the petitioners cannot be regarded as a "*syndicate*" under PD No. 1689 and *second*, as they could not even be considered to have committed simple estafa under Article 315(1)(b) of the RPC.

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[45] *Id*. at 339-340.

[46] *Supra* note 41. *See* further *rollo*, pp. 690-693 and 208-211.

We find then that the finding of probable cause against petitioners to be grossly erroneous. The petitioners were right. The 28 July 2009 resolution of the DOJ Secretary, their indictment and, necessarily, the warrants of arrest issued against them were indeed products of grave abuse of discretion. All must be, as they should have been, set aside.

Hence, we grant the instant appeal.

I

We begin with the basics.

Any person who causes pecuniary damage upon another through any of the acts of abuse of confidence or of deceit, as enumerated in Article 315 of the RPC, commits the crime of estafa or swindling. One of such acts of *abuse of confidence* is that specified in Article 315(1)(b) of the RPC, *viz*:[47]

> (b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

Broken down, estafa under Article 315(1)(b) of the RPC has the following elements:[48]

1. That money, goods or other personal property is received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same;
2. That there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt;

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[47] REVISED PENAL CODE (RPC) or Act No. 3815.

[48] *Corpuz v. People of the Philippines*, G.R. No. 180016, 29 April 2014, 724 SCRA 1, 31-32.

3. That such misappropriation or conversion or denial is to the prejudice of another; *and*

4. That there is a demand made by the offended party on the offender.

The crime known as syndicated *estafa*, on the other hand, is set forth and penalized by Section 1 of PD No. 1689. The said section reads:

Section 1. Any person or persons who shall commit *estafa* or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (*estafa*) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon(s)*", or farmers' associations, or of funds solicited by corporations/associations from the general public.

When not committed by a syndicate as above defined, the penalty imposable shall be reclusion temporal to *reclusion perpetua* if the amount of the fraud exceeds 100,000 pesos.

In essence, syndicated estafa is but the commission of any kind of estafa under Article 315 of the RPC (or other forms of swindling under Article 316) with two (2) additional conditions: *one*, the estafa or swindling was perpetrated by a "*syndicate*" and *two*, the estafa or swindling resulted in the "*misappropriation of money contributed by stockholders, or members of rural banks, cooperative, samahang nayon(s), or farmers association, or of funds solicited by corporations/associations from the general public*." Thus, in *People v. Balasa*,[49] we detailed the elements of syndicated estafa as follows:

1. Estafa or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code is committed;

2. The estafa or swindling is committed by a syndicate; *and*

[49] G.R. No. 106357, 3 September 1988.

3. The defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, *samahang nayon(s)*, or farmers associations, or of funds solicited by corporations/ associations from the general public.

The penalty for syndicated estafa under PD No. 1689 is significantly heavier than that of simple estafa under Article 315 of the RPC.[50] The penalty imposable for simple estafa follows the schedule under Article 315 and is basically dependent on the value of the damage or prejudice caused by the perpetrator, but in no case can it exceed twenty (20) years imprisonment.[51] Syndicated estafa, however, is punishable by life imprisonment to death regardless of the value of the damage or prejudice caused.

II

The first reason why the finding of probable cause for syndicated estafa against petitioners cannot stand is because they, under the circumstances, cannot be considered as a "*syndicate*" under PD No. 1689. As stated in the foregoing discussion, in order to commit the crime of syndicated estafa, the estafa must be committed by a "*syndicate*" as contemplated by the law.

In PD No. 1689, the term syndicate is described as "*consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme* x x x." By itself, however, such description can be vague and somewhat confusing. Indeed, going by the description alone, one can be led into the inference that an estafa committed by five conspiring persons against any of the stockholders or members of the associations mentioned under PD No. 1689

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[50] This is equally true in the case of other forms of swindling under Article 316 of the RPC, which is only punishable by *arresto mayor* in its minimum to medium periods and a fine of not less tha the value of the damage caused but not more three times such value.

[51] Article 315 of the RPC.

would automatically give rise to the crime of syndicated estafa. But is such inference really what the law contemplates?

Fortunately, the true import of the term "syndicate" has already been elucidated upon by relevant jurisprudence. Drawing from textual clues from the statute itself, our case law answers the foregoing query with a clear *no*.

Syndicate Must Be Five or More Persons Who Used The Association That They Formed or Managed to Defraud Its Own Stockholders, Members or Depositors.

Our resolution in the case of *Galvez v. Court of Appeals, et al*.[52] points us in the right direction. In *Galvez*, a criminal complaint for syndicated estafa was filed against five individuals who were the interlocking directors of two corporations that purportedly defrauded a commercial bank. Acting on such complaint, the city prosecutor issued a resolution finding probable cause to indict the directors for simple estafa under Article 315(2)(a) of the RPC, but not for syndicated estafa. This resolution was subsequently reversed by the DOJ Secretary upon review, but was ultimately sustained by the CA on *certiorari*. In its appeal to this Court, the commercial bank raised the question of whether the city prosecutor was correct in not charging the directors with syndicated estafa.

Galvez resolved the question in the affirmative. Citing the text of Section 1 of PD No. 1689 as well as previous cases that applied the said law, *Galvez* declared that in order to be considered as a syndicate under PD No. 1689, the perpetrators of an estafa must not only be comprised of at least five individuals but **must have also used the association that they formed or managed to defraud its own stockholders, members or depositors**. Thus:[53]

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[52] 704 Phil. 463 (2013).

[53] *Id.* at 473.

On review of the cases applying the law, we note that the **swindling syndicate used the association that they manage to defraud the general public of funds contributed to the association**. Indeed, Section 1 of Presidential Decree No. 1689 speaks of a syndicate formed with the intention of carrying out the unlawful scheme for the misappropriation of the money contributed by the members of the association. In other words, **only those who formed [or] manage associations that receive contributions from the general public who misappropriated the contributions can commit syndicated *estafa*.** xxx. (Emphasis supplied).

Hence, *Galvez* held that since the directors therein were "*outsiders*" or were not affiliated in any way with the commercial bank whose funds they allegedly misappropriated, they cannot be charged with syndicated estafa but only of simple estafa under Article 315(2)(a) of the RPC.

Dissecting the pronouncement in *Galvez* for our present purposes, however, we are able to come up with the following standards by which a group of purported swindlers may be considered as a syndicate under PD No. 1689:

1. They must be at least five (5) in number;[54]
2. They must have formed or managed[55] a rural bank, cooperative, "*samahang nayon*," farmer's association or any other corporation or association that solicits funds from the general public.[56]
3. They formed or managed such association with the intention of carrying out an unlawful or illegal act, transaction, enterprise or scheme[57] *i.e.*, they used the very association that they formed or managed as the

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[54] Section 1 of PD No. 1689.

[55] 365 Phil. 531, 543 (1999).

[56] *See* Section 1 of PD No. 1689 in relation to *Galvez v. Court of Appeals*, *supra* note 52.

[57] *Supra* note 54.

means to defraud its own stockholders, members and depositors.[58]

Guided by the foregoing standards, we shall now venture to apply the same to the instant case.

Petitioners Do Not Constitute a Syndicate; They Did Not Use BATELEC II as a Means to Defraud Its Members of their Contributions

There is no doubt that petitioners met the first and second standards under *Galvez*: petitioners are more than five (5) in number and they, as its directors, had management of BATELEC II—an electric cooperative. What is lacking on the part of the petitioners is the third standard. **Petitioners do not constitute a syndicate under PD No. 1689, as they never used BATELEC II as a means to defraud its members.**

To satisfy the third standard under *Galvez*, it must be established that the purported swindlers used the very association they formed or managed to defraud its members. Since the association contemplated by PD No. 1689 must be one that "*solicit[s] fund from the general public*," it follows **that the fraud committed through such association must pertain to its receipt of contribution or solicitation from its stockholders, members or the public**. Such kind of fraud is evidently missing in the case at bench:

First. It is undisputed that the contributions of the members of BATELEC II were paid to the latter not out of any fraudulent act, transaction or scheme. As admitted by Manalo *et al.*, the "*contributions*" of the members of BATELEC II comprise of their payments for the electricity being supplied by the cooperative.[59] In other words, **the contributions of the members of BATELEC II were received by the latter through legitimate transactions**.

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[58] *Supra* note 52 at 474.

[59] *Rollo*, pp. 446, 482; *see* Comment of private respondent Manalo.

Second. As BATELEC II received the contributions of its members *via* legitimate transactions, it cannot be said that the petitioners had used the cooperative to commit fraud on any of its members. Any alleged misuse of such contributions committed by petitioners *after BATELEC II has already received them through legal means* would **not constitute as defraudation committed through the cooperative, but would merely be an act of mismanagement committed against it**. Clearly then, the third standard of *Galvez* was not met.

Verily, petitioners cannot be considered as a syndicate under PD No. 1689. They, therefore, cannot also be charged with syndicated estafa under the said law.[60]

III

There is, however, a more fundamental reason why the finding of probable cause against petitioners should fail. The petitioners, under the circumstances, could not even be considered to have committed simple estafa under Article 315(1)(b) of the RPC.

The first two (2) elements of estafa under Article 315(1)(b) of the RPC do not exist by the factual circumstances of this case.

As Directors of BATELEC II that Approved the ITI and Supertrac Contracts, Petitioners Did Not Receive Funds of the Cooperative; They Don't Have Juridical Possession of Cooperative Funds

The first element of estafa under Article 315(1)(b) of the RPC is that the offenders must have received money, goods or other personal property—(a) in trust (b) on commission (c) for administration or (d) under any obligation involving the duty to make delivery of, or to return the same. This element is absent

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[60] *Cf. People v. Romero, supra* note 55 at 539 and *People v. Menil, Jr.*, 394 Phil. 433, 441 (2000). The second paragraph of Section 1 of PD No. 1689 will only apply if the group of swindlers does not meet the first standard but satisfies the second and third standards of *Galvez*.

in this case since petitioners did *not* receive any of the funds of BATELEC II as such.

While petitioners, as directors of BATELEC II, may be said to be vested with control over how the cooperative spends its funds,[61] the same cannot be considered as receipt and possession of such funds under Article 315(1)(b) of the RPC. This is so because petitioners—even in their capacities as directors of BATELEC—do not acquire *juridical possession* of the funds of the cooperative.

Juridical possession is the type of possession that is acquired by the transferee of a thing when he receives the same under the circumstances mentioned in Article 315(1)(b) of the RPC.[62] When juridical possession is acquired, the transferee obtains such right over the thing that he can set up even against its owner.[63] This is what petitioners lack.

Petitioners, despite their collective authority as directors to authorize expenditures for BATELEC II, do not have juridical possession over the funds of the cooperative. They simply do not have any right over such funds that they can set up against BATELEC II.

Clearly, petitioners cannot be considered to have received BATELEC II funds under the circumstances mentioned in Article 315(1)(b) of the RPC. The first element of estafa under the same provision is, therefore, absent.

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[61] Section 24 of PD No. 269, as amended, provides:

SECTION 24. *Board of Directors.–*

(a) The Management of a Cooperative shall be vested in its Board, subject to the supervision and control of NEA which shall have the right to be represented and to participate in all Board meetings and deliberations and to approve all policies and resolutions.

x x x x x x x x x

[62] 387 Phil. 15, 25 (2000).

[63] *Id*. at 26.

There is no Misappropriation or Conversion of the Funds of BATELEC II

But even assuming that the first element of estafa under Article 315(1)(b) of the RPC is present in this case, a finding of probable cause against petitioners is still bound to collapse. This is so because the second element of estafa under the said article is just the same non-existent.

The second element of estafa under Article 315(1)(b) of the RPC requires that there must be *misappropriation* or *conversion* of the money or property received by the offender or a denial on his part of such receipt. The terms misappropriation or conversion, in the context of the article on point, connotes "*an act of using or disposing of another's property as if it were one's own or of devoting it to a purpose or use different from that agreed upon*."[64] This element was not established in this case:

First. In approving the ITI and Supertrac contracts, the petitioners merely exercised their prerogative—as directors of the cooperative—to enter into contracts that they deem to be beneficial for BATELEC II.[65] Though the petitioners may have committed certain lapses, errors in judgment or even violations of NEA guidelines in making such approval, these do not have the effect of rendering the contracts with ITI and Supertrac illegal or void *ab initio*. Hence, from a strictly legal perspective, any payment made by BATELEC II pursuant to such contracts—backed as they were by the proper board approvals[66]—cannot *per se* be deemed a misappropriation or conversion of the cooperative's funds.

Second. Manalo *et al*. presented absolutely no evidence that the funds of BATELEC II were *not* spent in accordance with

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[64] 700 Phil. 632, 640 (2012).

[65] *Supra* note 61.

[66] CA *rollo*, pp. 355-356; BATELEC II Board Resolution No. 04-067 for the ITI contract and BATELEC II Board Resolution No. 04-111 for the Supertrac contract.

the ITI and Supertrac contracts as approved by the petitioners. In other words, there was no proof that the funds of the cooperative had been paid to persons or for purposes other than those to whom and for which the said funds ought to be paid under the contracts. As the evidence stands, no one but ITI and Supertrac received BATELEC II funds.

Third. Moreover, the absolution of both Trinidad and Bangayan—on the ground that they were not in conspiracy with the petitioners—greatly undermines any potential inference of misappropriation or conversion on the part of the petitioners. It negates the possibility that petitioners could have used the ITI and Supertrac contracts to embezzle funds from the cooperative. More significantly, it indirectly proves petitioners' good faith in approving the ITI and Supertrac contracts.

Verily, petitioners cannot be considered to have misappropriated or converted BATELEC II funds. The second element of estafa under the same provision is, therefore, nil.

Without Misappropriation or Conversion, Any Prejudice Caused Upon BATELEC II May Only Give Rise to Civil Liability

Without proof of misappropriation or conversion, the finding that petitioners may have committed the crime of estafa under Article 315(1)(b), much less of syndicated estafa, obviously, cannot hold. As we have seen, the evidence of Manalo *et al*. only tends to establish that petitioners have committed various lapses and irregularities in approving the ITI and Supertrac contracts and that such lapses and irregularities, in turn, caused some prejudice to BATELEC II. Such evidence, by itself, is certainly not enough for purposes of criminal prosecution for estafa.

Given the evidence at hand, petitioners, at most, may only be held civilly liable for the prejudice sustained by BATELEC II[67] subject to defenses petitioners may raise.

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[67] 34 Phil. 227 (1916).

IV

We thus come to the disposition of this case.

We hold that the CA erred when it found that the DOJ Secretary did not commit grave abuse of discretion in issuing 28 July 2009 resolution in I.S. Nos. 07-0552. In view of the absolute dearth of evidence supporting the finding of probable cause against petitioners, we indeed find that the said resolution had been the product of such abuse of discretion. Consequently, we must set aside the decision of the CA and direct the incumbent Secretary of Justice to withdraw the informations filed against petitioners pursuant to the 28 July 2009 resolution.

The warrants of arrest issued against petitioners in Criminal Case Nos. 0503-2007 and 0504-2007 must too be lifted, as a necessary consequence of the invalidity of the indictment against them.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. We hereby render a decision as follows:

1. **REVERSING** and **SETTING ASIDE** the decision dated 18 February 2010 and resolution dated 16 July 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 110838;

2. **SETTING ASIDE** the resolution dated 28 July 2009 of the Secretary of the Department of Justice in I.S. Nos. 07-0552 to 0553 and **DIRECTING** the Secretary of Justice to issue a resolution dismissing the criminal complaint docketed as I.S. Nos. 07-0552 to 0553 before the Office of City Prosecutor of Lipa City for lack of probable cause and lack of merit;

3. **DIRECTING** the incumbent Secretary of the Department of Justice to file motion to dismiss the informations in Criminal Case Nos. 0503-2007 and 0504-2007 with the Regional Trial Court of Lipa City, Branch 12, and to ask for the **LIFTING** of the warrants of arrest issued against petitioners pursuant to the 7 October 2009 Order of the said RTC of Lipa City.

Let a copy of this Decision be served to the Regional Trial Court, Branch 12, of Lipa City for its consideration.

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] *Reyes,* and *Jardeleza, JJ.,* concur.

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[*] Designated as Additional Member in lieu of Associate Justice Diosdado M. Peralta per Raffle dated December 7, 2016.

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Section 3(e) — The elements of violation of Sec. 3(e) of R.A. No. 3019 are: (*a*) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (*b*) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (*c*) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions. (Cambe *vs.* Office of the Ombudsman, G.R. Nos. 212014-15, Dec. 6, 2016) p. 190

ANTI-MONEY LAUNDERING ACT (AMLA) (R.A. NO. 9160)

Due process — An ex-parte application and inquiry by the Anti-Money Laundering Council (AMLC) into certain bank deposits and investments does not violate substantive due process, there being no physical seizure of property involved at that stage. (Subido Pagente Certeza Mendoza and Binay Law Offices *vs.* CA, G.R. No. 216914, Dec. 6, 2016) p. 314

Jurisdiction of Anti-Money Laundering Council — Allowance to the owner of the bank account, post issuance of the bank inquiry order and the corresponding freeze order, of remedies to question the order, will not forestall and waylay the government's pursuit of money launderers; allowing for notice to the account holder should not compromise the integrity of the bank records subject of the inquiry which remain in the possession and control of the bank, as the account holder so notified remains unable to do anything to conceal or cleanse his bank account records of suspicious or anomalous transactions. (Subido Pagente Certeza Mendoza and Binay Law Offices *vs.* CA, G.R. No. 216914, Dec. 6, 2016) p. 314

— Authority to inquire into bank deposits (Sec. 11 of the AMLA; allowing and authorizing alms to undertake an inquiry into certain bank accounts or deposits is not arbitrary; safeguards before a bank inquiry order is issued: (1) The AMLC is required to establish probable cause as basis for its *ex-parte* application for bank inquiry order;

(2) The CA, independent of the AMLC's demonstration of probable cause, itself makes a finding of probable cause that the deposits or investments are related to an unlawful activity under Sec. 3(i) or a money laundering offense under Sec. 4 of the AMLA; (3) A bank inquiry court order *ex-parte* for related accounts is preceded by a bank inquiry court order *ex-parte* for the principal account which court order *ex-parte* for related accounts is separately based on probable cause that such related account is materially linked to the principal account inquired into; and (4) The authority to inquire into or examine the main or principal account and the related accounts shall comply with the requirements of Art. III, Secs. 2 and 3 of the Constitution. (*Id*.)

— The allowance to the owner of the bank account to question the bank inquiry order is granted only after issuance of the freeze order physically seizing the subject account, and it cannot be undertaken prior to the issuance of the freeze order. (*Id*.)

— The AMLC must establish and demonstrate the required probable cause before issuance of the bank inquiry and the freeze orders. (*Id*.)

— The AMLC's investigation of money laundering offenses and its determination of possible money laundering offenses, specifically its inquiry into certain bank accounts allowed by court order, does not transform it into an investigative body exercising quasi-judicial powers. (*Id*.)

— The owner of a bank account that could be potentially affected has the right to challenge whether the requirements for issuance of the bank inquiry order were indeed complied with given that such has implications on its property rights. (*Id*.)

— The owner of the bank account which may be the subject of inquiry of the AMLC ought to have a legal remedy to question the validity of the order of the appellate court even if subsequent to the issuance of a freeze order. (*Id*.)

COURTS

Hierarchy of courts — Another requirement that a *certiorari* petition carries, springs from the principle of "hierarchy of courts" which recognizes the various levels of courts in the country as they are established under the Constitution and by law, their ranking and effect of their rulings in relation with one another, and how these different levels of court interact with one another. (Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) *vs*. GCC Approved Medical Centers Association, Inc., G.R. No. 207132, Dec. 6, 2016) p. 116

DAMAGES

Actual damages — To justify an award of actual damages, there must be competent proof of the actual amount of loss; credence can be given only to claims which are duly supported by receipts, and courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. (PNB *vs*. Raymundo, G.R. No 208672, Dec. 7, 2016) p. 617

Actual or compensatory damages — To be entitled to compensatory damages, the amount of loss must be capable of proof and must be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable. (Pryce Properties Corp. *vs*. Sps. Octobre, Jr., G.R. No. 186976, Dec. 7, 2016) p. 391

Exemplary damages — Exemplary damages are designed by our civil law to permit the courts to reshape behaviour that is socially deleterious in its consequence by creating negative incentives or deterrents against such behaviour; when not applicable. (Nat'l. Power Corp. *vs*. Sps. Malijan, G.R. No. 211731, Dec. 7, 2016) p. 727

Legal interest — On the interest to be imposed, we agree with petitioner that interest on legal interest is due and demandable, pursuant to Art. 2212 of the Civil Code. (Gilat Satellite Networks, Ltd. *vs*. United Coconut Planters Bank Gen. Ins. Co., Inc., G.R. No. 189563, Dec. 7, 2016) p. 421

OFFICE OF THE OMBUDSMAN

Functions — Determination of probable cause; in the proceedings of preliminary investigation, technical rules of evidence should not be applied. (Cambe *vs*. Office of the Ombudsman, G.R. Nos. 212014-15. Dec. 6, 2016) p. 190

— Determination of probable cause, respected provided there is no grave abuse of discretion. (*Id*.)

— In finding probable cause, only facts sufficient to support a *prima facie* case are required. (*Id*.)

— Probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay. (*Id*.)

PARTITION

Action for — An action for partition is at once an action for declaration of co-ownership and for segregation and conveyance of a determinate portion of the properties involved; if the trial court should find after trial the existence of co-ownership among the parties, it may and should order the partition of the properties in the same action. (Tabasondra *vs.* Sps. Constantino, G.R. No. 196403, Dec. 7, 2016) p. 532

— Physical partition of the property is required; remand of the case to the court of origin warranted to determine the technical metes and bounds, and the specific portions of the property assigned to each co-owner. (*Id*.)

2000 POEA STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Death benefits — The death of seafarer is not compensable where the death did not occur during the term of his employment contract and not work-related. (Covita *vs*. SSM Maritime Services, Inc., G.R. No. 206600, Dec. 7, 2016) p. 598

— To be entitled for death compensation and benefits from the employer, the death of the seafarer must be work-

as the beneficiaries must present evidence to prove a positive proposition. (Covita *vs*. SSM Maritime Services, Inc., G.R. No. 206600, Dec. 7, 2016) p. 598

— The probability of work-connection must at least be anchored on credible information and not on self-serving allegations. (*Id*.)

PLEADINGS AND PRACTICE

Theory and cause of action — A party is *bound by the theory he adopts* and by the cause of action he stands on, and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to re-litigate the matter anew either in the same forum or on appeal. (Dimaandal *vs*. P02 Ilagan, G.R. No. 202280, Dec. 7, 2016) p. 546

PLUNDER LAW (R.A. NO. 7080)

Plunder — Defined and penalized under Sec. 2 of R.A. No. 7080, as amended, has the following elements: (*a*) that the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (*b*) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Sec. 1 (d) thereof; and (*c*) that the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least Fifty Million Pesos (₱50,000,000.00). (Cambe *vs*. Office of the Ombudsman, G.R. Nos. 212014-15. Dec. 6, 2016) p. 190

POLITICAL AND JUSTICIABLE QUESTIONS

Doctrine — The matter about Sec. 3(b) of P.D. No. 198 was a justiciable question; political questions refer to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity; or in regard to which full discretionary authority has been delegated to the legislature or executive branch of the government."

PRELIMINARY INVESTIGATION

— The views issued by the United Nations Human Rights Committee do not form part of the treaty; they only display "important characteristics of a judicial decision" and are not *per se* decisions which may be enforced outright; thus, they are mere recommendations to guide the state it is issued against. (*Id*.)

UNJUST ENRICHMENT

Principle of — The principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it; allowing petitioner to earn more than it legally and contractually deserved is tantamount to unjust enrichment. (B.F. Corp. *vs.* Form-Eze Systems, Inc., G.R. No. 192948, Dec. 7, 2016) p. 451

VALUE ADDED TAX (VAT)

Exempt transactions — Revenue regulations must be understood to implement the same principle as the Cooperative Code and the NIRC and not add to the existing requirements provided by these laws. (Commissioner of Internal Revenue *vs*. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative, G.R. No. 209776, Dec. 7, 2016) p. 636

— The certificate of tax exemption shall remain valid so long as the cooperative is in good standing as ascertained by the Cooperative Development Authority (CDA). (*Id*.)

— Under Sec. 109(1) of the NIRC, *sales by agricultural cooperatives* are exempt from VAT provided the following conditions concur, *viz*: *first*, the seller must be an agricultural cooperative duly registered with the CDA; an agricultural cooperative is "duly registered" when it has been issued a certificate of registration by the CDA; *second*, the cooperative must sell either: 1) exclusively to its members; or 2) to both members and non-members, *its produce*, whether in its original state or processed form. (*Id*.)

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